



An
Bord
Pleanála

Inspector's Report

ABP 321124-24

Development	House and associated works
Location	Glenholme, 115 Churchtown Road Lower, Churchtown, Dublin 14
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D22A/0489
Applicants	Stephen and Brigitta Lannen
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	Third Party
Appellants	(1) Mary Gilligan and Tony Kirwan (2) Nigel Brennan (Charleville Residents Association) and Gavan Neary
Observers	None
Date of Site Inspection	24 March 2025
Inspector	B. Wyse

1.0 Introduction

- 1.1. This report follows on the Direction of the Board, dated 25 October 2024, for the preparation of a new Inspectors report in this case. The requirement for a new Inspectors report arose, in turn, from a High Court Order, dated 20 August 2024, remitting the case back to the Board for further consideration and determination from a point in time prior to the completion of the previous Inspectors report. The previous An Bord Pleanála case reference number was ABP-314989-22.

2.0 Site Location and Description

- 2.1. Glenholme is a residential property on the corner of Churchtown Road Lower and Charleville in the established suburban area of Churchtown. The existing property comprises a bungalow with front and back gardens, the latter generally enclosed by walls and mature hedging. The immediately adjacent properties on Churchtown Road Lower are also bungalows. Charleville is a small cul-de-sac scheme of detached two storey houses. Flemingstown Park to the south is a cul-de-sac scheme of mainly bungalows. The wider area is characterised by a varied mix of house types.
- 2.2. The side, northern, boundary of Glenholme fronting onto Charleville is defined by a c.2m high rendered and capped block wall. Outside of this there is a c.2-3m deep landscaped strip that runs the full length of the Charleville access road. A single yellow line along this side of the road (the southern side) prohibits parking from 8am to 6pm Monday to Friday.

3.0 Proposed Development

- 3.1. The proposed development comprises:
- A new house in the back garden of Glenholme, subdividing the property into two sites.
 - The house would be part single storey/part two storey with flat roofs. It would be of contemporary design and include 3 bedrooms and under-croft car parking. Total floor area 162sqm.

- A new vehicular/pedestrian entrance from Charleville across the landscaped strip necessitating the removal of a section of the boundary wall, existing hedging and trees and their replacement with a lower section of wall and planting in revised positions.
- Revised boundary treatments, Suds drainage and all ancillary works.

It is noted that the redline site boundary includes the entire Glenholme property and a section of the adjacent landscaped strip in Charleville. In relation to the latter area the application documentation includes a letter from Dun Laoghaire–Rathdown County Council consenting to its inclusion for the purposes of forming a driveway access, incorporating the necessary right of way (area hatched yellow), and to facilitate works to the grass verge/landscaped strip, including the removal and replacement of trees and hedging (area hatched red), in order to achieve required sightlines.

- 3.2. Further information submitted on 15 September 2022 included details in relation to: energy performance; construction materials; EV charging; on-site planting; boundary treatments; and the status of the adjacent grass verge. Documentation included revised drawings and a new letter of consent from Dun Laoghaire-Rathdown County Council in relation to the grass verge. This letter, in addition to reiterating the earlier consent, advises that while the land in question is not in the ownership of the Council it forms part of the public road network and the council is responsible for maintaining it.
- 3.3. Revised public notices were posted advising of the submission of this further information.

4.0 Planning Authority Decision

4.1. Decision

This is a decision to grant permission subject to 18 conditions. The conditions are generally standard and include:

Conditions 4, 5 and 11 refer to surface water drainage and the requirement for sustainable urban drainage systems (SuDS).

Conditions 6 – 9 refer to requirements in relation to tree and hedge removal and replanting.

Condition 10 stipulates that the proposed vehicular entrance shall be a maximum of 3.9m wide.

Conditions 14 – 18 refer to development contributions.

4.2. Planning Authority Reports

4.2.1. Planning Reports (dated 26/08/2022 and 13/10/2022). Basis for planning authority decision. Include:

- The proposed development is permitted in principle under the zoning objective for the site and the development plan specifically supports the utilisation of corner sites.
- The private amenity space to be retained for Glenholme is acceptable. That to be provided for the proposed house is also acceptable. The proposed 1.2m high rendered wall along the northern boundary of the site, in addition to the proposed planting, will enhance the visual amenity of the streetscape.
- The proposed dwelling will not impact the residential amenities of adjacent properties by way of overbearing, overlooking or overshadowing.
- The introduction of a contemporary style dwelling is visually appropriate on this infill site.
- Notwithstanding the recommendation of the Transportation Department that the vehicular entrance be a maximum width of 3.5m it was considered that the proposed width of 3.9m (as per further information) was acceptable and that it would not create a traffic hazard.
- The second letter of consent in relation to the use of the grass verge/landscaped strip in Charleville considered to address concerns raised by third parties in relation to this issue.
- Appropriate Assessment (AA) and Environmental Impact Assessment (EIA) screening conclude that neither AA nor EIA are required.

4.2.2. Other Technical Reports

Reports from Transportation Planning, Drainage Planning and Parks Department indicate no objections subject to conditions. The report from the Environmental Health Officer indicates no comment.

4.3. Prescribed Bodies

None.

4.4. Third Party Observations

The planning authority received a considerable number of observations, mostly from local residents, objecting to the proposed development. The main issues raised are similar to those raised in the grounds of appeal – see Section 8.1 below.

5.0 Planning History

PA Refs D21A/0108 and D19A/0884 – c.2021 and 2019 applications for a house on the site withdrawn.

PA Ref D17B/0063, ABP Ref 06D.248377 and PA Ref D15A/0263 – c.2017 and 2015 permissions for alterations and extensions to Glenholme.

PA Ref D97A/0758, ABP Ref 06D.106166 – c.1997 refusal of permission for a house to the rear of No.s 115 and 117 Churchtown Road Lower because the proposed vehicular access across the landscaped strip, considered to be an important feature in the layout of Charleville, would seriously injure the amenities of property in the vicinity.

PA Ref 87A/1119 – c.1987 refusal of permission for a house to the rear of No.s 115 and 117 for reasons relating to inappropriate access and overlooking of adjoining residential properties.

PA Refs F/662 and M/471 - Original permissions for Charleville granted in 1973 and 1978.

6.0 Policy Context

6.1. Development Plan

Dun Laoghaire Rathdown County Development Plan 2022-2028

Site is subject to Zoning Objective A – *To provide residential development and improve residential amenity while protecting the existing residential amenities.*

Policy PHP19 – objective to densify existing built-up areas through small scale infill development having due regard to amenities of existing established residential neighbourhoods.

Section 12.3.7.5, referring to Corner/Side Garden Sites, includes:

Corner site development refers to sub-division of an existing house curtilage to provide an additional dwelling in existing built up areas. In these cases relevant parameters to which the Planning Authority will have regard include:

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- Building lines followed, where appropriate.
- Car parking for existing and proposed dwellings provided on site.
- Side/gable and rear access/maintenance space.
- Adequate usable private open space for existing and proposed dwellings provided.
- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas where it may not be appropriate to match the existing design.
- Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained/reinstated where possible.

Section 12.4.8.1 includes:

Vehicle entrances and exits shall be designed to avoid traffic hazard for pedestrians and passing traffic. Where a new entrance onto a public road is proposed, the Council will have regard to the road and footway layout, the traffic conditions on the road and available sightlines and will impose appropriate conditions in the interest of public safety. In general, for a single residential dwelling, the maximum width of an entrance is 3.5 metres

6.2. Guidelines

Development Management – Guidelines for Planning Authorities, DOEHLG June 2007, includes the following advice in relation to matters arising around title to land:

The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts.

In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision.

Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter.

If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations.

Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis.

If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.

6.3. Natural Heritage Designations

None relevant.

7.0 Environmental Impact Assessment

- 7.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity or 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 at preliminary examination and a screening determination is not required.

See Appendices 1&2 for relevant forms.

8.0 The Appeal

8.1 Grounds of Appeal

8.1.1 Mary Gilligan and Tony Kirwan

The appellants reside at No.117 Churchtown Road Lower, the property immediately adjacent to the south of the subject property.

The main grounds of appeal can be summarised as follows:

- The proposed house is a two storey flat roofed box shaped building that resembles a cargo container. It would have an unsettling impact in a residential area.
- The front elevation, almost 6m high, would be directly against the public open space of Charleville. The access driveway across private lands outside the applicants control would split the amenity area in two.
- Due the restricted nature of the site there would be overbearing and overshadowing effects on No. 117 and a loss of property value.
- Previous similar applications on the property have failed for good planning reasons.
- The planning conditions attached to the planning authority decision to grant permission are inadequate and ill-considered and do not properly address the material issues raised in the multiple observations received by the Council.
- The report of the Parks Department shows very little understanding of the wider streetscape context of the mature planted roadside open space that is such a significant feature for local residents.
- By reference to the development plan support for utilisation of corner sites, the application is for a house in the rear garden. It would not be a corner house as the applicants have no frontage onto the public roadway.
- The proposed house design would not fit in. It would be a very intrusive feature.
- In relation to the open space area the second letter of consent submitted as further information concedes that the Council does not own the land. It

cannot, therefore, act as a partner for the purposes of the application as it does not have adequate legal interest. The appellants do not have the name of the property owner and he/she has not given consent to the application.

- Further to questions 24(a) and (c) on the application form it is submitted that the developer would take into their private control/ownership the public open space bordering the site. The proposal seeks to change the use of the planted strip from public open space to residential use.
- The appellants are concerned at the impending loss of the mature hedgerow that is such a strong feature of the dividing boundary between the properties. No consent has been given for its removal or its replacement by a boundary wall.

8.1.2 Nigel Brennan and Gavin Neary

Mr. Brennan resides at No.14 Charleville and is the Chairman of the Charleville Residents Association. The appeal is stated to be lodged on his behalf representing the residents.

Mr. Neary resides at 2 Flemingstown Park, the property immediately to the east of the subject property.

The submission includes a copy of Mr. Brennans letter of objection to the planning authority and a letter from legal counsel in relation to the ownership of part of the application site.

The main grounds of appeal can be summarised as follows:

- The Charleville development was developed in the 1970s on foot of a planning permission that included a rectangle of open space to the north and a linear landscaped strip running continuously along the southern boundary. The strip has been maintained by the Council and by residents of Charleville over many years (continuously at least since 2004) and who have retained a contractor at their own expense to undertake the work.
- The planting along the boundary of Glenholme was replaced in recent years by the Council following legal action to compel the Council to remove the original trees.

- The Board's attention is drawn to the previous decision to protect this area from encroachment – PA Ref D97/0758, ABP Ref 06D.106166.
- Letters of consent going back to PA Ref D97A/0758 have made it clear that the landscaped strip along the northern boundary of the site is not owned by the Council. The second letter of consent submitted as further information stated that the Council does not own the land but claimed that it forms part of the public road network.
- The enclosed letter from legal counsel demonstrates that this assertion by the Council is incorrect and that the residents of Charleville are the owners of the land. The lands comprise a landscaped, lawned, planted verge. They do not form part of the road, nor do they contain a footway or pavement. The lands are not part of the public road and, therefore, cannot have been taken in charge by the County Council in 1983. The relevant legislation (the Local Government Act 1925, as amended) does not refer to the phrase 'road network' nor does it include landscaped open spaces as part of the statutorily defined public road. The residents have been primarily responsible for maintaining the space over many years (since at least 2004) notwithstanding some work by the Council. The applicants do not enjoy sufficient interest in the land to carry out the proposed development. The application is not compliant with Article 22(2)(g) of the Regulations as the applicants do not have the consent of the owners of the lands and it is, therefore, invalid.
- The proposed development would be incompatible with several aspects of the development plan as illustrated by the following points.
- Charleville has been laid out with a strong linear visual character formed in part by the heavily planted landscaped open space along its southern boundary. The proposed house, perched on the edge of the linear open space and with its access built across it would disrupt this picture. The proposed house would step well forward of the side elevation of Glenholme, increasing its prominence and giving it an especially obtrusive impact.
- Previous refusals of permission on the subject site have sought to protect the amenity value of the landscaped strip and its importance to the public realm in Charleville. A new house as proposed would generate increased pedestrian

traffic and would lead to parking of vehicles at its edge, thereby eroding the quality of the linear space. The functioning of the new entrance and the need to maintain sightlines would likely give rise to pressure to remove the entire planting and replace it with a footpath.

- The proposed development would have an adverse impact on the houses opposite in Charleville. Their outlook would be diminished and they would be overlooked to an uncomfortable extent. The proximity of the house to the roadside would be out of character and detrimental to the appearance of the area.
- The proposal will give rise to additional traffic movements and demand for on-street parking. Currently parking is restricted on the southern side of Charleville. There is also no provision for additional pedestrian movements.
- The Autotrack diagram submitted with the application is unlikely to represent reality. The columns supporting the car port would conflict with vehicle turning movements and the modelling does not show the impact of the swept path on the northern side of the road in Charleville.
- The development would be an overdevelopment of the site. It would be out of keeping with the character of Charleville by reason of its prominent position on the edge of the open space, its bulk and the materials employed, especially the large areas of metal cladding.

8.2 Planning Authority Response

Grounds of appeal do not raise any new matter that would justify a change of attitude to the proposed development.

8.3. Response of Mary Gilligan and Tony Kirwan to appeal of Nigel Brennan and Gavin Neary

This indicates agreement with the other third party appeal and reiterates the reasons advanced previously as to why the proposed development should be refused permission.

8.4. Applicants Response (to both third party appeals)

Includes:

- The proposal as it relates to No.117 is primarily 1 storey with the 2 storey element set back 6.4m from the shared boundary.
- Only one high level window from a dressing room at first floor level faces south towards No.117 and this is opaqued.
- The building is 5.9m high and is a modest and contemporary approach to infill residential accommodation at a suburban corner/side garden and of a type that can be found all around suburban Dublin.
- The building is set back 1.2m from the boundary to the north with planting on both sides of the boundary wall. It is adjacent to a landscaped buffer strip.
- There is no impact to residential or visual amenity associated with No.117 or Charleville.
- Older planning applications on the site were bound by statutory documents at that time but which are now dated and obsolete. The current development plan recognises the requirement for increased residential densities at appropriate locations, including infill development. The current proposal is exactly the type of development envisaged.
- The development section relating to 'corner/side garden sites' refers to 'sub-division of an existing house curtilage'. The proposal falls under the scope of this provision.
- The proposal supports development plan policies PHP18 and 19 which encourage higher density infill residential developments.
- The landscaped strip in Charleville is not usable public open space. It has a visual amenity value which will not be materially altered by the proposed development.
- The design is consistent with the requirements of the development plan in relation to; contemporary design; height; setback from boundaries and boundary treatments; and orientation and fenestration.

- The issue of consent is not a relevant planning consideration in this case. The lands of concern are a public roadway and an associated landscaped verge.
- By reference to the definition of a public road under the Roads Act it is common practice to have access granted over a public road.
- By reference to Section 34(13) of the Planning Act it is clear that planning and legal processes are very separate matters.
- The applicants responses to questions 24(a) and (c) on the application form merely confirm their intention to privately manage their proposal. It does not suggest that the applicants intend to take any lands outside their ownership into their control.
- The legal counsels letter submitted does not provide any supporting evidence confirming ownership of the landscaped buffer and public road, rather it assumes that the residents of Charleville are the owners. In 2016 the applicants secured a court order directing the Council to replant the strip. Residents of Charleville were not involved in this case.
- The definition of 'road' under the Roads Act includes a range of things/matters and it is clear that the landscaped buffer is included and the Council have confirmed that they are responsible for maintaining the said lands.
- The proposed development satisfies the relevant development management standards set out in the development plan.
- The visual and linear character of the landscaped buffer is retained through replacement planting with the only new feature being the vehicular access. There would be no further erosion of any landscaped area. Sightlines are achieved without interruption to any existing trees, subject to regular maintenance.
- The separation distance to the house on the northern side of Charleville is 19.4m. This is a considerable distance and not out of character with others in the vicinity. There are no directly opposing windows from primary rooms below 22m on the first floor to the north.

- The proposal provides for two off-street car parking spaces as required by the development plan so on-street parking will not be affected. Pedestrian movement will be facilitated by the footpath on the northern side of Charleville. The swept path analysis on the Autotrack diagram avoids the columns.
- The contemporary design and scale of the proposed house is appropriate for the site and the surroundings.

8.5. **Observations**

None received.

8.6. **Further Submissions**

Following on the High Court remittal of the case the Board decided to issue notices under Section 131 of the Act inviting further submissions from the parties to the case.

8.6.1. **Nigel Brennan and Gavin Neary**

This essentially reiterates the appellants original grounds of appeal.

8.6.2. **Applicants**

This reiterates many of the points made in the applicants first response submission. It also includes:

- The Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities, published in January 2024, represent a key planning policy change that prioritises residential development and compact sustainable settlements, and within which infill development is particularly referenced.
- The Guidelines for Planning Authorities, Development Management, 2007 recognise that the planning system is not designed for resolving disputes about title to land or rights over land and that these are matters for the Courts.
- Reference is made to legal cases Morris v. An Bord Pleanala [2017] IEHC354 and Heather Hill Management Company CLG v. An Bord Pleanala and Others [2022] IEHC146 to support the view that there is no basis for the Board to

refuse permission on the issue of ownership/legal interest and that it should rely on Section 34(13) of the Act. It is submitted that it is obvious that the application is not frivolous or vexatious.

- A legal letter which notes that the appellants have not proved ownership of the relevant strip of ground and that the lands actually passed to the State as the ultimate successor when the original builders were dissolved.

8.6.3. Planning Authority

None received.

9.0. Assessment

9.1. I am satisfied that the main issues in this appeal are those raised in the grounds of appeal and that no other substantive issues arise. The issues can be addressed under the following headings:

- Development Plan Policy
- Residential Amenity and Design
- Traffic
- Legal Interest

9.2. Development Plan Policy

9.2.1. Much is made in the appeals of the history of previous refusals of planning permission for development on the subject site. The decisions in question date from the late 1980's and the late 1990's. The applicants are correct to point to a significant change in the planning policy environment since then, in particular in the direction of recognising the benefits of more compact settlement patterns and the encouragement of increased densities generally and through better utilisation of existing urban footprints, including the development of infill sites. This is reflected in the current development plan policies, including Policy PHP19. Such policies at local level in turn derive from regional and national policy, such as the National Framework Plan, which clearly and explicitly mandates this approach. The recently published residential development and compact settlement guidelines, as referenced by the applicants, further reinforce the position.

- 9.2.2. In principle, therefore, it is now entirely appropriate that properties such as the subject one can be looked at afresh in the context of this new policy environment.
- 9.2.3. In relation to the suggestion that the subject site cannot be considered a corner site as provided for under Section 12.3.7.5 of the development plan as it is a rear garden site with no road frontage, I consider that it would require an extraordinarily literal and narrow reading of that section to conclude as such. As indicated the section heading refers to corner and side gardens and the opening sentence refers to the sub-division of existing house curtilages to provide an additional dwelling or dwellings in built up areas. It is a common provision in most urban development plans now and it would be very much established practice to consider that properties such as the subject one would fall within its scope and I am satisfied that this is the case. The question of road frontage and access is considered at Section 9.4 below.

9.3. Residential Amenity and Design

- 9.3.1. This refers to the potential impacts of the proposed house on adjacent/nearby houses, the appropriateness of the proposed house design, the impact on the landscaped strip and the overall impact on the character of Charleville.
- 9.3.2. In relation to the potential impacts on adjacent and nearby houses the first concern raised is that the proposed house would give rise to overbearing and overshadowing relative to No.117 Churchtown Road Lower and a consequent devaluation of that property. No.117 is the adjacent property to the south. It comprises a bungalow with a large rear garden similar to the subject property. The common rear boundary is a high hedge, of the order of 2-3m in height. It is the single storey element only of the proposed house that would be in close proximity to this boundary. Its maximum height would be 3.187m and it would be positioned right at the end of the garden. The two storey element would be 6.4m from the boundary. In my view, there would be no significant sense of overbearance and no overshadowing, the latter assured also given that the new house would be north of No.117. Consequently, there is no basis, in my view, to the submission that that property would be devalued.
- 9.3.3. My conclusion on this matter remains the same even in the context of the applicants proposal to erect a 2m high wall along the boundary. It is not completely clear if this would mean removing the hedge. In any case such common boundary issues can

only be resolved between the parties and there is no further planning issue to be determined.

- 9.3.4. The other impact on nearby properties referred to is overlooking of the houses in opposite side of the road in Charleville. As this refers to the front of these houses any claim of overlooking is really impossible to sustain. Furthermore, the affected houses are across the road from the proposed house and at a considerable distance – the nearest window to window separation distance would be almost 20m. There is no basis, therefore, to the submission in relation to overlooking.
- 9.3.5. It follows that I do not consider that there is any basis to the contention that the proposal would represent overdevelopment of the site.
- 9.3.6. In terms of design the proposed house clearly represents an unashamedly contemporary approach. As indicated the development plan contemplates that such approaches can be appropriate and I agree with the applicants that similar designs on infill sites are increasingly common.
- 9.3.7. The overall form, being split level, is, in my view, a reasonable and effective means of achieving the required accommodation while mitigating impacts on adjacent properties, having regard to the configuration of the site. The external finishes include metal cladding to the upper floor and render at ground floor level – specific details can be required by condition to be agreed as is normal practice. While the design is clearly different to the prevailing pattern in the vicinity this in itself is not reason to consider it inappropriate or deleterious to the local environment. The addition of modern diverse designs can equally have an uplifting effect on established areas. While the house would be slightly forward of the side wall of Glenholme I do not consider that it would be too close to the road as to be overly obtrusive or dominant. The lowered section of boundary wall in combination with the proposed planting would, in my view, help to assimilate the building into the surroundings. In this I agree with the assessment of the planning authority.
- 9.3.8. The direct impact on the landscaped strip is the removal of some hedging and trees to form an entrance apron, approximately 3.9m in width, and to obtain suitable sightlines and replacement similar planting. The net distance over which hedging and trees would be permanently removed is about 10-12m. I do not consider this level of intervention and alteration to be excessive. Once completed, with the new

planting established, the overall character and appearance of the landscaped strip would not be substantially different than at present and I do not consider that there is any basis to consider that further erosion of the area would occur.

- 9.3.9. It follows that I do not consider that the proposed development would have a negative impact on the overall character of Charleville.

9.4. Traffic

- 9.4.1. The main concerns raised here relate to the additional demand for traffic and on-street parking that would arise, the lack of provision for pedestrians and alleged deficiencies with the Autotrack modelling submitted with the application.
- 9.4.2. The proposal here is for a single 3 bedroom house which includes provision for two on-site parking spaces. I do not consider that it would give rise to significant additional traffic or demand for on-street parking. In relation to the latter parking is available on the northern side of Charleville and the restriction on the southern side is limited to 8am to 6pm Monday to Friday, outside the most likely busiest times for visitors.
- 9.4.3. As indicated by the applicants pedestrians can easily use the footpath on the northern side of Charleville, an arrangement that would not be unusual.
- 9.4.4. In relation to the Autotrack modelling I am satisfied that this does demonstrate that cars entering and exiting the property would be able to do so satisfactorily and without giving rise to traffic hazard. Within the dimensions as shown there is ample scope for cars to avoid the outer columns of the undercroft parking area. While the swept path is not shown for the northern side of the road vehicular movements on the road would be similar to those generated from the existing houses on Charleville.

9.5. Legal Interest

- 9.5.1 This refers to the dispute over the ownership of the landscaped strip along the southern side of the Charleville access road and whether or not the applicants have a sufficient legal interest to make the application as proposed.
- 9.5.2. As indicated the application as originally submitted to the planning authority included a letter from Dun Laoghaire-Rathdown County Council consenting to the inclusion of the necessary section of the strip in the application for the purposes of carrying out the necessary works and the granting and retention of a right of way at the entrance.

Further to the numerous objections to the development received by the planning authority, on grounds that included counter claims to ownership/legal interest in the landscaped strip, the planning authority issued a request for further information that included an invitation to the applicants to clarify the status of the area in question and advising that this might require a new letter of consent. The new letter of consent from Dun Laoghaire-Rathdown County Council duly submitted reiterates the earlier consent but also indicates that the subject portion of land is not within the Councils ownership but that it is considered to form part of the public road network and that the Council is responsible for maintaining it.

- 9.5.3. The appellants (Brennan and Neary) maintain that the landscaped strip is owned by the residents of Charleville. While conceding that the Council has been involved in its maintenance they assert that the residents have been primarily responsible for this. They further maintain that the strip is not part of the public road and could not have been taken in charge by the Council. They argue that the application does not comply with Article 22(2)(g) of the Regulations and is, therefore, invalid. The appellants include a legal submission in support of their position.
- 9.5.4. The applicants counter that the issue of consent is not a planning consideration and that the matter is covered by Section 34(13) of the Act. They submit that the appellants legal submission does not provide any evidence of the residents ownership. They also refer to a 2016 court order obtained by the applicants that directed the Council to replant the strip with no involvement by the residents. The applicants also maintain that the definition of a 'road' under the Roads Act would include the landscaped strip.
- 9.5.4. The further submissions lodged by the appellants reiterate earlier arguments but do not include any new supporting documentation on the issue.
- 9.5.5. The applicants further submission, in addition to reiterating earlier arguments, includes references to the Development Management Guidelines and to legal cases in support of their view that matters of dispute in relation to title to land are not matters for the planning system or the Board to resolve. They maintain that it is obvious that the application is not frivolous or vexatious. They also assert that the appellants have not proved ownership of the land and the submission includes a legal letter in support of their position.

- 9.5.6. It is very clear in this instance that the matter of ownership/legal interest in the landscaped strip is the subject of serious dispute, including legal submissions on both sides of the argument. All parties are aware that the matter cannot ultimately be resolved by the Board and that it is a matter for the courts to decide.
- 9.5.7. In cases involving such disputes, and where the Board is contemplating granting permission, the Board's practice is to do one of two things. In the vast majority of such cases the Board will proceed to grant permission on the basis that all permissions are subject to section 34(13) of the Act which provides that a person is not entitled solely by reason of a permission to carry out development. It is only in a very small minority of cases where there is incontrovertible evidence put before the Board that the applicant for permission does not have sufficient legal interest to carry out the development that the Board will refuse permission on this basis. This practice is in line with the advice contained in the Development Management Guidelines (2007) and is consistent with various rulings of the courts on the matter.
- 9.5.8. The evidence before the Board in this case clearly does not meet the threshold for this second approach. In my view, therefore, if the Board is minded to grant permission it should proceed to do so. The Board Direction and/or a cover letter to accompany the Order might explicitly remind the applicants that the permission is subject to the Section 34(13) of the Act.

10.0. Appropriate Assessment Screening

The proposed development comprises a single house on an established suburban site where mains services are readily available.

No nature conservation concerns were raised in the planning appeal.

Having considered the nature, small scale and location of the project, and taking account of the screening determination of the planning authority, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site.

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Appropriate Assessment, therefore, is not required.

11.0. Recommendation

11.1. I recommend that permission be granted subject to conditions.

12.0. Reasons and Considerations

Having regard to the location of the site in an established suburban area and the current development plan support for infill development in such areas (Policy PHP19) it is considered, subject to compliance with the following conditions, that the proposed development would not injure the amenities of residential property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development, therefore, would be in accordance with the proper planning and sustainable development of the area.

13.0. Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 20th day of September 2025, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity and to ensure an appropriate high standard of development.</p>
3.	<p>Details of the proposed removal of trees, hedging and grass from the landscaped strip along the site frontage and replacement planting shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of the development.</p>

	Reason: In the interest of visual and residential amenity.
4.	<p>The new vehicular entrance shall be a maximum width of 3.9m. The new concrete apron and dished kerb shall be constructed at the applicants expense and to the specifications of the planning authority. Details of specifications and required permits for any movement of utilities, should such be necessary, shall be obtained from the planning authority and agreed in writing, prior to the commencement of the development.</p> <p>Reason: In the interest of traffic safety and to ensure a proper standard of development.</p>
5.	<p>Prior to the commencement of development the developer shall enter into a Connection Agreement with Uisce Éireann (Irish Water) to provide for a service connections to the public water supply and wastewater collection network.</p> <p>Reason: In the interest of public health and to ensure adequate water/wastewater facilities.</p>
6.	<p>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 and the construction of the driveway and parking/hardstanding area for the written agreement of the planning authority.</p> <p>Reason: In the interest of achieving a sustainable disposal of surface water.</p>
7.	<p>The developer shall prevent any mud, dirt, debris or other building material from being carried onto or placed on the public road as a result of the construction works and shall repair any damage to the public road arising from the works.</p> <p>Reason: In the interest of traffic safety and amenity.</p>
8.	<p>The developer shall take all necessary measures to avoid conflict between construction traffic and activities and other road users, including pedestrians.</p> <p>Reason: In the interest of traffic and pedestrian safety.</p>
9.	<p>Site development and building works shall be carried out between the hours of 0700 and 1900 Mondays to Fridays inclusive, between 0800 and 1400 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.</p> <p>Reason: To safeguard the amenity of property in the vicinity.</p>

10.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
11.	<p>The developer shall pay a financial contribution to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of replacement tree and hedge planting which benefits the proposed development. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.</p> <p>Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

B. Wyse
Planning Inspector

2 April 2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	321124 - 24		
Proposed Development Summary	House and associated works		
Development Address	Glenholme, 115 Churchtown Road Lower, Churchtown, D14		
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	<input checked="" type="checkbox"/>
		No	Tick if relevant. 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)?			
Yes	<input checked="" type="checkbox"/>	Schedule 5, Part 2, Class 10(b)(i).	Proceed to Q3.
No	Tick or leave blank		Tick if relevant. No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required
No	<input checked="" type="checkbox"/>		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	<input checked="" type="checkbox"/>	Relevant threshold is 500 houses. Proposal is for 1 house.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?

No	X	Screening determination remains as above (Q1 to Q4)
Yes	Tick/or leave blank	Screening Determination required

Inspector: B. Wyse
2025

Date: 29 March

Appendix 2 – Form 2

EIA – Preliminary Examination

An Bord Pleanála Case Reference	<ul style="list-style-type: none"> 321124
Development Summary	<ul style="list-style-type: none"> House and associated works in an urban setting where infrastructural services are available.
Examination	
•	Yes / No / Uncertain
• 1. Is the size or nature of the proposed development exceptional in the context of the existing environment?	<ul style="list-style-type: none"> No
• 2. Will the development result in the production of any significant waste, or result in significant emissions or pollutants?	<ul style="list-style-type: none"> No
• 3. Is the proposed development located on, in, adjoining or have the potential to impact on an ecologically sensitive site or location*?	<ul style="list-style-type: none"> No
• 4. Does the proposed development have the potential to affect other significant environmental sensitivities in the area?	<ul style="list-style-type: none"> No
<ul style="list-style-type: none"> Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity or 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 at preliminary examination and a screening determination is not required.

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• Conclusion

• **Based on a preliminary examination of the nature, size or location of the development, is there a real likelihood of significant effects on the environment **?**

- There is no real likelihood of significant effects on the environment

- EIAR not required

- ☒

- There is significant and realistic doubt in regard to the likelihood of significant effects on the environment

- Screening Determination required

-

- Sch 7A information submitted?

- Yes

- No

- There is a real likelihood of significant effects on the environment

- EIAR is required
- (Issue notification)

-

Inspector B. Wyse Date: 1 April 2025

DP/ADP _____ Date: _____

(only where EIAR/ Schedule 7A information is being sought)