



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312942-22

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<b>Development</b>	Construction of 2 two-storey houses. Removal and change to vehicular access with associated site works.
<b>Location</b>	Site to the rear of Gortevan, Barnhill Road, Dalkey, Co. Dublin.
<b>Planning Authority</b>	Dun Laoghaire-Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D21A/1089
<b>Applicant(s)</b>	Rosario Rizzo
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party vs. Refusal
<b>Appellant(s)</b>	Rosario Rizzo

**Observer(s)**

1. Sean Sheehy
2. Rosaleen Bradley
3. Aisling Murphy and Damian Quinn
4. Lucela Fitzsimons
5. Anne O'Reilly
6. Paddy and Margaret O'Reilly
7. Michael and Mary Craig
8. Wolverton Management Co. CLG
9. Susan Cameron
10. Majella Byrne
11. Jill Aston
12. Noelle Seaver
13. Kevin O'Connell

**Date of Site Inspection**

4<sup>th</sup> November 2022

**Inspector**

Stephen Ward

## 1.0 Site Location and Description

- 1.1. The site of the proposed development is located c. 400m west of Dalkey village centre. It is annexed from a larger residential site located along Barnhill Road to the south. The site is accessed via an existing cul-de-sac road which predominantly serves the residential estate of Wolverton Glen to the north of the site. The DART rail line runs further to the north of Wolverton Glen, at a distance of c. 60 metres from the appeal site.
- 1.2. The site has an overall stated area of 644m<sup>2</sup> and comprises the rear garden of the existing single storey dwelling known as 'Gortevan'. The site levels gradually fall to the rear (north) of the site and the site is bounded by the rear gardens of existing dwellings on all sides. The southern site boundary with 'Gortevan' consists of a recently erected timber fence with concrete posts. A combination of an existing boundary wall and dense, mature vegetation separates the site from the rear garden of 'Ormond' to the west and No. 34 Wolverton Glen to the north. There is a mature hedge along the boundary with 'Derreen' to the east. There is an existing vehicular access off Wolverton Glen at the northeast corner of the site, which would appear to be shared with the houses to the east known 'Derreen' and 'Breenagh'.
- 1.3. There is a mixed pattern and character of development in the surrounding area. The northern side of Barnhill Road mainly comprises a mixed character of low-profile, detached dwellings, with some instances of backland development. To the north of the site, Wolverton Glen is a higher-density, modern development comprising a mixture of terraced, semi-detached, and detached dwellings.

## 2.0 Proposed Development

- 2.1. In summary, permission is sought for the following:
  - Construction of 2 no. 4-bed, flat-roofed, 2-storey dwellings with rear gardens
  - Shared front courtyard/parking area with 5 no. parking spaces
  - Widening of existing vehicular entrance off Wolverton Glen to a maximum width of 3.232m
  - Landscaping, boundary treatment, SuDS drainage, and all ancillary works.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 9<sup>th</sup> February 2022, Dun Laoghaire-Rathdown County Council (DLRCC) issued notification of the decision to refuse permission for the following reason:

*Having regard to the height, scale, bulk/massing, layout of the proposed two-storey dwellings, their proximity to the adjacent boundaries and surrounding dwellings in this backland location, it is considered that the proposed development, would appear overly prominent and overbearing and would overlook the elevated amenity space of the existing dwelling. In addition, the open space areas for the proposed dwellings would be deficient in terms of their overall length. In this regard, the proposed development would be contrary to the provisions of Section 8.2.3.4 Additional Accommodation in Existing Built-up Areas (vi) Backland Development of the Dún Laoghaire Rathdown County Development Plan 2016-2022. It is considered therefore, that the proposed development would seriously injure the residential and visual amenities, and depreciate the value of property in the vicinity, and would be contrary to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The DLRCC planner's assessment can be summarised as follows:

- The site is zoned objective 'A', where residential development is permitted in principle. The proposal is generally in accordance with the zoning provisions and section 8.2.3.4 of the Development Plan.
- There is an extensive planning history on the site, and it is necessary to determine whether the previous grounds for refusal have been overcome.
- The current proposal has been amended to incorporate additional boundary setbacks. However, the planning authority is not satisfied that the previous concerns have been addressed.

- The proposal is marginally higher than the previous proposal, which also included a less visually impactful dormer roof design. The scale and prominence of the proposed dwellings would appear visually overbearing when viewed from the immediate site surrounds.
- Given the overall scale, form, and separation distances between the existing dwelling on site, the proposal fails to comply with Section 8.2.3.4 (vi) of the Development Plan and permission should be refused on this basis.
- The internal floor areas of the proposed dwellings comply with the requirements of 'Quality Housing for Sustainable Communities'.
- The proposal will reduce the depth of the rear garden of 'Gortevan' to 6-9m but this principle has already been accepted by the planning authority in previous applications.
- Section 8.2.3.4 (vi) of the Development Plan sets out the applicable private amenity space standards. Given the scale of the proposed houses, the relatively small rear garden depth, the reduced amenity area for house no. 1, and the separation distance from the existing dwelling and its elevated amenity area, the planning authority is not satisfied that the previous reason for refusal has been adequately addressed.
- The separation distances from surrounding boundaries/dwellings, particularly the existing dwelling to the south, is not acceptable with regard to the provisions of Sections 8.2.3.4 (vi) and 8.2.8.4 (ii) of the Development Plan.
- The proposal will have a negative impact on the residential amenity of adjoining properties by reason of overlooking and overbearing impacts.
- The application has demonstrated that there will be no undue overshadowing of adjoining properties.
- Given the setback of the dwellings, their limited visibility, and the quality of the design, the proposal is acceptable in terms of visual amenity.
- Many of the issues raised by third-party submissions regarding access via Wolverton Glen are private civil matters which are outside the remit of the application.

- It was recommended to refuse permission, and this forms the basis of the DLRCC decision.

### 3.2.2. Other Technical Reports

Drainage: No objections subject to conditions.

Transportation: No objections subject to conditions.

### 3.3. **Prescribed Bodies**

Irish Water: Standard conditions relating to connections and capacity apply.

### 3.4. **Third Party Observations**

21 no. submissions were received by the planning authority. The issues raised are covered in section 6.3 (observations) of this report.

## 4.0 **Planning History**

4.1. The following is noted in relation to the appeal site:

**P.A. Reg Ref D22A/0554:** Permission granted (27/10/22) to block up the existing vehicular entrance to Gortevan off Barnhill Road and create new vehicular entrance (centred on the site) with sliding gate.

**ABP Refs. 314270-22 & 314231-22 (P.A. Reg Ref D22A/0021):** Current appeal case against the decision of DLRCC to grant permission (11/7/22) for alterations to 'Gortevan' including: demolish roof and construct new first floor with pitched roof, widen/alter existing windows and door to front, new door and window to side, construct single storey extensions to rear of retained existing rear extension, new high flat roof to rear extension, widen/alter existing windows to rear extension, new vehicular entrance to Barnhill Road with sliding gate.

**P.A. Reg Ref D21A/0338:** Permission refused (11/6/21) for (A) alterations to the existing house 'Gortevan' consisting of: demolish roof and construct new first floor with pitched roof, widen existing windows to front and sides of main house. Construct

single storey extensions to rear of retained rear extension, new roof to rear extension and widen/alter existing windows to rear extension. Widen vehicular gate to Barnhill Road and fit sliding gate and (B) Construction of 2 no. semi-detached dormer dwellings (single storey with dormer upper floor with mansard type roof) including site excavation, parking area, landscaping, bin stores, services, widen the existing vehicular access to the rear of the site accessed from Wolverton Glen. The reason for refusal was as follows:

*Having regard to the height, scale, bulk / massing, layout and the proposed dormer windows to the front and rear; of the proposed two-storey dormer dwellings, their proximity to the adjacent boundaries and surrounding dwellings in this backland location, it is considered that the proposed development, would appear overly prominent and overbearing, and would overlook the properties to the south and north, and would have deficient length rear private amenity areas. It is considered therefore, that the proposed development would seriously injure the residential and visual amenities, and depreciate the value of property in the vicinity, would help set an undesirable precedent for similar type development in the area, and would be contrary to the proper planning and sustainable development of the area.*

**P.A. Reg Ref D20A/0062:** Permission refused (23/3/20) for 1. Construction of 2 detached dwellings (four-bedroom, two storey) including site excavation. 2. Parking area, boundary structures, landscaping, bin stores, services. 3. Widen existing vehicular access. The reason for refusal was as follows:

*Having regard to the height, scale, and bulk/ massing of the proposed two-storey dwellings, their narrow separation distance, and the closely adjacent boundaries and surrounding dwellings in this backland location, it is considered that the proposed development, by reason of its overall height, size/ bulk and layout, including large, east (side) boundary facing windows and large, first floor, front and rear windows; would appear overly prominent and overbearing, and would overlook the properties to the south and north, and would have deficient length rear private amenity areas. It is considered therefore, that the proposed development would seriously injure the residential and visual amenities, and depreciate the value of property in the vicinity, would help set an undesirable precedent for similar type development in the area,*

*and would be contrary to the proper planning and sustainable development of the area.*

**P.A. Reg Ref D18B/0503:** Permission granted (20/2/19) to demolish the single storey extension to the rear of the existing single storey dwelling and construct a single storey extension with roof lights to the rear. Provide and fit new windows to the ground floor front and side elevations of the existing dwelling, together with all associated site works on part of the site.

**P.A. Reg Ref D18A/0592:** Permission refused (14/8/18) to demolish the single storey extension to the rear of the existing single storey dwelling. Remove the garden shed located on the west side of the site/existing dwelling. Construct a two-storey extension with roof lights to the rear. Provide and fit new windows to the ground floor front and side elevations of the existing dwelling, together with all associated site works on part of the site. The reason for refusal was as follows:

*Having regard to the design, scale and massing of the proposed 2-storey extension, it is considered that the proposed development fails to have regard to the design and character of the existing single storey dwelling. The proposed development would dominate the existing dwelling and would be visually incongruent with the existing dwelling and would be prominent within the existing streetscape. It is considered that the proposed development would seriously injure the amenities, or depreciate the value, of property in the vicinity and is therefore considered to be contrary to the proper planning and sustainable development of the area.*

4.2. The following is noted in relation to adjoining sites:

**P.A. Reg Ref D19A/0326:** Permission granted (19/2/20) at 34 Wolverton Glen for a single storey and porch extension to side, sub-division of existing dwelling house to create a Family Flat, two new velux windows to front and side over existing kitchen, new pedestrian access to side, additional car parking space to front and all associated site works to existing dwelling house.



**P.A. Reg Ref D22A/0370:** Permission granted (18/8/22) at Derreen for extension to the side, over existing single storey converted garage with existing roof extension to the side, rear single storey extension, new single storey home office play room in place of existing car port, front canopy and porch, some internal alterations, widening vehicular access from Barnhill Road, and associated site works.

## 5.0 Policy Context

### 5.1. National Policy/Guidance

5.1.1 The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains several policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints;
- NPO 4 promotes attractive, well-designed liveable communities;
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards;
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking;
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location;
- NPO 35 aims to increase residential density in settlements through a range of measures including infill development and site-based regeneration.

5.1.2 **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)**, hereafter referred to as 'the Sustainable Residential Development Guidelines' sets out the key planning principles which should guide the assessment of planning applications for development in urban areas. Section 1.9 recites general principles of sustainable development and residential design, including the need to prioritise walking, cycling and public transport over the use of

cars, and to provide residents with quality of life in terms of amenity, safety and convenience. A design manual accompanies the guidelines which lays out 12 principles for urban residential design relating to context, connections, inclusivity, variety, efficacy, distinctiveness, layout, public realm, adaptability, privacy and amenity, parking and detailed design.

- 5.1.3 The guidance document ‘**Quality Housing for Sustainable Communities**’ (DoEHLG, 2007), identifies principles and criteria that are important in the design of housing and highlights specific design features, requirements and standards.

## 5.2. Development Plan

- 5.2.1. Although the DLRCC decision was made on the basis of the Dun Laoghaire-Rathdown County Development Plan 2016-2022, that plan has since been replaced by new Dun Laoghaire-Rathdown County Development Plan 2022-2028, which came into effect on 21st April 2022 and is now the operational plan for the purposes of the Board decision.
- 5.2.2. The site is zoned as ‘Objective A’, which is ‘*To provide residential development and improve residential amenity while protecting the existing residential amenities*’. Table 13.1.2 confirms that residential uses are ‘permitted in principle’ in this zone.
- 5.2.3. Chapter 4 ‘Neighbourhood – People, Homes and Place’ aims to increase delivery of housing subject to alignment with the NPF and RSES; the Core Strategy, Housing Strategy, and Housing Need Demand Assessments; and embedding the concept of neighbourhood and community into spatial planning. Section 4.3 deals with ‘Homes’ and relevant policies/objectives can be summarised as follows:
- PHP18:** Promotes increased density on suitable sites subject to suitable design which respects the character and amenities of the surrounding area.
- PHP20:** Seeks to protect the residential amenity of existing properties.
- PHP27:** Encourages an appropriate mix of housing.
- 5.2.4. Section 4.4 ‘Place’ promotes quality design and healthy placemaking in accordance with national policy and guidance. It sets out policies/objectives aimed at achieving a high quality of design and layout in residential developments.

5.2.5. Chapter 12 of the Development Plan deals with Development Management. The following sections are relevant:

**12.3** outlines guidance on criteria for residential developments and aims for high quality design to improve the living environment for residents.

**12.3.7.6** outlines the standards that apply to 'backland development'.

**12.4** sets out Transport guidance, including standards relating to traffic management, road safety, and car parking.

**12.8** deals with Open Space and Recreation, including quantitative and qualitative standards for residential developments.

### 5.3. **Natural Heritage Designations**

The Dalkey Islands SPA and the Rockabill to Dalkey Island SAC are both located offshore to the east, at distances of approximately 1.25km and 1.5km respectively.

### 5.4. **Preliminary Examination Screening for Environmental Impact Assessment**

Having regard to the established use of the site and surrounding development, the nature and limited scale of the proposed development, and the absence of any connectivity to any 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**

The decision of DLRCC to refuse permission has been appealed by the applicant. The appeal has been prepared by Hughes Planning and Development Consultants and the grounds of appeal can be summarised under the following headings.

### Planning History

- The application has been made with due regard for the previous refusal reasons (D20A/0062 & D21A/0338).
- The current proposal addresses these concerns while achieving an appropriate balance between the protection of residential amenity and the efficient use of a zoned, serviced, infill site.
- The planning authority has failed to consider the precedent case of ABP Ref. 307639, which was granted in strikingly similar circumstances on a site located 50m to the east of the appeal site.
- The appeal refers to several other suggested precedent cases which have permitted increased density on underutilised sites. Cited Board cases include Refs. 303725-19 (150m east of the appeal site), 303944 (40m east of the appeal site), and 304804-19 (39 Castle Park Road, Dalkey).

### Private Amenity Space

- The scale and height of the dwellings has no bearing on the assessment of open space.
- Notwithstanding its depth, the quantum of open space exceeds the minimum standard for each dwelling and will provide a highly usable south-facing space.

### Separation distances

- While the proposal does not achieve 22m separation distance between the proposed upper floor windows and 34 Wolverton Glen, the achieved distances (at least 14m) and fenestration treatment is sufficient to protect residential amenity.
- The velux window in No. 34 has been opened against the provisions of a Deed of Conveyance which prohibited any dormer-type-bungalows on that side of Wolverton Glen for the first 30 metres.
- Compared to previous applications, the proposal provides increased separation from the east and west site boundaries to ensure no undue overbearing impacts.

### Visual Impact

- The proposal will not detract from the immediate receiving environment, local adjoining properties, or the local public realm.

### Residential Amenity

- There is no impact to warrant a refusal of permission.
- The scale has been reduced and separation distances increased to avoid undue overbearing impacts.
- A contemporary aesthetic has been achieved.
- Overlooking has been mitigated to the front and rear with angled windows and hit-and-miss brick work.
- The dwellings cannot contribute to any extent of overshadowing as outlined in the Daylight Analysis and Overshadowing Report.

### National/Regional Policy

- The planning authority has failed to consider national planning policy and the merits of the proposal on a zoned, serviced, infill site within 1km of a DART station and a town/district centre.
- The proposal aims to make more efficient use of serviced land, which is consistent with the policies of the NPF, the Urban Development and Building Heights Guidelines for Planning Authorities, and the Regional Spatial and Economic Strategy for the Eastern and Midland Region.

### Revised Design Option

- Although the appeal expresses a preference for the design as submitted with the application, an amended design is presented.
- The amended design involves a partial setback (1037mm) of the northern façade at first floor level.
- It contends that the revisions reduce any potential overbearing visual impacts.

## **6.2. Planning Authority Response**

None.

### 6.3. Observations

Submissions have been received from thirteen parties, which generally support the planning authority decision. The concerns raised in the submissions are similar and can be summarised collectively under the headings below.

#### Access / Traffic

- The development requires access from Castle Park Road via Wolverton Glen, which is privately owned. There is no right of way for such access and the Management Company (WGMC) has made it clear that such consent will not be granted.
- Any right of way that may exist to Gortevan is for that single property only (occasional use) and not for the proposed development of two additional houses. It is contended that any right of way only extends as far as No. 18 Wolverton Glen and would be extinguished through the subdivision of the site as proposed.
- The applicant has not produced any evidence of the right of way or service wayleaves and, therefore, permission should not be approved.
- WGMC will not grant consent for the widening of the first (outside) gate access from Wolverton Glen. The existing access width (2.6m at gate) is inadequate and a minimum width of 3.7m is required for emergency vehicles.
- The owner of 34 Wolverton Glen and WGMC do not consent to the alteration of the shared pillar to widen the existing second (inside) entrance to Gortevan.
- WGMC will not grant consent for the connection / wayleaves to sewers or drains; for emergency/service vehicles; or for construction vehicles.
- The width and alignment of Wolverton Glen makes access difficult, particularly for larger vehicles (construction, service etc.).
- Construction traffic will result in potential damage, noise, disturbance, dirt and will restrict access to properties in Wolverton Glen. It should be limited to access off Barnhill Road.
- No parking has been provided for visitors, construction traffic, or service vehicles and any such parking should not be permitted within Wolverton Glen.
- The car parking does not comply with requirements for backland sites (5.5m x 3m).

- The autotrack drawings for Fire Tender access show a vehicle length of 7.7m, while such vehicles are typically 10.5m long.
- The additional traffic compromises the safety of residents in Wolverton Glen.

### Planning History

- The proposal is substantially the same as previous applications, particularly in relation to height, scale, proximity, and impacts on properties. It has not addressed the reasons for refusal.
- The suggested precedent cases referenced in the appeal (including the case at Killea, Barnhill Road) are substantially different in terms of site size, context, services, overlooking impacts, access etc.

### Overlooking

- Windows are larger than previously proposed and result in overlooking for adjoining properties.
- The proposal does not meet the required 22m separation distances from properties to the north and south. Mitigation measures are inadequate.
- The proposed windows will be even closer to Gortevan if P.A. Reg. Ref. D22A/0021 is granted.
- The flush roof window in No. 34 Wolverton Glen is quite different from a standard vertical dormer window.

### Backland Development

- This is clearly 'backland' development rather than 'infill' development.
- The proposal is not in keeping with guidance for backland development in respect of site size, separation distances, private amenity space, overlooking, car-parking, and access.
- This is clearly a case of overdevelopment of the site.

### Private Amenity Space

- The rear gardens do not meet the minimum required 11 metres.
- The proposed green space is inadequate and the existing spaces in Wolverton Glen are for residents only.

### Overbearing

- The sloping nature of the site highlights the prominent and overbearing impact of the houses in relation to Wolverton Glen.
- Single storey houses are encouraged for backland development as per planning authority guidelines.
- The impact of the dwellings would be unacceptably overbearing on 34 Wolverton Glen and the trees shown in photomontages do not exist.

### Drainage

- The services in Wolverton Glen are private and are maintained by WGMC. They are already at capacity and any additional development would overload the system, resulting in additional flooding.
- Connection points to services are not clearly indicated.
- The proposal will surely reduce the amount of rainwater that can be absorbed naturally by the earth.

### Residential Amenity

- The proposal would conflict with zoning objectives to protect residential amenity.
- The proposal would lower property values in the area.
- The proposal fails to have regard to the design and character of Wolverton Glen.

### Other Issues

- Any tree planting should be specified by condition to be native species and of an appropriate size.
- The study may be used as a fifth bedroom.
- The property addresses should not be part of Wolverton Glen.
- It is questioned whether conditions will be attached in respect of eco-friendly and sustainable energy options.
- It is questioned whether a Management Company will be set up for the proposed communal areas, services etc. It will not be managed by WGMC and should not benefit from the financial investment in the estate.



- The application was rightly refused in accordance with Development Plan provisions which were agreed as part of a lengthy democratic process.
- The potential for damage to roads, services and people in Wolverton Glen is questioned, as well as the liability for same.

#### 6.4 Prescribed Bodies

None.

### 7.0 Assessment

#### 7.1. Introduction

- 7.1.1. It is noted that the appeal includes an amended design option involving the partial setback of the first-floor level of the north façade. This is not an uncommon practice with appeals. The proposal attempts to address the reason for refusal, does not increase the potential for impacts on adjoining properties, and I am satisfied that third parties and the planning authority have been given the opportunity to comment on the amended proposal. Accordingly, I am satisfied that the amended proposal can be considered by the Board.
- 7.1.2. I would summarise by stating that the principle of the additional houses would be consistent with the Development Plan 'Objective A' zoning for the site. The proposal would also be consistent with local and national policies which aim for increased density and compact growth on underutilised sites, particularly on accessible sites such as this within 10 minutes walking distance of the Glenageary DART station. However, in accordance with planning policy and the DLRCC decision, the suitability of the proposal must be assessed against the criteria for 'backland development' and its impact on services, the amenities of the area, and surrounding properties.
- 7.1.3. Having inspected the site and examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, I consider that the main issues in this appeal are as follows:
- Legal Issues
  - The standard of residential amenity proposed
  - Impacts on residential amenity of surrounding properties

- Visual amenity
- Drainage
- Access, traffic and parking.

## 7.2. Legal Issues

- 7.2.1. The third-party submissions have raised widespread concerns about the legal interest of the applicant to carry out the proposed development. In summary, the submissions dispute the applicant's right of way through the full extent of Wolverton Glen (WG); the intensification of any such right of way; consent to widen the existing entrance arrangements; and consent to connect to the existing drains and other services within WG.
- 7.2.2. As evidenced by the existing vehicular entrance arrangements to the rear of Gortevan, it would appear that the applicant currently enjoys access to the property via Wolverton Glen. Furthermore, this would appear to be supported by the provisions of the legal document (dated 7<sup>th</sup> February 1994) submitted by the applicant with the appeal (see Appendix C).
- 7.2.3. The existence of the right of way is not outrightly disputed by the third parties. However, concerns have been raised about the extent of the right of way and its potential intensification as a result of the proposed development. I consider this to be a civil matter to be resolved between the relevant parties, and that the matter is outside the scope of the appeal case.
- 7.2.4. In terms of alterations to the existing entrance arrangements, I note that there is an outer (northern) gated entrance from Wolverton Glen, followed by an inner (southern) entrance on the northern boundary of Gortevan. It is not proposed to alter the outer entrance within Wolverton Glen. It is proposed to widen the existing inner entrance to Gortevan to a width of 3.232m. The application clarifies that this would be achieved through the removal of the eastern gate pillar and the reduction in the width of the western gate pillar by 210mm. The applicant contends that this will involve no alteration to the boundary treatment of no. 34 Wolverton Glen.
- 7.2.5. The third-party submissions contend that the existing gate pillars are partly owned by the owner of no. 34 and WGMC, and that consent for alteration of the entrance has

not been granted. I note that many of the submissions contain a copy of a drawing entitled 'Survey map of area between Wolverton Glen and residence, Gortevan, Barnhill Road'. Based on that survey map and the applicant's proposals, it would appear that the applicant could achieve the proposed entrance width of 3.232m without materially impacting on the boundaries of no. 34 or Wolverton Glen. In my opinion, this is a reasonable proposal, and any legal dispute is a matter to be resolved outside the scope of this appeal case.

- 7.2.6. Regarding water services, it is proposed to dispose of surface water on site rather than any connection to the surface water drainage system in Wolverton Glen. The application states that it is proposed to connect to the public mains water supply and the public sewer, and the 'ground floor plan' drawing proposes a foul water connection to the north via Wolverton Glen.
- 7.2.7. I note that the third-party submissions have objected to any connections via Wolverton Glen, but Irish Water has not raised any objection subject to connection agreements, capacity, and design standards. Ultimately, the application is dependent on Irish Water connections, and this will be subject to the necessary consents that may be required for any intermediary connection route. As per normal practice, I am satisfied that this would be satisfactorily addressed through conditions of any permission requiring the agreement of IW connection arrangements.
- 7.2.8. Concerns have also been raised about connections to other utilities within Wolverton Glen. I note that the details of utility connections have not been provided and this is standard practice for planning applications. Therefore, there is no proposal before the Board to connect to any such utilities within Wolverton Glen. In any case, I am satisfied that this will be a matter for separate consideration as part of the utility connection process, as is normal in the case of planning applications.
- 7.2.9. In conclusion regarding the foregoing legal issues and any other third-party concerns about the property rights of Wolverton Glen, I would highlight Section 5.13 of the Development Management Guidelines for Planning Authorities (DoEHLG, 2007). This outlines that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. These are ultimately matters for resolution in the Courts and the Board should note that, as per section

34(13) of the Planning Act 2000, a person is not entitled solely by reason of a permission to carry out any development.

7.2.10. The Guidelines do acknowledge that doubts raised as to the sufficiency of the legal interest may require a request for further information. It states that only where it is clear that the applicant does not have sufficient legal interest should permission be refused. Having regard to the foregoing, I am satisfied that the applicant has established sufficient legal interest for the making of the application and the decision. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal. In any case, this is a matter to be resolved between the relevant parties, having regard to the provisions of section 34(13) of the Planning and Development Act 2000 (as amended).

### **7.3. The standard of residential amenity proposed**

#### Floor Areas

7.3.1. I have reviewed the target/minimum areas for dwellings as set out in '*Quality Housing for Sustainable Communities*' (Table 5.1) and I note that the gross floor area for the proposed dwellings (153m<sup>2</sup>) significantly exceeds the requirements for a 4-bed/7-person 2-storey house (110m<sup>2</sup>). The internal arrangements are also consistent with the required standards. I note a third-party suggestion that the 'study' could be converted to a 5<sup>th</sup> bedroom. However, I do not consider this room to be of suitable width/size for a single bedroom and, in any case, the overall floor area of the house significantly exceeds the minimum 4-bed requirements. Accordingly, I would have no objection in respect of the proposed internal floor areas.

#### Private Open Space

7.3.2. Section 12.8.3.3. of the Development Plan sets out that all houses require good quality private open space behind the front building, with 4-bed+ houses requiring an area of 75m<sup>2</sup>. Section 12.3.7.6 'Backland Development' outlines that a lower requirement of 60m<sup>2</sup> applies to 3-bed+ units. The proposed development exceeds these requirements with areas of 78m<sup>2</sup> and 88m<sup>2</sup>.

7.3.3. Section 12.8.7 sets out quality standards, stating that a minimum separation distance of 22m for opposing rear windows should usually be observed, normally resulting in a minimum rear garden depth of 11m. However, where sufficient alternative space is

available, required separation distances may be reduced. Private open space should not be unduly overshadowed and separation distances should be increased where there is potential to overshadow/overlook adjoining properties.

- 7.3.4. In this case the proposed dwellings have a separation distance of 10.9m from rear first-floor windows to the southern site boundary. I note that this distance is reduced at ground floor level, resulting in rear garden depths of c. 8.4m. However, the garden areas still exceed the overall minimum area requirements and would benefit from a largely unobstructed, attractive, southern aspect. Accordingly, I am satisfied that the proposed gardens provide an acceptable standard of residential amenity.

#### Public Open Space and Communal Open Space

- 7.3.5. Section 12.8.3.1 of the CDP sets out the requirements for public open space in residential developments, which has regard to the Sustainable Residential Development Guidelines and is stated to be a minimum of 15% of the site area in existing built-up areas. It also acknowledges that this standard may not be possible in high-density or urban infill schemes, or on sites less than 0.25ha. In such cases a development contribution may be sought in lieu of the shortfall.
- 7.3.6. Having regard to the limited size of the appeal site and its backland context, I do not consider that public open space provision is appropriate or feasible in this case. A section 48 development contribution would adequately address this absence, the precise details of which should be agreed with the planning authority or, in default, with the Board.
- 7.3.7. Section 12.8.3.2 of the Development Plan also states that, in addition to public open space, communal open space must also be provided for apartments and in some instances for houses. However, in this instance of just two houses, each of which has adequate individual private amenity space, I do not consider that the provision of communal open space would be appropriate or feasible.

#### Conclusion

- 7.3.8. Having regard to the foregoing, I am satisfied that the proposed development would result in acceptable standards for internal living space and external private open space. It would ensure an appropriate standard of residential amenity for the prospective residents, and I have no objections in this regard.

## 7.4 Impacts on residential amenity of surrounding properties

### Overlooking and privacy

- 7.4.1. In outlining design criteria for residential development, section 12.3.1.1 of the CDP highlights the need to consider levels of privacy and amenity, including consideration of overlooking and the appropriate use of screening devices. Section 12.3.7.6 'Backland Development' states that development should generally be single storey to avoid overlooking, but where 2-storey is proposed a minimum distance of 22m shall apply between directly opposing rear windows and minimum rear garden depths of 11m shall apply. A relaxation in rear garden length may be acceptable once sufficient open space is provided to serve the proposed dwelling and the applicant can demonstrate that the proposed backland dwelling will not impact negatively on adjoining residential amenity.
- 7.4.2. As previously outlined, I consider that the rear garden depth is acceptable for the proposed houses given the overall areas provided. The rear upper floor windows would be c.10.9m from the rear (south) site boundary and would be c. 17m from the rear façade of Gortevan. However, Gortevan does not include upper floor windows and I am satisfied that any overlooking of the rear ground floor windows or the rear garden space would be adequately distanced, and direct overlooking would be adequately obscured by the proposed 2-metre-high boundary fence and the angled views available.
- 7.4.3. I note the proposed alterations to Gortevan as proposed under P.A. Reg Ref. 22A/0021, which is currently the subject of an appeal (ABP Ref. 314314270-22). Given the status of this proposal, it would be premature to raise objection on these grounds, particularly given that the applicant is the owner of both proposals. Furthermore, it should be noted that the proposed 1<sup>st</sup> floor extension to Gortevan would maintain a 22m separation distance from the rear 1<sup>st</sup> floor windows of the current appeal proposal.
- 7.4.4. Regarding impacts on the property to the north (no. 34 Wolverton Glen), the CDP does not include any particular specification for separation distances from the front of proposed dwellings to surrounding dwellings/gardens. However, I note that the Sustainable Residential Development Guidelines advise that normal requirements (i.e. 22 metres) may be impractical and that innovation and flexibility will be essential

to achieve an attractive character in new development. It also acknowledges that careful positioning and detailed design of windows can prevent overlooking.

- 7.4.5. The proposed dwellings would be c. 11 metres from the shared boundary with No. 34 WG, and c. 16 metres from its main rear façade. The application proposes hit-and-miss brickwork over the proposed 1<sup>st</sup> floor north-facing windows in order to mitigate overlooking potential. No. 34 is a low-profile dwelling with roof space accommodation served by small, high-level, rooflight windows. Given the applicant's mitigation measures, the limited size of the openings in no. 34, their separation distance of c. 20 metres, and their skyward orientation, I do not consider that any unacceptable overlooking impacts would occur. I also consider that there will be adequate separation distance from the rear garden of no. 34. Accordingly, I do not consider that the applicant's amended design proposal is necessary.
- 7.4.6. Having regard to the foregoing, I do not consider that the proposed development would have any unacceptable privacy or overlooking impacts on the existing dwellings to the north and south. The proposed 1<sup>st</sup> floor side elevation windows will consist of obscured glazing and will not result in any overlooking concerns. Other properties in the area would benefit from greater separation distances and there would be less impacts on privacy. Accordingly, I have no objections in this regard.

#### Overbearing Impacts

- 7.4.7. The proposed 2-storey dwellings are of a relatively low height (6.6m) given the proposal to incorporate flat roofs. The overall scale and bulk of the proposal is also reduced by the design approach for detached houses with a 1-metre separation distance. As previously outlined, I also consider that appropriate separation distances would be provided between the proposed dwellings and adjoining dwellings/boundaries.
- 7.4.8. I do not consider that the proposed houses would be excessive in scale, height, or bulk/massing, or that the proposed development would result in any unacceptable overbearing impacts when viewed from the properties in the surrounding area. Accordingly, I do not consider that the applicant's amended design proposal is necessary.

## Conclusion

- 7.4.9. In conclusion, I have considered the impacts of the development on existing properties, and I do not consider that the proposal would seriously detract from the privacy of surrounding properties by reason of overlooking. Furthermore, I do not consider that there will be any unacceptable overbearing impacts on surrounding properties. Accordingly, I would have no objection to the proposal on grounds on impacts on the amenities of surrounding properties.
- 7.4.10. I note the concerns raised regarding the devaluation of property in the vicinity. However, no explicit evidence has been submitted of any such impact. Furthermore, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.
- 7.5. **Visual Amenity**
- 7.5.1. As previously outlined, the site is located within an area which contains a wide variety of development in terms of scale and character. Furthermore, the proposed development is on a concealed, backland site, which is largely screened from the public realm by existing development to the north and south.
- 7.5.2. The proposed development would involve a contemporary insertion and photomontage images have been prepared showing the visual impact of the development from surrounding vantage points. I note that the proposed development would only be briefly visible from localised points in the public realm. I do not consider that the height, scale, or bulk/massing of the proposed development is excessive, and I consider that the contemporary design approach will positively contribute to the evolving character of the area.
- 7.5.3. Consistent with section 12.3.7.6 of the Development Plan, I consider that the proposed development is of an appropriate scale relative to the existing dwelling and is of high-quality design. Accordingly, I would have no objection on grounds of visual amenity.



## **7.6. Drainage**

- 7.6.1. As previously outlined, it is proposed to utilise on-site SuDs measures and to dispose of all surface water on site via soakaways. The planning authority Drainage Planning report outlines that there are no objections to this proposal subject to conditions. If a soakaway is not a feasible solution, the planning authority requires alternative SuDs proposals. It also specifies that the soakaways and hardstanding areas shall be designed in accordance with BRE Digest 365 / GDSDS standards.
- 7.6.2. I note the concerns raised by third-parties about the capacity of the existing drainage system and the potential for flooding. However, the proposed development will not connect to the existing drainage system and, as per the local authority reports, I am satisfied that on-site surface water management is an acceptable proposal.
- 7.6.3. Furthermore, as previously outlined, I am satisfied that the issue of water and wastewater connection can be adequately addressed through the Irish Water connection agreement process.

## **7.7. Access, traffic and parking**

- 7.7.1. The development comprises 2 no. 4-bed dwellings, and 5 no. communal parking spaces are proposed to the front of the dwellings. The spaces comply with the general size requirements of 2.4m x 4.8m as per section 12.4.5.7 of the CDP. The site is within Parking Zone 2 of the CDP. According to Table 12.5 of the CDP, the 2 houses would require a total of 4 spaces. Therefore, I am satisfied that the proposal for 5 spaces is acceptable and that the proposed development would not reasonably result in any unacceptable parking impacts on Wolverton Glen, whether generated by prospective residents and/or visitors etc.
- 7.7.2. With regard to traffic generation, it should be noted that there is an existing vehicular access to the site via Wolverton Glen, albeit a rear access which is presumably subsidiary to the main front access to Gortevan. Notwithstanding any extent of existing traffic movements to the site via Wolverton Glen, the proposed development has a maximum traffic-generating capacity of just two houses at operational stage. I do not consider this to be significant in the context of the existing 36 no. houses in the estate. I have noted concerns about the width and alignment of the Wolverton Glen access road, but I consider that such conditions and alignment are effective in

reducing vehicle speeds and improving traffic safety. Accordingly, I do not consider that the proposed development would have any unacceptable impacts on the existing capacity and safety of traffic movements within Wolverton Glen or the wider road network.

- 7.7.3. Regarding access to 'backland development', section 12.3.7.6. of the Development Plan states that vehicular access of a lane width of 3.7 metres must be provided to the proposed dwelling (3.1 metres at pinch points) to allow easy passage of large vehicles such as fire tenders or refuse collection vehicles. Access to the site is proposed via a widened inner entrance gate of 3.2m, although it is acknowledged that there is a separate outer gate within Wolverton Glen at a width of 2.7m. There is no proposal to widen this gateway and the third-party submissions have outlined a widespread objection to any such proposal.
- 7.7.4. It would appear that the Development Plan access width standards are derived from Table 5.2 of the Building Regulations 2006 (Technical Guidance Document B – Fire Safety). And while I acknowledge that the Wolverton Glen access width (2.7m) is c.400m narrower than the stated minimum 'pinch point' width (3.1m), it should be noted that the applicant's autotrack drawings do not propose that fire tenders or other larger vehicles would pass through that 'pinch point'. Ultimately, I would highlight that compliance with TGD B will be assessed under a separate legal code. The developer will be required to apply for a Fire Safety Certificate and that process will afford the opportunity to address compliance with TGD B in an appropriate and comprehensive manner. Therefore, I consider that the issue of compliance with Building Regulations need not concern the Board for the purposes of this appeal.
- 7.7.5. Otherwise, I note that the applicant has submitted autotrack drawings which demonstrate adequate turning capacity for larger vehicles within the Wolverton Glen estate. The drawings also show that the proposed car-parking spaces can be appropriately accessed/egressed by cars and/or delivery vans etc. Accordingly, I am satisfied that access proposals are acceptable for the purpose of this appeal.
- 7.7.6. Regarding the construction stage of the project, I note that concerns have been raised regarding construction traffic and associated impacts relating to noise, dirt, capacity, access, damage, and parking. The submissions suggest that any construction access should be limited to Barnhill Road.

7.7.7. I would state that some element of construction stage impact is an inevitable and unavoidable aspect of urban development. However, these impacts are temporary and must be appropriately facilitated if compact urban development is to be achieved within existing built-up areas. The application does not include details of construction traffic and it is therefore not clear whether Wolverton Glen would be used as an access. However, as per normal application practice, I would accept that it is unreasonable to expect construction management details at this stage of the process. Therefore, I am satisfied that construction traffic impacts can be adequately agreed as part of a construction management plan which should be agreed with the planning authority prior to the commencement of development.

## 7.8. Other Issues

7.8.1. I would agree with third-party submissions stating that any tree-planting should be of native species and should be of an appropriate size to the site. Details in this regard should be agreed in writing with the planning authority by condition.

7.8.2. The third-party submissions also raise concerns about the notion that the proposed development would be included as part of Wolverton Glen, in terms of the address and management company. I consider it appropriate that a separate address and management company should apply to the proposed development, details of which should be agreed in writing with the planning authority by condition.

7.8.3. I also note the queries raised by third-parties about eco-friendly and sustainable energy options. I note that section 12.4.11 of the Development Plan requires the provision of electric vehicle charging points at a rate of 1 per 5 spaces for multi-unit residential developments. However, I do not consider this to be warranted for a development of just two houses. Furthermore, I am satisfied that the matter of energy efficiency will be adequately addressed through the separate legal code of the Building Regulations.

7.8.4. Having regard to the Section 28 Guidelines in respect of 'Commercial Institutional Investment in Housing', I consider that the development, comprising less than 5 own-door units and falling within the definition of structure to be used as a dwelling to which these guidelines applies, should not include a condition to restrict the first occupation of these units as outlined by the Guidelines.

## **8.0 Appropriate Assessment – Screening**

Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area, zoned for residential development, and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

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

## **10.0 Reasons and Considerations**

Having regard to the pattern and character of development in the area, the design and scale of the proposed development, and the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in accordance with the zoning objective for the site, would not detract from the visual amenity of the area, would provide an acceptable standard of residential amenity for the prospective residents and would not seriously injure the residential amenity of surrounding properties, and would not endanger public safety or convenience by reason of traffic generation, drainage proposals, or otherwise. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interests of clarity.

2. 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. Details of same shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

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

3. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreements with Irish Water.

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

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

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

5. All service cables associated with the proposed development (such as electrical, telecommunications, and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

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

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development including details of construction access, traffic management arrangements, noise management measures and off-site disposal of construction waste.

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

7. The car-parking and hardstanding area serving the proposed development shall comply with the detailed standards of the planning authority for such road works.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

8. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the

name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility.

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interests of sustainable waste management

10. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

11. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) A plan to scale of not less than 1:500 showing –

(i) The species, variety, number, size and locations of all proposed trees and shrubs, which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder.

(ii) Details of screen planting, which shall not include *cupressocyparis leylandii*.

(iii) Details of roadside/street planting, which shall not include *prunus* species.

(iv) Hard landscaping works, specifying surfacing materials, furniture and finished levels.

(b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment

(c) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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



12. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

**Reason:** In the interests of public safety.

13. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity

14. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Stephen Ward  
Senior Planning Inspector

9<sup>th</sup> December 2022