



An
Bord
Pleanála

Inspector's Report ABP-319242-24

Development	Retention of two-storey extension to existing structure. Retention of alterations to reg ref 20091687 consisting of the relocation of a first-floor fire escape stairs with internal and external alterations. Retention of roof alterations and all associated site works.		
Location	Newtownbarry, Bunclody, Co. Wexford.		
Planning Authority Ref.	20231528.		
Applicant(s)	Murgreen Limited.		
Type of Application	Retention Permission	PA Decision	To grant permission.
Type of Appeal	Third	Appellant	Michael Kavanagh
Observer(s)	None		
Date of Site Inspection	11/12/2024	Inspector	Richard Taylor

Context

1. Site Location/ and Description.

The appeal site is located at Newtownbarry, Bunclody, a village in Wexford. It has direct access to a public road, known as the R746. The access is set back slightly off this road and comprises a laneway that traverses broadly westwards and parallel to the southern boundary of the site. The building is located at the rear of the site, adjacent to the western site boundary and set back off the public road at

varying distances of between approximately 42 and 48 metres. It is broadly orientated east (front) to west (rear). The building is broadly “L” shaped due to a number of extensions being added to the two-storey main building. The southern and northwestern gables of the building are close to the western and southern boundaries. The rear elevation of the building has a staggered alignment and located approximately 7 metres from the rear/western site boundary. The building is a mixture of heights with the main northern section two stories in height. The remaining elements are single storey in height. It is finished in render with blue slates to the roof.

There is a mixture of hard and soft landscaping areas between the rear of the building and the boundary. The rear and northern boundary comprise mature trees and hedging averaging approximately 4 metres in height. The southern boundary comprises a mix of a block wall with piers adjacent to the gable of the building and approximately 2 metres in height. The boundary material changes to timber panel fencing at a point approximately adjacent to the rear elevation to the rear of the site. There is an external concrete fire escape at the southwestern corner of the building and an access path approximately 1.2 metres in width between the boundary and along and adjacent to the gable of the building.

To the front and adjacent to the building there is a level hard surfaced parking area. To the north and east all the building there is a large soft landscape garden area largely in grass with groups of mature trees. The topography of the site falls from the car parking area towards the northern and eastern boundaries. The roadside boundary is undefined. Views from the public road of the building are filtered by the intervening mature trees.

Adjacent and to the south of the site there is a funeral home with hard surfaced car parking area to the front and landscaping adjacent to the common boundary.

There are dwellings further to the south, approximately 34 metres from the appeal site building gable at the closest point. To the rear and north of the site there are 2 large, detached dwellings within generous plots.

2. Description of development.

The proposal is for retention permission and relates to part of a larger application for alterations and revisions to an existing residential facility. The proposal comprises the following:

Permission for the following; A) Retention permission for the construction of a two-storey extension to the side of existing structure consisting of the provision of an enclosed fire escape stairwell, mechanical lift and ancillary rooms and also for a single storey extension to the rear consisting of accommodation,

B) Retention permission for alterations made during construction to the drawings, specifications and details that were previously granted permission under pl. reg. no. 20091687 consisting of the relocation of a first-floor external fire escape stairs, the omission of an external fire escape stairs, reduction in the floor area of the extended areas and minor ancillary internal and external alterations.

C) Retention permission for a partly enclosed and roofed external seated area to the rear with ancillary roof alterations, and also for external hard and soft landscaping and planted areas and hard stands,

D) And for permission to widen existing permitted access driveway, all with ancillary works.

Part B in italics above is subject to grounds of appeal based on the submission by the appellant.

3. Planning History.

Application No.: 20004488. Applicant Name: Aidan Sawyer. Extension and alterations to Rosaoibhinn nursing home (246 sq.m. extension). Granted subject to conditions 4th of July 2001.

Application No.: 20040210. Applicant Name: Aidan Sawyer. Retention of alterations to the design of the extension to side of existing nursing home which was previously granted under planning register number 20004488 which involve the following; 1.) Increase in floor area, 2.) Alteration to the internal layout, 3.) Alterations to front, rear and side elevations (Rosaoibhinn nursing home). Granted subject to conditions 14th of April 2004.

Application No.: 20091687. Applicant Name: Aidan Sawyer 1) erection of 498.5sq.mt extension with 206.5sq.mt basement underneath to the northern elevation (side elevation) 2) removal of existing steel staircase and erection of

repositioned staircase on the northern elevation (side elevation) 3) erection of a 47.8sq.mt extension over existing dining and ancillary areas to the western elevation (rear elevation) 4) erection of a 2sq.mt extension to the eastern elevation (front elevation) 5) change of use of attic storage area to staff living accommodation over existing permitted extension re 20004488 & 20040210 with the provision of an external staircase 6) widening of existing entrance and the provision of on-site car parking & 7) all associated site development works.

Granted subject to conditions 3rd of June 2010.

Application No.: 20140354. Applicant Name: Aidan Sawyer. Permission to erect a 134.8 square meter single storey extension to side of existing nursing home consisting of 6 no. En-suite bedrooms and associated works with connection to existing public mains. Granted subject to conditions 13th of August 2014.

Application No.: 20180704. Applicant Name: Aidan Sawyer. Permission to (1) make alterations to extension permitted under planning reference number 20140354, (2) to erect a first floor extension to nursing home consisting of day room, additional bedrooms, en-suites and ancillary areas and (3) permission for retention of existing first floor development consisting of staff areas, laundry and two en-suites to nursing home with connection to existing public services and all associated site and ancillary works. Refused 18th of July 2018. (traffic – sightlines not available. Previously approved sightlines not provided. Adequate Parking not provided).

4. National/Regional/Local Planning Policy (see attached)

- The Wexford County Development Plan 2022-2028 was adopted by the Elected Members of Wexford County Council at the Special Meeting of the Council held on Monday, 13th June 2022. The Plan came into effect on Monday, 25th July 2022. It has regard to national and regional policies in respect of residential development.
- Chapter 3: Core Strategy.
- Table 3-2 County Wexford Settlement Hierarchy. Bunclody is a Level 3a Service Settlement.
- 3.6.3 Level 3a Service Settlements: Role and Function: While the size of these settlements varies, the settlements all share a common characteristic of being

important service settlements for their local communities and their wider rural hinterlands. All of these settlements perform important functions including retail, commercial, education, residential, service and amenity functions. The location of these settlements, together with targeted growth and investment in services, will contribute to the balanced spatial development of the county.

- development approach includes: Ensure that new development contributes to the creation of attractive, liveable, well-designed, high-quality settlements and the local communities enjoy a high-quality of life and well-being. Protect and enhance amenities, heritage, green infrastructure and biodiversity in these settlements.
- Chapter 4: Sustainable Housing.
- Objective SH03: To seek to facilitate all households to access good quality housing appropriate to the household circumstances and in their particular community of choice. The Council's priority will be on meeting the most acute needs- those unable to provide for their accommodation from their own resources or are otherwise in need of housing or housing supports.
- 4.5.1 Housing for All.
- 4.7.3 Utilise Existing Stock: The Council will continue to encourage the utilisation of existing housing stock and its refurbishment.
- 4.8.2 Housing for Older People. 4.8.3 Housing for People with Disabilities.
- Objective SH35: To facilitate access for people with disabilities and older people to an appropriate range of housing and related support services delivered in an integrated and sustainable manner that promotes equality of opportunity, individual choice and independent living.
- Objective SH36: To support independent living for people with disabilities and older people and to facilitate the provision of specific purpose-built accommodation and the provision of nursing homes, retirement villages, residential care facilities at appropriate locations in towns and villages in the county. These facilities must be well served by infrastructure and amenities including accessible footpaths, local shops and public transport in order to allow the resident to be socially included and to allow better care in the community, independence and access.
- Chapter 5: Design and Place-making in Towns and Villages.

- Objective TV06: To require high quality design in the public realm, architecture and in building functionality.
- Objective TV11: To require that all development complies with the design advice contained in the narrative and the objectives of this chapter and the design principles set out in the guidance documents in Section 5.3 of this chapter.
- Chapter 11: Landscape and Green Infrastructure.
- Chapter 15: Sustainable Communities and Social Infrastructure Strategy
- 15.6.1 Groups with Specific Design/Planning Needs
- Objective SC06: To support the entitlement of all members of the community to enjoy a high quality living environment and to support local communities, the Health Authorities and other bodies involved in the provision of facilities for groups with specific design/ planning needs.
- Objective SC11: To facilitate the provision of care facilities for groups with specific planning and design needs, including older people, people with disabilities both physical and intellectual. These care facilities include independent living options, sheltered housing, day-care facilities, nursing homes and specialised care units. The preferred location for this type of development is within, or in close proximity to, towns and villages and is subject to compliance with normal planning and environmental criteria.
- Objective SC13: To facilitate the design needs of older people and people with disabilities in community facilities, public open spaces and recreational areas.
- Volume 2 Development Management Manual.
- Section 2 Common Principles for All Developments, 2.2 Place Making and Design, 2.6 Amenity.
- 3.9 Nursing Homes/Residential Care Homes.
- Volume 3: Settlement Plans and Specific Objectives: Section 1: Bunclody Town Settlement Plan.
- 1.5.1 Land Use Zoning Objectives: Change of use and extensions to existing buildings will generally be required to be consistent with the zoning matrix.
- Figure B-5 Flood Zone Overlaid on the Land Use Zoning: site zoned as existing residential and outside of flood zones.

5. Natural Heritage Designations

- Nearest natural heritage designations to the site are as follows:
- Special Protection Areas [site code]:
- Cahore Marshes SPA [004143]
- The Raven SPA [004019]
- Wexford Harbour and Slobs SPA [004076]
- Special Areas of Conservation (SACs) [site code]:
- Blackstairs Mountains SAC [000770]
- River Barrow And River Nore SAC [002162]
- Slaney River Valley SAC [000781]
- Kilpatrick Sandhills SAC [001742]
- Blackstairs Mountains SAC [000770]
- Blackwater Bank SAC [002953]
- Cahore Polders and Dunes SAC [000700]
- Kilmuckridge Tinnaberna Sandhills SAC [001741]
- Buckroney-Brittas Dunes And Fen SAC [000729]

Development, Decision and Grounds of Appeal

6. PA Decision.

- The planning report notes the following:
- Referral responses were requested from the Coastal Engineer, Chief Fire Officer, and Executive Roads Technician. No objections were received. Roads recommended conditions.
- One observation received, which is from the appellant.
- The site notice was inspected on 26/01/2024. Deemed in accordance with the Planning and Development Regulations 2001 (as amended).
- Development contributions are applicable.
- The extensions as constructed are located back from the public road and do not have any overlooking into residential properties. The fire escape to the southern corner is located adjacent to the side of a funeral home and is not looking over

any public areas of the funeral business. The extensions as built are considered acceptable.

- The site is accessed by an existing entrance which the applicant is seeking permission to widen. Water supply and effluent treatment will use existing facilities. The site is within category C of the OPCW flood map

7. Third Party Appeal. Grounds:

- The appellant grounds for appeal relates to part of a larger proposal:
- Retention permission for alterations made during construction to the drawings, specifications and details that were previously granted permission under register number 20091687 consisting of the relocation of a first floor external fire escape stairs, the omission of an external fire escape stairs, reduction in the floor area of the extended areas and minor ancillary internal and external alterations.
- The grounds of appeal are as follows:
- 1. Retention for fire escape stairs which is partly encroaching on land in ownership of the appellant.
- The stairs were constructed without consent in 2020 by the previous owner. Part of the stairs are located on the appellant's land. The previously granted stairs to the side of the building where not constructed as the land is part of the Land Registry folio which is registered to the appellant.
- 2. Overlooking window which does not have permission.
- A first floor window on the side elevation facing to the funeral home has no planning permission. Retention permission was sought in reference 20180704 but was refused. It is a window for a bedroom which does not have permission as it was meant to be an entrance hallway for a fire escape. This is intrusive to families attending the funeral home. Removal of this window is requested. This is not included with the submitted plans.
- 3. Inaccurate site layout plan submitted.
- The site layout plan does not reflect buildings presently on site and the dimensions from the funeral home to the building are incorrect. This should have been requested as further information as highlighted to the local authority.
- 4. Inaccuracies in the planning report.

- The planning history section of the report notes that application 20180704 was granted, however this is incorrect as that application was refused and has implications on the decision.
- 5. Previous planning permission conditions not carried out.
- Extra parking provision has not been provided on site. Condition 8 of granted permission reference 20091687 related to roads and safety at the entrance and required the provision of a 2 metre wide footpath along the road frontage. This has not been provided and therefore does not comply with the condition this is not referred to in the current application roads report. The road condition has not changed with very poor sight lines onto a regional road.
- 6. Inaccurate position of site notice.
- The site notice was not in the position indicated on the site layout plan. It was positioned 14 metres from the road's edge, 7 metres inside the entrance driveway from the pier which was indicated on the site layout plan.
- 7. Conflict of interest between the roads report and applicant.
- It is understood that the Council's Roads Inspector who dealt with the application is new to one of the Directors of Murgreen limited, the applicant, on a personal level. This should have been disclosed at the outset and it is requested that this is reviewed.
- 8. Scope of Retention works/clarity of supporting information
- It is unfair to grant retention for everything in this building as it was unclear what retention works were sought. The items are not clearly shown or stated or described in the notices.
- 9. Use of fire escape as smoking area / Fire risk
- The top landing of the fire escape stairs is being used as a smoking area and cigarette ends are being thrown into the appellant's property, which is a serious fire risk. A sign was erected but this has been ignored. There is a health and safety risk the building does not have an up-to-date fire safety certificate.
- 10. Poor construction
- The dormer structure containing the escape door from the first floor is poorly constructed in timber and PVC cladding, some of which recently fell off. It is not considered of fireproof construction.

- 11. Change of use: this building has changed use since closing as a nursing home.
- 12. Land ownership: the property was purchased two years ago. The issues of ownership have been ignored. The issue of rectification of the land folio has been ignored and should be addressed before seeking retention planning permission. The applicant needs to own the ground that the fire escape is on to get retention permission. The appellant has not given consent for permission on his land.

8. Applicant Response

- The applicant's response to the appeal is submitted on their behalf by Malloy architecture and includes evidence from Brock McClure planning and development, and a sworn declaration by Mr Aiden Sawyer.
- 1. Retention of fire escape stairs and encroachment on to the appellant's land.
- The appeal site was previously owned by Mr Aiden Sawyer Between 2001-2022. An appended sworn declaration by Mr Sawyer outlines the history and possession in relation to the boundary.
- Mr Sawyer was approached by the appellant around 2018 with a request to allow the appellant to remove the existing party boundary treatments that had been in situ for over 35 years. The existing boundary consisted of mature leylandii trees with some native Birch, part of which is clearly visible in the historic photographs provided by Mr Sawyer. These photos were taken during the works involved in replacing the boundary treatments. The appellant proposed a solid blockwork wall of varying heights to be finished in a mix of plaster and granite. The appellant wished to remove the mature vegetation that screened both properties. Mr Sawyer refrained from constructing the previously granted fire escape stairs. Due to this agreement an escape stair was constructed to the rear of the property where it is now located and the doorway at first floor level facing the appellant's property was locked and became obsolete for fire escape purposes.
- Mr Sawyer's declaration confirms the appellant made a verbal agreement that the boundary would be surveyed, mapped and a date of rectification would be prepared by him at his own expense and submitted to the property registration

authority. Mr Sawyer trusted the appellant to honour the agreement, but the rectification was not submitted.

- The appellant was satisfied with the status of the shared boundary as he undertook the replacement boundary treatment works and associated costs. It cannot be argued that the appellant did not know the boundary was incorrect at the time of construction.
- Map 1 in Appendix A shows the existing as built first floor plan superimposed onto the PRA special registration/folio map. This illustrates the fire escape stairs are entirely within the applicant's folio as currently registered and do not encroach onto the appellants property.
- Map 2 of Appendix A is the map submitted by the appellant with a planning application launched in 2018 under reference number 20181627. This clearly depicts the shared party boundary as it exists on the ground today and not the shared boundary as registered with the PRA. This map, along with the sworn declaration of Mr Sawyer, is clear evidence that the appellant had accepted the boundary as it existed on site when he purchased the property in 2018.
- The Brock McClure evidence refers to the planning history of the site. It includes excerpts of the site layout plans for each of the previous applications from 2000-2023. The boundaries of these cases have been consistent. The current application is the first occasion in which the appellant has made a submission. Prior to this there have been no instances where the appellant raised any concern or objections regarding the red line boundary or asserted ownership.
- References 20181627 November 2018, and 20180607 May 2018 were submitted for extensions to the funeral home. The boundaries in these applications align with the boundary with the current application/appeal.
- Section 34 (13) of the planning and development Act 2000 (as amended) states: "a person shall not be entitled solely by reason of a permission under this section to carry out any development." The planning report also notes that "the site edged red for planning purposes is not a legal ownership map. If works are proposed on a neighbouring site, then the applicant would need written approval from the adjacent landowner to carry out the works, if required." Planning and legal processes are very separate matters for consideration. The

applicant is within their legal right to proceed. Any legal matters that may arise are not for consideration at this time.

- 2. Overlooking window and accuracy of drawings
- The appellant purchased the property in 2018 and was aware on the 1st floor window prior to purchasing. If the appellant had viewed the files relating to the property, he would have been reasonably aware of the full external fire escape at this location.
- The first-floor bedroom window does not have any adverse effect on residential amenity. No minimum setback distances apply for commercial premises and does not impact the privacy of patrons of the funeral home. The window is obscurely glazed.
- The use of the obsolete fire escape door as a window was entirely acceptable and in substantial compliance with planning permission reference 20091687.
- The alteration from a door to window of the same width with use of obscure glass is exempted development under part one Section 4-(1) H of the Planning and Development Act. If deemed appropriate, a condition for obscure glazing in perpetuity can be attached to a grant of permission. All elements requiring regularisation are included. Any omissions can be deemed exempted development.
- The appellant had an opportunity to address privacy concerns from existing and permitted windows when making the planning application to extend the process under location reference 20181627.
- The appellant references to proposals contained in previous applications are irrelevant to the current application. It is an attempt to regularise the planning status of the site and is the first attempt to do so by the current owner/applicant. The applicant had no part in previous applications.
- The process to regulate planning is being conducted in tandem with fire safety and disability access. The building design including means of escape are necessary to comply with TGD Part B fire. The existing fire escape is less obtrusive when viewed from the appellant's property.
- The cover letter submitted in support of the application clarified full details of the proposal.
- 5. Inaccuracies in the planning report

- The appellant is incorrect that the refusal of application reg. number 20180704 has the effect of the refusal of the window as discussed above. The reference to 20180704 being granted rather than refused in the planning history section of the report is a typing error. Planning history is considered at section 6 in the report.
- 6. Previous planning permission conditions
- The application cover letter included commentary at Section 4 on access and services. The entrance is in substantial compliance with the relevant permission, reg. number 20091687. It is proposed to upgrade the access driveway by widening to the extent indicated on the site layout plan.
- The cover letter submitted in support of the application clarified full details of the proposal.
- All matters relating to any deviations from the previously granted permissions are dealt with in the planning report.
- The applicant is content for the Board to attach any conditions they see fit to grant permission if it is deemed necessary in the interest of clarity and to ensure there is no ambiguity.
- 7. Position of site notice.
- The validity of the site notice location is a matter for the case officer. Page Six of the planning report states that it is acceptable and include a photograph of the notice in place.
- 8. Conflict of Interest
- There is no evidence that the case roads engineer gave favourable consideration to the applicant during the process. The proposals did not give rise to any difficult decisions relating to the existing access. The report was clear and concise and factually correct.
- Other matters:
- Fire safety certificates. The property has 5 fire safety certificates, the latest of which is dated 2020. A fire risk assessment is being undertaken by a qualified consultant to ascertain if a further certificate is required. This matter is outside the remit of the appeal. The Chief Fire Officer issued comments on the application on the applicant will follow the advice.

- Construction materials and external finishes: It would appear likely that the image referred to was taken during the fitting of external finishes. The external finish to the dormer is acceptable and plans with existing finishes. It is a matter of compliance with relevant fire safety certificate conditions that external finishes meet the relevant class dictated by its proximity to the shared boundary.

8. PA Response

- No further comments received.

Environmental Screening

9. EIA Screening –

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

10. AA Screening -

Having regard to the modest nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Having examined all the application and appeal documentation on file and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The main issues, therefore, are as follows:

- (a) Principle of Development
- (b) Retention of fire escape stairs and encroachment

- (c) Overlooking window and accuracy of drawings
- (d) Inaccuracies in the planning report
- (e) Previous planning permission conditions
- (f) Inaccurate position of site notice
- (g) Conflict of interest
- (h) Other issues.
- (a) Principle of Development

2.2. Retention permission is sought for a range of works carried out to an existing residential facility in an urban area. The policy supports the provision of specialist housing including nursing homes and those with disabilities, in particular by Objective SH36, and Objective SC11. The site is located within lands identified as existing residential. Therefore, in broad terms, policy supports the proposal subject to detailed considerations including those set out in Volume 2 of the plan.

- (b) Retention of fire escape stairs and encroachment

2.3. The appellant contends that an existing fire escape to the rear of the property is located within lands in his ownership. This is disputed by the applicant.

2.4. There is comprehensive evidence provided by both parties in relation to this matter which I have fully considered. It is clear from the evidence and site visit that the boundary has been subject to improvement works.

2.5. Site visit observations confirm that the fire escape in question is located entirely to the rear of the building and projects slightly towards the appellants property. Between the gable of the building/fire escape structure and the boundary wall there is a hard surfaced path area and landscaping towards the rear of the site. The fire escape and the building does not include any projections, features, or structures over or beyond the boundary wall structure and fence that separates the properties. Based on my own site observations and review of the supporting scale drawings, I am satisfied that the fire escape is located within the boundary demarcated on the site location plan for the application.

2.6. From a review of the evidence, I consider that the location of the boundary is a dispute between the parties and a civil matter. 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. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.

(c) Overlooking, window and accuracy of drawings

- 2.7. The appellant highlights that the 1st floor gable window as shown on the plans does not reflect what is in place. They consider that this opening results in a loss of privacy to the appellants property and visitors to the facility. The applicant has responded with a number of points in rebuttal, stating that the opening is substantially in accordance with a previous approval, variance is permissible by exempted development, and the appellant was aware of the window when the property was purchased in 2018.
- 2.8. The appellant is correct that the supporting elevation plan indicates a different opening design compared to that on site. Whilst it appears similar in width, it is larger in height and appears to have similar proportions to a door opening with the bottom portion comprising a UPVC panel, with approximately the upper half in glazing.
- 2.9. I have not been provided with the full drawings associated with the various planning histories for the appeal site and must therefore rely upon the excerpt images in the evidence which are not to scale. It broadly replicates the opening for the former fire escape door from application reg: 20091687. However, this was located roughly centrally within the gable elevation. The as-built location is closer to the front elevation directly below where the hipped roof meets the sloped front section of the roof of the building. I consider that this is a drafting error that does not prejudice the appeal or any party as they are fully aware of the issue.
- 2.10. In relation to the amenity impacts of this opening, the relevant policy considerations in volume 2 of the plan, as discussed above, require proposals to protect the amenity of the area, along with other requirements. The area towards which the opening is directed is a car park and associated access at the front of the appellant's property. This area is therefore public and is not subject to protection by the policy. It is subject to public views from the adjoining road and adjacent lands albeit filtered by the existing boundary treatments. The applicant has demonstrated with photographic evidence that the window in question is subject to obscured glazing. This further

mitigates amenity impacts. It is also located sufficient distance from residential properties beyond the appellant's building to the south. The relationship of the window to adjoining properties is acceptable within this urban context. I consider that the design is acceptable and sufficiently sympathetic to the elevation treatments of the host building. I am also satisfied that amenity is not impacted by the fire escape for the same reasons. In addition, boundary vegetation mitigates direct views from the structure.

2.11. In relation to inaccuracies with the submitted plans, I am satisfied that the supporting information sufficiently describes and illustrates the nature of the proposal.

2.12. The appellant also questions the retention nature of the proposal. It is permissible within the legislation to submit a planning application for the retention of works already carried out.

(d) Inaccuracies in the planning report

2.13. The appellant considers the planning report inaccurate due to an incorrect reference to a historic application on the site being noted as approved rather than refused. I do not consider that this issue to be significant in the consideration of the merits of the proposal.

(e) Previous planning permission conditions

2.14. The appellant highlights that conditions attached to previous permissions have not been complied with and in particular the access and parking details. I consider that this issue is a matter for the Council and associated enforcement powers, if deemed appropriate. It is a matter that is outside the scope of this appeal and associated considerations by the Board. I also note that the roads technical response has no objections in relation to the proposal. Accordingly, there are no grounds to refuse permission on these issues.

(f) Inaccurate position of site notice

2.15. The appellant considers that the site notice for the application did not meet the relevant legislative requirements. Notwithstanding the set back from the public road of the notice as discussed in the appellant's evidence, I consider that it was suitably conspicuous and available to review by any persons in close proximity to the site.

Based on the information provided I am satisfied that the site notice meets the requirements as noted in the planning report.

(g) Conflict of interest

- 2.16. The appellant alleges that there is a conflict of interest with the Council roads adviser. There is no definitive evidence presented by the appellant in relation to this issue. This is a matter that is outside the scope of this appeal and consideration by the Board.

(h) Other issues.

- 2.17. The appellant also raises issues in relation to fire safety, smoking activity in close proximity to their property, and construction materials and finishes over the fire escape and adjacent roof.
- 2.18. The applicant has confirmed that fire safety certificates have been issued for the applicants building and this process is under review. This matter is subject to separate regulatory controls and therefore is outside the scope of this appeal and consideration by the Board.
- 2.19. In relation to smoking activities the applicant indicates that there is no evidence to support this assertion and that any related activities occur within a dedicated facility elsewhere within the site and separated from the common boundary.
- 2.20. I consider that this is a management issue for the applicant and that there are no policy grounds to withhold permission on this basis.
- 2.21. In relation to materials and finishes of the fire escape and associated dormer roof structure, I consider that this issue is subject to separate regulatory controls and therefore this is a matter that is outside the scope of this appeal and consideration by the Board.
- 2.22. The appellant also queries if a change of use of the building has occurred. The scope of the application and associated appeal is set out within the description of the development and associated supporting information. It does not seek, or include, reference to a request for a change of use. I note the planning history of the site which confirms that it was in use as a nursing home from 2001 and is referred to as such in the various decisions since that time. However, I note that the site description section within the planning report refers to the nursing home “currently

being used as an accommodation centre administered by the Department of Children, Quality, Disability, Integration, and Youth.” I conclude that a change of use does not form part of the proposals and therefore any associated issues are outside the remit of this appeal. This is a matter for the applicant and Council to satisfy themselves that any change of use is lawful and in accordance with planning legislation.

- 2.23. I have reviewed the other aspects of the application, and I am satisfied that they are compliant with relevant policy considerations. The remaining elements are acceptable in terms of design and will not adversely impact on the amenity of neighbouring properties or the area due to a combination of their location, separation distances and screening by boundary treatments of the site.

3.0 Recommendation

- 3.1. I recommend that retention permission for the development be granted.

4.0 Reasons & Considerations

Having regard to the information submitted with the application and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with zoning objective for the site as set out in the Wexford County Development Plan 2022 – 2028, and all other material considerations, would not be injurious to the amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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

Reason: In the interests of clarity.

2. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. No part of the development hereby permitted shall be occupied until interceptor drainage grating has been provided the full width of the entrance with the public road and shall be piped to a satisfactory outfall. The access shall be piped with a suitably sized pipe to ensure that no interference shall be caused to the existing roadside drainage. Provision shall be made to ensure ease of future maintenance. Surface water from the site shall not be permitted to drain onto the adjoining public road. The access laneway of the site shall be retained in a permeable surface in accordance with the approved plans.

Reason: In the interest of traffic safety.

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

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

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.

Richard Taylor

Planning Inspector

22nd August 2024