



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318043-23

#### Development

Retention of works consisting of (a) change of use of the first floor of workshop structure to habitable living space and a single residential unit, from its use which was previously granted under planning register no. 20074470. (b) Ancillary alterations to the structure necessary to facilitate the change of use. (c) The provision of ancillary services and ancillary site works necessary to service the change of use and also for permission for the following works: - (d) The further change of use of ground floor of workshop to habitable living space and for the use of same with the first floor as one single rural dormer bungalow dwelling. (e) An extension and alteration to the structure for habitable use, including external finishes renovations. (f) The upgrade of the existing services including the waste water treatment plant to EPA standards. (g) Connections to relevant utilities and/or services. (h) Ancillary

	site works, boundary improvement works
<b>Location</b>	Baurela, Ballyhuskard, Co. Wexford.
<b>Planning Authority</b>	Wexford County Council
<b>Planning Authority Reg. Ref.</b>	20221611
<b>Applicant(s)</b>	Mary Doyle and Bill Wright
<b>Type of Application</b>	Permission for Retention
<b>Planning Authority Decision</b>	Grant Retention Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Aine McCabe
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	21 <sup>st</sup> of August 2024
<b>Inspector</b>	Angela Brereton

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Appendix 1 – Form 1: EIA Pre-Screening

Appendix 2 – Form 2: EIA Preliminary Examination

## **1.0 Site Location and Description**

- 1.1. The site (stated area 0.27ha) is located in the rural area in the townland of Baurela, Ballyhuskard, Co. Wexford. It is c. 6.5kms to the southeast of Enniscorthy and the M11 and c.1km the southwest of Kilcotty crossroads and the R744 and c.3km to the northeast of Glenbrien. It is accessed via the narrow local road network.
- 1.2. The site is accessed via an existing entrance off a sharp bend in the county road. It is screened and is bordered by a post and wire fencing to the rear. There are hedgerows and intermittent trees surrounding the remainder of the site. There is a shed/workshop and polythene tunnel currently located on site. There is also the existing house/workshop building proposed for retention for habitable use. In view of boundary screening and setback the site is not much visible from the road.
- 1.3. There is a house to the west of the site. The subject site shares the main access to the public road and is accessed via this entrance and an internal gate. As shown on the Site Layout Plan, and on documentation on file there is a right of way and shared access to the adjacent residential property to the west of the site. There are signs on site relevant to issues concerning the use of the shared access.
- 1.4. There are a number of one-off houses in the area, including the split-level dwelling to the west. There is a horticultural farm and dwelling to the east of the site. Agricultural land surrounds the site and the county road is to the south of the site.

## **2.0 Proposed Development**

This proposal is for the Retention of existing works consisting of the following:

- (a) Change of use of the first floor of workshop structure to habitable living space and a single residential unit, from its use which was previously granted under planning register no. 20074470.
- (b) Ancillary alterations to the structure necessary to facilitate the change of use.
- (c) The provision of ancillary services and ancillary site works necessary to service the change of use and also for permission for the following works: -

(d) The further change of use of ground floor of workshop to habitable living space and for the use of same with the first floor as one single rural dormer bungalow dwelling.

(e) An extension and alteration to the structure for habitable use, including external finishes renovations.

(f) The upgrade of the existing services including the wastewater treatment plant to EPA standards.

(g) Connections to relevant utilities and/or services.

(h) Ancillary site works, boundary improvement works.

Documents submitted with the application include the following:

- Copy of a Circuit Court Order (2019/00146) between Liam Doyle and Mary Doyle and Aine McCabe regarding access and right of way issues.
- Percolation Test Report for on-site wastewater treatment - MK Environmental Solutions Ltd.
- Details in support of the application.
- Details from Molloy Architecture and Design Studio regarding the planning history and rationale for the current proposal.
- Land Registry Documents.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

On the 23<sup>rd</sup> of August 2023, retention permission was granted by Wexford County Council subject to 11no. conditions. These conditions in summary include regard to the following:

The proposed development to be carried out in accordance with the plans and particulars submitted, Section 47 agreement to be entered into between the applicant and the planning authority, the dwelling to be used as a permanent residence only, development contributions, surface water drainage, water supply,

disposal of effluent including the decommissioning of the existing and installation of new wastewater treatment system and landscaping.

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

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

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

##### Background

- They refer to the documentation regarding the legal dispute between the parties over the shared entrance. Noting that the 2019 court order details that there is a right of way over the entrance from the public road to the subject site i.e. under the ownership of the objector.
- They refer to Section 34(13) of the Planning and Development Act 2000 (as amended) and note that a grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate.
- The use of the shed permitted under Reg.Ref. 20074574 is not the subject of the current application.
- They note that any boundary disputes are civil matters.

##### Current Application

- The application site is within an area under Strong Urban Influence and they refer to the information submitted in support of the application which demonstrates that applicants rural linkage and (contested by the Appellant).
- They recommend occupancy and permanent residency conditions be applied.
- The siting of the dwelling is acceptable in its own right and in the context of the surrounding pattern of development including adjoining neighbouring dwellings to the east and west.
- The design of the dwelling house is acceptable in the context of bulk, massing, proportioning, fenestration and finish.

- The previous reasons of the An Bord Pleanála refusal are noted, but they consider that the proposed extension and alterations will significantly improve the design and layout.
- That the proposed siting and design will not adversely affect residential amenity in terms of overlooking, loss of privacy, overbearing and overshadowing or loss of light for the dwelling to the west.
- The proposed dwelling is in compliance with minimum site sizes and floor areas for dwellings.
- Existing planting on site and additional planting inside the west boundary is considered acceptable and compliant with biodiversity requirements.
- They have regard to the access issues and consider the existing lane width and sightlines to the public road to be acceptable.
- A connection to the public water mains is proposed and a feasibility letter from Irish Water is included. This would necessitate the decommissioning of the existing well. They note issues regarding accessing the public water mains via adjoining lands.
- The existing septic tank is to be replaced and upgraded and the polytunnel on site to be removed to facilitate the new infiltration area.
- Stormwater attenuation has been proposed and is considered to be satisfactory.
- OPW Flood Map Category C: low to minimal risk for site and surrounding area.

#### Further Information request

This includes the following:

- As the proposed connection from the watermain at the public road cross over lands that are outside the ownership of the applicants, the applicant was requested to submit the consent of the relevant landowner agreeing to the watermain connection and details of the works required to facilitate same.



### Further Information response

Molloy Architecture & Design Studio have submitted a response to the Council's F.I request which includes the following:

- The applicants have been unable to secure the formal easement that is legally required to lay the proposed watermain supply connection as originally proposed.
- Therefore, the applicants propose to retain their existing bored well which currently serves their domestic water supply.
- They enclose a Hydrological Assessment Report to mitigate the Council's concerns regarding the existing water supply. The HAR concludes that the existing ground water supply is of good drinking quality.
- The Report recommends the upgrade of the existing onsite effluent treatment system in accordance with EPA guidelines. This has already been proposed in the current application.
- The proposal if granted would have a positive effect on the existing ground water supply by improving the onsite wwts and thereby representing and Environmental gain.
- A Revised Site Layout Plan is enclosed showing the location of the existing well supply and omissions of the proposed public mains connection.

### Planner's Response

They have regard to the F.I submitted and their response includes the following:

- The Hydrological Assessment Report has been reviewed by the Environment Department who consider that based on the submitted information that public health issues would not arise.
- They note that it is concluded that the existing well is not affected by effluent treatment systems in the area and that the onsite septic tank system (which is proposed to be upgraded) is not affecting neighbouring wells.
- The conclude that the development as proposed is acceptable and that previous concerns about the suitability of the existing water supply have been adequately addressed.

- It is acknowledged that there remains a dispute regarding boundaries and precise ownership of land and they note that their recommended grant of permission does not supersede property rights, which ultimately is a civil matter for resolution.
- They recommend a grant of permission subject to conditions.

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

#### Engineer's Report

They recommend that permission be granted taking into account recent improvements in sight lines and both the speed limit and the respective approaches to the entrance from both directions.

#### Environment Report

They have regard to the F.I response, noting that the applicant did not secure permission from the adjoining landowner regarding connection to the watermain. That they propose to retain the existing well. That the Hydrogeological Assessment Report prepared by IE Consulting concludes that the existing groundwater supply is of good drinking water quality. That the HAR recommends the upgrade of the existing on site WWTS. They recommend permission subject to conditions.

### **3.4. Prescribed Bodies**

#### Irish Water

They have reviewed the Pre-Connection Enquiry and provide that the water connection is feasible without infrastructure upgrade by Irish Water.

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

These have been noted in the Planner's Report and as they have been made by the subsequent Third Party Appellant, their concerns are considered further in the context of the Grounds of Appeal and in the Assessment below.

## 4.0 Planning History

Including as noted in the Planner's Report, the following are relevant to the subject site:

- ABP-306618-20 – Reg.Ref. 20191541 – Permission was refused for 3no. Reasons by the Council and subsequently by the Board for the Retention of (a) existing dwelling accommodation and (b) existing twin chambered septic tank and permission for the installation of EPA code of practice compliant percolation area and all associated site works. Reasons in summary included would be prejudicial to public health; would result in ad-hoc piecemeal residential development; would be out of character with the established pattern of development in the area and would be contrary to the proper planning and sustainable development of the area.
- Reg. Ref. 20220657 – Permissions for retention of (a) The change of use of the first floor workshop structure to habitable living space and a single residential unit from its use which was previously granted under Planning Register no. 20074470 (b) Ancillary alterations to the structure necessary to facilitate the change of use (c) The provision of ancillary services and ancillary site works necessary to service the change of use and also permission for the following works: (d) The further change of use of the ground floor of workshop to habitable living space and the use of same with the first floor as one single rural dormer bungalow dwelling; (e) An extension and alteration to the structure for habitable use , including external finishes renovations; (f) The upgrade of the existing services including the WWTP to EPA standards; (g) Ancillary site works, boundary improvement works.

This was refused for one no. reason which in summary provided that the proposed development and associated on-site wastewater treatment system would exacerbate a proliferation of percolation areas in close proximity to one another and be prejudicial to public health.

- Reg.Ref. 20074574 – Permission granted subject to conditions for the erection of a shed. Condition no.2 referred to surface water drainage and no. 3 concerned that the shed is not used for human habitation or for any other

purpose other than incidental to the enjoyment of the house. This shed has been erected on the subject site.

#### *Adjoining site*

- Reg.Ref. 20074470 – Permission granted subject to conditions to Liam Doyle, for Retention of A) Workshop, B) Entrance to site, C) Polythene Tunnel and Permission was sought for the erection of dwelling house with septic tank, percolation area and bored well.

This has been constructed and is the third-party dwellinghouse to the west of the application site.

Copies of these decisions, including the Board decision are included in the History Appendix of the Report.

## **5.0 Policy Context**

### **5.1. Project Ireland 2040, National Planning Framework (NPF) 2018**

Section 5.3 refers to the growth and development of rural areas and the role of the rural town as a catalyst for this. It is recognised that the Irish countryside is, and will continue to be, a living and lived-in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural enterprise, while at the same time avoiding ribbon and over-spill development from urban areas and protecting environmental qualities.

Objective 19 outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area. It further states that in rural areas elsewhere, it is an objective to 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.

### **5.2. Section 28 Guidelines**

#### **Sustainable Rural Housing Guidelines for Planning Authorities 2005**

This seeks to encourage and support appropriate development at the most suitable locations. A distinction to be made between 'Urban Generated' and 'Rural Generated' housing need.

Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working fulltime or part-time in rural areas. This includes reference to people who have lived most of their lives in rural areas and are building their first homes.

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

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.3 refers to Assessing Housing Circumstances. This includes exceptional health circumstances.

Section 4.4 is concerned with Access and restriction of such on National Primary and Secondary Roads.

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

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

The current CoP replaces the previous Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ ) issued in 2009. This CoP

applies to site assessments and subsequent installations carried out on or after 7th June 2021. It provides that the 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.

### **EU Water Framework Directive**

The EU Water Framework Directive (WFD) creates a framework for the protection of all waters including rivers, lakes, estuaries, coastal waters and groundwater, and their dependent wildlife/habitats, under one piece of environmental legislation.

## **5.3. Wexford County Development Plan 2022-2028**

### Volume 1 – Written Statement

#### Core Strategy

Section 3.4 provides the Core Strategy Guiding Principles.

Map 3-1 Core Strategy Map. This shows that the subject site is located in an area under 'Strong Urban Influence'.

Table 3-2 provides the County Wexford Settlement Strategy. The site is in Level 7 - *The open countryside outside of the settlements listed in Levels 1 to 6.*

*Sustainable Housing Strategy* - Section 4.4 refers.

Section 4.5 the Housing Requirements – Housing for All.

Section 4.5.2 refers to Housing Needs.

Section 4.6 Locations for Future Housing.

Objective SH06 refers: *To prioritise the provision of new housing in existing settlements and at an appropriate scale and density relative to the location in accordance with the National Planning Framework, the Regional Spatial and Economic Strategy for the Southern Region and the Core Strategy and the Settlement Strategy in the Plan.*

*Single housing in the open countryside will be considered where it is for those with a demonstrable economic or social functional need to live there as set out in Section 4.9 Housing in the Open Countryside and Table 4-6.*

Housing in the Open Countryside.

Section 4.9.1 refers to Single (One-off) Rural Housing Policy Context.

*The Council will continue to support sustainable rural settlement in accordance with the National Planning Framework, the RSES and the Sustainable Rural Housing-Guidelines for Planning Authorities (DEHLG, 2005) and any future updates of those guidelines.*

Note is had to the rural area types defined in the Sustainable Rural Housing Guidelines as shown on Map 1 i.e.:

- Areas Under Strong Urban Influence
- Stronger Rural Areas
- Structurally Weak Areas.

As outlined in Section 3.3 single rural housing will be considered in the open countryside in accordance with Table 4-6 Criteria for One-Off Rural Housing.

In order to be considered for a single dwelling in the open countryside, an applicant must meet one of the following categories:

A. A person who has a demonstrable social functional need to reside in a particular rural area (except for Structurally Weak Rural Areas)

Or

B. A person who has a demonstrable economic functional need to reside in a particular rural area (except for Structurally Weak Rural Areas)

The applicant must comply with the criteria for that category and the applicable rural area criteria as set out in Table 4.6 (includes regard to Rural Area Type) and the accompanying definition and notes.

This is an extract from Table 4.6 relevant to the location of the site.

Rural Area Type Area	Category A – Social need	Category B- Economic need
Strong Urban Influence	A person who has lived full-time in a principal residence for a minimum	Persons who by the nature of their work have a functional need to

	<p>of 7 years (not necessarily concurrently and at any time in their life) in that local rural area and the site is within 7km radius of where the applicant has lived or is living and who has never owned a rural house. (See Point 4 in Definitions and Notes regarding owning a rural house). The dwelling must be the person's permanent place of residence. The person can work from home or commute to work daily.</p>	<p>reside permanently in the rural area close to their place of work. Functional economic need must be related to a rural resource based activity such as full-time agriculture or horticulture and the nature of the activity or business must require the person to live at on or in close proximity to the business. Similar part-time occupations can also be considered where it can be demonstrated that it is the predominant occupation. The applicant must be able to provide documentary evidence that the employment is full-time or predominant employment when part-time. The applicant must be able to demonstrate that the landholding is such to support a viable enterprise.</p>
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Section 4.9.3 refers to the presumption against Ribbon Development.

Objectives SH39 – SH46 relative to New Individual Dwellings in the Open Countryside include:



SH40: *To strictly control individual rural housing in the open countryside in areas that are reaching their carrying capacity in terms of effluent treatment capacity, visual amenity and/or roads carrying capacity in accordance with the requirements set out in Table 4.6 and the associated definitions and notes and subject to compliance with normal planning and environmental criteria and the relevant development management standards.*

SH41: *All planning permissions granted for individual rural dwellings in the open countryside will be subject to a condition which will require the applicant to enter an occupancy agreement for a period of 10 years from the date of first occupation of the dwelling house.*

### Roads and Infrastructure

Section 8.7.3 includes regard to Local Roads and to sight distances.

Objective TS79: *Where works are required to achieve sightlines at a vehicular access, the following criteria must be complied with:*

- *The necessary works to achieve the required sightlines must be indicated within the site edged red submitted with the planning application.*
- *No construction of the dwelling shall take place until the sightlines are in place.*

Infrastructure Strategy - Section 9.4 refers.

Objective IS01: *To ensure the efficient and sustainable use and development of water resources and water services infrastructure in order to manage and conserve water resources in a manner that supports a healthy society, economic development requirements and a cleaner environment.*

Section 9.5 refers to Water Supply.

Section 9.5.2 to Group Water Schemes and Private Water Supplies.

Section 9.5.3 to Groundwater Protection Schemes

Objective WS08: *In rural areas, where connection to an existing public water supply is not possible, or the existing supply system does not have sufficient capacity, the provision of a private water supply will be considered where it can be demonstrated that the proposed water supply meets the standards set out in EU and national*

*legislation and guidance, would not be prejudicial to public health or would not impact on the source or yield of an existing supply, particularly a public supply.*

Section 9.6 – Wastewater.

Section 9.6.4 refers to Individual Private Wastewater Systems in Rural Areas.

Section 9.6.5 to Wastewater Treatment Systems and Private Wells.

Objective WW11: *To consider the development of single dwelling houses only where it is demonstrated to the satisfaction of the Planning Authority that the proposed wastewater treatment system is in accordance with the 'Code of Practice Wastewater Treatment and Disposal System Serving Single Houses, EPA 2021' and any updated version of this document during the lifetime of the Plan, and maintained in accordance with approved manufacturer's specifications and subject to compliance with the Water Framework Directive, the National River Basin Management Plan 2018-2021, the Habitats and Shellfish Waters Directives and relevant Pollution Reduction Programmes.*

Section 9.11 refers to Flood Risk and Surface Water Management.

Section 9.11.11 – Surface Water Management. This includes reference to the use of SuDS.

Section 15.6.2 – Universal Access and Design.

## Volume 2 – Development Management

Section 3 refers to Residential Developments.

Section 3.1.1 Design Guidance for Single Houses in Rural Areas.

Section 3.1.2 – Standards for Single Dwellings in Rural Areas. *In terms of siting, scale and design, the proposal should have regard to the principles of rural house design as set out in Section 3.1.1. A list of criteria are given relevant to design and layout, wastewater treatment - pwwts, access - vehicular entrance, landscaping etc.*

Section 3.1.1 – Applications for Single Houses on Backland Sites in Rural Areas.

Section 6.2.6 – Siting and Design of Access/Egress Points.

This includes regard in Section B to Sightlines – Road Speed limit greater than 60kph – 65m.

Section 7.4 – Landscape and Biodiversity. This includes regard to the retention of trees and hedgerows and Landscape Plans. Also, to Landscape and Visual Impact Assessment.

Section 8 refers to Infrastructure and Environmental Management.

Section 8.2.1 – Surface Water Management.

Section 8.2.4 – Connection to Public Water or Group Water Scheme.

Section 8.3.1 – Private On-Site Wastewater Treatment Systems. Table 8-1 provides Buffer Zones around Wastewater Treatment Systems.

#### Landscape Character Assessment

Section 11.6 refers to Landscape Character Assessment.

Objective L04: *To require all developments to be appropriately sited, designed and landscaped having regard to their setting in the landscape, ensure that any potential adverse visual impacts are minimised and that natural features and characteristics of the site are retained.*

Volume 7 refers to Landscape and Visual Impact Assessment.

## **5.4. Natural Heritage Designations**

The site is not proximate to Natura 2000 sites.

## **5.5. EIA Screening**

- 5.5.1. Having regard to the modest scale of the development, and the separation from any environmentally sensitive sites, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

Local resident Aine McCabe has submitted a Third Party Appeal, against the Council's decision to grant permission for the proposed development and against conditions no.1 and 6 (Appendix 2). This includes, that the contents of her original objection should be revisited as she doesn't feel her concerns have been taken into account.

The Grounds of Appeal are extensive and are summarised under the headings below:

#### Background

- Reference is had to the reasons for refusal in the previous Board decision ABP-306618-20 (Appendix 3). The Appellant does not consider that the 3no. reasons for refusal have been addressed in the current application.
- The Hydrological Assessment Report submitted as part of the F.I is flawed and details are provided relative to this issue. This includes relative to location of wells, percolation areas and impact on groundwater and water quality.
- The proposed development constitutes an extension to ribbon development and would lead to a further dwelling and business operating from an already exacerbated linear development.
- It is located in an area of strong rural development, would be out of character with the established pattern of development in the area and would set an undesirable precedent for such development.
- It would mitigate against the preservation of the rural environment and would pose a traffic and health risk. The development for retention would therefore be contrary to the proper planning and development of the area.
- They note concerns about the proposed design and layout and that the application does not show how the building would be brought up to standards including building regulation requirements.

### Planning History

- Reference is made to the numerous applications made to Wexford County Council in relation to the subject site. They also refer to details in their Appendices 8, 9 and 11.
- That the current application is an abuse of process and is looking again for the same change of use of workshop to residential without any material change from the last declined applications and indeed from the Board's decision. The Board's reasons as to why it declined planning to change the use of the workshop to residential have not been addressed.

### Enforcement Notice

- There is an enforcement notice issued in relation to the subject site as there is an unauthorised development as the applicants have been living in the workshop without planning permission for this use. They provide details and note that this enforcement notice has not been complied with.
- The subject site is not included on the Residential Property Price Register which suggests that the site was purchased as an agricultural site.

### Third Party Consent

- The applicant has no legal rights to alter the existing right of way which is for agricultural use, to put services through the appellant's private property or to complete works or alter her private property in any way.
- Volume 2 Section 3.1.2.3 of the County Wexford Development Plan has been contravened as legal consent has not been given to alter or do any works on her property as stated in Condition no.1 of the Council's permission.
- Reference is had to the existing gates at 4m in width, through her garden and whereby no possibility of this changing. Also, to the Court Order and mapping. Noting that there was no order made for any alterations to her private property or to amend the use of the right of way to residential or alterations to her existing boundaries (Appendix 14).
- It has been stated in the planners report there are ongoing civil matters with regards to access and the precise ownership of land. This is incorrect as civil

matters have been resolved in the circuit court and a Court Order has issued in November 2019 in relation to the conclusion of civil matters.

- The applicants sought to amend the Courts direction in July 2020 to change the location of the gates which was struck out and directed that gates remain where they are erected (Appendix 14 &15).
- The Appellant has provided a copy of folio and legal map which have been provided by land registry and are legal documents (Appendix 10) showing that she is the sole registered owner and it is clearly stated in the Court Order that the property on which the right of way existing belongs to Aine McCabe (Appendix 14).
- All necessary legal documents showing the civil matter with regard to access and ownership on her property has concluded and that she is the sole legal owner, have been submitted.
- Legal obligations should not be set aside at the discretion of the planning department in Wexford Co. Co. as it is her understanding Wexford Co.Co. can't overrule a Circuit decision.
- The appellant does not consent to any works and has not provided consent, the right of way is for agricultural use only and there is no evidence or consent given to change or given permission for the existing use of her private property to be changed or maintained or altered in any way by the applicants.
- There is no wayleave in place and Third-Party consent has not been provided in the application from the legal owner of the property to the East of the subject site and this could lead to difficulties in the future with no written consent in place or formal easement. This contravenes the County Development plan.

#### Access

- It is incorrect to say that there is a laneway from the road to access property, her home is located right beside the public road, there is no laneway to access her private property and reference is had to the land registry map (Appendix 10).

- There is no access laneway and the Appellant submits that her entrance gates and several buildings and her garden are omitted from this map to mislead the Council. The entrance to her home which are located 5m from the roadside is not included on these maps.
- Section 3.1.3 of Volume the Wexford CDP (Backland sites in rural areas) has not been complied with.
- The sightlines/setback proposed would contravene Section 6.2.6.B as it is a requirement for sightlines to be setback 3m when the access is for more than one dwelling. Reference is had to the sightlines measurement relative to the bend.
- These recommendations are included in Condition nos.1 & 6 even though she has not given her consent and this contravenes with the County Wexford Development Plan as there is no third party consent.
- The third-party will not allow this to take place and was never consulted either by the applicants or Wexford Co.Co. and the applicant will not be able to fulfil conditions 1 & 6 as they haven't the legal right to do so and confirmation of this has already been provided to Wexford Co.Co.

#### Sightlines

- The CDP in Volume 2 Section 6.2.6 clearly sets out the condition to Siting and Design of Access/Egress points and this proposal does not comply.
- Note is had to Section 6.2.6B (2m set back only to be used whereby the access/egress is for a single dwelling). Therefore, sightlines should be measured from centre point of the existing 4m wide access and set back 3 m, based on this, 65m sightlines is not achievable.
- The Road Inspection report is flawed and is not in accordance with Vol. 2 of the CDP Section 6.2.6 B refers. The proposal would not comply with planning policy regarding sightlines.
- In addition to her entrance at the public road there appears to be no assessment of the access from the applicant's property onto the Appellants property.

- They refer to the Inspectors Report (ABP-306618-20) regarding visibility issues due to the bend in the road.

#### Wastewater Treatment Systems

- Reference is had to previous correspondence which forms part of this planning application.
- The information on the cover letter from Molloy Architecture is incorrect and misleading.
- The site layout map is incorrect as to the percolation area to the north of the subject site and details on this are provided.
- As shown on the drawing, separation distances do not comply with minimum separation distances under Table 6.3 of the CoP Domestic WWTS as the existing and proposed percolation areas do not meet with the required separation distances (this was noted on the previous appeal to the Board in 2020).
- The well on the subject site does not comply with the CoP of Domestic WWTS as it is located 28m from the percolation area to the west, the minimum separation distances are not achievable.

#### Ribbon Development

- As has been confirmed by the An Bord Pleanála Report there is extensive linear development in a confined area of a small rural road which has a 90 degree road.
- All properties have their own WWTS and a number of them also have private wells. There is an excessive concentration of septic tanks in the area.
- There is a high risk with the exacerbation of septic tanks and percolation areas in close proximity that the private wells in the area would be at risk of contamination.
- It has been confirmed in the applicant's planning application that they installed a twin chamber septic tank in 2018 and that it was installed without planning permission and without any percolation area.



- There is no percolation area in existence on the subject site and currently a polytunnel exists where the applicant proposed new percolation area is to be located.
- The proposed wwts and the proposal for an additional septic tank on the subject site may affect water quality of the existing well on site and neighbouring wells.
- Wexford County Council planning policy or the CoP is not complied with relative to this issue regarding the impacts of private wwts.

#### Hydrological Assessment Report

- The Third Party provides an assessment of the findings of this HAP and considers that there are inaccuracies and that the details submitted are inadequate and do not comply with the relevant standards. This includes regard to wastewater treatment systems, percolation area and wells not being up to standard and posing a health risk.
- They provide a detailed assessment of the adverse impact on wells in the vicinity. Submitting that the proposal will provide serious health risk for both the occupants of the subject site and adjoining properties. That it does not appear that a full assessment of private wells in the area has been completed.

#### Landscape and Biodiversity

- The third-party refer to the landscaping proposals submitted and does not agree nor give permission for any removal of the existing boundary treatment including long established trees along her boundary.
- The proposal does not comply with proposals related to retention of trees and hedgerows and landscaping in the WCDP. Reference is provided to a number of relevant policies and objectives.
- The appellant has not given permission for the removal of existing trees and hedgerows along the site boundary. Or to alter landscaping plans in the original application Reg.Ref.20074574.
- Section 7.4.1 of Volume 2 of the CDP is contravened as regards retention of existing trees and hedgerows.

### Social and Economic Need

- The third-party does not consider that the applicants comply with the criteria of one-off rural housing. In addition to this there are currently a number of properties in close proximity being sold at present, one of which is located two houses south c.100m away from the subject site.
- There is no confirmation provided showing the applicants have never owned a rural house previously and this is required in order to comply with policy.
- As confirmed by the applicant the workshop is not being used by the applicant for residential purposes.
- Reference is had to a number of applications in the area, whereby planning applications in the locality were refused based on no evidence of social and economic need etc (Appendix 37 refers).

### Design and Layout

- They refer to the Board's previous decision in ABP-306618-20 (Appendix 3) and consider that the building is compromising their privacy, it doesn't resemble a dwelling and would not meet current building regulations.
- Reference is had to the proposed design changes particularly to the fenestration and to issues of potential for overlooking. Section 3.1.2 of Volume 2 of the CDP is contravened relative to the impact on neighbouring properties.
- The building does not comply with building regulations, there is nothing provided showing how this building will be brought up to building regulations.
- It was the appellants understanding that when she purchased her house that the current operation of this unauthorised development would be ceasing as she was advised that this was a temporary arrangement.

### Social and Economic Need

- This unauthorised development has been going on for some time, before the third-party purchased the property.
- There are currently 2 properties and a business using her private entrance whereby one dwelling and a business is operating in breach of planning

legislation, is resulting in ongoing difficulties whereby there is ongoing traffic, congested traffic and conflicting turning movements.

- The subject development exacerbates the problem of ribbon development in the area. There are currently 13 houses in 250m which is well in excess of the amount in planning policy. This application could result in a further dwelling and a business extending it further.
- The third-party asks the Board to investigate this serious risk to public safety which contravenes the Wexford CDP.
- There are a number of Appendices enclosed with the appeal statement.

## **6.2. Applicant Response**

Molloy architecture & Design Studio have submitted a response to the grounds of appeal on behalf of the applicants. This includes the following:

- They submit that the vast majority of the content of the appellant's submission deals with existing civil matters that are not within the remit of the planning authority to decide upon or affect in any way. These matters are outside the scope of the planning process.
- They only refer to matters that need to be reiterated but have already been dealt with, either by the Council in the course of the planning process or by the court of law outside of the planning process.
- This planning application must be assessed on planning and environmental matters only.

### **Environmental Matters**

- The applicant submitted a Hydrogeological Assessment Report as part of the response to the request for further information.
- This report was commissioned at significant cost to the applicant and carried out by a highly reputable Environmental consultancy – IE Consulting. The authors are satisfied that the content of the report is accurate and reflects the situation on the ground.

- That a methodical and professional approach was used to preparing the planning and appropriate equipment was used for surveying the site and surrounding properties.
- The applicant has not submitted any documentary evidence to substantiate her statements about inaccuracies. In the absence of such the only evidence that should be considered is the professional reports and documents submitted.
- The appellant also refers to matters relating to the existing septic tank system and the time period when it was installed. The First Party provide that the proposal for a system upgrade is not affected by the history of the existing septic tank and percolation area and all matters relating to the WWTS can be regularised by way of grant of permission. They submit that any minor matters could be dealt with by way of condition.

#### County Development Plan Objectives, Linear Development etc

- Whilst the applicant has proven her compliance with Rural linkage criteria by way of submission of documentary evidence, they submit that the application should not be reviewed as a simple one-off rural home.
- The family have lived here for many years and are attempting to regularise an existing dwelling which utilises an existing entrance point that was granted under the parent permission of the appellants property and home.
- The site is an infill site and consolidates the existing pattern of linear development, using an existing structure that was previously permitted development which is encouraged by CDP objectives.
- The subject site is well screened from the public road and would be far from typical linear development.

#### Building Regulations

- The appellant observes that the planning application does not contain any detail with regard to how the dwelling would comply with the current building regulations. The applicants' response submits that compliance with the building regulations is not a planning matter.

### Civil and Legal Matters

- They refer to the right of way issue and note that such exists over the property in favour of the applicant, with relevant folios and court orders proving this submitted already with her planning application.
- The applicant is satisfied that the information submitted with the planning application substantially reflects her rights regarding the access. They note that matters of legal title are not for planning authorities
- They request the Council's permission be upheld that that a grant of permission be issued in due course.

### **6.3. Planning Authority Response**

This includes the following:

- The two planners' reports set out rationale for recommendation for grant on this planning application.
- It is noted and agreed that the width of the entrance should remain at 4m, not 8m and the Planning Authority would be amenable to this being clarified by way of conditions.
- Reference was had to the ongoing legal dispute over the position of boundaries. That as per Section 34(13) of the Act, a decision to grant does not supersede ownership rights.
- Reasons no.1 and 3 of the previous Board refusal: Reg.Ref. 20191541/ABP. 306618-20 have been addressed under the current application.
- With regard to reason no.2 they consider that the dwelling at this location would not militate against the rural environment. It is largely screened from public view, is not ad-hoc piecemeal development given that the site is located between the public road and the dwelling to the west.
- They request their decision to grant be upheld, and that an appropriately worded condition that the entrance should remain at 4m be attached.

## 6.4. Observations

There are no Observations noted on file.

## 7.0 Assessment

### 7.1. Policy Considerations

- 7.1.1. The Settlement Strategy has regard to Rural Generated Housing Need. This is a matter of compliance with rural settlement strategy which requires consideration of not just local but also regional and national planning provisions that deal specifically with this matter. National Policy Objectives 18 and 19 of Project Ireland 2040, refer. As noted in the Policy Section above, Objective 18 seeks to develop a programme for new homes in small towns and villages. Objective 19 seeks that: “In rural areas under urban influence, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in the 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”.
- 7.1.2. Regard is also had to the Sustainable Rural Housing Development Guidelines 2005 where the strategy indicates that there should be a presumption against urban generated one-off housing in rural areas adjacent to towns. The site is located in an area classified as being under “Strong Urban Influence” as identified in the Guidelines. Section 3.2.3 refers to Rural Generated Housing. This includes reference to “people who have lived most of their lives in rural areas and are building their first homes”. Section 4.3 of the Sustainable Rural Housing Guidelines 2005 refers to Assessing Housing Circumstances.
- 7.1.3. Regard is had to the Core Strategy in Volume 1 of the Wexford CDP 2022-2028. Map 3-1 Core Strategy Map. This shows that the subject site is located in an area under ‘Strong Urban Influence’. Section 3.6.8 includes: *One off rural housing in the open countryside will be considered where a social or functional economic need is demonstrated in accordance with Section 4.9 Housing in the Open Countryside in Chapter 4 Sustainable Housing.*
- 7.1.4. Section 4 of Volume 1 of the CDP sets out the policy for Single rural housing in the countryside. Table 4.6 outlines the criteria including for ‘Rural Areas under Strong

Urban Influence.’ This has been noted in the Policy Section above. It provides that the applicant must comply with the criteria for that category and the applicable rural area criteria as outlined i.e.: A) *A person who has demonstrable social functional need to reside in a particular rural area* or B) *A person who has demonstrable economic functional need to reside in a particular rural area.*

- 7.1.5. The applicants note that they are applying for retention of a workshop structure to habitable living space i.e for use as a dwelling, on the subject site and provide a background to the family history of residing on this site. They refer to documentation submitted to support the family residing in the area since 1999. They provide details of familiar linkages and bills/bank accounts and a letter from the postman to confirm their residence over the years and submit that they have become part of the local community. The Planner’s Report notes that the applicant has lived in the area for a minimum period of 7 years and the site is within 7km radius of where the applicant is living and that they have never owned a rural house. That the dwelling will be the applicant’s permanent place of residence.
- 7.1.6. The third party refers to details of local needs information and queries the accuracy of some of the details that have been submitted. I note that it would appear from the documentation submitted that the applicants are from and have resided in excess of 7 years in the local area and have not previously owned a house and are socially connected to the area. Therefore, it would appear that the local needs criteria as per Table 4.6 in an area under ‘Strong Urban Influence’ have been met.

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

- 7.2.1. Regard has been had to the Planning History in the appropriate section above and as noted in the Planner’s Report, the Third Party Appeal and First Party response. It is noted that there is an extensive planning history and copies of previous planning history are included in the Appendix to this Report.
- 7.2.2. Note is had in particular of the Board decision in Ref. ABP-306618-20. The Board’s 3no. reasons for refusal in summary considered: (1) that the proposed development and associated on-site wastewater treatment system would exacerbate a proliferation of percolation areas in close proximity to one another and be prejudicial to public health; (2) would result in an ad-hoc piecemeal residential development in

the rural area lacking public services and community facilities and would militate against the preservation of the rural environment; (3) would be out of character with the established pattern of development in the area and would set an undesirable precedent for such development.

- 7.2.3. The Third Party queries how permission can now be granted for a similar type development in the current application that was previously refused both by the Council and subsequently by the Board. They note that the application for a change of use to living accommodation of the workshop has been declined by the Council a number of times and this decline was also reaffirmed by the Board in 2019 (ABP-306618-20).
- 7.2.4. The Planning Authority's response to the appeal provides that reasons no. 1 and 3 of the Board's decision have been addressed under the current application. That with regard to refusal reason no.2, the Planning Authority consider that the dwelling at this location would not militate against the preservation of the rural environment, it being largely screened from public view. That in addition it is not ad-hoc development given that the site is located between the public road and the dwelling to the west. In this respect it is noted that further details have been submitted in the current application including the Hydrogeological Assessment Report.
- 7.2.5. Also of note is Reg.Ref. 20074574 where permission was granted subject to conditions to Liam Doyle for the Erection of a Shed on the subject site. It is noted that condition no. 3 provides that this shed not be used for human habitation or the keeping of animals or for any other purpose other than the purpose incidental to the enjoyment of the house. This shed has been erected and is not part of the subject application.
- 7.2.6. In addition, Reg.Ref. 20074470 where permission was granted subject to conditions to Liam Doyle for the Retention of A) Workshop, B) Entrance to Site, C) Polythene Tunnel and permission was granted for the erection of a dwelling house with septic tank, percolation area and bored well. The Site Layout Plan also showed the location of the Workshop (which is the subject of the current application) and the Shed. Condition no. 14 provided that the workshop not be used for human habitation or the keeping of animals or for any other purpose other than the purpose incidental to the enjoyment of the house. It is noted that the site included in that permission showed



the location of the house to the west, which now appears to be owned by the third party. Since that time, it is noted that the original site has been subdivided. The current application shows the red line boundary of the subject site, the property to the west is not included.

### **7.3. Design and Layout**

- 7.3.1. The Site Layout Plan shows the location of the workshop building, close to the southern boundary of the site. This proposal is to facilitate the retention of the conversion of this building to living accommodation. The Floor Plans and Elevations show the internal alterations and the modifications to the fenestration proposed. Details are also given of proposed changes to the external finishes. It is proposed to provide 2no. bedrooms at first floor level. The total floor area is given as 134sq.m. The building has a steeply sloping roof (it is proposed to inset rooflights) shown 7.26m to ridge height. The plans include a proposed porch and canopy to the main entrance. I would note that compliance with the Building Regulations are dealt with under separate remit.
- 7.3.2. The building is well screened by existing planting and is not much visible from the public road. I would have no objection to the design and layout and alterations proposed and would consider that the building is low profile and well integrated into the landscaping on the site. The Site Layout Plan submitted shows that the landscaping and boundary treatment both existing and proposed appears to be within the subject site. If the Board decides to permit, I would recommend that a Landscaping condition be included.

### **7.4. Legal issues**

- 7.4.1. There are a number of issues raised as noted in the submission made and the grounds of appeal. In summary the Third Party is concerned that it is proposed that there be any alterations to her private property in relation to the access and her existing long-established boundaries. That it is stated that services are to be put through her garden and works to be done to her private property without any consultation or consent being obtained from the owner. In addition, the appellant has stated her concerns regarding the implementation of Condition nos. 1 and 6 of the

Council's permission. It is provided that the applicants have no legal right and the appellant does not authorise any works or alterations to her private property.

- 7.4.2. The First Party response submits that the majority of the appellants submission deals with matters that are outside the scope of the appeals process, or that have already been dealt with either by the Council during the course of the application or by the court of law outside of the planning process. They submit that the application must be assessed on planning and environmental matters. Regard is also had to the Site Layout Plan which includes a note with reference to the boundaries depicted.
- 7.4.3. It is noted that the Planning Authority's response to the grounds of appeal provided that as noted in the planner's reports there is an ongoing legal dispute over ownership and position of boundaries and per Section 34(13) of the Planning Act. A decision to grant does not supersede ownership rights.
- 7.4.4. I note that a copy of a Court Order from the Circuit Court regarding the right of way issue and gated access to the lands has been included in the documentation submitted. This is a separate issue. It is of note that the issue of ownership or boundary disputes regarding private rights of way etc. are civil matters and I do not propose to adjudicate on these issues. In this case note is had to the provisions of S.34(13) of the Planning and Development Act 2000 (as amended): "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*"

## **7.5. Access issues**

- 7.5.1. It is proposed to use the existing access to the site, from the local road. This is located on a bend in the road. The Site Layout Plan shows 'Shared access right of way indicated in yellow'. This concerns the access from the road which also serves the house to the west (appellant's). This access is shown outside of the redline boundary. The gated access to the subject site is set further back along the southern site boundary.

- 7.5.2. The third party concerns regarding the use of the access are noted. It is noted that there are issues concerning the shared access from the public road and a copy of the Circuit Court Order (2019/00146) is included on the file. This is a private legal issue and I would also refer the Board to the Legal issues section in this Assessment above.
- 7.5.3. Section 6.2.6 of Volume 2 of the Wexford CDP 2022-2028 refers to Siting and Design of Access/Egress Points. This includes regard in Section B to Sightlines – Road Speed limit greater than 60kph – 65m. Figure 6-7 refers to measuring sightlines at a point 2m/3m. Concerns have also been raised regarding adequate sightlines being available. The Site Layout Plans submitted show that there are 65m sightlines available at the entrance on either side of the bend on the public road. The Council's Engineers Report provides that taking into account recent improvements in sightlines and both the speed limit and the respective approaches to the entrance from both directions that they recommend a grant of permission.
- 7.5.4. The appellant is concerned that the Site Layout Plan is incorrect in measuring sightlines. That on the site layout map the sightlines are measured from the centre of an 8m wide entrance which does not exist nor is there any legal consent for same from a distance of 2.4m from the roadside. I note that the Planning Authority response to the appeal recommends that an appropriately worded condition that the entrance to the site should remain at 4m be attached.
- 7.5.5. I note that the appellant has concerns about the implementation of condition no. 6 of the Council's permission regarding interceptor drainage grating to be provided. If the Board decides to grant permission, I would recommend, that appropriate conditions relative to access and drainage be included.

## **7.6. Suitability of site for Disposal of Effluent**

- 7.6.1. Section 9.6.4 of Volume 1 of the Wexford County Development Plan 2022-2028 and Section 8.3.1 of Volume 2 include reference to Individual Private Wastewater Systems in Rural Areas. This includes that the provision of on-site wastewater treatment systems to serve new one-off rural housing must be carefully considered as these systems place significant pressures on water quality. The latter includes reference to the assessment criteria and to the need to carry out a Site Suitability

Assessment, noting: *The siting, design and installation of the wastewater treatment system shall be in accordance with the requirements of the Code of Practice: Wastewater Treatment and Disposal Systems serving Single Houses (P.E. <10), published by the EPA in 2021 or future updates. It must comply with minimum separation distances to various receptors specified in the Code of Practice.*

- 7.6.2. The site is within an unserviced rural area. The Site Layout Plan shows the location of the wastewater treatment system to the rear i.e. north of the workshop building proposed for retention for conversion to a dwelling. This shows that the existing septic tank is to be upgraded and replaced. It is proposed to provide a Eurotank Treatment System. The location of the well proximate to the southern site boundary is also shown.
- 7.6.3. The location of the existing gravel soakpit serving the existing agricultural building and dwelling, has been shown on the Site Layout Plan. This notes that the soakpit shall be retained for the agricultural building only. This was granted under Reg.Ref. 20074574 and is not part of the subject application.
- 7.6.4. A Site Characterisation Form has been submitted. This notes that the Aquifer Category is 'Poor.' Vulnerability is 'Moderate' and the groundwater protection response is given as R1. Appendix E of the CoP 2021 notes the Groundwater Protection responses -Table E1 refers. This provides that a wastewater treatment system is acceptable subject to normal good practice i.e. system selection, construction, operation and maintenance in accordance with the CoP, and having regard to the location of domestic water supplies. The Site Characterisation Form notes that the existing old septic system with soak-pit is to be decommissioned and replaced with a new on-site system. That the site is potentially suitable for the treatment of wastewater effluent, but that the groundwater is the target most at risk.
- 7.6.5. It is of note that Table 6.4 of the 2021 EPA CoP provides the percolation values relative to the type of treatment system. This notes for septic tank and percolation area it is 3-50 and for secondary treatment systems and soil polishing filters the percolation value range is 3-75. The Site Characterisation Form provides that the depth of the trial hole is 2.2m. A number of 'T' tests were carried out and it is noted that percolation test results provide an Average T value of 8.5, noting: *Fast drainage rate as anticipated from a very free draining sand subsoil. Suitable T value for*

*conventional percolation trenches after the existing septic tank.* It is stated that ‘P’ tests were not required as the T value is inside the EPA Range 3-50. It is proposed to install a conventional septic tank and in-situ percolation area. Details are given of percolation trenches. The recommendation of the Site Characterisation Form is to ‘*Retain existing Delaney Concrete as installed en approved and SR66 compliant septic tank unit*’.

- 7.6.6. The Council’s Environment Section’s Report noted that as shown on the plans originally submitted the applicant sought to mitigate the previous environmental reason for refusal by proposing to connect to the public mains. A letter confirming feasibility of the water mains connection has been supplied from Irish Water as part of the current application. The Planning Authority’s F.I request noted that the proposed connection from the watermains at the public road cross over lands that are outside the ownership of the applicant and requested that consent of the adjoining landowner be submitted agreeing to the watermain connection and details of the works required to facilitate same.
- 7.6.7. The applicant’s response notes that they have been unable to secure formal agreement that is legally required to lay the proposed water mains supply connection as originally proposed. That therefore the applicants must retain their existing bored well which currently serves their domestic water supply.
- 7.6.8. That to mitigate any concerns the Planning Authority may have regarding the existing water supply in the context of the existing WWTPs in the vicinity a Hydrogeological Assessment Report was commissioned and submitted as part of the F.I. Noting that the HAR concludes that the existing ground water supply is of good drinking quality. The Report recommends the upgrade of the existing on-site effluent treatment system in accordance with EPA guidelines. That the proposed upgrade is already proposed in this application.

#### Hydrogeological Assessment Report

- 7.6.9. IE Consulting were appointed by Molloy Architecture (on behalf of the applicant) to undertake a HAR in the context of the application. This had regard to the previous refusals which noted concerns that the proliferation of systems in the area would be prejudicial to public health. They submit that the main aim of this HAR is to weigh up all available evidence in order to assess if the groundwater quality of the source site

and other existing supplies in the area are being contaminated by the accumulation of nitrates or by microbial contamination due to the proximity of 3no. polishing filters c. 30m, c. 38m and c. 55m away from the site/surrounding area and to help to develop a robust conceptual model.

- 7.6.10. Details are given of the scope of the works, including groundwater sampling upstream and downstream of the site. It is noted in the WCC planning report that there is an open drain proximate to the site. The Site Layout Plan shows the location of the existing domestic well is c. 55m south of an existing percolation area and is c.38m south-west of another existing percolation area.
- 7.6.11. A description is given of soils and subsoils mapping in the area. The GSI Groundwater Vulnerability mapping indicates the site is located where mapped vulnerability is Moderate. Table 1 provides information from the SCF Report (2022) pertaining to the soils and subsoils based on the logging of the trial pit (depth 2.2 m). Details are given of the Bedrock Geology underlying the site. Table 2 provides the hydrological features and their WFD status, noting that the site is located within the catchment of the River Sow to the southeast and the stream Oulartleigh 12 is within c. 465m of the site. CFRAMS mapping notes that the nearest flood mapped extents to the site is approx. 0.7km to the south.
- 7.6.12. Regional Hydrology includes that the site overlies a Poor Aquifer – Bedrock which is generally unproductive except for Local Zones. The site and well are located within the Castlebridge North GWD (EPA, 2023). The HAR notes that this GWB has a poorly productive bedrock WFD status. That the groundwater is considered as Not Risk of deteriorating to less than Good status in the future. The characteristics of the Castlebridge North GWB are summarised. Table 3 provides details of the Groundwater Vulnerability Classification Scheme. The site including the proposed well location is within an area of Moderate Vulnerability.
- 7.6.13. The summary comment for the site in the SCF (2022), states that the site is potentially suitable to retain the existing twin chambered septic tank and to “install a new EPA CoP soil percolation area”. It also states that the existing well must be > 35m away from the nearest part of the proposed percolation area.
- 7.6.14. Details are given in the HAR of Groundwater Resources and of a Working Conceptual Groundwater Model (Figure 15 refers). There is an existing groundwater

supply (utilised as upgradient sampling point) > 100m east associated with the adjacent property to the east of the application site. This, public water mains pipeline supplies the dwelling to the west of the property and in addition to many of the houses in the area. It is noted that there are 25 dwellings within 500m of the proposed well. They note that the neighbouring well to the east (utilised as upgradient sampling point) is c.110 south-east of an existing percolation area – that serves the dwelling that uses the well. That it is this percolation area that is within 55m of the well location for which the study is being undertaken. The closest percolation areas to the borehole supplying the development are 55m to the north and 38m to the Northwest. It is provided that the proposed percolation area will be approx. 40m north of this borehole.

- 7.6.15. The HAR refers to a Site Walkover and Table 4 provides details of a Sample Name and Description. It is noted that the only property deemed downgradient is the dwelling to the western boundary (the appellant's property) but that home is served by the public water supply and so is not applicable for sampling.
- 7.6.16. The current septic tank location on the subject site is c. 40m cross gradient of the well location. While the site is relatively flat there is a slight slope to the west towards the stream identified as the Oulartleigh (Figure 18 refers). It is noted that there is a drain or gully outside the boundaries of the site. That the existing workshop building is supplied by the private well close to the southern boundary of the subject site.
- 7.6.17. Section 6 of the HAR provides details on Water Quality having regard to water sampling carried out. Noting that the results show that the groundwater quality is high at the site with all parameters at concentrations below the recommended threshold values. Table 5 provides the Groundwater quality analysis results.
- 7.6.18. The HAR concludes that the ground conditions are deemed suitable for the use of an in-situ wastewater system as recommended in the site suitability assessment report. That upgrading the existing on-site wastewater treatment system arrangements to a superior treatment system will enhance the treatment and attenuation. Note is had to the revised Site Layout Plan in Appendix A. It is recommended to upgrade the existing wastewater treatment system to an EPA CoP compliant percolation area to safeguard the existing quality of the water supply and to safeguard/improve the water quality in the downstream streams and rivers.

- 7.6.19. The Council's Environment Section had regard to the F.I submitted. They noted that the applicant did not secure permission from the adjoining landowner for connection to the water mains. That the applicant is reverting to the retention of the existing bored well. That to mitigate the concerns of the Local Authority, the applicants have submitted a HAR prepared by IE Consulting which concludes that the existing groundwater supply is of good drinking water quality. That the HAR recommends the upgrade of the existing onsite WWTS. They recommend that permission be granted subject to conditions including that that installation of the percolation area be in accordance with current guidelines in the EPA CoP and that the existing septic tank be decommissioned. Conditions nos. 8, 9 and 10 of the Council's permission refer.
- 7.6.20. The concerns of the third party querying the accuracy of the HAR are noted. However, I would consider that it has been demonstrated that this proposal will provide for an upgrade of the existing wwts and that the proposal will not adversely impact on the quality of the groundwater. If the Board decides to permit, I would, recommend that appropriate conditions be included.

## **7.7. Screening for Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the development and to the nature of the receiving environment and separation distance from the nearest designated site, no appropriate assessment issues arise, and it is considered that the development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites.

## **8.0 Recommendation**

I recommend that retention permission be granted subject to the conditions below.

## **9.0 Reasons and Considerations**

Having regard to the planning history of the site and the pattern of development in the area, to the modifications proposed to the building proposed for retention and use as a dwellinghouse for the applicants, and to the upgrades proposed to the wastewater treatment system, it is considered that subject to compliance with the



conditions set out below, this retention proposal will provide a dwelling for applicants with a local need, and would not seriously injure the residential or visual amenities of property in the vicinity, would be acceptable in terms of traffic safety, would not be prejudicial to public health and would constitute an acceptable form of development at this location. As such this retention proposal would not be contrary to the proper planning and development of the area.

## 10.0 Conditions

1. The development shall be retained, carried out and completed in in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received on the 1<sup>st</sup> of August 2023, and by An Bord Pleanála on the 17<sup>th</sup> day of October, 2023, 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. The building proposed for retention as a dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least ten years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant]. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
  - b) Within two months of the occupation of the building proposed for retention as a dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the building proposed for retention as a dwellinghouse is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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

5. (a) The septic tank/wastewater treatment system hereby permitted shall be installed in accordance with the standards set out in the document entitled "Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent  $\leq 10$ )" – Environmental Protection Agency, 2021.  
(b) Treated effluent from the septic tank/ wastewater treatment system shall be discharged to a percolation area/ polishing filter which shall be provided in accordance with the standards set out in the document entitled "Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent  $\leq 10$ )" – Environmental Protection Agency, 2021.  
(c) Within three months of the installation of the septic tank/wastewater treatment system, the developer shall submit a report to the planning authority from a suitably qualified person (with professional indemnity insurance) certifying that the septic tank/ wastewater treatment system and associated works is constructed and operating in accordance with the standards set out in the Environmental Protection Agency document referred to above.  
(d) Within three months of the date of this permission, the existing septic tank to be decommissioned shall be removed and the site reinstated.

**Reason:** In the interest of public health and to prevent water pollution

6. The vehicular access arrangements from the public road, serving the development proposed for retention, shall comply with the requirements of the planning authority for such works.

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

7. Prior to the occupation of the development, a detailed Landscape Plan for the site with full works specifications shall be submitted to, and agreed in writing with, the planning authority. This plan shall include detailed specifications relating to boundary treatment and planting. The site shall be landscaped in accordance with the agreed scheme. All planting shall be carried out in the first planting season following the date of this permission and shall be permanently retained thereafter. Any tree which dies, decays or is removed within the first five years of being planted shall be replaced with a tree of similar species and size.

**Reason:** In the interest of visual amenity and to protect the rural character of the area.

8. All service cables associated with the development to be retained (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

**Reason:** In the interests of orderly development and the visual amenities of the area.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development

Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the occupation of the dwelling or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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.

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Angela Brereton  
Planning Inspector

23<sup>rd</sup> of September 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-318043-23		
<b>Proposed Development Summary</b>	Retention of existing works including change of use of workshop structure to habitable living space, to include the provision and upgrade of services, ancillary site works and boundary treatment.		
<b>Development Address</b>	Baurela, Ballyhuskard, Co. Wexford.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	✓
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>	✓		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required
<b>Yes</b>	✓	Class/Threshold.....	Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	✓	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

## EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-318043 -23	
<b>Proposed Development Summary</b>	Retention of existing works including change of use of workshop structure to habitable living space, to include the provision and upgrade of services, ancillary site works and boundary improvement works.	
<b>Development Address</b>	Baurela, Ballyhuskard, Co. Wexford	
<b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<b>Nature of the Development</b> Is the nature of the proposed development exceptional in the context of the existing environment?  Will the development result in the production of any significant waste, emissions or pollutants?	<p>The proposed development to provide in summary for the retention of existing works including change of use of workshop structure to habitable living space, to include the provision and upgrade of services, ancillary site works and boundary improvement works. There are other houses in this rural area.</p> <p>The proposed development is in the unserved rural area. As per the documentation submitted, including regard to the Hydrological Assessment Report it will not result in significant emissions or pollutants.</p>	<p>No</p> <p>No</p>
<b>Size of the Development</b> Is the size of the proposed development exceptional in the context of the existing environment?  Are there significant cumulative considerations having regard to other existing and/or permitted projects?	<p>This proposal to provide for a dwelling house (stated area 0.27ha) and is well below the threshold of 500 units and below 10ha as per Class 10(b) of Schedule 5 of Part 2 of the Planning and Development Regulations 2001 (as amended).</p> <p>Please refer to the Planning History Section of this Report. No significant cumulative considerations</p>	<p>No</p> <p>No</p>
<b>Location of the Development</b> Is the proposed development located on, in, adjoining or does it have the potential to significantly	No - The proposed development to provide in summary for the retention of existing works including change of use of workshop structure to habitable living space, to include the provision and upgrade of services, ancillary site works and boundary improvement works.	No

<p>impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>This retention proposal has been assessed in the documentation and shown on the drawings submitted, and it is concluded that it will not have a significant effect. A Hydrogeological Assessment Report has been submitted.</p>	<p>No</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required</p>	<p><b>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</b></p> <p><del>Schedule 7A information required to enable a Screening Determination to be carried out.</del></p>	<p><b>There is a real likelihood of significant effects on the environment.</b></p> <p><del>EIAR required.</del></p>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**DP/ADP:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)