



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312953-22

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<b>Development</b>	Construction of a single storey detached dwelling. A Natura Impact Statement was submitted with this application.
<b>Location</b>	Newtown, Passage East, Co. Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	211131
<b>Applicant(s)</b>	Krista Meade
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Krista Meade
<b>Observer(s)</b>	Lloyd Hutchinson; Paul Renehan
<b>Date of Site Inspection</b>	24.04.23
<b>Inspector</b>	Una O'Neill



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## 1.0 Site Location and Description

- 1.1. The subject site is located in a rural area 1.7km south of Crooke and 3km south Passage East, in County Waterford. The site, which has a stated area of 0.25ha, fronts onto the local primary road L4076 and backs onto the coast/beach referred to from different sources as Passage Strand/Raheen Strand/Barrack Strand (for ease of reference I will refer to it as Passage Strand). There is an informal grassed walkway from the road to Passage Strand which is used by the public.
- 1.2. The site is greenfield/overgrown with vegetation at present. There is a stream along the southern boundary (EPA name Knockparson), with an embankment down to the stream, and also an embankment to the east, down to the coast. There are several rural detached dwellings in the vicinity of the site.

## 2.0 Proposed Development

- 2.1. The proposed development is for a single storey (with attic accommodation) fully serviced detached dwelling together with all associated site works to include new vehicular access/driveway, landscaping, boundary treatments, foul water treatment system and all other associated site works.
- 2.2. The stated flood area of the proposed house is 168sqm. Vehicular access is via a new entrance from the adjoining local road. Water will be supplied from the public mains. Surface water is to be directed to two soakpits. Wastewater is to be treated via a new on-site tertiary treatment system.
- 2.3. A Natura Impact Statement accompanies this application.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission REFUSED for three reasons, summarised as follows:

R1: Development located within a flood plain on lands identified as Flood Zone A and B as per OPW Flood Risk Mapping...absence of a site-specific flood risk assessment.

R2: Site is adjoining and partly within the River Barrow and River Suir SAC and in designated Flood Zones A and B...absence of a Natura Impact Statement.

R3: Visually sensitive location adjacent to the coast, at a visually vulnerable area and along a scenic route as designated in the Waterford County Development Plan 2011-2017...visually obtrusive form...would seriously injure the amenities of the area and result in an inappropriate pattern of development adjacent to the coast which it is an objective of the Planning Authority to protect as per Objective CP4 of the county development plan.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. The following is of note:

- Local Housing Need – in an area under urban pressure. Supplementary Application Form completed, however, no folio or land registry documentation submitted.
- Services – T value of 30.53 and P value of 28.39. Site is located in Flood Zone A and B and a water course runs along the southern boundary. Water Services Section has concerns.
- Access – New entrance onto local primary road L4076. Sightlines can be achieved. With regard to laneway to north of site, redline boundary of the site has allowed for 2m in width for the existing laneway to provide access to the foreshore.
- Siting and design – single storey dwelling; max ridge height of 5.8m, which is 1.275m lower than previously refused dwelling; no first floor level accommodation indicate though stated in the description; external finishes of render and cedar cladding.
- Landscape character – site is along a scenic route and partially within an area classed as 'visually vulnerable' scenic classification; notwithstanding photomontage submitted, serious concerns that the proliferation of houses at this vulnerable coastal location will have a detrimental impact on site and area

and addition of another house adjacent to the coast would compound this situation further.

- Flood risk – Almost entirety of site apart from a portion to the north is within Flood Zone A and B, associated with the watercourse along the southern boundary. The entirety of the proposed house, wastewater treatment system and percolation area are within the flood zones.
- The applicant has submitted a Site Specific Flood Risk Assessment. Notwithstanding the findings of the report, no justification test has been submitted and a dwelling house is considered a highly vulnerable development type. The applicant has not satisfied the Planning System and Flood Risk Management Guidelines for Planning Authorities 2009.
- NIS identified risks during the construction stage and mitigation measures are proposed. The findings of the NIS are considered acceptable.
- Ribbon development – The site is an infill site. The applicant is seeking to build a house on family land beside the family home. Ribbon development is not an issue.

### 3.2.2. Other Technical Reports

**Water Services** – Report (dated 7<sup>th</sup> December 2021) states the following:

- Over concentration of single wastewater treatment systems in the immediate area, posing a threat to groundwater and the environment.
- Notwithstanding regulated safe distances under EPA Code of Practice, site is elevated with a steep incline towards the local stream to the south and shoreline to the east and would represent an environmental impact on both.

**Heritage Officer** – Report (dated 2<sup>nd</sup> February 2022) states that NIS has been reviewed. Conclusion of report is based on absence of direct effects in that the development will take place outside the boundary of the SAC and is buffered by an existing line of vegetation on the coastal boundary.

- NIS does not provide a detailed assessment of source-pathway-receptor with regard to waste water treatment.

- The Coolteigan stream runs along the southern boundary and outfalls to the estuary but has an unassigned water quality status. The WFD requires development demonstrate that it will not result in a deterioration in status or jeopardise the attainment of good water status. Waterford Harbour is at risk of not attaining good status and water quality 2013-2018 is cited as moderate.
- Proposal is for a tertiary treatment system and discharge to groundwater. It is also noted the area is within a flood zone, notwithstanding the absence of flood data for the site.
- Satisfied that the proposal will not cause adverse impacts on the integrity of Waterford Estuary SAC given that it will not impact on the attributes and targets of the two qualifying interest habitats within the impact zone of the site.
- The location of the site at a flood zone and adjacent to a stream with an unknown water quality status raises uncertainty in achieving compliance with the following objective of the development plan: Policy ENV7 (WFD and SRB WMP); Policy ENV16 (flood risk); Policy HN16 (riparian corridor of 15m required).

### 3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage – Report (dated 20<sup>th</sup> January 2022) notes the Natura Impact Statement by Russell Environmental & Sustainability Services recommends several mitigation measures in section 4.4. The Department has no objection under the condition that every mitigation measure will be strictly adhered to during all preparatory site works and throughout the building phase until completion.

### 3.4. Third Party Observations

Seven submissions were received, one of which supports the application, and the others raise objections to it. The issues raised are largely as set out in the grounds of appeal (see Section 6 hereunder).



## 4.0 Planning History

21/570 – Permission REFUSED for a house. Same reasons for refusal as current application, ie flood zone; location partly adjoining and within the River Barrow and River Suir SAC, in a designated flood zone, and absence of a NIS; location along the coast, at a visually vulnerable area and along a scenic route.

82/463 – Permission REFUSED for a house.

## 5.0 Policy Context

### 5.1. National Policy

- Project Ireland 2040 National Planning Framework (2018)
  - Objective 19: Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:
    - o 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;
    - o In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- Regional Spatial and Economic Strategy for the Southern Region 2020-2032 (January 2020)
- Sustainable Rural Housing Guidelines for Planning Authorities (2005)

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

#### Chapter 2 Spatial Vision and Core Strategy

- Table 2.2 Settlement Hierarchy and Typology – Passage East/Crooke is identified as a Class 4A Rural Town.
- Section 2.10 'Rural Areas' states that the countryside will continue to be a living and lived in landscape, focussing on the requirements of rural communities and their economies, based primarily on agriculture, forestry tourism and rural enterprise, while at the same time avoiding an over-spill urban generated development and protecting environmental quality.
- Section 2.10.1 Rural Area under Strong Urban Influence - ... facilitate the housing requirements of the local rural community, subject to satisfying site suitability and technical considerations, whilst on the other hand directing urban generated development to areas zoned and designated for housing in the adjoining villages and rural settlement nodes.
- The provision of rural housing shall be based on the core considerations of economic, social or local need to live in a rural area, siting and design criteria, and 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.
- **CS 05 Housing Strategy** - We will develop and deliver a Housing Strategy in order to meet the housing needs of our communities, balance the provision of social and affordable private housing, ensure effective delivery of housing and mitigate current residential leakage and unsustainable travel patterns.
- **CS 09 Low Carbon Future** - Through the implementation of the Core and Settlement Strategies, we will put in place a pattern of land use and associated policy objectives and actions, which facilitate a just transition to a low carbon society.
- **CS 12 Rural Regeneration** - We will pursue the regeneration of smaller towns and villages in a manner consistent with NPO 16, 17 & 18, particularly those experiencing stagnation, decline, dereliction and vacancy. Through programmes such as “new homes in small towns and villages”, we will facilitate greater choice for people to build homes in these locations in the interest of securing their viability as a focus for community interaction, activity, and rural services.
- **CS 13 Settlement Strategy** - In a manner consistent with the settlement typologies and respective policy objectives of the SRSES, we will:

...

- Support the development of our urban and rural settlements to provide for the demands of their communities and encourage networking between settlements to build economic resilience and rationalise the sustainable provision of services while structuring and implementing the settlement hierarchy in a manner consistent with the RSES Sustainable Place Framework.

## **Chapter 7 Housing and Sustainable Communities**

- Section 7.11.2 Housing in the Open Countryside.
- **Policy Objective H28:** 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.
- **Housing Need -** Persons with a demonstrable social need to live a particular local rural area would include those that have lived a substantial period of their lives (7 years or more) in the local rural area and who require a dwelling to meet their own housing needs close to their families and to the communities of which they are part. A local area for the purpose of this policy is defined as an area generally within a 10km radius of the applicant's former place of residence. This rural housing policy will apply equally to those living in the local area, who require a new dwelling to meet their own housing need, as well as returning emigrants wishing to establish a permanent residence for themselves and their families in their local community.
- Section 7.11.4 Ribbon Development.
- **Policy Objective H29:** We will avoid the creation of ribbon development (defined as five or more houses existing on any one side of a given 250 metres of road frontage) and will assess whether a given proposal will contribute to and/ or exacerbate such ribbon development, having regard to the following:
  - (i) The type of rural area and circumstances of the applicant.

- (ii) The degree to which the proposal might be considered infill development.
  - (iii) The degree to which existing ribbon development would coalesce as a result of the proposed development.
  - (iv) Local circumstances, including the planning history of the area and development pressures
- **Map 6:** Miscellaneous Map, The Rural Housing Classification.
  - **Chapter 10** – Landscape, Coast/Marine and Blue Green Infrastructure
    - **Policy L 02 Protecting our Landscape and Seascape** - We will protect the landscape and natural assets of the County by ensuring that proposed developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of their area and ensuring that such proposals are not unduly visually obtrusive in the landscape, in particular, in or adjacent to the uplands, along river corridors, coastal or other distinctive landscape character units.
    - **Policy C&M 05 Scenic Coastal Area** - To protect the scenic value of Waterford's Coastal Zone including landward and seaward views and continuous views along the coastline and manage development so it will not materially detract from the visual amenity of the coast
  - **Appendix 8** – Landscape and Seascape Character Assessment
    - **Scenic Route 15** - South-east from Waterford City on the R683 to Mount Druid. South along the R684 to Belle Lake and east on third class road via Woodstown to Waterford Harbour. North to Passage East along the Harbour, continuing north towards Cheekpoint. South at junction to R683 and west to Waterford City.
    - **Coastal Landscape Character Type – appeal site is in the Lower Waterford Estuary Character Unit, rated as 'Most Sensitive Area'**. This type of area is described as follows: 'Very distinctive features with a very low capacity to absorb new development without significant alterations of existing character over an extended area'.

- **Seascape Type and Sensitivity: Fully Enclosed Coast; Most Sensitive to Change;** Likely to undergo significant change or loss of character and appearance due to relatively minor changes - especially if located along the shoreline or skyline as it is visible throughout the area.
- **Appendix 13** – Strategic Flood Risk Assessment
- **Map 2** – Zoning and Flooding Map
  - Eastern end of appeal site, which includes the beach/shore area is in Flood Zone A, where the stream along southern boundary of the site meets the coast.

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

The eastern section of the application site is within the River Barrow and River Nore SAC (002162) and within Waterford Harbour pNHA (000787). Duncannon Sandhills pNHA (001738) is located 2.9km from the site, on the opposite side of the estuary. Bannow Bay SPA (004033) and SAC (000697) is located 8.3km to the east of the site. Hook Head SAC (000764) is located 10.8km to the east and 9km to the south of the site. Tramore Back Strand SPA (004027) and Tramore Dunes and Backstrand SAC (000671) and pNHA is located is located 8.3km to the southwest of the site.

### 5.4. **EIA Screening**

Under Item 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where more than 500 dwelling units would be constructed, the need for a mandatory EIA arises. The proposal is for the development of 1 dwelling. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, notwithstanding the proximity of the proposed development to a European Site, the nature and scale of the development would not result in a real likelihood of significant effects on the environment and so the preparation of an EIAR is not required. 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

An appeal has been lodged by the applicant accompanied by a submission from a planning consultant. The grounds of appeal are summarised as follows:

- The site is a gap site in a row of six dwellings. It is an infill site and does not constitute ribbon development, as assessed by the PA.
- The site is overgrown and unused and belongs to the applicant's family, who own a 42ha farm on the opposite side of the road.
- The access route to the beach to the north and the stream to the south are outside the site boundaries.
- The public road declines north-south with the application site at a lower level to houses to the north.
- Attic storage accommodation is proposed and not habitable attic accommodation.
- Refusal Reason 1:
  - Application was accompanied by a Site Specific Flood Risk Assessment. There is no identified fluvial or tidal flooding across the site, based on predictive mapping and historic flooding information.
  - The Flood Zone Mapping contained in the Draft Waterford County Development Plan 2022-2028 confirms the site is not in Flood Zone A or B.
- Refusal Reason 2:
  - The site is in a designated 'visually vulnerable' coastal location, however, the nature, scale and characteristics of the site are such that the proposed house can be absorbed into the rural landscape, without detracting from the visual amenity. The development of the site will enhance the visual and general amenity of the area. Photomontages show no negative impact from views of the beach and estuary from the road or from the beach back to the road and the rural landscape beyond.

- There is no uninterrupted views of the beach and estuary from the road given existing houses and trees.
- The proliferation of houses already exists. This is an infill site, not located at either end of the row of dwellings, which would contribute to ribbon development.
- Refusal Reason 3:
  - The consideration in relation to the number of septic tanks in the area was on the basis of the mistaken belief that the site is in a Flood Zone.
  - The Site Suitability Assessment raises no concerns in relation to ground characteristics or discharge to ground. No council official critically reviewed the site suitability assessment report.
  - The NIS findings were accepted by the Heritage Office and the Planning Officer that significant impacts on the SAC can be ruled out.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

Two observations were received. The issues raised are summarised as follows:

- Site acts as a sponge for excess water that accumulates in the 'v' of the road during heavy rainfall.
- Development of site will have an impact on run off from the stream and flooding.
- Flooding and density of septic tanks in the area.
- There are rocks on eastern boundary of the site brought in to slow down coastal erosion.
- Development in Crooke Passage East could accommodate applicant.
- There are other options that will not affect the visual, cultural and natural amenity of the area.

- Laneway to north of site is a public right of way. Unclear what width of laneway will be after the development. Appears that northern boundary of site is pushing into the laneway.
- Concerns in relation to local eco-system and various fauna and flora.
- SAC addressed in environmental consultants report, but SPA was not addressed.
- The Department of Housing Local Government and Heritage confined itself to the natura report.
- Concerns, supported by research, in relation to release of clean effluents into ecosystems.
- The natura report confirms there is an indirect threat to the SAC, which consultant has failed to acknowledge in their grounds of appeal.
- Flood risk – divergent opinion between local authority and retained engineer.
- Visual impact from the northern ditch being removed from the site.
- Waste water – discharge of ‘clean effluents’ lead to deterioration and demise of local ecosystems, as confirmed by world wide research. The site and the SAC are hydrologically linked to the SPA.
- The area is under urban pressure and will result in 5 or more houses along a 250m stretch of road. As per national guidance this is not allowed. This overrides any characterisations as gap or infill development.
- Housing need – genuine housing need is not disputed, however, no documents have been submitted as required to support this.
- Non-compliant with national and local guidelines, specifically Chapter 4 of the rural housing guidelines and section 4.10 of the development plan which relate to housing within settlements.
- There is a 4B settlement within 5km of the site.



## 7.0 Assessment

Having examined the application details and all other documentation on file, including the submission received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Rural Housing Policy
- Visual Amenity
- Water Services
- Appropriate Assessment

Waterford City and County Development Plan 2022-2028 came into effect on 19<sup>th</sup> July 2022. I note the Planning Authority's assessment of this application was undertaken under the previous development plan, Waterford County Development Plan 2011-2017, as varied and extended, which was also in force at the time of the appeal submission. I assess hereunder the application against the operative development plan, namely Waterford City and County Development Plan 2022-2028.

### 7.1. Rural Housing Policy

- 7.1.1. The proposed dwelling is located in a rural area south of the village of Passage East/Crooke.
- 7.1.2. The PA assessed the proposal against the rural housing policies of the previous plan and was of the view that the applicant complied with the rural housing need policies. I note the questions within the Supplementary Application Form required by the PA to be filled out by those applying for rural housing remains the same in the current plan as under the previous development plan.
- 7.1.3. Section 2.10 'Rural Areas' of the operative development plan states that the entire county is now identified as being under urban influence and Policy H28 is the applicable rural housing policy, which states that in these areas housing proposals will be facilitated 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. Section 7.11.2 of the development plan, 'Housing in the open Countryside', states

persons with a demonstrable social need to live a particular local rural area would include those that have lived a substantial period of their lives (7 years or more) in the local rural area and who require a dwelling to meet their own housing needs close to their families and to the communities of which they are part. A local area for the purpose of this policy is defined as an area generally within a 10km radius of the applicant's former place of residence.

7.1.4. The applicant has submitted a Supplementary Form with their application. It is stated that she currently lives in the family home, which is located c.165m southwest of the appeal site, on the opposite side of the road and set back from it, as per the submitted site location map. The map also shows one dwelling sold to a non-family member to the southwest/north of the family residence. The application form, 'Supplementary Form', requests in relation to the family home the submission of documentary evidence, eg land registry details, home deeds, signed affidavit. No documentary evidence has been submitted. In relation to the questions relating to housing need, the applicant states she has lived and gone to school locally and her stated employment is as a careworker for Positive Care in Arklow, with the work location varying across Waterford/Wexford/Tipperary (commenced work there in 2020). No documentary evidence has been submitted by the applicant in relation to schools or work, as requested in the supplementary form. The applicant states she wishes to remain close to her parents and also her grandmother who lives nearby and needs 24/7 care.

7.1.5. I note that the policies and objectives of the Waterford City and County Development Plan 2022-2028 seek to provide more sustainable formats of development within the rural area through supporting the viability of smaller towns and rural settlements. I would have serious reservations as regards the validity of the applicants functional social need to reside at this specific site. Given the close proximity of the subject site to Passage East/Crooke, and given the applicant's employment is not contingent on her living in the rural area, I consider that the existing settlement in the immediate locality would be capable of satisfactorily addressing the applicant's residential needs. In relation to policy H28 of the development plan, as supported by NPO 19, it is a core consideration in rural areas under urban influence, that the provision of single housing in the countryside is based on demonstrable economic or social need, as well as the requirement to have regard to the viability of smaller towns and rural

settlements. I examine further the latter point hereunder, which is also in my opinion, of particular import in this case.

- 7.1.6. The site lies on the northern side of local road L4076, which travels along the coast north to Passage East/Crooke. There is a proliferation of rural dwellings along this road between the site and Passage East, highlighting the development pressure that this area appears to be under. The proposed dwelling would be the seventh dwelling within a 250m stretch of road. I consider this proposed rural dwelling would exacerbate issues around the sustainable development of existing serviced areas, as per policies CS 05 and CS 09 of the development plan, and I note the existing rural area is under significant development pressure due its proximity to the coast, as can be seen from the number of rural dwellings present in the area, particularly as one gets closer to Passage East/Crooke. While the PA considers the site an infill site, I have had regard Policy Objective H29 (ribbon development), in particular to the designation of the area as a rural area under urban influence, the development pressure evident in this area, in addition to the circumstances of the applicant (as addressed in the previous section), and I consider that a proposed dwelling at this location would contribute further to the pattern of scattered and sporadic development in this area. I further consider, that the proposed dwelling, given its location removed from any settlement centre and public transport networks would be heavily dependent on the private car, and as such would contribute to unsustainable travel patterns and only further hamper attempts to move toward a low carbon economy and, would thereby be contrary to policies CS 05 and CS 09 of the development plan (see section 5.2 above). I therefore consider that the development would contribute to an excessive density of development in an unserviced rural area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and based on the foregoing I consider that the proposal would be contrary to the proper planning and sustainable development of the area and the policy provisions of the Waterford City and County Development Plan 2022-2028.

## 7.2. Visual Amenity

- 7.2.1. The applicant argues in the grounds of appeal that the site can accommodate the proposed dwelling given the ground levels, the design of the dwelling, presence of

existing dwellings to the north and the south, and lack of direct views into the site from both the road and the coast.

- 7.2.2. The PA considers this location to be a visually sensitive location adjacent to the coast, at a visually vulnerable area and along a scenic route as designated in the Waterford County Development Plan 2011-2017.
- 7.2.3. Under Appendix 8 of the operative development plan, the site is considered as being in a 'most sensitive area' under the Coastal Landscape Character type Lower Waterford Estuary Character Unit. I note the site is located along designated scenic route 15. Policies L02 and C&M05 (see section 5 above) seek to protect the landscape, seascape and scenic coastal areas.
- 7.2.4. I consider the greenery offered by vegetation and the intermittent views of the coast along any coastal location all contribute to its character and the fact that at this point the coast is not highly visible does not negate the importance of the views along this scenic route. I consider the proposal will contribute to a higher density of development in a rural coastal location which will detract from the character of this area, notwithstanding a design which is single storey in form. I note the topography of the site is at a low point on the road, however, this also means the embankment to the sea is lower and the potential visibility of the dwelling is higher from the seaward side, particularly in winter when leaves are off the trees.
- 7.2.5. I have viewed the site and the surrounds, and I have reviewed all submissions and documentation on the file. On balance, I consider the proposal is contrary to Policy L02 and Policy C&M 05 of the development plan.

### **7.3. Water Services**

- 7.3.1. It is proposed to serve the development by public water mains. A wastewater treatment system with percolation area is proposed to address wastewater.
- 7.3.2. The stream along the southern boundary of the site is referred to as the Knockparson stream on the EPA website. This stream flows in an easterly direction to the coast. On the coast the land is in Flood Zone A at the confluence of the stream and the coast.

- 7.3.3. The site slopes south to the stream and east to the coast. Surface water and groundwater therefore naturally flow in those directions and both are a consideration in terms of quality of run off and quantity of run off given the location of the eastern portion of the site in the River Barrow and River Nore SAC (002162) and addition of water to an identified Flood Zone A area.
- 7.3.4. The soil type is indicated to be acid brown earths, brown podzolics, surface water gley and groundwater gleys, with subsoils of till derived from acidic/volcanic rocks/alluvium, over a 'poor' aquifer, with vulnerability indicated to be extreme and high. I note GSI maps shows the western half of the site has a 'High' groundwater vulnerability rating and the eastern half of the site has an 'Extreme' groundwater vulnerability rating. There is a public/group water scheme within 1km of the site, called East Waterford WSZ.
- 7.3.5. The Groundwater Protection Response is stated to be R2(1). The EPA Code of Practice 2021, states in relation to R21 that a WWTP is 'Acceptable subject to normal good practice. Where domestic water supplies are located Nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Chapter 6 are met and the likelihood of microbial pollution is minimised'.
- 7.3.6. Trial holes were dug to 2.8m. Bedrock was encountered at 1.7m, with no water ingress encountered. T value is stated to be 30.53 and P value is stated to be 28.39. I note the report concludes that that site is suitable for a secondary treatment system and polishing filter, or a tertiary treatment system and infiltration/treatment area, with the latter being proposed. A tertiary system is stated to be proposed due to site restrictions. Discharge to ground is proposed. No details are given in relation to the specifics of the treatment system and percolation area, other than an outlined box location on the site layout plan. I note two soakaways (one to the front of the house and one to the rear) are proposed for surface water management.
- 7.3.7. Section 6.3 and table 6.2 of the EPA Code of Practice 2021 (CoP) set out minimum separation distances from a DWWTS (periphery of tank/plant/infiltration/treatment area) to various features. I note from the site layout plan that the distance from the treatment system to the foreshore is c. 20m. While it is difficult to pinpoint the exact high water level based on the site layout submitted, it is clear that the proposal falls

short of the minimum recommended distance of 50m from a DWWTS to a lake or foreshore, as per the EPA Code of Practice (CoP). The treatment system is indicated to be 10.35m from the boundary with the stream, however I note it is less than this at its closest point. The minimum recommended distance as per the CoP is 10m. The CoP states 'The separation distances from features identified in Table 6.2 apply to all DWWTSs being assessed under the site characterisation methodology in this CoP. If any of these requirements cannot be met on a new site, the site is not suitable for the installation of a DWWTS'.

### Flooding

- 7.3.8. The third party submission raises concerns in relation to flooding.
- 7.3.9. The PA states the south east extremity of the site falls within flood zone A and B (OPW October 2013) and states no works are proposed in this area.
- 7.3.10. A Flood Risk Assessment has been submitted by the applicant. It is stated the site access is at 9.5mOD, the ffl of the house is 10mOD and the remainder of the site is generally at or sits above 5mOD. It is stated that the highest recorded water level in Waterford City is 3.02mOD. It is stated that there is no identified fluvial and tidal flooding across the site based on predictive mapping and historical flood information.
- 7.3.11. I note that flooding is not an issue at this location as per current OPW data (floodinfo.ie). The zoning and flooding map accompanying the Waterford County Development Plan 2022-2028 also does not identify this as a flood zone area, with a small area where the stream reaches the beach identified as flood zone B. I note no works are proposed in this area and two soakaways are proposed on the site to address surface water.
- 7.3.12. Given the proposed management of surface water on the site, and given the house and associated works are not located within a flood zone (noting the identified flood zone is at the coast where the stream meets the beach) and given the ffl of the proposed dwelling, I do not consider any impacts will arise in relation to flooding.

## **8.0 Appropriate Assessment**

- 8.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, and section 177U and 177V of the Planning

and Development Act 2000 (as amended) are considered fully in this section. The areas addressed are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- Screening the need for appropriate assessment
- The Natura Impact Statement and associated documents
- Appropriate assessment of implications of the proposed development on the integrity of each European site

## **8.2. Compliance with Article 6(3) of the EU Habitats Directive**

8.2.1. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

## **8.3. Screening the need for Appropriate Assessment**

8.3.1. The first test of Article 6(3) is to establish if the proposed development could result in likely significant effects to a European site. This is considered stage 1 of the appropriate assessment process i.e. screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and Appropriate Assessment carried out.

8.3.2. While the project forms part of the SAC it is not directly connected with or necessary to its management, notwithstanding, it needs to be determined if the development is likely to have any significant effects on this or any other European sites. Accordingly, I examine the development hereunder in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European site.

- 8.3.3. While the applicant has not submitted a separate screening assessment, I am satisfied that I have sufficient information before me to allow for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

#### Screening for Appropriate Assessment - Test of Likely Significant Effects

- 8.3.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

#### Brief Description of the Development

- 8.3.5. The proposed development is for a two storey dwelling. The proposal would be served by the public mains for water and by an onsite wastewater treatment system for foul effluent. There are two soakaways proposed to address surface water.
- 8.3.6. The eastern most portion of the site, ie the coastal section, is within the boundary of the River Barrow and River Nore SAC. I note no works are proposed within the boundary of the SAC. There is a surface water stream located along the southern boundary of the site which connects to the coast and the River Barrow and River Nore SAC.
- 8.3.7. Within the greenfield part of the site, where the dwelling is proposed, a vegetation survey was undertaken in August 2021. Four habitats were observed, namely hedgerows, treeline along the stream, recolonising bare ground and lowland rivers/streams. No rare or recorded plant species were recorded on the site. No invasive plant species were present. Typical bird species were present on the site. There was some evidence of Otter using the stream, likely for foraging and eating.

#### European Sites

- 8.3.8. I have established a potential zone of influence having regard to the location of European sites, the Qualifying Interests (QIs) of the site and their potential mobility outside that European site, the source-pathway-receptor model and potential environmental effects of the proposed project. The following European sites have been identified:

- River Barrow and River Nore SAC (002162)



- Hook Head SAC (000764)
- Tramore Dunes and Backstrand SAC (000671)
- Bannow Bay SAC (000697)
- Bannow Bay SPA (004033) Mid-Waterford Coast SPA (004193)
- Tramore Back Strand SPA (004027)

8.3.9. I set out hereunder a summary of European Sites that occur proximate to the proposed development, including their conservation objectives and QIs/SCIs:

European Site	Qualifying Interests/SPIs	Distance	Screening Comment
<p>River Barrow and River Nore SAC (002162)</p> <p>Conservation Objective:</p> <p>To maintain and / or restore the favourable conservation condition of the Annex I habitat(s) and / or the annex II species for which the SAC has been selected. Further detailed conservation objectives for each qualifying interest are provided by the NPWS</p>	<ul style="list-style-type: none"> <li>▪ Estuaries</li> <li>▪ Mudflats and sandflats not covered by seawater at low tide</li> <li>▪ Reefs</li> <li>▪ Salicornia and other annuals colonising mud and sand</li> <li>▪ Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>)</li> <li>▪ Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</li> <li>▪ Water courses of plain to montane levels with the <i>Ranunculon fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation</li> <li>▪ European dry heaths</li> <li>▪ Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels</li> <li>▪ Petrifying springs with tufa formation (<i>Cratoneurion</i>)</li> </ul>	<p>Within site boundary</p>	<p>A vegetation survey indicates none of the qualifying habitats are present on the site. 1130 Estuary and 1140 tidal mudflats and sandflats are adjacent to the site within the River Barrow and Nore SAC.</p> <p>Given the location of the eastern portion of the site in the SAC and given the proximity and potential impacts of the proposed dwelling on the SAC in terms of groundwater and surface water, this site requires further consideration.</p>

	<ul style="list-style-type: none"> <li>▪ Old sessile oak woods with Ilex and Blechnum in the British Isles</li> <li>▪ Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)</li> <li>▪ Vertigo moulinsiana (Desmoulin's Whorl Snail)</li> <li>▪ Margaritifera margaritifera (Freshwater Pearl Mussel) ▪ Austropotamobius pallipes (White-clawed Crayfish)</li> <li>▪ Petromyzon marinus (Sea Lamprey)</li> <li>▪ Lampetra planeri (Brook Lamprey)</li> <li>▪ Lampetra fluviatilis (River Lamprey)</li> <li>▪ Alosa fallax fallax (Twaite Shad)</li> <li>▪ Salmo salar (Salmon)</li> <li>▪ Lutra lutra (Otter)</li> <li>▪ Trichomanes speciosum (Killarney Fern)</li> <li>▪ Margaritifera durrovensis (Nore Pearl Mussel)</li> </ul>		
<p>Hook Head SAC (000764)</p> <p>Conservation Objective:</p> <p>To maintain and / or restore the favourable</p>	<ul style="list-style-type: none"> <li>▪ Large shallow inlets and bays</li> <li>▪ Reefs</li> <li>▪ Vegetated sea cliffs of the Atlantic and Baltic coasts</li> </ul>	<p>c.10.8km to the east and 9km to the south</p>	<p>There is no direct overlap between the development site and this SAC. Given the distances between the application site and this site, and the potential dilution effect in the estuary over that</p>

<p>conservation condition of the Annex I habitat(s) and / or the annex II species for which the SAC has been selected. Further detailed conservation objectives for each qualifying interest are provided by the NPWS.</p>			<p>distance, potential impacts are excluded and no further consideration of this site is required.</p>
<p>Tramore Dunes and Backstrand SAC (000671)</p> <p>Conservation Objective:</p> <p>To maintain and / or restore the favourable conservation condition of the Annex I habitat(s) and / or the annex II species for which the SAC has been selected. Further detailed conservation objectives for each qualifying interest are provided by the NPWS.</p>	<ul style="list-style-type: none"> <li>▪ Mudflats and sandflats not covered by seawater at low tide</li> <li>▪ Annual vegetation of drift lines</li> <li>▪ Perennial vegetation of stony banks</li> <li>▪ Salicornia and other annuals colonising mud and sand</li> <li>▪ Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)</li> <li>▪ Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</li> <li>▪ Embryonic shifting dunes</li> <li>▪ Shifting dunes along the shoreline with</li> </ul>	<p>c.8.3km to the southwest</p>	<p>There is no direct overlap between the development site and this SAC. Given the distances between the application site and this site, intervening land uses, and the potential dilution effect in the estuary over that distance, potential impacts are excluded and no further consideration of this site is required.</p>

	<p><i>Ammophila arenaria</i> (white dunes)</p> <ul style="list-style-type: none"> <li>▪ Fixed coastal dunes with herbaceous vegetation (grey dunes)</li> </ul>		
<p>Bannow Bay SAC (000697)</p> <p>Conservation Objective:</p> <p>To maintain and / or restore the favourable conservation condition of the Annex I habitat(s) and / or the annex II species for which the SAC has been selected. Further detailed conservation objectives for each qualifying interest are provided by the NPWS.</p>	<ul style="list-style-type: none"> <li>▪ Estuaries</li> <li>▪ Mudflats and sandflats not covered by seawater at low tide</li> <li>▪ Annual vegetation of drift lines</li> <li>▪ Perennial vegetation of stony banks</li> <li>▪ <i>Salicornia</i> and other annuals colonising mud and sand</li> <li>▪ Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>)</li> <li>▪ Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</li> <li>▪ Mediterranean and thermoAtlantic halophilous scrubs (<i>Sarcocornetea fruticosi</i>)</li> <li>▪ Embryonic shifting dunes</li> <li>▪ Shifting dunes along the shoreline with</li> </ul>	c.8.3km to the east	<p>There is no direct overlap between the development site and this SAC. Given the distances between the application site and this site, and the potential dilution effect in the estuary over that distance, potential impacts are excluded and no further consideration of this site is required.</p>

	<p>Ammophila arenaria (white dunes)</p> <ul style="list-style-type: none"> <li>▪ Fixed coastal dunes with herbaceous vegetation (grey dunes)</li> </ul>		
<p>Bannow Bay SPA (004033)</p> <p>Conservation Objective: To maintain and / or restore the favourable conservation condition of the Annex I habitat(s) and / or the annex II species for which the SAC has been selected. Further detailed conservation objectives for each qualifying interest are provided by the NPWS.</p>	<ul style="list-style-type: none"> <li>▪ Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</li> <li>▪ Shelduck (<i>Tadorna tadorna</i>)</li> <li>▪ Pintail (<i>Anas acuta</i>)</li> <li>▪ Oystercatcher (<i>Haematopus ostralegus</i>)</li> <li>▪ Golden Plover (<i>Pluvialis apricaria</i>)</li> <li>▪ Grey Plover (<i>Pluvialis squatarola</i>)</li> <li>▪ Lapwing (<i>Vanellus vanellus</i>)</li> <li>▪ Knot (<i>Calidris canutus</i>)</li> <li>▪ Dunlin (<i>Calidris alpina</i>)</li> <li>▪ Black-tailed Godwit (<i>Limosa limosa</i>)</li> <li>▪ Bar-tailed Godwit (<i>Limosa lapponica</i>)</li> <li>▪ Curlew (<i>Numenius arquata</i>)</li> <li>▪ Redshank (<i>Tringa totanus</i>)</li> <li>▪ Wetland and Waterbirds</li> </ul>	c.8.3km to the east	There is no direct overlap between the development site and this SPA. Given the scale of development, the nature of the site, and the distances between the application site and this European site, potential impacts are excluded and no further consideration of this SPA is required.
<p>Tramore Backstrand SPA (004027)</p> <p>Conservation Objective: To maintain and / or restore the</p>	<ul style="list-style-type: none"> <li>▪ Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</li> <li>▪ Golden Plover (<i>Pluvialis apricaria</i>)</li> <li>▪ Grey Plover (<i>Pluvialis squatarola</i>)</li> </ul>	c.8.3km to the southwest	There is no direct overlap between the development site and this SPA. Given the scale of development, the nature of the site, and the distances between the application site and

<p>favourable conservation condition of the Annex I habitat(s) and / or the annex II species for which the SAC has been selected. Further detailed conservation objectives for each qualifying interest are provided by the NPWS.</p>	<ul style="list-style-type: none"> <li>▪ Lapwing (<i>Vanellus vanellus</i>)</li> <li>▪ Dunlin (<i>Calidris alpina</i>)</li> <li>▪ Black-tailed Godwit (<i>Limosa limosa</i>)</li> <li>▪ Bar-tailed Godwit (<i>Limosa lapponica</i>)</li> <li>▪ Curlew (<i>Numenius arquata</i>)</li> <li>▪ Wetland and Waterbirds</li> </ul>		<p>this European site, potential impacts are excluded and no further consideration of this SPA is required.</p>
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8.3.10. Having regard to the characteristics of the development, the location of the appeal site and the separation distance to the aforementioned SACs and SPAs, and the lack of direct hydrological links, I can confirm that the only SAC relevant for further consideration is the River Barrow and River Nore SAC (002162).

8.3.11. I note concerns raised that SPAs have not been considered in the NIS, however, given the small scale of the site, the existing vegetation and overgrown nature of the site, and the flying range of the birds associated with the SPAs outlined above, there is no potential for any impact of the proposed development on SPAs in the wider area.

#### 8.4. Screening Determination

8.4.1. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site No. 002162 (River Barrow and River Nore SAC) in view of the sites Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is therefore required.

8.4.2. In reaching the conclusion of the screening assessment, no account was taken of measures intended to avoid or reduce the potentially harmful effects of the project on any European Site.

## 8.5. The Natura Impact Statement

8.5.1. The application is accompanied by an NIS, dated 4<sup>th</sup> October 2021, by Russell and Environmental Sustainability Services, which examines and assesses the potential adverse effects of the proposed development on the following European site:

- River Barrow and River Nore SAC (002162)

8.5.2. The applicant's NIS was prepared in line with current best practice guidance.

8.5.3. The NIS concludes that on the basis of objective scientific information, that the project individually or in combination with other plans or projects will not affect the integrity of any European site.

8.5.4. The NIS identifies possible adverse effects of the proposed development on specific QIs of the River Barrow and River Nore SAC (002162). Of the QIs listed by the NPWS, the relevant QIs proximate to the site are stated to be 1130 Estuary and 1140 tidal mudflats and sandflats. These habitats are at present stable and the trend is that of increasing quality (as quoted from the NPWS in 2011). Evidence of otters was noted in the adjoining stream.

8.5.5. No potential direct pathways from the site for emissions are identified. Potential indirect effects are considered in terms of potential effects of emissions to surface water during construction stage.

8.5.6. Details of construction mitigation measures are detailed in Section 4.4 of the NIS and are listed as: good construction practices in relation to dust; no works to be undertaken during periods of forecast rain; all plant and machinery to be service; no plant maintenance to occur on site; refuelling to be completed using drip trays; procedures and contingency plans to be set up to deal with emergency accidents or spills. I note there is no commentary in relation to how surface water is to be controlled/directed during the construction phase. I consider this a deficiency in the mitigation measures proposed.

8.5.7. I note no consideration is given in the NIS to potential effects at operational stage in terms of wastewater and appropriate mitigation in relation to the unlikely event that

pollution of groundwater as a result of wastewater effluents or malfunction of the wastewater treatment system arises. I consider this a deficiency in this NIS. I note soakaways are proposed for during the operational phase.

- 8.5.8. An assessment of in-combination and cumulative effects are considered and none are identified.
- 8.5.9. Notwithstanding the above conclusion of the NIS and the conclusion of the report as submitted by Department of Housing, Local Government and Heritage which noted no objection based on all mitigation measures proposed being implemented, I have concerns in relation to the scope and extent of mitigation measures proposed in the NIS. The onus is on the applicant to ensure that adequate and relevant information is submitted to enable an Appropriate Assessment to be carried out. Such an assessment should be based on the best scientific knowledge in the field, of all aspects of the development project which can, by itself or in combination with other plans and projects, adversely affect the European site in light of its Conservation Objectives. I am not satisfied that the mitigation measures proposed have adequately considered both the construction and operational phases of the proposed development. I am not satisfied that the information presented allows for a complete assessment of all adverse effects of the development on the conservation objectives of European sites in the area, alone, or in combination with other plans and projects.

## 9.0 Recommendation

- 9.1. I recommend that permission be refused for the following reasons and considerations set out hereunder.

## 10.0 Reasons and Considerations

1. Having regard to the location of the proposed development in a Rural Area under Urban Influence according to the Waterford City and County Development Plan 2022-2028 (Map 6:Miscellaneous Map, The Rural Housing Classification), where in accordance with Policy Objective H28, the provision of housing is based on the core consideration of demonstrable economic, social or local need, it is considered that, based on the information on the file, the applicant has not demonstrated an economic or social need to live in this



rural area and that a proposed dwelling at this location would militate against the preservation of the rural environment, the efficient provision of public services and infrastructure, and would exacerbate the potential for ribbon development. The proposed development would therefore, be contrary to the provisions of the Waterford City and County Development Plan 2022-2028, specifically policies H28, CS05 and CS09 and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the coastal location of the site along designated Scenic Route no. 15 in the Waterford City and County Development Plan 2022-2028 and in relation to which it is a particular objective of the planning authority under Policy L04 and Policy C&M05 to protect the scenic value of Waterford's scenic routes and coastal zone and manage development so it will not materially detract from the visual amenity of the views or coast, it is considered that the proposed development, by reason of its location between the public road and the coast, would seriously injure the visual amenities of the area, would adversely affect the amenity of this coastal zone and would contravene the policies of the said development plan, which policies are considered reasonable. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the site conditions, proximity of the site to the foreshore, and proximity of the site to the River Barrow and River Nore SAC, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system, and accordingly the Board cannot be satisfied that the proposed development, individually or in combination with other plans and projects, would not be likely to have a significant effect on this European site, in view of the site's conservation objectives. The proposed development would, therefore, be prejudicial to public health, would pose an unacceptable risk of environmental pollution and would be contrary to the proper planning and sustainable development of the area.

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Una O'Neill  
Senior Planning Inspector

27<sup>th</sup> April 2023