



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319573-24

<b>Development</b>	Outline permission for the construction of a house and associated site works.
<b>Location</b>	Parknasilloogue, Enniskerry, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	2360222
<b>Applicant(s)</b>	Breda Maguire
<b>Type of Application</b>	Outline Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s) (3 No.)</b>	Mary O' Mahony; Olivia Noonan and Mauro Di Biasi; Sinéad Hayes and Simon Hayes
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> August 2024
<b>Inspector</b>	C Daly.

## **1.0 Site Location and Description**

- 1.1.1. The subject site is located off a laneway and consists of a modest sized cottage located towards its north-east corner and a sloping garden area to its rear and side which slopes uphill to the west where a mature Ash tree is located. There is an existing vehicular access to the southern side of the cottage where the laneway from which the site is accessed partially widens.
- 1.1.2. There are three other detached dwellings on their own grounds which are also accessed off the laneway which leads to the public road, the L1011, which is located within a 50km per hour speed limit zone. The site is surrounded by detached houses of varying scale on two sides with such houses also located on the laneway opposite and there is a water treatment plant located adjacent to the south of the subject site.

## **2.0 Proposed Development**

- 2.1.1. Outline permission is sought for the construction of a detached dwelling with a stated floor area of 153.3sq.m., the subdivision of the site, connection to all services, close off exiting site entrance and new recessed site entrance on to laneway.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission granted subject to 7 No. conditions.

Noteworthy conditions include the following:

- Condition No. 3: All surface water run-off from roofs, entrances, driveways, parking areas etc. shall be collected and disposed of within the site to soak pits. In particular, no such surface water run-off shall be allowed to flow onto the public roadway or adjoining properties, nor to discharge to the public foul sewer.
- Condition No. 4 (a) Prior to commencement of development, the written agreement of Uisce Éireann shall be obtained for the provision of water services necessary to serve the proposed development. (b) The granting of this permission by Wicklow County Council is in its role as a Planning Authority. It does not commit Wicklow County Council to the provision of any

water services to serve the proposed development. Details of connections and the specification of materials to be used for the water services are a matter for Irish Water.

- Condition No. 6 (a) Tree protection measures as identified in the Arboricultural Assessment submitted on the 29<sup>th</sup> February 2024 shall be implemented in full prior to the commencement of development. (b) Landscaping shall be carried out on site in accordance with the Landscaping Plan submitted on the 29<sup>th</sup> February 2024. The landscaping and tree planting shall be carried out before or during the first planting season or part thereof occurring after the commencement of development. Any plants, which become seriously damaged, shall be replaced by others of similar size and species.

Further Information was sought by the Planning Authority in relation to the following issues: request for details in relation to ground works / re-profiling of the site and culverting of a stream, the identification of an Uisce Éireann wayleave to the west of the subject site, insufficient information in relation to sight line distances at the junction with the public road, tree root protection measures for the Ash tree located on the western boundary and in relation to a tree planting and landscaping scheme.

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

- 3.2.1. The planner's report noted that the site was zoned as 'Existing Residential' (RE) and considered that infill development was acceptable at this location. The layout, design and scale of the proposal were considered to respect the area.
- 3.2.2. Further information was requested in relation to possible ground works / re-profiling and the culverting of a stream, planting over an Uisce Éireann wayleave, sight line distances, proposals in relation to the protection of the Ash tree located on the western boundary and in relation to proposed boundary tree planting.
- 3.2.3. The responses of the applicant were considered to address the concerns of the Planning Authority and it was considered that the evidence submitted demonstrated that no remodelling of the lands or filling in of the stream occurred, the Uisce Éireann wayleave was indicated with planting removed from its location, the details in relation

to the entrance off the public road were noted to be acceptable, the tree protection landscape proposals were accepted.

### 3.3. Prescribed Bodies

- 3.3.1. Uisce Éireann (two submissions): Note that the proposal includes planting in close proximity to the western wayleave. A 'Build Over' application to UÉ was sought accordingly in relation to assessment of feasibility.

### 3.4. Third Party Observations

- 3.4.1. 7 No. third party observations were received and the planning comments raised are generally reflected in the grounds of appeal and in addition these also include:
- The overhead phone line through the property would need to remain in place.
  - The site notice does not meet visibility requirements and is invalid.
  - The heritage value of the existing cottage should be preserved.
  - There is parking provision for at least 4 cars which is excessive.
  - The status of the Irish Water easement needs to be checked.
  - Concerns expressed regarding damage to the base of the large Ash tree, loss of biodiversity and potential damage to foundations of adjacent houses.
  - Concerns regarding the type and height of the proposed boundary trees.

## 4.0 Planning History

**P.A. Ref. 976475** refers to an application for a bungalow on the lands adjacent to the west of the subject site which was granted permission by the Planning Authority on 31/10/1997.

**P.A. Ref. 964510** refers to an application for a kitchen extension and attic conversion on lands opposite the subject site to the east which was granted permission by the Planning Authority on 06/09/1996.

**P.A. Ref. 977274** refers to an application for a dwelling house located to the north-east across the laneway which was granted permission by the Planning Authority on 20/05/1998.

## 5.0 Policy Context

### 5.1. Local Plans

#### Bray Municipal District Local Area Plan 2018 – 2024 (LAP)

5.1.1. It is noted that The Bray Municipal District Local Area Plan 2018 – 2024 was adopted on 10<sup>th</sup> June 2018 for a period of 6 years (per section 1.1) and this could be seen as remaining in force until 28th September 2024 given the provisions in relation Christmas and Covid closures under Sections 251 and 251A of the Planning and Development Act, 2000, as amended. Under this L.A.P., the subject site is located within an area zoned RE-Existing Residential where the objective is to *‘To protect, provide and improve residential amenities of existing residential areas’*. The description of this zoning objective provides for *‘appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity’*.

5.1.2. Chapter 3 deals with residential development including the design of new developments. Objective R1 states that *‘All new housing developments shall be required to accord with the housing objectives and standards set out in the Wicklow County Development Plan’*. Objective R4 relates to in-fill housing developments and the use of under-utilised and vacant sites subject to a high standard of design, layout and finish.

#### Wicklow County Development Plan 2022 – 2028

5.1.3. The appeal site is located within the settlement boundary of Enniskerry. Under the Wicklow County Development Plan 2022 – 2028, the core strategy designates Enniskerry as a Level 4 Core Region ‘Self Sustaining Town’ in the Wicklow Settlement Hierarchy. These are *‘Towns with high levels of population growth and a weak employment base which are reliant on other areas for employment and/or services and which require targeted ‘catch up’ investment to become more self-sustaining’*. It is stated that such towns are targeted for growth rates of 25% to 30% and that the goal is to limit further development other than town centre/ infill / regeneration.

5.1.4. Section 3.5 of the CDP in relation to zoning notes that *“This development plan provides the population and housing targets for all 21 settlements in the County up to*

2031. However, it only provides plans for 13 settlements, the remainder of the settlements having their own standalone 'Local Area Plans', which will be reviewed after the adoption of this County Development Plan".

- 5.1.5. New Local Area Plans are to be made for 5 listed town including Bray Municipal District which includes Enniskerry and Kilmacanogue. It is stated that *"In relation to the zoning principles, it is stated that a minimum of 30% of the housing growth will be delivered within the existing built up footprint of the settlement"*. In relation to densities, the zoning principles section states that *"in existing residential areas, infill development shall generally be at a density that respects the established character of the area in which it is located, subject to the protection of the residential amenity of adjoining properties"*.
- 5.1.6. The sequential approach to zoning is to be applied with *"Priority 3 Infill within the existing built envelope of the town, as defined by the CSO Town Boundary. Town centre regeneration / infill / brownfield developments normally located within the existing built up part of the settlement, generally on lands zoned 'town centre', 'village centre', 'primary area', 'existing residential' and other similarly zoned, already developed lands will be prioritised and promoted in the first instance for new housing development"*.
- 5.1.7. Per Section 4.2 of the CDP outlines the role and function of Level 4 Self Sustaining Towns and it refers to Enniskerry as a "settlement". Level 10 refers to "the rural area (open countryside)" and this is defined as *"all the rural area outside of the designated settlements"*. Under Section 4.3 Settlement Strategy Objective CPO 4.6 is stated *"To require new housing development to locate on designated housing land within the boundaries of settlements, in accordance with the development policies for the settlement"*.
- 5.1.8. In relation to housing in the open countryside, CPO 6.41 refers to housing need and the core consideration of demonstrable functional social or economic need to live in the open countryside and Table 6.3 outlines the Rural Housing Policy.
- 5.1.9. Section 17.3 in relation to Landscape states in *"urban areas"* states *"All locations designated as 'settlements' in the County settlement hierarchy (i.e. areas falling within Levels 1-6) are considered 'urban' areas for the purpose of landscape classification"*. Appendix 11 of the CDP refers to Local Area Plans and it is stated

that “*This appendix presents an amendment that has been made to a Local Area Plan through the County Development Plan process. Amend Bray Municipal District Local Area Plan 2018 (Enniskerry) Land Use Map as shown on Map No. 3*” and the Land Use Zoning Map for the Bray Municipal District LAP 2018 is presented in this Appendix. This map contained in the CDP confirms the settlement boundary consistent with the descriptions outlined in the CDP and parts of which are quoted above. The relevant map is found in Appendix 11 of the Development Plan.

5.1.10. Chapter 5 deals with Town and Village Centres – Placemaking and Regeneration and Chapter 6 relates to Housing.

5.1.11. There are no prospects of special amenity value or special interest listed in the Plan that relate to the subject site or its surroundings. There are a number of objectives related to the proposed development including CPO 6.16 which encourages high quality infill development which is sensitive to context, CPO 6.21 which allows for infill residential development that protects existing residential amenity on ‘existing residential’ lands and CPO 6.22 which states that small scale infill development shall be at a density that respects the established character of the area.

5.1.12. Appendix 1 deals with Development and Design Standards and Appendix 2 with Single Rural Houses Design Guidelines.

## **5.2. National and Regional Policy**

### Project Ireland 2040 – National Planning Framework (NPF)

5.2.1. The NPF is the Government’s national level strategic planning framework for shaping the future growth and development of Ireland up to 2040. National policy objectives (NPOs) are set out for people, homes and communities in Chapter 6. Compact growth is the first National Strategic Outcome sought which involves delivering a greater proportion of future residential development within the existing built-up area of settlements. The NPF requires that 30% of all new homes are delivered within the existing built up footprint of settlements (NPO 3c). NPO 35 seeks to increase residential density in settlements including via infill development.

### Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy 2019-2031

- 5.2.2. Enniskerry is located in the ‘core region’ as defined in the RSES for the eastern and midland regional authority area. Regional policy objective 3.3 is relevant to the subject development and this states that Local authorities, in their core strategies shall set out ‘*specific objectives relating to the delivery of development on urban infill and brownfield regeneration sites in line with the Guiding Principles set out in the RSES*’.

### 5.3. Planning Guidelines

- 5.3.1. The following section 28 Ministerial Guidelines are relevant:

- Development Management Guidelines for Planning Authorities, (Department of Environment, Heritage and Local Government, Department of Environment, Heritage and Local Government, 2007).
- Design Manual for Urban Roads and Streets (DMURS) (2019);

- 5.3.2. Other relevant national guidelines include:

- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009).
- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, (Department of Housing, Local Government and Heritage, 2018).
- Greater Dublin Regional Code of Practice for Drainage Works (Version 6.0).
- Road Safety Audits (Transport Infrastructure Ireland, 2017).

### 5.4. Natural Heritage Designations

- 5.4.1. The closest designated site is the Knocksink Wood Special Area of Conservation and Knocksink Wood Proposed Natural Heritage Area (Site Code 000725) c. 0.53 km to the subject site’s north-east and Powerscourt Woodland Proposed Natural Heritage Area (site code 001768) is located c. 0.8km to the south.

### 5.5. Environmental Impact Assessment Screening

- 5.5.1. See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I



have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The three no. parties to the appeal are:

- a. Mary O' Mahony,
- b. Olivia Noonan and Mauro Di Biasi,
- c. Sinéad Hayes and Simon Hayes.

In conjunction with the observations received by the Planning Authority during their consideration of the application, the grounds of appeal from three parties with addresses at Parknasilloge and Kilmolin, can be collectively summarised as follows:

#### Scale and Design

- The two storey scale is out of character with the dwellings in the area;

#### Residential Amenity

- The close proximity to the adjacent dwelling will result in a loss of privacy and create additional noise;
- This will result in negative impact on the valuation of adjacent houses;

#### Ground Works and Drainage

- Ground works that involved significant removal of top soil and planting, reprofiling of the site and the diversion of a stream underground through the site have taken place in recent years and this has not been represented on the drawings;
- It is asserted that the surface level stream through the site existed prior to the ground works;
- Issues raised in relation to failure of the Council to consider these matters;

- The applicant proposes to build over a culverted stream;
- There will be an increase in surface water run-off/flooding of the private roadway which has already occurred due to the diversion of the stream (photos submitted in support of this assertion);
- Failure to demonstrate that the ground conditions are capable of draining the additional surface water run-off that will arise;
- Flooding of adjacent land will be exacerbated;
- Excess water will flow to the gully in the public road and onwards to Knocksink Woods Special Area of Conservation and this impact has not been assessed by way of Appropriate Assessment;

#### Traffic and Access

- Safety and access issues (traffic hazard) related to additional traffic to be generated given lack of visibility (inadequate sightlines) at junction with laneway and at junction of laneway with the public road and due to inadequate width and condition of the private laneway;

#### Legal Authority to carry out development

- The application is invalid as it includes land (the laneway) not within the ownership of the applicant for which no consent has been given;
- The application is invalid as it proposes connections to water supply and foul drainage not within the red line boundary and which are outside the ownership of the applicant and for which no consent has been given.

## **6.2. First Party Response**

6.2.1. The applicant's responses to the grounds of appeal from the third parties can be summarised as follows:

- The proposed development meets the Development Plan criteria for infill development;
- Similar development has occurred in the vicinity with examples cited;

- The red line boundary of the site is accurate as per the Ground Truth Survey prepared by Paul Corrigan and Associates in 2019;
- Consent for connections is not required as easements are in place;
- The position of the old boundary fence beside the laneway was retained by the new wooden fence;
- No construction is proposed in the area outside the fence;
- There were issues with the blockage of a drain on the laneway which have been resolved;
- Rainfall in March/April 2024 was significantly higher than normal, was concentrated in County Wicklow with storms and Met Éireann data submitted;
- The surface water crossing the driveway emanates from a different site.

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

6.3.1. The Planning Authority did not respond to the grounds of appeal.

### **6.4. Observations**

6.4.1. None.

### **6.5. Further Responses**

6.5.1. A further response from one of the appellants to the other appeals was received and which is summarised as follows:

- Alleged unauthorised works and trespass took place on the appellant's lands and the installation of a new manhole cover should be disregarded;
- Alleged that the applicant previously carried out unauthorised development;
- The existence of the stream has been confirmed by other residents;
- The Board is invited to use its powers under Section 35 of the Act.

## **7.0 Assessment**

I consider that the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Principle of Development
- Scale and Design of the Proposed Dwelling;
- Impacts on Residential Amenity;
- Ground Works on the Subject Site;
- Traffic Safety and Access;
- Surface Water Drainage;
- Legal Authority to Carry out the Development;

### **7.1. Principle of Development**

- 7.1.1. While not raised directly in the appeals, the issue arises as to whether the principle of development is acceptable given that the Bray Municipal District Local Area Plan 2018 – 2024 may have expired at the time the Board makes its decision. The principle of development of the site for residential development was accepted by the Planning Authority on the basis of the site's zoning at the time of decision. Based on the CDP planning principles and policies in relation to settlements and settlement boundaries and development within same, where infill residential development is generally provided for, the question that would arise if the LAP and site zoning expires, is whether the subject site is located within a settlement boundary or is located within the open countryside as per the descriptions of such areas outlined in the CDP. Noting the totality of the CDP policies in relation to settlements when combined with the effective definition of the settlement boundary in Appendix 11 of the CDP for Enniskerry, a Level 4 Core Self Sustaining Town targeted for significant growth with infill provided for in this regard, the CDP zoning and settlement principles, while acknowledging the general planning principles followed in the LAP in relation to settlement, the site is clearly located within the settlement boundary defined in Appendix 11 of the County Development Plan and is not located within the open countryside as defined in the CDP and in relation to landscape policy.

Accordingly, I consider that the rural housing policy is not applicable to the subject site. If the LAP is no longer in force at the time of the decision, I would consider that the principle of residential development on the subject site is acceptable on the above outlined basis. Should the Board consider that in the absence of any zoning of the site, that the rural housing policy of the CDP applies, it should be noted that the applicant has not put forward a specific case in this regard and it appears that the applicant may also own another house in Parknasillogue and regard should be had to the rural housing policies of the CDP including CPO 6.41 and Table 6.3 in relation to the assessment of rural housing need and whether the applicant qualifies or not.

## **7.2. Scale and Design of the Proposed Dwelling**

- 7.2.1. Objective 6.16 of the Development Plan relates to high quality design for infill development that is sensitive to the site context and which enables consolidation of the built environment. The proposed dwelling, which accords with the site zoning which allows for infill residential development, would be located at a modest height above the private laneway located adjacent to the east of the subject site and would be partially cut into the side of the hill. It would follow the contours of the site to a sufficient degree such that it would not be excessively visually obtrusive. The dwelling would not be located on an excessively high position on the site, with the first floor ground level at level c. 184m (the adjacent site to the west slopes uphill to level c. 184m and more steeply beyond the western boundary and the adjacent laneway is at c. 175.5m per the Proposed Section A-A drawing) and the ridge height being and 4.956m as stated. Due to its scale and location this would not impact on any protected views or have a significant negative impact on the landscape character of the area.
- 7.2.2. The entrance and driveway would be positioned at the lowest point of the site adjacent to the private laneway with some landscaping works required to be cut into the hill and I consider this would not have a significant visual impact on the laneway setting. Surface water drainage concerns will be dealt with separately below.

7.2.3. Noting the Development Plan policies in relation to residential development and design, I consider that the location of the dwelling on the site, combined with its scale and form, would not be excessive for the subject site or its surroundings noting the similar pattern of development in the vicinity which consists of detached dwellings on modest sized plots generally surrounded by private open space and noting the significant separation distances to adjacent sites in the vicinity. I consider that the outline proposal would be sensitive to context, enabling consolidation of the built environment and would not be detrimental to the streetscape.

### **7.3. Impacts on Residential Amenity**

- 7.3.1. Objectives CPO 6.21 and CPO 6.22 of the Development Plan relate to protection of residential amenity and infill residential development. Noting the level and position of the proposed dwelling on the site and the separation distances to adjacent dwellings and sites, I have no concerns in relation to significant overlooking, other than from the balcony element towards the adjacent existing cottage, or significant loss of privacy for adjacent residential properties. For completeness, I also have no significant concerns in relation to overbearing or overshadowing impacts noting the scale and position of the proposed dwelling.
- 7.3.2. In relation to the balcony element, due to its height and close position relative to the existing cottage on the site, I do have concerns that significant overlooking and loss of privacy could occur in terms of its impact on the existing cottage located to the north-east on the subject site but not in terms of overlooking the Hayes' dwelling to the west, San Molin to the north and the O'Mahony property across the laneway to the north-east. Should the Board decide to grant permission, I recommend that a condition be included to require a 2m high screen to be located on the north side end of the balcony element to prevent undue overlooking and loss of privacy to the established cottage.
- 7.3.3. In relation to the concerns expressed in relation to loss of views over the subject site from the west, it appears that such views would be partially obscured from the ground floor level, it is noted that such views are not protected in the County Development Plan or Local Area Plan and that there is no right to such views and, in

any event, having regard to the CDP policies encouraging infill development, I do not consider that there would be a significant loss of such views given that the dwelling to the west is located c.4m above the proposed dwelling and this would not be out of character with the pattern of development in such a settlement area.

7.3.4. The appeals have raised issues in relation to the effects of ground works on the site. Noting the Arboricultural Assessment report prepared by CMK Hort + Arb Ltd, the Landscape Plan prepared by same and the proposed site layout plan, the proposal to protect the Category B2 Ash tree and root protection zone located to the west and landscaping proposals for the site mainly for the new site sub-division and reprofiling of the landscape, I have no significant concerns in relation to the landscape changes that would result from the outline application in terms of residential amenities as the proposed landscaping and levels would not be out of character for the area.

7.3.5. In relation to CPO 17.12 of the Development Plan which refers to the protection of non-designated sites from inappropriate development ensuring that ecological impact assessment is carried out, noting the scale of the development and the receiving environment of a grassland site, I have no significant concerns in relation to compliance with this policy objective.

7.3.6. Issues have been raised in relation to traffic impacts and the use of the laneway for vehicular access to the subject site with the increased trips that would be generated. In relation to the impacts on residential amenity, I consider that such trip generation impacts would not be sufficient to generate significant disamenity impacts.

7.3.7. In relation to devaluation of property, no significant impacts on residential amenities have been found and it is noted that no submissions have been received from property valuation experts.

#### **7.4. Grounds Works and Drainage**

7.4.1. The Planning Authority requested further information to provide clarity in respect of works relating to the culverting of the stream and in relation to reprofiling of the land. On the basis of the applicant's response to this, the Planner's Report stated that it was satisfied that '*no remodelling of the lands occurred or filling in of stream*'. Noting

the appellants' submissions and the submissions and response of the applicant and one appellant, I note that the subject application has not applied for permission for the suggested ground works referred to by the appellants although the outline permission applied for includes the ground works associated with the proposed dwelling and entrance where alterations to the landscape in and around the dwelling and entrance would be required. This planning assessment relates only to the development applied for and not to any works, whether exempt or not, outside of the scope of the application.

- 7.4.2. Notwithstanding the assertions of the appellants and the submitted letters from residents in relation to the existence of a stream through the site, the 2019 Ground Truth Survey suggests that no such stream passed through the site. I also note the assertions/rebuttals made by the applicant in her further information response and in the response to the appeals, including that no reprofiling works took place and that no historical stream existed on the site. On balance, I consider that the submitted site layout plans and other drawings, including Ground Truth Survey and historic mapping, can be relied upon for this assessment. It should also be noted that, per the public notices for the proposed development, should a decision be made to grant permission, it would not authorize planning permission for any development not described in the public notices for which separate permission may or may not be required. As such, I have no significant concerns that the proposed development is relying on permission for works for which permission is required to be granted.
- 7.4.3. Concerns have been raised by the appellants in relation to surface water drainage being diverted through and outside the site with submissions made, including photos, showing surface water collecting on the laneway adjacent to the subject site and a dye test from Bridge Road to the laneway has been submitted.
- 7.4.4. As outlined above, no ground evidence, historic mapping or survey data has been submitted that supports the assertions made by the appellants. I consider that the historic mapping available does not support the claims made in relation to a stream crossing the site. Allegations outside the scope of this report have been made in relation to trespass and works on lands outside the applicant's lands.



7.4.5. The applicant's submission in relation to rainfall in March/April 2024 in County Wicklow is noted. The applicant has asserted that the surface water shown on the laneway does not emanate from the subject site. Having regard to the appeals and the applicant's submissions and noting the surface area of development and the area of the subject site and the levels, I consider that a technical drainage solution is capable of being implemented on the subject site in relation to the surface water drainage requirements of the proposed development. Should the Board decide to grant outline permission, I recommend that a condition be attached requiring the application consequent to include detailed Sustainable Urban Drainage Systems (SUDS) drainage details demonstrating that the surface water drainage requirements of the development can be wholly catered for on the subject site and to the Council's required standards.

7.4.6. In relation to the concerns of the appellants in terms of the potential for the grounds works to impact on any drain traversing the site and to exacerbate drainage issues on the laneway and around the site, should permission be granted I recommend a condition requiring survey details and a proposal for diversion of any existing drain from the area of the works required for the proposed development, to be provided at permission consequent stage.

7.4.7. In relation to potential drainage towards Knocksink Woods SAC, I have carried out an Appropriate Assessment Screening further below in this report.

## **7.5. Traffic Safety and Access**

7.5.1. Traffic safety concerns have been raised in relation to the proposed new vehicular entrance on to the laneway and in relation to the use of the laneway. Noting the single lane width of the laneway, its layout and its function of serving the existing dwellings on the laneway, given the limited speeds achievable on the laneway and the inherent need of drivers to exercise due caution and to co-operate on such a laneway, I do not consider that a traffic hazard would result from the proposed new vehicular site entrance or from the intensified use of the laneway.

- 7.5.2. Traffic and access concerns related to asserted lack of adequate sightlines and traffic hazards at the junction with the public road have been raised. This matter was responded to by the applicant in relation to Further Information item no. 3 with a Chartered Engineer's Technical Note. It is noted that the entrance to the laneway off the public road is located within a 50 km p/h zone where sightlines of 70m in both directions are required from a 2.4m setback as per requirements of DN-GEO-03060 published by Transport Infrastructure Ireland (Table 5.5).
- 7.5.3. The applicant's Technical Note refers to the relevant Transport Infrastructure Ireland guidance documents where sightline requirements are 70 metres from a 3m setback. The Technical Note drawing seeks to demonstrate that this can be achieved to the south-east but to the west would require a relaxation to 2.4 metres to achieve the required sightline or a setback to point 300mm offset from the nearside edge of the road which the Chartered Engineer deems to be acceptable. Having viewed the sightline drawing, and noting the nature of the bend in the road at this point, I do not consider that a relaxation of the setback for the western sightline to be appropriate. While the Planning Authority accepted this response I would have significant concerns in relation to the safety of the western sightline having also visited the site and viewed the sightlines from the junction with the public road and I consider that a traffic hazard would result and I recommend that permission be refused in relation to this issue.
- 7.5.4. Having reviewed the appellants' submissions, the Technical Note submitted and the TII Guidance (TII, April 2017), I note that some intensification of use of an existing junction would arise from the additional dwelling. Having viewed the public road in the vicinity of the junction, and noting the applicant's response, I also have significant concerns in relation to right turning movements from the public road into the laneway close to a bend in the road with western forward visibility to and from the right turning position significantly limited and with obstruction of road users likely to result while awaiting turning movement. I do consider that a significant intensification of use of the junction with the public road would arise and that a traffic hazard would result due to the substandard nature of the road in terms of its alignment and for this reason I recommend that permission be refused in relation to this issue. This matter

was raised in the third party grounds of appeal and is not considered to be a new issue in the consideration of this appeal.

## **7.6. Legal Authority to Carry Out the Development**

7.6.1. The issue raised by the Planning Authority in relation to the Uisce Éireann wayleave located to the west was addressed by the removal of planting from this area and no issue arises in relation to this matter.

7.6.2. Concerns have been raised that the application relies on works outside the applicant's ownership for which no consent has been given including in relation to water supply and foul drainage connections and in relation to encroachment of the proposed vehicular entrance on part of one appellant's landholding. The area of the red line is disputed. It is noted that the applicant is stated to be the Owner of the subject site on the planning application form. Other assertions have been made in relation to alleged trespass, works on the laneway and legal disputes which are not considered planning matters within the scope of the subject application. The applicant has responded to the appellant's submissions and has asserted ownership of the subject site, a registered right of way in her favour and other easements in the driveway to carry out necessary connection works.

7.6.3. In accordance with the process outlined in the Development Management Guidelines, where the applicant has effectively been given the opportunity to respond to assertions in relation to the accuracy of the red line boundary and has asserted ownership, and where it is not clear from the response that the applicant does not have sufficient legal interest, then it is open to the Board to grant permission on that basis. The Development Management Guidelines state that,

*"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. Where appropriate, an advisory note to this effect should be added at the end of the planning decision".*

- 7.6.4. The question raised over title/land owner consent for the proposed development is not for the Board to determine and where the 2001 regulations have been complied with. Accordingly I recommend that, should the Board be minded to grant permission, that an advisory note per Section 34(13) of the Act be appended to the relevant order.
- 7.6.5. It has been suggested that the Board should consider refusing permission on the basis of alleged past failures of the applicant to comply with the terms of permission(s) specifically referred to in the response submission. Having examined these planning files and alleged unauthorized development, I do not consider the issues that arise to be of such a substantial nature as to merit this approach while also noting that the other planning issues in relation to the proposed development have been addressed or can be addressed by way of condition.

## **8.0 Appropriate Assessment Screening**

### Appropriate Assessment Screening Determination (Stage 1, Article 6(3) of Habitats Directive)

- 8.1.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

#### European Sites

- 8.1.2. The subject site is located off a laneway within the settlement area of Enniskerry and the proposed development is not located within or immediately adjacent to any site designated as a European Site, comprising a Special Area of Conservation or Special Protection Area (SPA). One no. European site is located within a potential zone of influence of the proposed development, c.0.53 km to the subject site's north-east. This is:

- Knocksink Wood Special Area of Conservation (Site Code 000725)

The qualifying interests of this SAC are listed below:

- 7220 Petrifying springs with tufa formation (Cratoneurion)\*
- 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles

- 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, *Alnion incanae*, *Salicion albae*)\*

\* indicates a priority habitat under the Habitats Directive.

### Screening Determination

8.1.3. In relation to the Tufa springs, there are no direct hydrological linkages connecting the project site to the European site. The proposed development comprises an outline permission for a dwelling house and associated works located in an urban serviced area. No features of any ecological significance in the context of European sites are present on the development site.

8.1.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not, alone or in combination with other projects, have any significant effect on a European Site. The reason for this conclusion is as follows:

- The small scale and domestic nature of the development whereby construction impacts would be limited with no possibility of long-term impacts from this phase of the project, and lack of impact mechanisms that could significantly affect a European site,
- The location of the development in a serviced urban area, the distance from European sites and absence of direct ecological pathways, such as a watercourse, to any European site whereby a significant level of dilution and mixing of waters would occur, and noting the direction of the slope from the subject site towards the south and east with no possibility of a connection with the river located to the north which flows toward Knocksink Wood,
- The screening determination carried out by the Planning Authority.

8.1.5. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Site and is therefore excluded from further consideration. Appropriate Assessment is not required.

## 9.0 Recommendation

- 9.1. I recommend that the planning application be refused for the following reasons and considerations.

## 10.0 Reasons and Considerations

1. The site would be accessed from the public road from which right turning movements into the laneway serving the site are seriously deficient and sightlines at the junction of the lane with the public road to the west have not been satisfactorily demonstrated. The additional traffic movements generated by the proposed development would therefore endanger public safety by reason of traffic hazard and obstruction of road users.

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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C Daly  
Planning Inspector

30<sup>th</sup> September 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>			
<b>Proposed Development Summary</b>	Construction of a house		
<b>Development Address</b>	Parknasilloogue, Enniskerry, Co Wicklow		
<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>	Yes
		<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>			EIA Mandatory EIAR required
<b>No</b>	X		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>			No EIAR or Preliminary Examination required
<b>Yes</b>	X	500 units	Class 10(b)(i) Proceed to Q.4

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

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

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



**Form 2**  
**EIA Preliminary Examination**

<b>An Bord Pleanála Case Reference</b>	<b>ABP-319573-24</b>	
<b>Proposed Development Summary</b>	Construction of a house	
<b>Development Address</b>	Parknasilloogue, Enniskerry, Co Wicklow	
<p><b>The Board carried 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></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development.</b> Is the nature of the proposed development exceptional in the context of the existing environment.</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development is for a dwelling house within a settlement boundary and which is connected to water services and wastewater services.</p>	<p>No</p> <p>No</p>
<p><b>Size of the Development</b> Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and / or permitted projects?</p>		<p>No</p> <p>No</p>
<p><b>Location of the Development</b> Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact on an ecologically sensitive site or location, or protected species?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the</p>	<p>No designations apply to the subject site.</p> <p>The proposed development will be connected to the public water and sewer network.</p>	<p>No</p> <p>No</p>

area, including any protected structure?		
<b>Conclusion</b>		
<b>There is no real likelihood of significant effects on the environment.</b>  EIA is not required.		

**Inspector:**

**Date:**

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

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

(only where Schedule 7A information or EIAR required)