



An
Bord
Pleanála

Inspector's Report ABP315848-23

Development	The construction of a two storey, four bed, detached house with new vehicular entrance and associated works on the lands occupied by Kilmore House.
Location	Kilmore House, Kilmore Avenue, Killiney, Co. Dublin
Planning Authority	Dun Laoghaire-Rathdown Co. Co.
Planning Authority Reg. Ref.	D22A/0286
Applicant(s)	Eve Flynn
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Third Party vs Grant
Appellant(s)	Margaret and Feichin McDonagh.
Observer(s)	None
Date of Site Inspection	18 th September 2023
Inspector	Leah Kenny

1.0 Site Location and Description

The proposed development is located within the grounds and to the north-east of Kilmore House, a two-storey Protected Structure (RPS no. 1685) located off Kilmore Avenue.

The site slopes downwards from west to east and the proposed dwelling is sited on the northeastern edge at a lower part of the site than the main dwelling. The boundary of the site along Kilmore Avenue comprises planted hedging and there are several mature trees on site. There is a pedestrian gate onto Kilmore Avenue.

The proposed development has no immediate neighbours, apart from Kilmore House. It is bounded to the north by a residential property set within an extensive 9-acre site (Strathmore). There is one dwelling directly across the road (Knockanure) from the proposed vehicular entrance to the site and a number of other dwellings along Kilmore Avenue on both sides of the road.

Kilmore Avenue is accessed off both Station Road and Killiney Road and is a narrow steep road with no footpaths.

The site has a stated area of c.0.077ha and the proposed dwelling a stated area of 191.4sq. m.

The site is located within Killiney Architectural Conservation Area (ACA).

2.0 Proposed Development

The proposed development comprises the following:

- Construction of a two storey, four bedroomed detached dwelling.
- Construction of a new vehicular entrance from Kilmore Avenue to the site with on-site parking for two cars.
- All associated works including landscaping (including tree protection measures) planting and boundary treatments, infrastructure, lights, foul/surface drainage, and all site works necessary to facilitate the dwelling.

Water supply will be via the existing public mains, and it is proposed to discharge foul water via a gravity piped network to an existing private drain running along

Kilmore Avenue, and then onto a public combined sewer in Sation Road / Strathmore Road. Storm water runoff will be discharged to a piped gravity system and then discharged to a permanent pavement area.

The design of the proposed development was slightly amended in response to the Planning Authority's request for further information. The alterations included setting back the gateway 0.5m and including obscure glazing on the northern elevation.

3.0 Planning Authority Decision

3.1. Decision

By order dated 24th January 2023, Dun Laoghaire-Rathdown Co. Co decided to grant permission for the development subject to 11 no. conditions. Conditions of note include:

- Condition 3: The glazing within the north elevation, at first floor level, including the window serving Bedroom 3 shall be manufactured opaque or frosted glass and shall be permanently maintained. The flat roof areas shall be accessed for maintenance purposed only and the proposed vehicular entrance gates shall be of an open railing bar type.
- Condition 5: All necessary measures shall be taken by the Applicant and Contractor to avoid conflict between construction traffic/activities and traffic/road users, particularly pedestrians, during construction works preventing any mud, dirt, debris or building material being carried onto or placed on the public road or adjoining properties as a result of the site construction works and repair any damage to the public road arising from carrying out the works.
- Condition 6: Existing trees and hedges on site shall be retained and protected in accordance with 'Tree, Hedgerow & Vegetation Survey, Assessment, Management & Protection Measures' Report (Austin Associates), lodged as Further Information on 19th December 2022.
- Condition 7: The entire dwelling shall be used as a single dwelling and shall not be sub-divided in any manner or used as two or more habitable units.

4.0 Planning Authority Reports

4.1.1. Planning Report

The planning report is the basis of the Planning Authority's decision to grant permission. The key considerations of the Case Planner's report focused on compliance with the policies set out in the Dun Laoghaire-Rathdown Development Plan 2022-2028, departmental reports and matters raised in third-party submissions.

The main issues of the Case Planner's initial report (dated 15th June 2022) included location of the proposed development within an ACA, proximity to Kilmore House (a Protected Structure), location of mature trees within the existing site, impact on environmental sensitivities within the area, visual impact, residential amenity and the potential to impact neighbouring properties (including overlooking and overshadowing), access, parking and drainage.

Further Information was requested on the 9th of September 2022 in relation to the following three items:

1. Applicant to submit revised drawings which demonstrate emergency vehicle (fire tender and ambulance) movements can access the site from Killiney Road and Station / Strathmore Road.
2. Applicant to demonstrate (a) that the proposed development would adequately retain the physical character of the area including features such as 'boundary walls, pillars, gates / gateways, trees, landscaping, and fencing or railings' (Section 13.3.7.7 Infill of the Development Plan); (b) the extent of excavation proposed near Tree No. 4796; and in responding to these matters note the location of the proposed development within the Killiney ACA.
3. Applicant to submit (i) a plan showing the layout of the wastewater treatment system for the existing dwelling Kilmore House and the proposed dwelling demonstrating compliance with EPA's Code of Practice, and (ii) a plan showing the exact position of the wastewater treatment systems (including percolation areas) of neighbouring dwellings demonstrating compliance with distance requirements as per EPA Guidance.

The second part of the Case Planner's report considers the further information received on the 19th of December 2022 and recommended that planning permission be granted subject to 11 no. conditions.

The application was screened for Appropriate Assessment and the screening showed no potential for significant effects. The application was also screened for Environmental Impact Assessment, and it was concluded at preliminary examination that there is no likelihood of significant effects.

4.1.2. Other Technical Reports

- Drainage Planning – No objection subject to conditions.
- Transportation Planning – No objection subject to conditions.
- Environmental Health Officer – Following the applicant's response to the Request for Further Information, the Senior Environmental Health Officer considered the issues raised in the RFI were 'no longer applicable'.
- Conservation Officer – No report at time of writing.

4.1.3. Third Party Observations

Two Third Party observations were submitted to the Planning Authority during its determination of the planning application raising concerns with the proposed development. The appellants raised and amplified these issues in their grounds of appeal submitted to the Board.

5.0 Planning History

The subject site, to the north-east of Kilmore House, has the following planning history going back 25 years.

- **PA Ref. D20A/0771:** Planning permission was REFUSED by the Planning Authority for the construction of a two-storey, four-bedroom, detached dwelling and associated works including the provision of a new vehicular entrance to the site from Kilmore Avenue. The reason for refusal related to the scale, size and height of the proposed dwelling, its location within the Killiney ACA and in an area to which the 0/0 designation applies (in the Dun

Laoghaire Rathdown County Development Plan 2016-2022). The decision was not appealed to An Bord Pleanála.

- **PA Ref. D00A/0140:** Planning permission was REFUSED by the Planning Authority for the demolition of 2-storey habitable house and replacement with a single storey house on the northeast section of the same property and the replacement of the septic tank serving both houses with a biofilter treatment plant. The three refusal reasons included (1) the zoning of the site 'where no increase in the number of buildings will normally be permitted', (as per the 1998 Dun Laoghaire Rathdown County Development Plan), the demolition of a habitable dwelling and the subdivision of a hitherto open site and (2) the proposal to demolish a Protected Structure. The decision was not appealed to An Bord Pleanála.
- **PA Ref. D99A/0587:** Planning permission was REFUSED for the demolition of a 2-storey habitable house on the southwest section of lands and its replacement with a 2-storey house on the northeast section of the same property and the replacement of the septic tank serving both houses with a biofilter treatment plant. The single reason for refusal related to the intrusive effect on visual amenity and residential amenity of the area arising from the introduction of a new building on an area not previously built on; and the proposed new access would create a new hazard on the existing substandard roadway.

Kilmore House and grounds has the following planning history:

- **PA Ref. D00B/0959:** Planning permission was GRANTED for the demolition of existing bathrooms and staircase at ground floor and first floor to rear of existing listed building and the proposed construction of a new two storey extension including new internal staircase also new windows in the original style to replace out of character doors and windows. Under PA Ref. D01B/0422 planning permission was GRANTED for revisions to this permission to include the re-location of new internal staircase and bay window to rear, provision of new windows in the original style and the provision of a roof light.

- **PA Ref. D99A/0137:** Planning permission was GRANTED for the reinstatement of unstable section of south boundary wall using weathered salvaged stone finishing to a height of 1.8m, retention of re-erected 19th century stone entrance piers and realignment of walls at entrance to improve visibility.

Having regard to the well-established suburban location many houses have been extended over the years. Those relevant to the subject appeal, in the vicinity of the proposed development include:

- **PA Ref. D18A/0354, ABP-302570-18:** Permission was GRANTED for a single storey dwelling house with access off Kilmore Avenue with revised conditions.
- **PA Ref. D15A/0379, ABP-245758:** Planning permission was GRANTED with revised conditions for the demolition of an existing house and construction of house and outbuildings, solar photovoltaic panel on the semi-detached garage roof of existing 31sqm outbuildings and all associated works.

6.0 Policy and Context

6.1. Development Plan

The subject application was lodged on the 25th of April 2022, just days after Dun Laoghaire Rathdown County Development Plan 2022-2028 (the 'Development Plan') came into effect (on the 21st of April 2022). The settlement strategy for the Core Strategy of the Development Plan supports the transition to a low carbon and climate resilient County through the implementation of a compact growth agenda, increased integration between land-use and transportation, increased sustainable mobility and, the sustainable management of environmental resources. Achieving compact growth targets is to be implemented by *inter alia* promoting the development of infill and brownfield lands.

In the Development Plan the subject site is subject to zoning Objective A '*to provide residential development and improve residential amenity, while protecting the existing residential amenities*'. Residential development is 'permitted in principle' under this zoning objective, subject to compliance with the relevant policies, standards and requirements set out in the Development Plan.

The site is also located within Killiney Architectural Conservation Area (ACA); and it is within the grounds of Kilmore House which is a Protected Structure (RPS No. 1685) located circa 30 m to the southwest of the subject site.

The application is also located within the area to which Specific Local Objective 130 applies which states: *'To ensure that development within this objective area does not (i) have a significant negative impact on the environmental sensitivities in the area including those identified in the SEA Environmental Report, and/or (ii) does not significantly detract from the character of the area either visually or by generating traffic volumes which would necessitate road widening or other significant improvements'*.

There is an objective 'To protect and preserve Trees and Woodlands' to the northeast, west and south of the subject site.

Chapter 4 of the Development Plan (Neighbourhood - People, Homes, and Place) sets out the policy objectives aimed at creating and maintaining successful neighbourhoods and protecting residential amenities throughout the County.

Relevant policies include:

- **Policy Objective PHP19** (Existing Housing Stock Adaptation): It is a Policy Objective to:
 - Densify existing built-up areas in the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods.
- **Policy Objective PHP35** (Healthy Placemaking): It is a Policy Objective to *inter alia*:
 - Ensure that development proposals are cognisant of the need for proper consideration of context, connectivity, inclusivity, variety, efficiency, distinctiveness, layout, public realm, adaptability, privacy and amenity, parking, wayfinding, and detailed design.

Chapter 11 of the Development Plan (Heritage and Conservation) sets out the policy objectives aimed at protecting the County's heritage and managing change in a positive way, so that it enhances rather than diminishes the evolving character of the County.

- **Policy Objective HER8 (Work to Protected Structures):** It is a Policy Objective to *inter alia* (i) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.
- **Policy Objective HER13: (Architectural Conservation Areas):** It is a Policy Objective to *inter alia*:
 - (i) Protect the character and special interest of an area which has been designated as an Architectural Conservation Area (ACA).
 - (iii) Ensure that any new development or alteration of a building within an ACA or immediately adjoining an ACA is appropriate in terms of the proposed design, including scale, height, mass, density, building lines and materials.
 - (iv) Seek a high quality, sensitive design for any new development(s) that are complementary and/or sympathetic to their context and scale whilst simultaneously encouraging contemporary design which is in harmony with the area.
 - (vi) Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving, and street furniture.

In respect of ACAs, the Development Plan elaborates that while the purpose of an ACA designation is to protect and enhance the special character of an area, it should not be viewed as a means of preventing new development but rather to help guide and manage change to ensure developments are sympathetic to the special character of the ACA.

Chapter 12 of the Development Plan sets out the Council's specific requirements relating to quality design and place making in order to ensure the proper planning and sustainable development of the County.

Section 12.3.1.1 (Design Criteria) sets out the range of design criteria which will be considered when assessing all applications.

Section 12.3.1.1 (Corner / Side Garden Sites) outlines the parameters which the Planning Authority will have regard to for the sub-division of an existing house curtilage, to provide an additional dwelling(s) in existing built-up areas.

Section 12.3.7.7 (Infill) sets out that infill development will be encouraged within the county in accordance with Policy Objective PHP19: Existing Housing Stock – Adaptation. It outlines that new infill development shall respect the height and massing of existing residential units and retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

Section 12.11 of the Development Plan sets out the Council’s specific requirements relating how developments may have implications on heritage.

Section 12.11.2 (Architectural Heritage – Protected Structures) advises that the inclusion of a structure in the Record of Protected Structures does not prevent *inter alia* the development of the structure, provided that the impact of any proposed development does not negatively affect the character of the Protected Structure and its setting.

Section 12.11.2.3 (Development within the Grounds of a Protected Structure) advises that any proposed development within the curtilage, attendant grounds, or in close proximity to a Protected Structure, has the potential to adversely affect its setting and amenity and there will be an insistence on high quality in both materials, and design, which both respects and complement the Protected Structure, and its setting. It also sets out that a balance must be struck between allowing compact development, while protecting the architectural heritage and historic building stock within the County. It includes a range of criteria against which development proposals within the grounds of a Protected Structure will be assessed.

Section 12.11.4 (New Developments within an ACA) requires a sensitive design approach for any development proposals in order to respect the established character and urban morphology. Where development is appropriate, the Planning Authority is supportive of contemporary design that is complementary and sympathetic to the surrounding context and scale. The criteria against which new development within an ACA will be assessed includes:

- All developments should be site specific and take account of their context without imitating earlier styles.
- New developments should be to a high standard of design and should have a positive contribution to the character of the ACA.

Section 12.4 outlines specific transport requirements for new developments. Those of relevance to the proposed development include:

- Section 12.4.8.4 (ACA's/Protected Structures) advises poorly designed off-street parking which involves the removal of boundary walls, gate piers, railings and gates can have an effect on the setting and appreciation of the building, groups of buildings and the wider streetscape and will not generally be permitted. All proposals for off-street parking will be considered on a case-by-case basis and should:
 - Minimise loss of original boundary treatment.
 - Retain a significant amount of soft landscaping and planting to reduce the visual impact of the parked car. The vehicular entrance and hard standing area should not dominate a property's forecourt or result in the loss of traditional finishes such as granite setts and flags.
 - Provide surface treatments of a high quality using traditional materials compatible with the surrounding context. Bituminous and concrete surfacing are not acceptable.
 - Where favourable site conditions exist minimum intervention, integration and reuse of materials will be the key considerations.

Section 12.8.11 (Existing Trees and Hedgerows) requires new development to be designed to incorporate, as far as practicable, the amenities offered by existing trees and hedgerows. The retention of existing planted site boundaries will be encouraged within new developments, particularly where it is considered that the existing boundary adds positively to the character/visual amenity of the area.

6.2. Killiney ACA

The Killiney Architectural Conservation Area (ACA) describes the main characteristics of Kilmore Avenue as being *“like elsewhere in this area, being narrow and winding with an adjacent woodland canopy through which there are glimpses of dwellings standing in large, landscaped gardens (with some properties fronting directly onto the road). Even though there is full public access there is no through traffic, as it is used almost entirely for access to adjacent dwellings.*

Despite the number of 20th century subdivisions and the addition of new entrances the character of the historic landscape of this area has probably not changed much since the end 19th century. Its soft landscape has obviously densified with the passage of time and is the most dominant characteristic.”

In respect of new build within the ACA, new development is expected to contribute to the visual enhancement and vibrancy of the area whilst respecting its existing physical character. In this regard, the Council will *inter alia*:

- Seek to ensure that any development including modifications and/or alterations or extensions affecting structures within the Killiney ACA, are designed, and sited appropriately and are not detrimental to the character of the structure or its setting and context within the ACA.
- Encourage where appropriate the use of non-reflective glazing to exposed elevations containing a low solid to void ratio (i.e., large extent of glazing relative to masonry).
- In considering all proposals for building/structures, the Council will seek to encourage the development of new buildings in Killiney ACA in accordance with County Development Plan Policy as being a stimulus to imaginative, high quality, passive design, and an opportunity to enhance the ACA generally.
- In this regard appropriately scaled new build should have respect for the site/building context, without imitating earlier styles.

In respect of landscape protection within the ACA:

- The Killiney ACA seeks to protect buildings, structures and items of architectural interest and will also seek to protect and enhance the spatial quality of Killiney, its natural environment, groups of trees, boundary treatments and associated hedgerow planting/periphery planting to individual plots, views and prospects and other intrinsic aspects of the ACA.

In respect of new or replacement planting:

- Where boundaries must be repaired or replaced or where new boundaries are required, the Council will promote the use of materials which are sympathetic to that existing, including where applicable, hedgerow planting and informal tree planting etc.

6.3. Natural Heritage Designations

The site is not located within a designated Natura 2000 site. The nearest designated sites are Rockabill to Dalkey Island SAC (Site Code 00300) 1.6km away and Dalkey Island SPA (Site Code 004172) 2.25km away.

6.4. EIA Screening

Having regard to the modest scale and nature of the proposed development and the absence of any foreseeable emissions therefrom, the location of the site within a built-up urban area, the availability of private / public piped services to accommodate the foul effluent arising therefrom, I conclude that the necessity for submission of an EIAR and carrying out of EIA may be set aside at a preliminary stage.

7.0 The Appeal

7.1. Grounds of Appeal

The appellants live opposite the proposed development in Knockanure, Kilmore Avenue and their main grounds of appeal are as follows:

- The vehicular access to the site will not be safe and will result in traffic hazard and vehicular conflict along a very narrow avenue thus endangering public safety.
- The proposed site forms a substantial and intrinsic part of the curtilage of Kilmore House (a Protected Structure) and the impact of the proposed development on its curtilage was not adequately assessed by way of Environmental Impact Assessment, particularly in the context of Specific Local Objective 130.
- There were previous refusals by Dun Laoghaire Rathdown County Council for developments of a smaller nature on the proposed site and the previous reasons for refusal have not been addressed.
- The application site is in an elevated and visually sensitive location and is not suitable for infill development due to its sensitivity as part of a historic

designed landscape of a Protected Structure, within an ACA and represents a congested form of development on a constrained site.

- The drainage arrangements are inadequate in that no evidence has been given of permission from the co-owners for connection to a private drain on Kilmore Avenue.
- The proposal will have negative impacts on visual amenity and on the Killiney ACA given the removal of significant amounts of mature hedgerow and mature trees and introduction of a flat roof structure which is considered to be an 'alien form'.
- The proposal will have significant negative impact on the residential amenity of the area overlooking principal habitable rooms and gardens of existing neighbouring residential lands.

7.2. Applicant Response

The First Party responded to the Third-Party submission as follows:

- The planning history of the subject site was reiterated and further planning precedents of relevant planning grants by Dun Laoghaire Rathdown were cited notably D16A/0944, D20A/0040, D18A/0354, D13A/0424, D19A0203, D16A/0346, D17A/0141 and the subject site D22A/0286.
- The current application was subject to a Further Information in relation to emergency vehicular access, boundary treatment as it takes account of SLO 130 including excavation at one particular tree and wastewater queries. In making its planning decision the Planning Authority has accepted the submissions by the applicant.
- The application was compliant with Project Ireland 2040 - National Planning Framework objectives and Development Plan policies and objectives.
- Specific responses were made in relation to the appellants submission in relation to:
 - Traffic Hazzard
 - Impact on the Protected Structure

- Environmental Impact Assessment Screening
- Previous reasons for refusal
- Overdevelopment
- Inadequate drainage
- Impacts on existing visual and residential amenity including overlooking and overshadowing.

7.3. **Planning Authority Response.**

The Planning Authority considered that the grounds of appeal did not raise any new matters which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

7.4. **Observations**

There were no observations.

7.5. **Further Responses**

Not applicable.

8.0 **Assessment**

8.1.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the planning application, the Third-Party Appeal, the response of the First Party, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are as follows:

- Principle of Development
- Built Heritage (Protected Structure)
- Built Heritage (ACA)
- Environment (Specific Local Objective 130)
- Traffic
- Residential and Visual Amenity

- Drainage Arrangements

Each of these issues is addressed in turn below.

8.2. Principle of Development

- 8.2.1. The subject site is in an area zoned residential and infill development is actively encouraged and supported by the Development Plan and is consistent with national policy for compact growth. However, the site is also located in a sensitive location governed by multiple other Development Plan objectives including SLO 130, and those relating to the Killiney ACA. The proposal is also located within the grounds / curtilage of a Protected Structure.
- 8.2.2. In this regard, the Development Plan acknowledges that a balance must be struck between allowing compact development, while protecting the architectural heritage and historic building stock within the County.
- 8.2.3. On this basis and having regard to national housing policy which seeks to consolidate housing in serviced urban areas, I consider the principle of a house to be acceptable; permission being predicated on the impacts of the development on the character of the area and the prescribed standards and safeguards set out in Chapter 12 (Development Management) of the Development Plan being met.

8.3. Built Heritage (Protected Structure)

- 8.3.1. The proposed development is located within the grounds of Kilmore House, a Protected Structure (RPS Ref. 1685). Its described in the RPS as a "House". There is no additional note in the description relating to associated outbuildings, entrance gates, piers and / or walls also being Protected Structures.
- 8.3.2. It is a Policy Objective of the Planning Authority to protect structures included on the RPS from any works that would negatively impact their special character and appearance (Policy Objective HER8); however, it also is inherent in the Plan that appropriate, high-quality development which both respects and complements the Protected Structure and its setting, is acceptable.
- 8.3.3. The appellants argue that the application site forms a substantial and intrinsic part of the curtilage of the Protected Structure at Kilmore House. They cite Chapter 13 of the *Architectural Heritage Protection Guidelines for Planning Authorities*; and argue that the

applicant failed to assess the impact of the proposed development on the curtilage of the Protected Structure and failed to carry out adequate environmental impact screening.

8.3.4. Section 1 of the RPS notes that in relation to a Protected Structure, the meaning of the term structure includes the interior of structure, the land lying within the curtilage of the structure, any other structures lying within that curtilage and their interior, all fixtures and features which form part of the interior or exterior of that structure. The protection also extends to any features specified as being in the attendant grounds.

8.3.5. As noted by the appellants the notion of curtilage is not defined by legislation, but it is generally taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure. The attendant grounds of a structure are lands outside the curtilage of the structure, but which are associated with the structure and are intrinsic to its function, setting and/or appreciation. A Planning Authority has the power to protect all features of importance which lie within the attendant grounds of a protected structure. However, such features must be specified in the RPS.

8.3.6. The Killiney Architectural Conservation ACA (2010) provides some elaboration on the 'notion' of curtilage. as being understood to be the parcel of land immediately associated with that structure, the landscape setting within which the structure stands, and which contributes to the structures essential character.

8.3.7. The appellants argue that the Heritage Impact Assessment did not describe or assess the application site as a functional part of the curtilage of the Protected Structure. They refer specifically to the fact the subject site includes a pedestrian path and exit onto Kilmore Avenue and refer to the considerations set out in Section 13.1.5 of the Heritage Guidelines relating to what a Planning Authority should consider in making a decision as to the extent of the curtilage of a Protected Structure. I note that this part of the Guidelines is primarily focused on determining curtilage in the context of including structures on the RPS, and it advises that this needs to be determined on a case-by-case basis and should ideally be done prior to inclusion of the structure in the RPS. As noted above, Kilmore House, is identified on the RPS as a "House" and there is no additional note elaborating on the extent of its curtilage, including its gardens, and the pathway and pedestrian access gate identified by the appellants.

- 8.3.8. However, and notwithstanding the above, it remains the case that neither the Development Plan nor Heritage Guidelines prevent development within the curtilage of a Protected Structure.
- 8.3.9. Furthermore, Heritage Guidelines advise that the level of documentation required to accompany a planning application to a Protected Structure, will depend on the scale, extent or complexity of the works involved and they specifically advise that works proposed to a confined area of a protected structure or work within the curtilage of the structure should not normally require extensive documentation regarding the unaffected parts of the structure.
- 8.3.10. I have read the Heritage Impact Appraisal submitted with the application, and have visited the site (the grounds of Kilmore House and the site of the proposed new dwelling) I consider that the documentation submitted with the application addressed the key issues relating to the potential impact of the proposed development on the Protected Structure, its grounds (inclusive of its garden) and therefore to all intents and purposes, its curtilage (albeit that this is not defined in the RPS).
- 8.3.11. I am also satisfied that the proposed development will not adversely affect the setting, special character, appearance and visual amenity of Kilmore House and its grounds. In this regard, the proposed development is located at the lowest part of the grounds and at its north-eastern extremity.
- 8.3.12. The lawn area to the east of Kilmore House is terraced and the site of the proposed development is naturally divided from the main garden by mature hedging. While this hedging is to be removed, new boundary hedgerow and trees are to be introduced along the revised boundary between the sites (to be planted on the Kilmore House side). The level difference and planting will therefore continue to protect the character of the main house and its immediate context screening it from the proposed development and visa versa.
- 8.3.13. The Conservation Officer did not submit a report in respect of the subject application; however, I have had regard to the report prepared in respect of a previous, similar proposal, that concluded *“the Conservation Division accepts the principal of the development; the site is sufficiently distanced from the Protected Structure so as not to encroach or visually over-power Kilmore House.”*

- 8.3.14. I also agree with the Conservation Officer, generally, and specifically in respect of the design of the proposed dwelling that *“the design of the proposed building will clearly be legible as a latter addition within the context of the surrounding architectural heritage. In this regard the proposal accords with the aforementioned policy”*.
- 8.3.15. Having regard to the above, I consider the proposed development to comply with Policy Objective HER8, Section 12.11.2 and Section 12.11.2.3 of the Development Plan.
- 8.3.16. The appellants make reference to a High Court decision in relation to matter (Monkstown Road Residents Association & Ors v An Bord Pleanála Protected Structure (Dalguise House)) of a proposal for 8 blocks of apartments; and consider the principle of this decision can be applied to the subject planning application. It considered that the points relating to curtilage and EIA Screening, insofar as they are applicable to this appeal, are addressed elsewhere in this report.

8.4. Built Heritage (Architectural Conservation Area)

- 8.4.1. Section 12.11.4 (New Developments within an ACA) requires a sensitive design approach for any development proposals in order to respect the established character and urban morphology. Where development is appropriate, the Planning Authority is supportive of contemporary design that is complementary and sympathetic to the surrounding context and scale.
- 8.4.2. I note that the character of Kilmore Avenue, is described in the Killiney ACA as being *“narrow and winding”* and *“with an adjacent woodland canopy through which there are glimpses of dwellings standing in large, landscaped gardens (with some properties fronting directly onto the road).”*
- 8.4.3. I also note that new development is expected to contribute to the visual enhancement and vibrancy of the area whilst respecting its existing physical character, and should *inter alia “be a stimulus to imaginative, high quality, passive design, and an opportunity to enhance the ACA generally”* and that *“appropriately scaled new build should have respect for the site/building context, without imitating earlier styles”*.
- 8.4.4. I consider the siting of the proposed development would not materially undermine the character of Kilmore Avenue, as described in the ACA. I further note that the ACA acknowledges that despite several 20th century subdivisions and the addition of new entrances *“the character of the historic landscape in this area has not probably changed much since the end of the 19th Century”* and I consider the proposed

development to be an opportunity to introduce a 21st century building to the area. In this regard, I am of the opinion that the proposal is a high-quality contemporary design solution, inclusive of flat roof, which maximises the sloping topography of the site. I consider that the modern design is a more successful way to add to the character and appearance of the Killiney ACA than relying on or imitating historical styles.

8.4.5. I note the Conservation Officer's concerns relating to the boundary treatment onto Kilmore Avenue in respect of the previous application (PA Ref. D20A/0771); however, I consider that the subject application has taken the concerns on board and proposes a sympathetic approach including retaining and planting new privet hedging, retaining mature trees and the existing pedestrian gate, and introducing new trees.

8.4.6. I therefore consider the proposed development to be an appropriate high quality contemporary infill development within the Killiney ACA, which complies with Policy Objective HER13, Section 12.11.4 and how new development is expected to contribute to the visual enhancement and vibrancy of the ACA (as set out in the Killiney ACA).

8.5. **Environment (Specific Local Objective 130)**

8.5.1. The requirement of SLO 130 is twofold i.e., that development within this objective area does not (i) have a significant negative impact on the environmental sensitivities in the area including those identified in the SEA Environmental Report, and/or (ii) does not significantly detract from the character of the area either visually or by generating traffic volumes which would necessitate road widening or other significant improvements.

8.5.2. Having regard to the environmental sensitivity mapping in the SEA Environmental Report, Killiney is an environmentally sensitive area (acknowledging overlapping environmental sensitivities).

8.5.3. However, having regard to the scale and nature of the proposed development, i.e., a single dwelling and ancillary works on a serviced infill site, I am of the opinion it will not have significant negative impact on the environmental sensitivities in the area with reference to *inter alia* designated sites or preserved views. I refer to my separate consideration of the potential impact on the Killiney ACA and nearby Protected Structures.

8.5.4. Also, by reason of its scale and nature, I do not consider the proposed development would *significantly* detract from the character of the area either *visually or by generating traffic volumes* which would *necessitate road widening or other significant*

improvements. The proposed development can be accommodated with relatively discrete intervention within the SLO 130 area, including site works, tree removal and the opening of a new vehicular access along Kilmore Avenue.

8.5.5. In respect of tree removal, I note the requirements of Section 12.8.11 of the Development Plan that: new developments shall be designed to incorporate, as far as practicable, the amenities offered by existing trees and hedgerows; and that the retention of existing planted site boundaries will be encouraged within new developments, particularly where it is considered that the existing boundary adds positively to the character/visual amenity of the area. I consider the approach put forward by the applicant has complied with this requirement.

8.5.6. I also note a *Tree, Hedgerow & Vegetation Survey, Assessment, Management & Protection Measures Report* was submitted as part of the Response to Further Information. I agree with the Case Planner, that it will be important that those trees identified to be retained, need to be carefully protected during construction activities.

8.5.7. Having regard to the foregoing, I am satisfied that the proposed development complies with SLO 130 and Section 12.8.11 of the Development Plan.

8.6. **Traffic**

8.6.1. Kilmore Avenue is a narrow steep winding road with no footpaths. Its primary function is to serve as an access road to the properties along its length road. The means of access from both Killiney Hill Road and Station Road (inclusive of Private Road signage) mean it is not heavily trafficked, and its nature means that considerable low speed driving is required - a trait that is necessary on other roads in the Killiney and Dalkey area.

8.7. I consider the development of a single dwelling will not materially increase traffic volumes along the lane. I note that this is also the opinion of the of the Planning Authority.

8.8. The appellants also raise specific concerns relating to the substandard nature of the Kilmore Avenue and refer to similar concerns raised by the Roads Section in respect of previous 1999 application. However, I consider there has been a significant policy shift since then to consider matters above and beyond just road safety and civil engineering matters as supported by the *Design Manual for Urban Roads and Streets* (DMURS); and this is reflected in the current position of the Transportation Planning Section.

8.9. Having regard to the application documentation submitted, and in particular the response to the Request for Further Information and amendments to the design of the entrance gateway included therein; I am satisfied that (a) the design of the proposed vehicle access and car parking meets the required standards, (b) the necessary sight lines can be achieved and (c) that emergency vehicles (fire tender and ambulance) can access the site from Killiney Hill Road and Station/Strathmore Road.

8.10. Having regard to the location of the site it is accepted that construction activities will have to be carefully managed to avoid conflict between construction activities and pedestrian / vehicular movements and that temporary inconvenience is likely. I note that an outline Construction Management plan was submitted as part of the Response for Further Information and construction management is a matter which can be addressed by way of condition.

8.11. Having regard, to the above, I am satisfied that the proposed development complies with Section 12.4 and 12.4.8.4 of the Development Plan.

8.12. **Drainage Arrangements**

8.12.1. There is an existing private foul drain serving properties along Kilmore Avenue (including Kilmore House) which then discharges to the public combined sewer in Station Road / Strathmore Road. It is proposed to connect into this private drain. Water supply will be taken from an existing watermain which runs along Kilmore Avenue.

8.12.2. I do not consider the additional loading resulting from an additional house will overload the capacity of the foul drainage infrastructure or have implications for public health. In this regard, I note that neither the Municipal Services Department nor the Environmental Health Officer (following the Further Information submitted on the application) objected to the proposed development.

8.12.1. The appellants advise that as co-owners of the private foul drain, they have not and will not consent to the proposed development connecting into the drain. This is a legal matter, and I note Section 34(13) of the Planning and Development Act 2001 (as amended) which sets out that a person is not entitled solely by reason of a permission to carry out any development.

8.13. Impact on Residential and Visual Amenity

8.13.1. The appellants consider the proposed development will be overbearing and will negatively impact the amenity of their property (Knockanure), and other residents along Kilmore Avenue.

8.13.2. It is the case that the proposed development will introduce a new dwelling along the Avenue; and consistent with the prevailing pattern of development in the area determined by the sloping topography, narrow and winding roads, strong / high boundaries to the road (including hedging, boundary walls and gates) and tree canopy / landscaping within properties; glimpses of the property will be evident. However, I do not consider the proposed development would result in an adverse visual impact on the residential and visual amenity of the area.

8.13.3. Having regard to the siting and level of the proposed dwelling, its configuration, orientation of first floor windows, trees to be retained and additional landscaping proposed, I am also satisfied that the proposal will not result in overlooking of neighbouring properties.

8.13.1. The appellants who live in Knockanure have raised specific concerns relating to loss of visual amenity and loss of privacy. In this regard, I note that their property is on the opposite side of Kilmore Avenue, and behind a boundary wall / gates and hedging. From the drawings submitted, the height of the finished roof level of the proposed dwelling will be +41.9m, relative to the ridge height of Knockaure of +42.4m. At its nearest point at first floor level, the proposed development will be approx. 25m away (corner to corner) extending up to approx. 37m away; and the first-floor windows of both properties are not directly opposing each other because of the respective configurations of each house. Having regard to the foregoing, and the trees to be retained and additional landscaping proposed within the subject site, and the intervening boundary treatment of their own property, I am satisfied that the proposed development will not be unduly overbearing or result in a loss of privacy so as to materially adversely impact their existing residential amenities.

8.13.2. Some of the existing trees will be removed as a result of the proposed development; however, having visited the site I note that many of those within the central area are of varying quality; and I am satisfied that the proposed development is proposing to retain the highest quality of trees along the boundary. I also note the approach to retain and

enhance the existing hedging and wooden fence along the boundary except for the vehicular entrance. I consider retaining the softer interface with Kilmore Avenue to be appropriate.

8.13.3. Having regard to the above, I am satisfied that the proposed development will not result in an adverse effect on the amenities of existing adjacent properties by way of overlooking, overshadowing or overbearing appearance, therefore conclude the proposed development to be in accordance with the proper planning and sustainable development of the area.

8.14. **Appropriate Assessment Screening**

8.14.1. Having regard to the nature and scale of the proposed development and the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 **Recommendation**

I recommend that planning permission be granted for the reasons and considerations set out below and subject to the following conditions.

10.0 **Reasons and Considerations**

Having regard to the residential land use zoning of the site; the nature, scale and design of the proposed development; and the provisions of the Dun Laoghaire-Rathdown County Development Plan 2022 – 2028 including policies relating to development within an ACA and within the grounds / curtilage of a Protected Structure, it is considered that, subject to compliance with the conditions set out below the proposed development would not adversely impact on the character and visual amenity of the Killiney ACA and would not seriously injure the visual or residential amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be carried out in its entirety in accordance with the plans, lodged with the application on 25th April 2022, as amended by Further Information received on 19th 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.</p> <p>REASON: In the interest of the amenities of the area.</p>
3.	<p>The following shall be strictly adhered to in the proposed development:</p> <p>(a) The glazing within the north elevation, at first floor level, including window serving Bedroom 3, shall be manufactured opaque or frosted glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.</p> <p>(b) The flat roof areas shall be accessed for maintenance purposed only.</p> <p>(c) The proposed vehicular entrance gates shall be of an open railing bar type (not backed with solid panels/ sheeting/planks), or solid timber with a natural hardwood finish.</p> <p>REASON: In the interests of residential amenities. and visual amenity.</p>

4.	<p>The disposal of surface water shall be in accordance with the requirements of the Planning Authority as follows:</p> <p>(a) The surface water runoff generated by the development shall not be discharged to the public sewer but shall be infiltrated locally to the specifically designed permeable paving in accordance with Section LO.2.2.6 policy Objective EI6: Sustainable Drainage Systems of the County Development plan 2AZZ-2021, as indicated in the application.</p> <p>(b) The proposed green roof shall be designed, installed and maintained in accordance with BS EN 12056-3:2000 and The SUDS Manual (CIRIA C7S3),</p> <p>(c) Any changes to parking and hardstanding areas shall be constructed in accordance with the recommendations of the Greater Dublin Strategic Drainage Study for sustainable urban drainage systems (SuDS) i.e., permeable surfacing, and in accordance with Section 12.4,8,3 Driveways/Hardstanding Areas of the County development plan 2022-2028, Appropriate measures shall be included to prevent runoff from driveways entering onto the public realm as required. Where unbound material is proposed for driveway, parking or hardstanding areas, it shall be contained in such a way to ensure that it does not transfer on to the public road or footpath on road safety grounds.</p> <p>REASON: In the interest of public health.</p>
5.	<p>The developer shall enter into water and wastewater connection agreements with Uisce Éireann.</p> <p>Reason: In the interest of public health.</p>
6.	<p>(a) All necessary measures shall be taken by the Applicant and Contractor to avoid conflict between construction traffic/activities and traffic/road users, particularly, pedestrians, during construction works.</p> <p>(b) The Applicant shall prevent any mud, dirt, debris or building material being carried onto or placed on the public road or adjoining properties as a</p>

	<p>result of the site construction works and repair any damage to the public road arising from carrying out the works.</p> <p>REASON: In the interest of public safety, and the proper planning and sustainable development of the area.</p>
7.	<p>Existing trees and hedges on site shall be retained and protected in accordance with 'Tree, Hedgerow & Vegetation Survey, Assessment, Management & Protection measures, Report (Austin Associates), lodged as Further Information on 19th December 2022.</p> <p>REASON: In the interest of amenities, visual harmony, and the proper planning and sustainable development of the area</p>
8.	<p>The entire dwelling shall be used as a single dwelling unit and shall not be sub-divided in any manner or used as two or more separate habitable units.</p> <p>REASON: To prevent unauthorised development.</p>
9.	<p>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 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.</p> <p>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.</p>

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.



Leah Kenny
Planning Inspector

20th September 2023