



An
Bord
Pleanála

Inspector's Report

ABP-320567-24

Development

Refined vehicular access to the existing vehicular accessway; construction of four houses with two car parking spaces for each house; additional 278sq.m. of public open space off Sidmonton Court, Bray; the demolition of a low block wall which transects the site and associated site works, including minor alterations to existing public footpath.

Location

Site located between Sidmonton Court and Sidmonton Park, Bray, County Wicklow.

Planning Authority

Wicklow County Council.

Planning Authority Reg. Ref.

2460301.

Applicant(s)

John and Margaret Maguire.

Type of Application

Permission.

Planning Authority Decision

Grant Permission.

Type of Appeal

Third Party.

Appellant(s)	Sidmonton Court Residents Association.
Observer(s)	Michael Durand and Siobhan Enright; Eunice McKeown.
Date of Site Inspection	11 th October 2024.
Inspector	Ciarán Daly

1.0 Site Location and Description

- 1.1. The subject site, of irregular shape with stated area of 0.2415ha., consists of a mainly overgrown area, with a mobile trailer unit on site, located behind rows of mainly single storey detached houses on two sides, to the rear of Meath Road to the east and Sidmonton Road to the west. The site slopes downhill somewhat from south-west to north-east. Beside the northern site boundary there is a laneway access which serves Sidmonton Park detached bungalows opposite and to the south the site is located adjacent to an area of open space which includes grass, paths and a vehicular track access to the entrance gates of the subject site.
- 1.2. The adjacent open space to the south is associated with Sidmonton Court, a cul de sac of detached bungalows. The site is located within the suburban built up area of Bray c. 300m west of the promenade, c. 800m south of Bray train station and c. 1km south-east of Main Street.

2.0 Proposed Development

- 2.1. The proposed development, in summary, consists of the following:
- Construction of four no. two storey detached dwellings including solar panels and two no. car parking spaces per dwelling,
 - Public open space of 278sq.m.,
 - Demolition of low block wall on the site,
 - Revised vehicular access, access is proposed from the existing access gates via Sidmonton Court,
 - alterations to public footpath.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Wicklow County Council granted permission for the development subject to 18 no. conditions.

3.1.2. Conditions

Notable conditions include:

- Condition No. 4 requires the written agreement of Uisce Éireann to provide necessary water services.
- Condition No. 5 requires a proposal to reconstruct and extend the existing Kilruddery Stream culvert under the site.
- Condition No. 6 requires the submission of further access details from Sidmonton Court including in relation to the public footpath.
- Condition No. 7 requires the submission of a comprehensive landscaping and boundary treatment scheme.
- Condition No. 9 requires the submission of detailed proposal for the internal road network.
- Condition No. 10 requires mitigation measures outlined, including in the Flood Risk Assessment, to be carried out.
- Condition No. 13 requires the first occupation of the dwellings by individual purchasers and not by a corporate entity.
- Condition No. 18 requires the first floor bathroom window to the north-east side elevation of unit 1 to be opaque or frosted glazing.

4.0 Planning Authority Reports

4.1. Planning Reports

4.1.1. The basis of the decision is to be found in the Planner's Report. The assessment noted the changes by comparison with the grant of permission under reg. ref. 22/595

(ABP-314324-22) to relate to changes to elevations of house no. 1 and alterations to ground floor layouts of house types B and C. Noting these changes, the report found that there would not be a major impact by comparison with the previously permitted development and found the proposal acceptable in terms of overall design and layout. Details of the proposed northern boundary wall are recommended to be addressed by condition.

- 4.1.2. The access arrangements, noting similarities to the previous permission, were not considered to detract from the layout, character and function of the open space serving Sidmonton Court. It was noted that loss of open space would be offset by the new area of open space. Flood risk issues were not considered significant subject to appropriate conditions given the nature of the development and that risks can be mitigated against. A recommendation to grant permission followed.

4.2. Other Technical Reports

- Municipal District Engineer: No objection subject to compliance condition.
- Roads: No objection subject to conditions.
- Fire Service: No objection subject to conditions.

4.3. Third Party Observations

6 no. third party observations were received by the Planning Authority. The concerns raised are broadly similar to those summarised below in the appeals and observations sections except for the following not summarised in the appeal:

- Reduction in footpath will create accessibility issues.
- Proximity of pedestrian path on site relative to windows adjacent
- Visual impact of the vehicular access.
- Additional traffic through Sidmonton Court and wider traffic issues to worsen.
- Overlooking and impact on privacy.
- Inadequate rear gardens.
- Noise disturbance.

- Excessive scale, height and density.
- Lack of detail including in relation to boundary treatments.
- Flood risk is an issue and lack of drainage detail.

5.0 Planning History

There is an extensive planning and legal history related to the subject site. The relevant planning history is summarised below:

Reg. Ref. 22/595: Permission refused by the Planning Authority and granted on appeal (ref. ABP-314324-22) for construction of four detached two storey houses, public open space and revised vehicular access to the existing accessway. This file is currently under judicial review.

Reg. Ref. 20/1169: Permission was refused by the Planning Authority for the construction of 4 no. houses on the appeal site. The two no. reasons for refusal related to the effect of the access on the layout and character of the public open space; and lack of information to assess flood risk. A third party appeal (ABP-309457-21) in support of the P.A.'s decision to refuse permission was dismissed by the Board given that there was no appeal of the decision to refuse permission.

Reg. Ref. 17/1263: Permission was refused by the Planning Authority and on appeal (ref. ABP-300696-18) for the construction of 4 no. houses on the appeal site. The reason for refusal related to the impact on the character and layout of the existing public open space on Sidmonton Court.

Reg. Ref. 15/462: (ABP 27.245191) decision by the Board to grant following refusal by the P.A. to refuse permission quashed in respect of application for 4 no. detached two storey houses accessed off Sidmonton Court.

Reg. Ref. 11/68: Permission was granted by the Planning Authority and on appeal (ref. PL39.240671) for the construction of a house. Condition no. 2 required no access from Sidmonton Court with only pedestrian access allowed. This decision was quashed.

Reg. Ref. 09/112: Permission was refused by the Planning Authority and refused on appeal (ref. PL39.236006) for the construction of a house. The reason for refusal

related to the impact of the access on the layout, character and visual amenities of the existing public open space on Sidmonton Court and lack of difference from previous application.

Reg. Ref. 08/108: Permission was granted by the Planning Authority and was refused on appeal by An Bord Pleanála (ref. PL 39.230185) for construction of one detached house and access from Sidmonton Court. Reason for refusal related to the impact of the curved roadway on the open space in terms of amenity.

Reg. Ref. 03/184: Permission was granted by the Planning Authority and refused on appeal by An Bord Pleanála (ref. PL.39.206357) for the construction of one house and entrance from Sidmonton Court. Reason for refusal related to the access endangering public safety by reason of a traffic hazard.

EX05/19: The Planning Authority determined that the erection of a metal palisade fence 2m high, double entrance gates 6m wide, parking of a trailer with metal storage container, use of public open space lands between the entrance gates and the public road as a vehicular access and construction of a roadway within the lands at Sidmonton Court, Bray, are development and are not exempted development.

Referral 39.RL.2861 (S5-1-11): In 2012 the Board decided that the erection of a metal fence, the placing of a builders' hut/trailer, and the erection of gates c.6m in width, is development and is not exempted development.

6.0 Policy Context

6.1. Wicklow County Development Plan 2022-2028

- 6.1.1. To note, the Bray Municipal District Local Area Plan 2018 – 2024 (LAP) is no longer in force having expired earlier this year. Under this plan, the site and open space area adjacent to the south were zoned under objective “RE- existing residential”. The zoning objective for the town and environs no longer apply. Variation no. 2 to the Development Plan is currently proposed and this provides for the inclusion of the land use zoning and key development objectives maps for the LAP settlements / areas (including Bray) to be integrated into Volume 2 of the County Development Plan.

- 6.1.2. The appeal site is located within the settlement of Bray. Under the Wicklow County Development Plan 2022 – 2028, the core strategy designates Bray as a Level 1 Metropolitan Area Key Town in the Wicklow Settlement Hierarchy. These are towns identified for growth rates of c. 35% having regard to the regional planning status as towns suitable for higher levels of growth.
- 6.1.3. 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”*.
- 6.1.4. New Local Area Plans are to be made for 5 listed town including Bray Municipal District. It is stated in relation to the zoning principles, 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”*.
- 6.1.5. 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”*.
- 6.1.6. Section 4.2 of the CDP outlines the role and function of Level 1 Key Towns. 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”*. Table 3.5 of the CDP estimates that there will be housing growth of 4,026 units between Q3 2022 and Q2 2028.

6.1.7. The following policies and objectives are relevant in this case:

Strategic County Outcome: SCO1: Sustainable Settlement Patterns and Compact Growth:

CPO 4.2 *To secure compact growth through the delivery of at least 30% of all new homes within the built-up footprint of existing settlements by prioritising development on infill, brownfield and regeneration sites and redeveloping underutilised land in preference to greenfield sites.*

CPO 4.3 *Increase the density in existing settlements through a range of measures including bringing vacant properties back into use, reusing existing buildings, infill development schemes, brownfield regeneration, increased building height where appropriate, encouraging living over the shop and securing higher densities for new development.*

CPO 6.3 *New housing development shall enhance and improve the residential amenity of any location, shall provide for the highest possible standard of living of occupants and in particular, shall not reduce to an unacceptable degree the level of amenity enjoyed by existing residents in the area.*

CPO 6.14 *To densify existing built-up areas subject to the adequate protection of existing residential amenities.*

CPO 6.25: *In existing residential areas, the areas of open space permitted, designated or dedicated solely to the use of the residents will normally be zoned 'RE' as they form an intrinsic part of the overall residential development. Such lands will be retained as open space for the use of residents and new housing or other non-community related uses will not normally be permitted.*

CPO 14.06 *To implement the 'Guidelines on the Planning System and Flood Risk Management' (DoEHLG/OPW, 2009).*

CPO 14.08 *The zoning of land that has been identified as being at a high or moderate probability of flooding (flood zones A or B) shall be in accordance with the requirements of the Flood Risk Management Guidelines and in particular the ‘Justification Test for Development Plans’ (as set out in Section 4.23 and Box 4.1 of the Guidelines).*

CPO 14.09 *Applications for new developments or significant alterations/extension to existing developments in an area at risk of flooding shall comply with the following:*

- *Follow the ‘sequential approach’ as set out in the Flood Risk Management Guidelines;*
- *An appropriately detailed flood risk / drainage impact assessment will be required with all planning applications, to ensure that the development itself is not at risk of flooding and the development does not increase the flood risk in the relevant catchment (both up and down stream of the application site), taking into account all sources of flooding;*
- *Restrict the types of development permitted in Flood Zone A and Flood Zone B to that which are ‘appropriate’ to each flood zone, as set out in Tables 3.1 and 3.2 of the Flood Risk Management Guidelines unless the ‘plan making justification test’ has been applied and passed;*
- *Where a site has been subject to and satisfied the ‘Plan Making Justification Test’ development will only be permitted where a proposal complies with the ‘Justification Test for Development Management’, as set out in Box 5.1 of the Guidelines.*
- *Flood Risk Assessments shall be in accordance with the requirements set out in the Guidelines and the SFRA.*

Where flood zone mapping does not indicate a risk of flooding but the Planning Authority is of the opinion that flood risk may arise or new information has come to light that may alter the flood designation of the land, an appropriate flood risk assessment will be required to be submitted by an applicant for planning permission and the sequential approach shall be applied as the ‘Plan Making Justification Test’ will not be satisfied.

6.1.8. Chapter 2: Overall Strategy, Chapter 3: Core Strategy, Chapter 4: Settlement Strategy, Chapter 6: Housing and Chapter 14: Flood Management are also considered relevant.

6.2. Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES)

6.2.1. The RSES is underpinned by key principles that reflect the three pillars of sustainability: Social, Environmental and Economic, and expressed in a manner which reflects the challenges and opportunities of the Region. It is a key principle of the strategy to promote people's quality of life through the creation of healthy and attractive places to live, work, visit and study in.

6.2.2. The site is located with the 'Dublin Metropolitan Area'. The Metropolitan Area Strategic Plan (MASP), which is part of the RSES, seeks to focus on a number of large strategic sites, based on key corridors that will deliver significant development in an integrated and sustainable fashion. The followings RPOs are of particular relevance:

6.2.3. **RPO 5.4:** *Future development of strategic residential development areas within the Dublin Metropolitan Area shall provide for higher densities and qualitative standards set out in the 'Sustainable Residential Development in Urban Areas'. 'Sustainable Urban Housing; Design Standards for New Apartment' Guidelines, and Draft 'Urban Development and Building Heights Guidelines for Planning Authorities'.*

6.2.4. **RPO 5.5:** *Future residential development in the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs, supported by the development of Key Metropolitan Towns in a sequential manner as set out in the Dublin Area Strategic Plan (MASP) and in line with the overall settlement strategy for the RSES.*

6.3. National Planning Framework

6.3.1. The National Planning Framework seeks 'making stronger urban places' and sets out a range of objectives which it considers would support the creation of high-quality urban places and increased residential densities in appropriate locations while improving quality of life and place.

6.3.2. Relevant Policy Objectives include:

- **National Policy Objective 4:** Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- **National Policy Objective 13:** *In urban areas, planning and related standards, including in particular building height and car parking, will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.*
- **National Policy Objective 33:** *Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.*
- **National Policy Objective 35:** *Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.*

6.4. Section 28 Ministerial Guidelines

6.4.1. Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, 2024 (the Compact Settlement Guidelines).
- Quality Housing for Sustainable Communities: Design Guidelines, 2007.
- Urban Design Manual, A Best Practice, 2009.
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).
- Regulation of Commercial Institutional Investment in Housing – Guidelines for Planning Authorities (May 2021).

6.5. Natural Heritage Designations

6.5.1. The following designated conservation sites are noted to be located as follows in relation to the site:

- Bray Head Special Area of Conservation (SAC) and Bray Head Proposed Natural Heritage Area (PNHA) (000714) is located c. 600m east of the appeal site.
- Ballyman Glen SAC and PNHA (000713) is located c. 3km west of the appeal site.
- Dargle River Valley PNHA (001754) is located c. 3.1km south-west of the appeal site.
- Dalkey Coastal Zone and Killiney Hill PNHA (001206) is located c.5.4km north of the appeal site.
- Rockabill to Dalkey Island SAC (003000) is located c. 5.7km north-east of the appeal site.
- The Murrough SPA (004186) is located c. 7.6km south-east of the appeal site.

- The Murrogh SAC and PNHA (000730) is located c.9km south-east of the appeal site.
- Dalkey Islands SPA (004172) is located c. 8km north of the appeal site.

6.6. Environmental Impact Assessment Screening

- 6.6.1. See Forms 1 and 2 appended to this report in Appendixes 1 and 2. The proposed development is located within a suburban area which is located within a town. Having regard to the nature and scale of the proposed development, to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended) and the absence of any connectivity to any sensitive location, 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.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. One appeal was received from Sidmonton Court Residents Association. The grounds of appeal can be summarised as follows:
- Similarities with previous applications noted, strong opposition remains and previous most recent grant of permission is currently under Judicial Review.
 - The two differences with the previous application are immaterial and the inconsistencies in the planning history are highlighted.
 - Previous planning assessments and decisions in relation to negative impact on the open space are supported and with no material changes noted.
 - History of alleged unauthorised development on and around the site with reference to a Section 5 Declaration of the Council.
 - The open space/walkway area would be degraded into a new road junction.
 - The lands have no frontage onto Sidmonton Court in the absence of planning for a vehicular access way.

- A serious traffic hazard would result per a previous Road Safety Audit and per previous decisions of An Bord Pleanála.
- Any vehicular access would breach condition of a previous grant of permission by the Board which only allowed for pedestrian access.
- The proposal would contravene Section 6.1 of the Local Area Plan in relation to open space as it would result in a loss of residential amenity space.
- The Development Plan process rejected a new objective for access across public open space and the application must be assessed under the CDP.
- Inadequate site notice provision and inconsistencies with application.
- The landowner consent letter is inadequate and there were breaches in relation to a previous letter of consent. The application should be invalidated.
- This would reward the removal of hedgerow from within the open space area.
- Lack of reference in reports to applicable previous Judicial Reviews.
- Failures in assessment of the P.A. including in some of the above matters not being assessed.
- Planning permission is required to exercise the right of way to the site and the use of the public space for vehicular access is unauthorised development having been formed in September 2005.

7.2. Applicant Response

7.2.1. The applicant's response to the grounds of appeal can be summarised as follows:

- A vehicular right of way exists from Sidmonton Court to the subject site with enclosures submitted in support and with application.
- While Res Judicata may apply in principle, per case law the primary consideration is proper planning and sustainable development of the area.
- Unauthorized development is a matter for the Council and does not impinge on the planning merits of this case.
- Since 2004, An Bord Pleanála have not claimed the driveway to be a traffic hazard and previously when claimed this was unsupported by evidence.
- The accessway is the only logical and safe way to access the site.
- The vehicle accessway is not zoned or identified as open space or parks and does not adjoin same.

- No loss of public or private playing fields or play space would result. A new area of open space would be provided that was previously acceptable.
- The site notice issues have been checked and accepted by the local authority and the issues raised are de minimis.
- The ongoing authority of the letter of consent was acknowledged and accepted by the planning authority culminating in their grant of permission.
- There have been material changes in planning circumstances since the last refusal of the Board in 2018 including, inter alia, the climate and housing crises, the population increases in the intervening period, the Sustainable Residential Development and Compact Settlement Guidelines (2024), new government policies under Housing for All (2021), National Sustainable Mobility Policy (2022) and Climate Action Plan (2023), the Regional Spatial and Economic Strategy 2019-2031 and the new Wicklow County Development Plan 2022-2028.
- The 8 grounds of the current contested Judicial Review regarding file ABP-314324-22 are without merit and it is noted that 5 of the last 6 Inspector's Reports recommended a grant of permission and that the P.A. issued a grant of permission on 5 occasions that included an access from Sidmonton Court.
- The development facilitates compact development in an accessible urban location well serviced by town centre facilities and amenities.
- The effect of refusing permission would be to sterilise the land contrary to sustainable planning principles for the sake of the retention of an unjustified grass verge.
- Precedents cited in relation to grants of permission for housing where access roads were required over open space.
- There are no residential amenity or visual impact grounds for refusal.

7.3. Planning Authority Response

7.3.1. The Planning Authority has not responded to the grounds of appeal.

7.4. Observations

7.4.1. Two no. observations were received from Michael Durand and Siobhan Enright of Sidmonton Park, and from Eunice McKeown of Sidmonton Park Road, Bray. The issues raised by observers are summarised as follows:

- Given there are no changes, refusal is warranted consistent with previous decisions.
- The visual and residential amenity impact (overbearing – height and bulk, shadowing and overlooking) of the three large houses and other houses in close proximity to existing residences at Sidmonton Park Road merit refusal.
- There is no clarity or consultation in relation to boundary treatments including relating to planting where room is not available.
- The entrance to the development has not been resolved.
- Flooding issues on Sidmonton Park Lane and Sidmonton Park Road.
- There is no mains drainage on Sidmonton Park Lane and no drainage plan.
- No drawings from Sidmonton Park Road have been submitted and the residents should be consulted regarding planting and boundary treatments.
- Density should be in keeping with existing scale and character which this proposal is not.

8.0 Assessment

8.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development.
- Access and Precedent.
- Design.
- Flood Risk.

- Other Matters.

8.2. Principle of Development

- 8.2.1. The Bray Municipal District Local Area Plan 2018 – 2024 (LAP) is no longer in force having expired earlier this year. This plan included the zoning objectives for the town which no longer apply. Bray Municipal District Local Area Plan is currently at pre-draft stage. I note that the site's location within the built up area of Bray, a Level 1 Metropolitan Area Key Town in the Wicklow Settlement Hierarchy, and its position effectively surrounded to the west, north and east by existing residential development and to the south by an area of open space. I note that Bray is targeted in the core strategy of the Development Plan for significant population growth / residential development including infill development.
- 8.2.2. Consistent with national and regional policy, infill development is encouraged in the CDP and particularly so in accessible locations proximate to high quality public transport. I note the site is located within c.600m distance of Bray train station and its location within less than 10 minutes of such a high quality transport node and in walking distance of the town centre, means that it can be considered to be an accessible location in line with the Compact Settlement Guidelines.
- 8.2.3. I note the site's previous residential zoning objective (RE - Existing Residential with the associated land use objective to protect, provide and improve residential amenities of existing residential areas) and that the previous zoning objective stated that such lands are suitable for infill developments. In this context, noting the above CDP policies and guidelines, it is clear that, in terms of sustainable development planning principles and consistency with the Climate Action Plan 2024, the subject site is inherently suited to residential development and this was previously confirmed by the site's zoning.
- 8.2.4. I also note that Objective CPO 6.25 of the CDP confirms that open space areas permitted as part of residential developments "*will normally be zoned 'RE' as they form an intrinsic part of the overall residential development. Such lands will be retained as open space for the use of residents and new housing or other non-*

community related uses will not normally be permitted". In this context, noting the former residential zoning of the lands under the expired LAP, the infill nature of the site and location, the usability, character and visual amenity of the open space, the limited effect on the open space lands including by reference to the proposed additional area of open space and that such a route serves an ancillary function for the proposed development, I consider that the access would conform to a sufficient degree with Objective CPO 6.25.

8.3. Access and Precedent

Layout and Visual Impact

- 8.3.1. The documentation submitted with the application, including legal documents, confirm that a right of way, including for vehicles, exists along the proposed access route for the development. On my site visit, I observed this right of way to be in use for vehicles given the visibility of the wear and tear in the form of a mud track over most of the space.
- 8.3.2. In relation to the Planning Authority's decision, the Council's Roads Department expressed no objections and requested that the conditions provided for in the Board's most recent decision under ABP-314324-22 be applied should permission be granted. The Fire Service requested vehicular access in line with technical standards. The Planner's Report assessment considered that given *"the fact that the proposed entrance area will be a shared surface with the existing pedestrian footpath and subject to appropriate design, the proposal would not be considered to detract from the layout, character and function of this open space, or set a precedent for similar haphazard development. It is also important to note that any potential loss of public space as a result of the proposed access will be offset by the creation of a new public open space (c.278sqm) in the south western corner of the site that is to be integrated into the open space serving Sidmonton Court which is considered acceptable"* and a recommendation to grant permission followed.
- 8.3.3. The proposed vehicular access would be located in part of an area of open space consisting of part of a footpath, strip of roadside verge and an area of track which is

part of a linear grass strip (c. 150sqm) located between the footpath and the subject site. I note the relatively small area that would be taken for this function in a marginal area of the open space which is primarily used for walking through and which is largely ancillary to the main area of useable open space to the south-west.

- 8.3.4. Considering also that it is proposed to provide an area of open space (c.278sqm) that can join the existing grass area adjacent to the southern boundary, I consider the vehicular access would not have a significant negative impact on the open space area in terms of its use function or visual appearance. I am of the opinion, rather, that the open space would be enhanced as the additional landscaped area to be provided would be of a more useable form than the area (c.63sqm) that would form the entrance route to the housing development.
- 8.3.5. In relation to the loss of the area of hedgerow along or beside the southern boundary of the subject site, noting the submitted landscape plan with boundary planting and trees to be located between the residential area and the open space, I consider that the proposal is acceptable in such an urban location where opportunities for hedgerow are generally limited with infill development. If permission is granted, a condition is recommended to ensure the landscaping scheme is provided.

Traffic Safety

- 8.3.6. In relation to alternative vehicular access arrangements to the site to the north from Sidmonton Park, I note the absence of a right of way through this private laneway and also that the applicant's response to the appeal includes a 2006 expert report from Colin Buchanan consulting engineers that previously noted the lack of visibility that would be available from an entrance on to Sidmonton Park from the site (for a proposal for one house) and the lack of visibility where Sidmonton Park laneway meets the public road to the west (Sidmonton Road). The report considered this route to be hazardous for pedestrians. I have no information before me to doubt these conclusions and having viewed the site and surrounds, I agree that an entrance to the north of the site is not a viable (or available) vehicular access option.
- 8.3.7. The proposed access way to the site would be located over the existing right of way. It would be located at and adjacent to the curved area of road at Sidmonton Court

and it would curve to meet it. The entire vehicular access route would be a shared surface from Sidmonton Court across the grass areas and footpath and into the site. Safety concerns have been raised by third parties. I note the applicable standards from the Design Manual for Urban Streets (2019) (DMURS) wherein Section 4.3.4 refers to standards for shared surfaces which can be designed to calm traffic. It notes that *“Research has found that shared carriageways perform well in terms of safety and there is also evidence to suggest that well designed schemes in appropriate settings can bring benefits in terms of visual amenity, economic performance and perceptions of personal safety”*.

8.3.8. I note the layout of the proposed entrance way to the residential development which I consider to be consistent with DMURS standards and the planning history where the safety of the access has not been a noted issue for the Board in its 4 most recent decisions. I also note the 2006 expert report from Colin Buchanan consulting engineers which noted no significant safety issues with a vehicular entrance from the subject site to Sidmonton Court.

8.3.9. The proposal would formalise the existing route and intensify its use to a limited extent for 4 no. dwellings while including revised footpath layout, I do not consider that a hazard for pedestrians would arise given the lack of barriers to visibility and the low vehicle speeds that would be required to safely come in to and out of the subject site. I also note no concerns in relation to traffic safety were raised by the Council's Roads Department and that the appellants, observers and third parties have not submitted any expert opinions to counter this view. I do not consider that significant congestion/traffic would result given the limited scale of the development.

Precedent and Consistency of Approach

8.3.10. The appellant's have raised issues including in relation to how this approach is consistent with previous Council and Board decisions to refuse planning permission for a very similar access arrangement for largely similar residential developments. The appellant's have suggested that if circumstances have not materially changed, then how can the decision to refuse permission be overturned. In relation to this matter, I will focus my assessment on the previous decisions of An Bord Pleanála rather than the decisions of the Planning Authority as the Board is the final

determining authority in relation to planning matters outside of the courts. I should note that my planning assessment in this case is broadly similar to the assessment of the Inspector in the previous similar application under reg. ref. 22595 (ABP-314324-22). I see no substantive planning reasons for departing from that assessment.

8.3.11. Under reg. ref. 17/1263 (ABP-300696-18) permission was refused by the Planning Authority and on appeal (ref. ABP-300696-18) for the construction of 4 no. houses on the appeal site. The reason for refusal related to the impact of the access across public amenity space on the character and layout of the existing public open space on Sidmonton Court and that this would seriously injure the amenities in the vicinity. The layout, in terms of access and relationship with the adjacent public open space, is similar to the current application. In deciding to refuse permission, it was noted that *“In deciding not to accept the Inspector's recommendation to grant permission, the Board had regard to the lengthy planning history of the site, and to its previous decisions, and considered that there had been no material changes in planning circumstances since its previous refusals in relation to the proposed vehicular access across the Sidmonton Court public open space and pedestrian route through this open space”*.

8.3.12. The Inspector in the above case, in recommending a grant of planning permission, noted the restricted usability of the stretch of open space affected by the access and noted that the additional area of open space to be provided would add to the visual amenity of the space. In my view, the two differing opinions, and the previous Board refusals in relation to impact on the open space including those under PL39.236006, PL39.230185, PL39.206357 and PL39.128210 relate to planning interpretation of the impacts of the changes to the public open space area including in relation to visual impact, usability of the existing space and quality of the space that would replace it.

8.3.13. The most recent Board refusal of these 4 under PL39.236006 is the most similar in terms of the inclusion of additional open space. In that case, the Board decision noted *“In deciding not to accept the Inspector's recommendation to grant permission, the Board considered that the proposed development contains the essentials of that previously refused by An Bord Pleanála on 2nd day of February, 2009, under appeal*

reference number PL 39.230185. Notwithstanding the improvements in the instant case referred to in the Inspector's Report, the Board did not accept that the gains, in terms of the proper planning of the area, would outweigh the losses". It is also noted that the most recent Board decision (ABP-314324-22 currently under judicial review) granted permission for a similar development and there is no noted inconsistency in this regard.

8.3.14. In planning terms, in my view the assessment effectively rests on whether the impact of the additional open space to be provided outweigh the losses in terms of the impacts of the access route over the additional space. For the reasons already cited above, I consider the benefits to be significantly better relative to the loss of some of the open space, and on balance, I consider this to be an acceptable approach in terms of its impacts on local amenities. This, in my opinion, is also a superior approach to refusing permission noting the general objective to provide for infill residential development within such accessible urban locations to consolidate the built up area. I consider this to be a legitimate planning assessment and finding as it relates to matters of planning judgement.

8.3.15. While the apparent inconsistency in approach asserted by the appellants may require some explanation, the approach adopted here and in the case currently under Judicial Review are not materially inconsistent with previous assessments of this matter where a balance is required to be considered and I consider this to be legitimate approach to planning assessment and determination of this matter. The effect of not allowing this approach would be to, at least partially, nullify significant aspects of planning assessments in general, for example in relation to assessment of the quality of public open space and its impacts on adjacent residential amenities, and this, in my view, is not in the best interests of proper planning and sustainable development considerations as they relate to the common good.

8.3.16. In relation to the safety of the proposed vehicular access, it is noted that the most recent Board decision that refused permission on such grounds was under reg. ref. 03/184 (ABP ref. PL39.206357) whereby part of the reasons and considerations was stated to be "*the proposed access across public amenity open space and a pedestrian route from a curved portion of roadway to the site would endanger public*

safety by reason of traffic hazard and would seriously injure the amenities of the area". The Inspector's Report in this case noted a lack of visibility at the site access point due to the presence of hedging on the adjacent public open space which is no longer the case.

8.3.17. There have been 4 no. Board refusals for a similar access arrangement where traffic safety or hazard issues have not been cited as reason(s) for refusal. In this context, noting the absence of hedging that could reduce visibility at the access point, and for the reasons referred to in this report in relation to the safety of the access proposed, I do not consider that significant issues arise in relation to consistency with previous decisions.

8.4. Design

8.4.1. The proposal includes the demolition of a low block wall that transects the site and the construction of 4 no. detached two storey houses with solar panels and two car parking spaces per house. Three of the houses, units 2 to 4, would be located in a line to the rear (north) of the site facing south towards the access road while one of the houses would be located at the western side of the site towards the south and it would face east towards the access road. The rear gardens of the three northern houses would back on to the laneway to the north which serves the houses at Sidmonton Park located to the north. The rear garden of the house to the south-west, unit 1 (type A) would back on to the rear gardens of no.s 43 and 42 Sidmonton Road.

8.4.2. House unit 1, 4 bedroom type A, would be in a traditional design with hipped and pitched roof elements and part gable front and would incorporate eastern facing solar panels on part of the roof. House type B, three bedroom units 2 and 3, would be of traditional pitched roof form appearing as single storey to the front and with first floor level rear facing windows appearing part two storey to the rear. House type C, three bedroom unit 4, would have a similar design appearance and form to type B.

8.4.3. In relation to separation distances from properties in the vicinity, noting SPPR 1 of the Compact Settlement Guidelines requires Development Plans to not include an

objective in respect of minimum separation distances that exceed 16m between opposing windows serving habitable rooms to the rear of houses. The Development Plan does not provide for a minimum separation distance. I note the separation distances to the north of units 2, 3 and 4 from the dwellings at Sidmonton Park would be in excess of 24m and that the separation distance to the rear of unit 1 would be in excess of 28m to the west. I consider such separation distances to be more than adequate to ensure no undue overlooking of first floor windows. I note no significant concerns in relation to the separation distance of the first floor side windows of unit 1 to the north and south and in relation to the gardens to the west, north-west and south-west given the significant angles would avoid significant direct overlooking of these gardens.

8.4.4. I have no concerns in relation to the rear garden depths of units 2, 3 and 4 being in excess of 7.9m and which would adjoin the adjacent laneway such that no significant privacy or overlooking concerns arise. In relation to the rear garden depth of unit 1, ranging from 6.905m to 8.105m from the rear elevation, I note the absence of first floor rear vertical facing windows. However, there would be roof windows and these are noted to be in opaque glass and this can be ensured by providing a condition for same should permission be granted. In this context, I have no concerns in relation to undue overlooking of adjacent residential properties to the west.

8.4.5. In relation to no. 66B Meath Road to the east, I note the inclusion of a single modest sized first floor level window on the front elevation facing east of unit 1. The separation distance to the eastern boundary with this property would be just over 13m. Given the presence of a side facing first floor level window from this adjacent property, I consider that should permission be granted, that the first floor east facing window of house type A, unit 1, should be in opaque glass which is suitable given its bathroom function. For the avoidance of doubt, to ensure privacy to the east and west of units 2 and 4 respectively, with limited separation of their side gable ends from adjacent gardens noted, their first floor level side facing windows should be conditioned to be in opaque glass should permission be granted notwithstanding the reference on the drawings to this treatment.

- 8.4.6. In relation to height, bulk and scale of the houses, house type A would have a ridge height of up to 7.7m with main higher eaves height of 4.67m. House types B and C would be of a similar scale. The walls would be in render finish with slate/tile roofs. Noting the position of the dwellings on the site and their general visibility within the urban setting predominantly surrounded by single storey housing, the scale, width and depth of the proposed dwellings and the separation distances from adjacent properties, I have no significant concerns in relation to undue bulk overbearing impacts on adjacent properties and I consider that the traditional design of the facades would integrate with the streetscapes to the south and north to a sufficient degree, would not be out of character for the area and I have no undue concerns in relation to visual impact.
- 8.4.7. In relation to potential overshadowing, the Compact Settlement Guidelines notes that there is no requirement to submit a technical assessment in relation to daylight and sunlight for low rise housing with good separation distances. Noting the height and positions of the proposed dwellings on the site and the separation distances to adjacent properties, I have no significant concerns in relation to significant overshadowing impacts on adjacent residential properties including gardens.
- 8.4.8. Boundary treatments include a reinstated wall to the northern rear of the site, rendered blockwork walls (1.8m high) between the rear sides of the houses and the existing western and the southern part of the eastern wall would be retained while the northern part would consist of the 1.8m high rendered blockwork. The planting scheme includes trees inside the northern boundary scattered along the eastern and western boundaries with grass in the open space and some tree planting. I note no significant issues in relation to boundary treatments which would integrate with the development and surroundings and should permission be granted, I consider that a condition be attached to ensure the landscaping scheme is adhered to. In the context of the retention of the northern site boundary, I do not consider consultation with residents of Sidmonton Park to be required.
- 8.4.9. In relation to internal residential standards and the Quality Housing for Sustainable Communities Guidelines, the proposed floor areas for house type A at 207 sq.m. and house types B and C at 151sq.m. would substantially exceed the minimum floor

areas for such two storey four and three bedroom types respectively. I also note that the rear garden sizes would be well in excess of 100sqm and with sufficient depth to be useable and I have no significant concerns in relation to the standard of the scheme for future occupants.

- 8.4.10. Overall, I note that the scheme would consolidate the urban development pattern at this location and support sustainable development principles in this regard with no significant design concerns noted in relation to the proposed layout that cannot be dealt with by condition should permission be granted and this generally accords with CDP policy including CPO 6.14 which provides for such infill development while protecting existing amenities.

8.5. Flood Risk

- 8.5.1. Concerns have been raised in third party observations regarding flooding issues on Sidmonton Park Lane and Sidmonton Park Road. The site is located within Flood Zone B and a Site Specific Flood Risk Assessment (FRA) prepared by Dennany Reidy Associates was submitted with the application. This report is dated 11/02/2021 and I note no significant changes to the proposal or in relation to guidance such that it cannot currently be relied upon.
- 8.5.2. The Planner's Report noted a culverted stream bed on the site running west-east with no open stream on the site noted per the appeal documentation submitted under reg. ref. 22/595 for a similar development. The stream was noted to be open where it enters and exits the site. It noted that per drawing no. M242-001, it is proposed to, in consultation with the Council, culvert the section of stream through the site and extend the culvert from the road crossing across the full width of the site.
- 8.5.3. The Council Engineer's report suggested that the stream should not be fully culverted through the site for access and sustainability reasons, and that nature-based SUDS be incorporated into the design. Noting the provision of a new open space area and its importance to the overall scheme, I consider that standard SUDS measures and full culverting of the stream should be required by condition to ensure the full usability of the open space provision proposed, given the marginal loss of

open space from the proposed access, and to ensure drainage is adequately catered for on the site.

8.5.4. The Area Engineer also noted that there would be an inadequate corridor for maintenance and separation distance from the new dwellings of the existing shared waste water service connection for properties on Sidmonton Road. I note that a separation distance of over 3m would be provided and that the drainage plan drawing also provides for a possible alternative “*SW outfall subject to survey and agreement with WCC*” inside the site entrance along the new road access. The P.A. decided to grant permission subject to conditions in relation to drainage and water including condition no. 4 (water services), condition no. 5 (stream culverting), condition no. 10 in relation to flood risk mitigation measures and condition no. 11 (SUDS measures). The P.A.’s conditions do not directly deal with the internal engineer’s concerns in relation to wastewater treatment provisions. Given the drainage layout presented, I am of the opinion that a condition that provides for these matters to be agreed with the Council prior to commencement of development is capable of being implemented in a manner consistent with the concerns of the engineer in relation to wastewater connection routes and consistent with the drainage layout drawing.

8.5.5. The Planner’s Report suggested conditions be provided in relation to access/wayleave for pipes to the existing shared waste water service connection which did not follow through into the conditions and I consider my previously recommended conditions sufficient in this regard. The P.A. noted no significant concerns, subject to drainage and mitigation conditions, in relation to flood risk and noted that the same FRA was submitted in respect of the previous application granted by the Board (ABP-314324-22).

8.5.6. The FRA includes a list of potential sources of flooding as follows:

- Tidal / Coastal Flooding: The site is located within 300m of the Irish Sea. It is noted that the development would be located c7m above the highest recorded tide and the estimate for sea level rise in 100 years is noted to be 23mm. Tidal flooding risk is therefore very low.

- Fluvial Flooding: In relation to the Kilruddery Stream (the potential source), it is noted that *“the CFRAM study indicated that the proposed development site is located within an area highlighted as at risk of flooding from a 0.1% AEP fluvial flood event. On review of the 2015 FRA and considering the OPW Flood Map report the following can be noted: -*

The most significant river in the Bray area is the River Dargle which is prone to frequent flooding; however, the proposed development site is not located in the Dargle catchment. The only other source of fluvial flooding relevant to the proposed development site is the section of the Kilruddery Stream crossing the proposed development site.

The catchment area feeding the Kilruddery Stream flowing through the site is estimated in the 2015 FRA to be 1.0 Ha. The 2015 FRA report concludes, and it is accepted here, that the Kilruddery Stream Culvert at the outflow point from the proposed development site has adequate capacity to convey the unrestricted flows from the estimated catchment area.

In relation to the August 15th, 2008 flooding event in close proximity to the site, the 2015 FRA states, and it is accepted here, that it is reasonable to conclude that the works undertaken by WCC have significantly reduced the risk of a re-occurrence of the flooding on Sidmonton Road as they provide for flood water to drain directly to the Kilruddery Stream and therefore not impact on the proposed development site”. Given the capacity of the stream and provided it is kept in a good state of repair and maintenance, the risk of fluvial flooding is considered low.

- Surface Water Flooding: SUDS measures will be required for surface water attenuation and these will be submitted to the P.A. for prior agreement and the risk is noted to be low from this source. In relation to off-site surface water run-off, it was noted that *“the natural fall of the ground is generally in a north easterly direction. Any off-site surface flood water entering the area and unobstructed would flow to the north-east corner. The August 2008 flow accumulated at this corner to a level estimated to be 9.8m and not greater than 9.96m OD. This is at least 600mm below the proposed the lowest proposed finished floor level of 10.6m”. As such, no significant risk arises.*

- Groundwater Flooding: No basements levels are included in the proposed development and the CFRAM map for Bray does not indicate any ground water flood risk.
- Human / Mechanical: no risk is anticipated from human and mechanical sources in the area.

8.5.7. The residential type development is noted to be classed as highly vulnerable and given the location within Flood Zone B, a Justification Test is required in accordance with CPO 14.09 of the CDP. The relevant criteria are addressed below in relation to this matter. The FRA notes in section 11 the criteria set out in Box 5.1 of the guidelines which it considers to be met. In light of the concerns raised by third parties in relation to flooding each of the criteria are addressed below.

1. The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines.

8.5.8. While the subject site is no longer zoned, per the assessment above in relation to the principle of development, I considered it to be effectively designated for residential development having regard to sustainable development principles and the core strategy and policies, including infill development, of the Development Plan. The Bray Municipal LAP undertook a Strategic Flood Risk Assessment (SFRA) where it was considered appropriate that the subject lands, partially located in Flood Zone B, retain the residential zoning objective applicable to the site that existed prior to the expiration of the LAP.

8.5.9. It noted that applications for minor development (e.g. extensions) are unlikely to raise significant flooding issues and should expansion of existing uses be proposed, flood mitigation measures are required. Recommended Mitigation Objectives are set out in Section 3.4. These include implementation of the Justification Test as set out in the Flood Risk Guidelines. I am satisfied that the proposed scheme is considered to be in accordance with criteria 1.

2. The proposal has been subject to an appropriate flood risk assessment that demonstrates:

(i) The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk;

8.5.10. Per Appendix A of the submitted Drainage Design Report prepared by Dennany Reidy Associates Consulting Civil and Structural Engineers, the public surface water drainage network to the south will be used for discharge of attenuated surface water and the inclusion of SuDS measures is noted. The report notes a discharge flow rate of 0.71l/s and storage volume of 74 cubic metres will be provided via an off-line stormwater storage system. Should permission be granted, I recommend that the final details of the attenuation arrangements be agreed with the Council. I am therefore satisfied that the proposed scheme is considered to be in accordance with criteria 2(i).

(ii) The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;

8.5.11. Mitigation measures to reduce the risk of flooding are listed in Section 10 of the SSFRA as follows:

- *“The lowest building ground floor level is to be set at 10.6m (OD).*
- *The detailed drainage and landscape designs incorporate into them, Sustainable Urban Drainage Systems (SuDS) measures.*
- *Any proposed works to the existing 450mm dia. culverted section of the Kilruddery Stream located on the proposed development site be agreed with Wicklow Co. Co. prior to carrying out”.*

8.5.12. Per Appendix A of the Drainage Design Report, the direction of overland and piped flow would flow towards the public network to the south. On site surface water

management will ensure no addition / increased risk of flooding elsewhere. I am therefore satisfied that the proposed development includes appropriate and reasonable measures to minimise risk of flooding in accordance with criterial 2(ii).

(iii) The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access; and

8.5.13. It has been previously noted that the finished floor levels of the houses would be above the 1 in 1,000 year flood event level and I note the characteristics of the surrounding urban area are such that the emergency services are highly unlikely to be impeded in relation to access to the site and surrounding area. I am therefore satisfied that the proposed development includes appropriate and reasonable measures to minimise risk of flooding in accordance with criterial 2(iii).

(iv) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

8.5.14. The subject site is effectively designated for residential development notwithstanding the absence of a residential zoning objective. The site is noted to be a modest sized infill site largely surrounded by existing residential development. Its development would consolidate urban development in the area in accordance with sustainable development principles and would provide enclosure and passive surveillance within the scheme while being set back from the existing open space to the south to integrate with the existing character of the area. I consider the urban design, in this context, to be high quality which would enhance the development of the area. I am therefore satisfied that the proposed development includes appropriate and reasonable measures to minimise risk of flooding in accordance with criterial 2(iii).

8.5.15. The Planner's Report noted *"that the proposed development is located on lands zoned Residential which would have been assessed previously in the zoning of the lands under the Bray LAP under which the residential land use has been considered acceptable in this location. Furthermore, upon review of all the information submitted, previous applications on site and the overall proposed development I am satisfied that due to the minor nature and scale of the scheme, the proposed development is considered unlikely to raise significant flooding issues and that the risks identified in the applications FRA can be adequately mitigated against. Therefore, the proposed development would still be considered acceptable subject to appropriate mitigation and drainage measures being carried out"*. While noting the concerns raised by third parties, based on the justification test findings, I agree with the Planner's Report on this matter.

8.5.16. In conclusion in relation to flooding, I consider that the information provided with the application to be sufficient for the purposes of this assessment. Should permission be granted, I recommend that conditions be attached to ensure details regarding the capacity of the attenuation storage are agree with the Planning Authority as well as details for the culverting of the stream running under the site.

8.6. Other Matters

8.6.1. I note the references in the appeal to the Section 5 referral in relation to exempt development (Referral RL2861) where the Board decided that the erection of a metal fence, the placing of a builders' hut/trailer, and the erection of gates, approximately six metres in width, is development and is not exempted development. It is clear from the application that the applicant has applied for permission for the proposed development, and in that context, whether parts of the development are exempted or not, has no bearing on the assessment of the proposed development.

8.6.2. The assessment considers the planning impacts of the proposed development and is, in effect, not impacted by the previous declaration which was confined to a legal consideration of whether the proposals are or are not development and/or exempted development. The planning merits of the subject proposed development were considered by the Council and are considered in this appeal and it is noted that

matters in relation to unauthorised development are matters for the Council and are matters in relation to which the Board has no role in this case.

- 8.6.3. In terms of procedural matters and the alleged irregularities in terms of the nature and timing of the erection of the public notices, I note no evidenced breach of the regulations for display of site notices and that both matters were considered acceptable by the planning authority. Notwithstanding the assertions of the appellant in relation to differences with the previous application, I note the requirement for a *“brief description of the nature and extent of the development”* rather than a detailed description. I note the location of one of the site notices shown on the Site Location Map with one noted to be near the site entrance to the south and no evidenced breach in this regard and I am satisfied that the issues raised did not prevent the concerned parties from making representations. The above assessment represents my de novo consideration of all planning issues material to the proposed development.
- 8.6.4. The issues raised in relation the letter of consent being out of date are noted. I also note the response of the applicant whereby it was noted that the ongoing authority of the letter of consent was acknowledged and accepted by the Council and which did not prevent their grant of permission. In terms of the legal interest, I am satisfied that the applicants have provided sufficient evidence of their legal intent to make an application. Any further legal dispute is considered a Civil matter and is outside the scope of the planning appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of Section 34(13) of the 2000 Planning and Development Act, as amended.
- 8.6.5. The appellant cites the Development Plan process for the preparation of the current CDP which rejected a new objective for access across public open space and notes that the application must be assessed under the CDP. The role of this assessment is to assess the merits of the proposed development having regard to all of the applicable policies and objectives and to balance these in the interests of the proper planning and sustainable development of the area. Noting my above assessment in relation to the proposed use of the open space, I note that this assessment is based on taking a balanced view of CDP policy in relation to the type and quality of open

space that would result from the proposed development. I refer the Board to my assessment under the Principle of Development Section 8.2 above in this regard.

- 8.6.6. In relation to the hedgerow removal outside of the site, I consider this matter to be outside the scope of this report and I note that I have considered the application in relation to the current situation on the ground.
- 8.6.7. The National Biodiversity Action Plan (NBAP) includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss. Section 59B(1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Board, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Board. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.
- 8.6.8. I have previously noted the suitability in principle of the site for the type of infill residential development proposed. In relation to the above assessments, I consider that the proposed development is materially consistent with the Climate Action Plan 2024.

9.0 Appropriate Assessment

Appropriate Assessment: Screening Determination

(Stage 1, Article 6(3) of Habitats Directive)

- 9.1. I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended. The subject site is not located within or adjacent to any European Site. The closest European Site, part of the Natura 2000 Network, is the Bray Head SAC (site code 000714), located c. 600m east of the appeal site.

- 9.2. A screening report for Appropriate Assessment was not submitted with this planning appeal case. However, in the Local Authority assessment of the proposed development, Appropriate Assessment Screening was undertaken by Wicklow County Council as part of their planning assessment and a finding of no likely significant effects on a European Site was determined. Wicklow County Council concluded the proposed development would not require the preparation of a Natura Impact Statement and Appropriate Assessment was not carried out.
- 9.3. A detailed description is presented in Section 2.1 of my report. In summary, the proposed development site is a brownfield site within a suburban environment, surrounded by housing, roads and green space in the immediate vicinity. The development will comprise the construction of 4 no. detached dwellings and vehicular access. Water and waste will be connected to local services.
- 9.4. There are no watercourses or other ecological features of note on the site that would connect it directly to European Sites in the wider area. An area of amenity green space bounds the southern perimeter of the site and the Kilruddery stream runs through the site which is partially culverted and which discharges into the Irish Sea. The River Dargle runs c.1.08km to the north of the site and it discharges into the Irish Sea.

European Sites

- 9.5. The proposed development site is not located within or immediately adjacent to any site designated as a European Site, comprising a Special Area of Conservation (SAC) or Special Protection Area (SPA). One European site is located within 1.5km of the potential development site:
- Bray Head Special Area of Conservation (SAC) (000714) is located c. 600m east of the appeal site.
- 9.6. This European site is designated for plant and marine habitats including vegetated sea cliffs and dry heath. The head is noted to be an important seabird colony. Peregrine Falcone, an Annex I species under the EU Birds Directive, breeds at the site. The heath and grassland habitats are threatened by reclamation for agriculture and by frequent burning. Given the limited scale of the proposal, I do not consider it necessary to examine the potential for significant effects on any European Sites beyond those of Bray Head.

- 9.7. Due to the confined nature of the development site and the presence of a significant buffer area between the site and Bray Head, with the stream pathway unlikely to be unduly impacted given the standard drainage measures to be employed on the site, I consider that the proposed development would not be expected generate impacts that could affect anything but the immediate area of the development site, thus having a very limited potential zone of influence on any ecological receptors.
- 9.8. The proposed development would not have direct impacts on any European site. During site clearance, demolition and construction of the existing wall and site works, possible impact mechanisms of a temporary nature include generation of noise, dust and construction related emissions to surface water.
- 9.9. The contained nature of the site (serviced, defined site boundaries) and distance from receiving features connected to Bray Head SAC make it highly unlikely that the proposed development could generate impacts of a magnitude that could affect European Sites.
- 9.10. No detail has been provided regarding the possible use of the amenity grassland by overwintering birds that are Special Conservation Interests of The Murrough SPA (004186) located c. 7.6km south-east of the appeal site and Dalkey Islands SPA (004172) located c. 8km north of the appeal site. However, given the scale of the proposed development within a suburban area, I do not consider it likely that any temporary noise or human disturbance that may occur during the construction phase would be any significant increase on the current baseline if works were to commence during the wintering period.

Likely significant effects on the European sites in view of the conservation objectives

- 9.11. The construction or operation of the proposed development will not result in impacts that could affect the conservation objectives of the above named SAC or SPAs. Due to distance and lack of meaningful ecological connections there will be no changes in ecological functions due to any construction related emissions or disturbance. There will be no direct or ex-situ effects from disturbance on mobile species during construction or operation of the proposed development. There will be no significant disturbance to any wintering birds (ex-situ) that may occasionally use the amenity grassland area adjacent to the proposed development site.

In combination effects

9.12. The proposed development will not result in any effects that could contribute to an additive effect with other developments in the area. No mitigation measures are required to come to these conclusions. I consider the provision of standard construction related conditions to prevent pollutants leaving the site to not be a mitigation measure for the purpose of avoiding or preventing impacts to the SAC or SPA.

Overall Conclusion

Screening Determination

9.13. Having carried out Screening for Appropriate Assessment of the project in accordance with Section 177U of the Planning and Development Act 2000 (as amended), I conclude that that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European sites including Bray Head SAC, The Murrough SPA and Dalkey Island SPA or any other European site, in view of the sites Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

9.14. This determination is based on:

- The relatively minor scale of the development and lack of impact mechanisms that could significantly affect a European Site.
- Distance from and weak indirect connections to the European sites
- No significant ex-situ impacts on wintering birds

9.15. Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.

10.0 Recommendation

It is recommended that permission be granted subject to conditions.

11.0 Reasons and Considerations

Having regard to suitability of the site for residential development in an urban infill location where such development is generally sought in accordance with the

provisions of the Wicklow County Development Plan 2022-2028, to the existing pattern of development in the area and to 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 be acceptable and would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not unduly negatively impact the adjacent open space and would be acceptable in terms of flood risk and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Mitigation measures outlined in the plans and particulars, including the Flood Risk Assessment, shall be carried out in full, except where otherwise required by conditions attached to this permission.

Reason: In the interest of protecting the environment and in the interest of public health.

3. The glazing to the below listed windows shall be manufactured opaque or frosted glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.

(a) The south-west roof windows of house type A, unit 1.

(b) The first-floor north-east facing window of house type A, unit 1.

(c) The first-floor side-facing windows of house types B and C, units 2, to 4.

Reason: In the interests of residential amenity and for clarity.

4. Prior to commencement of development the developer shall submit for the written agreement of the planning authority proposals to reconstruct and extend the existing Kilruddery Stream culvert (as shown on Drawing number M242-001 submitted on the 30th day of May 2024) wholly under the site. All works shall be carried out in accordance with the requirements of the planning authority at the developer's expense.

Reason: In the interest of protecting the environment and in the interest of public health.

5. The formation of the vehicular access and public footpath along the front (southern) boundary of the site, from Sidmonton Court, shall be constructed in accordance with the requirements of the planning authority, and shall comply, in all respects, with the standards set out in the Design Manual for Urban Roads and Streets (DMURS).

Reason: In the interests of pedestrian and traffic safety.

6. The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be levelled, soiled, seeded, and landscaped in accordance with the landscaping scheme submitted to the planning authority on the 30th day of May, 2024. This work shall be completed before any of the dwellings are made available for occupation unless otherwise agreed in writing with the planning authority and shall be maintained as public open space by the developer until taken in charge by the local authority.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

7. The landscaping scheme shown on drawing number 17436-2-101, as submitted to the planning authority on the 30th day of May, 2024 shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the

completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

8. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and to ensure an appropriate high standard of development.

9. All the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of sustainable transportation.

10. Public lighting shall be provided in accordance with a scheme which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of trees. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interest of amenity and public safety.

11. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance

with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

12. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply in all respects with the standards set out in the Design Manual for Urban Roads and Streets (DMURS) (and not those in "Recommendations for Site Development Works for Housing Areas".)

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

13. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and [residential] amenity.

14. The developer shall ensure that the development is served by adequate water supply and/or wastewater facilities and shall enter into a connection agreement (s) with Uisce Éireann (Irish Water) to provide for a service connection(s) to the public water supply and wastewater collection network within 6 months of this grant of retention permission.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

15. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority and

these proposals shall be consistent with the landscaping scheme, drainage scheme (including SW option as shown on Drawing number M242-001 submitted on the 30th day of May 2024) and provision of open space proposed for the site.

Reason: To prevent flooding and in the interests of sustainable drainage.

16. Site development and building works shall be carried out between the hours of 07.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

17. Prior to commencement of development, a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of reducing waste and encouraging recycling.

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure satisfactory reinstatement of the site. Reason: To ensure the satisfactory completion of the development.

19. 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.

20. (a) Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual

purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

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.

Ciarán Daly
Planning Inspector

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-320567-24		
Proposed Development Summary	Refined vehicular access to the existing vehicular accessway; construction of four houses with two car parking spaces for each house; additional 278 sq. m. of public open space off Sidmonton Court, Bray; the demolition of a low block wall which transects the site and associated site works, including minor alterations to existing public footpath.		
Development Address	Site located between Sidmonton Court and Sidmonton Park, Bray, County Wicklow.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
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?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
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]?			
		Threshold	Comment (if relevant)
			Conclusion
No		N/A	No EIAR or Preliminary Examination required
Yes	X	Class 10(b)(i): Construction of more than 500 dwelling units. (iv)	Proceed to Q.4

		Urban development which would involve an area greater than 10 hectares in the case of other parts of the built-up area outside a business district		
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference Number	ABP- 320567-24
Proposed Development Summary	Refined vehicular access to the existing vehicular accessway; construction of four houses with two car parking spaces for each house; additional 278 sq. m. of public open space off Sidmonton Court, Bray; the demolition of a low block wall which transects the site and associated site works, including minor alterations to existing public footpath.
Development Address	Site located between Sidmonton Court and Sidmonton Park, Bray, County Wicklow.
<p>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.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	The development has a modest footprint, comes forward as a standalone project, requires modest demolition works, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The development is situated in a town centre urban built up serviced location. The development is removed from sensitive natural habitats and designated sites and landscapes of identified significance in the County Development Plan.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity)	Having regard to the modest nature of the proposed development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects,

and complexity, duration, cumulative effects and opportunities for mitigation).	and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	No
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector:

Date: _____

DP/ADP: _____
(only where Schedule 7A information or EIAR required)

Date: _____