



An  
Bord  
Pleanála

## Inspector's Report ABP – 315805-23

---

<b>Development</b>	Two storey side extension to west, alterations and revisions to south, east and north elevations, to internal layout and to external vehicular parking and, associated site works.
<b>Location</b>	Merriton House, Kinlen Road, Greystones, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority Reg. Ref.</b>	22 751.
<b>Applicant</b>	Ciaran and Maureen Hanrahan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	John and Sinead Gulliver
<b>Date of Site Inspection</b>	24 <sup>th</sup> July, 2023.
<b>Inspector</b>	Jane Dennehy

## **Contents.**

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	5
5.0 Policy and Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations .....	6
5.3. EIA Screening .....	6
6.0 The Appeal .....	6
6.1. Grounds of Appeal .....	6
6.2. Applicant Response .....	7
6.3. Planning Authority Response .....	8
7.0 Assessment.....	9
8.0 Recommendation.....	11
9.0 Reasons and Considerations.....	11

## 1.0 Site Location and Description

- 1.1. The site is that of Merriton House which has a stated area of 999 square metres has frontage onto Kinlen Road which has in the Burnaby, Greystones. Merriton House is modest detached dormer style Edwardian with a stated floor area of 175 square metres. It has front and rear gardens and vehicular access along off Kinlen Road from which there is a lane along the west side of the dwelling along the entire depth of the site. Semi-detached houses facing onto Kinlen Road are located between northern side of the application and as Mill Road.
- 1.2. Epworth, the (Appellant party property) is a detached dwelling on the site to the rear of the application site. It is in the Edwardian style, has been upgraded and extended and which has access off Quarry Road.
- 1.3. There is a lane between the rear boundaries of the properties on Kinlen Road and on Quarry Road extending from Old Mill Road and terminating at the rear of the application site and appellant party properties.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicate proposals for:-

A two-storey side extension to west side of the house which has a stated floor area of twenty-one square metres and which in the design detail and finishes are similar to those of the existing house. A veranda is included to the west side of the extension and a side elevation window.

Alterations and revisions to the existing south, east and north elevations

Revisions to internal layout,

Revisions to external vehicular parking and,  
associated site works.

- 2.2. In a submission lodged on 21<sup>st</sup> December 2022 in response to an additional information request, it is confirmed that at the request of Irish Water a trench was opened across the width of the lane. It was inspected by a Wicklow County Council Engineer who provided written confirmation that the sewer was no longer in use and that there is no private sewer in the laneway at and in the vicinity.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The applicant was requested to provide written confirmation of agreement from Irish Water to show that the proposed development would not have negative impact on the sewer in the lane or Irish Water's assets.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planning officer in his initial report, indicated satisfaction with the proposed development subject to clarification from Irish Water regarding the sewer line which was raised with the applicant in the additional information request. According to the planning officer, the form height and design detail for the two-storey extension is deemed to be appropriate and compatible with the existing dwelling and in keeping with the characteristics of the ACA.

The planning officer in his supplementary report, on the further information submission indicated satisfaction with the proposed development and notes with regard to objections by the third party (appellant) that the extension would not extend over the width of the lane in entirety and that there would be no impact on access from the rear of the property at Epworth, Reference is also made to section 34 (13) of the Planning and Development Act, 2000, as amended, regarding entitlement to carry out a development and it is stated that issues such as rights of way are a civil matter outside the planning remit. A grant of permission is recommended subject to standard conditions.

#### **3.2.2. Other Technical Reports**

There are no internal technical reports available on file.

#### **3.2.3. Third Party Objections**

Submissions indicating objection to the proposed development were lodged in connection with the application and in connection with the further information submission were lodged by John and Sinead Gulliver of Epworth, (the Appellant Party) in which issues raised include:-

- The extension would be built on the communal laneway over which there are rights of way which would be affected.
- There are problems with the sewage network and the existing pipework in the lane to which regular access for repair and maintenance is necessary.
- The proposal has an inappropriate and insensitive design,
- The proposed development will have adverse impacts on the architectural heritage of The Burnaby which is in an ACA.
- The proposed development will overlook and overshadow with adverse impact on privacy and residential amenities.

3.2.4. There is a further written statement by John and Sinead Gulliver which was received by the planning authority on 5<sup>th</sup> January, 2023 on file on in which is additional comments are made on the applicant's further information submission and the objections previously made are reiterated. The planning authority, after it had determined its decision on the application, forwarded a copy to the applicant along with a covering letter on 25<sup>th</sup> January, 2023.

## 4.0 **Planning History**

There is no record of planning history for the application site.

## 5.0 **Policy and Context**

### 5.1. **Development Plan**

The operative plan is the Wicklow County Development Plan, 2022-2028.

Development and Design Standards are in Appendix 1.

Built Heritage is within Chapter 8.

Burnaby is a statutory Architectural Conservation Area. Table 8.1, Maps 8.3.

### 5.2. **Greystones and Kilcoole LAP 2013-2019**

There is no official record of the plan' statutory period being extended. Further to an enquiry with the local authority it is understood that it is being taken into

consideration in development management unless any provisions are in conflict with the CDP. (A Draft LAP is on public consultation at present.)

The site is within The Burnaby which is subject to the zoning objective “Existing Residential” and also subject to the specific objective: . R10 – Residential – 10/ha and, *‘To provide for the development residential communities up to a maximum density of 10 units per hectare and to preserve and protect residential amenity’*.

Policy HER 12 provides for preservation of the character of the ACAs in accordance with policies and objectives provided for in Section 9 under Objective HER 12.

Policies and Tree protection objectives are in Section : T14 for Greystones Portland Road and T17 for Greystones Whitshed Road.

The Burnaby ACA is in Section 3.4

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

The following designated sites are within 5 km of the appeal site: • Bray Head SAC (Site Code 000714) – circa 2 km to the north • Glen of the Downs SAC (Site Code 000719) – circa 2.7 km to the west • The Murrough Wetlands SAC (Site Code 000730 – circa 3 km to the south.

### 5.4. **EIA Screening**

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 **The Appeal**

### **Grounds of Appeal**

- 6.1. An appeal was lodged on behalf of John and Sinead Gulliver on 14<sup>th</sup> February, 2023 attached to which there is a copy of a conservation report, a copy of a submission on the Draft Greystones Local Area Plan, 2020, photographs and copies of extracts

from a publication”, A Small Town” and submissions lodged in connection with the planning application. The grounds for the objection are outlined below:-

- The proposed development is on a communal lane within an ACA. There is a need to preserve the laneway as part of the public realm in The Burnaby. There is historic significance, associated with the early years of the State and interaction between De Valera and Collins and tertiary routes/mews lanes are a unique feature of Burnaby and the public realm and landscaping is noted in the conservation report.
- According to the conservation report both Merriton House and Epworth should be included on the record of protected structures. Losses of historic fabric due to refurbishment works should be resisted and the ACA enforced.
- The proposed development would render service at the appellant party’s property inaccessible. There is a clay sewage pipe which was laid when the Burnaby was developed, in the communal lane between Quarry Road and Kinlen Road over 160 metres between Hawkins Lane and Mill Road which serves several properties and may need to be replaced. There is a lack of accessibility from Mill Road to the pipe behind Merriton House and there is a need for access outside Merriton House on the lane for maintenance and repair works to the pipe.
- Windows at the proposed development will directly overlook a bedroom at Epworth. The Burnaby Estate design avoided intrusive overlooking.

### **Applicant Response**

6.2. A submission was received from the applicant’s agent on 13<sup>th</sup> March, 2023, and according to the submission:-

- The claim by the appellant that the laneway is communal is rejected as being without substance. There are no communal rights over this lane but there is communal access over the laneway from Mill Road to rear of Kinlen and Quarry Roads between the properties. The applicant is the registered owners of the site and lane on the north side.

Attached to the submission are copies of folio documentation along with a statement by the applicant's solicitor to confirm applicant is the registered owner of the plot on which the existing house is located and adjoining laneway and that there are no Burdens on Title. No third party has a wayleave or right of way to pass over the lane.

- It is clearly shown that the separation distance between the applicant and appellant party properties is 34.5 metres which is well in excess of the minimum distance of twenty-two metres for opposite first floor windows according to the CDP and the planning officer stated that no overlooking would occur.

6.3. It is claimed that the appeal is vexatious and should be dismissed. It is also stated in the submission that the appellant party has had the benefit of planning permission for development Epworth under P A. Reg. Ref. 02/7252 and 14/1209.

#### **Planning Authority Response**

6.4. There is no submission on file from the planning authority.

#### **Further Responses.**

6.5. A further submission was received from the Appellant on 8<sup>th</sup> June, 2023 in which is stated that the appeal is not vexatious but made in good faith. According to the submission:

- The claim as to rights over and the blocking of access over services in the communal laneway at the rear of the applicant and appellant properties is reiterated. In this regard, supporting written statements signed by the occupants of three properties located in the immediate vicinity are attached. Support is expressed for the appellant's objections on grounds that the proposed development would block and interfere with access rights to the communal services including a clay pipe at the rear of the houses backing onto the lane.



- Reference is made to investigations by An Taisce into the cultural significance of the laneway and as to its use as an exit route by Michael Collins. In this regard a copy of an article “*Cork Fella Comes to County Wicklow*” in *Roaring Water Journal* – January 2023 is attached to the submission.
- With regard to the claim as to overlooking from the first-floor window in the proposed extension, it is stated that the design for the Burnaby ACA ensure that bedroom windows do not overlook windows in neighbouring properties.
- The proposed extension can be located to the east side of the existing dwelling as was previously stated in the which was made in the objections at application stage.

## 7.0 **Assessment**

7.1. The issues to be addressed can be considered below under the following subheadings:-

Access to and encroachment onto lane.

Historic, Cultural and Architectural Heritage.

Visual and Residential Amenities.

Overlooking and Overshadowing of Adjoining Property

### **Access to and encroachment onto lane.**

7.2. Further to review of the copies of the folio documentation provided in connection with the appeal, and it is not apparent that there are any specific third-party access rights that would be encroached on by the proposed development. It has also been confirmed at application stage that there is no public sewer under the control of public authorities which is in service within the laneway.

7.3. With regard to the claim that the footprint of the proposed extension, encroaches onto property, namely a laneway over which there are communal rights, it remains open for the appellant to have the matter resolved through the legal system, matters over Title being outside of the planning remit. As has been indicated by the planning

officer in his report, there is no entitlement solely by reason of a grant of permission for a development to be carried out.

### **Historic, Cultural and Architectural Heritage.**

- 7.4. The observations of the Appellant party as to the historic and cultural heritage significance of the laneway are noted and appreciated. However, notwithstanding the designation of the area within which the site and its environs are located as a statutory ACA it is not considered that there are potential and substantive cultural heritage impacts that would warrant rejection on planning grounds having regard to the footprint relative to the laneway, the form and design of the proposed extension.

### **Visual and Residential Amenities.**

- 7.5. The proposed extension, which has a stated floor area of twenty-one square metres, by way of the proposed design detail, form and the selection of materials and finishes, integrates with and is subordinate to the existing Edwardian style dwelling. There is no objection to the alterations and rearrangements proposed for the existing dwelling, which also facilitate the incorporation of the additional internal space within the proposed extension or the proposed arrangements for front curtilage parking and for installation of a front gate. It is considered that the proposed development is acceptable in terms of compatibility with the existing and surrounding residential development and the features and characteristics of the ACA

### **Overlooking and Overshadowing of Adjoining Property.**

- 7.6. With regard to the contention as to overlooking of the Appellant Party's property it is considered that the limited scope for overlooking is not such that it would amount to undue interference with privacy and impact on residential amenities at Epworth to the rear. In this regard minimum separation distances between the main rear facades of the two dwellings exceed thirty-four metres and the rear dormer at first floor level in the proposed extension has an additional separation distance owing to the setback from the rear building line of the house. There is also no question of an overshadowing impact given the separation distances and the location of the application site to the south of the appellant party's property.

### **Appropriate Assessment Screening**

7.7. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions and absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage. .

## 8.0 Recommendation

8.1. In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld based on the reasons and considerations and subject to the conditions set out below.

## 9.0 Reasons and Considerations

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application [as amended by the further plans and particulars submitted on 21<sup>st</sup> December, 2022 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 interest of clarity.

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

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

3. The developer shall enter into water and wastewater connection agreements with Irish Water.

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

4. Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.

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

5. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments 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 the Board to determine the proper application of the terms of the Scheme.

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

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

**Jane Dennehy**  
Inspector  
27<sup>th</sup> July, 2023