



An  
Bord  
Pleanála

## Inspector's Report ABP-321498-24

<b>Development</b>	Division of existing house into one house and two apartments. Demolition of existing garage.
<b>Location</b>	4/5 Raheen Villas, Glenard Avenue, Bray, County Wicklow, A98 HH21
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	2460489
<b>Applicant</b>	Christina Devereaux
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Richard O Hanrahan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> March 2025
<b>Inspector</b>	Matthew O'Connor

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## **1.0 Site Location and Description**

- 1.1. The appeal site is 0.045ha and is situated on Glenard Avenue, a cul de sac accessed from Sidmonton Avenue in the settlement of Bray, Co. Wicklow. The subject site comprises a relatively modern detached two-storey dwelling with detached garage and internal parking area. The character of the surrounding locality is residential and there are residences adjoining the appeal site to the north, south and east. There are no Protected Structures or National Monuments within or immediately adjoining the appeal site. The site is not located within a Flood Zone.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the following:
- Division of existing property into three separate dwellings comprising – 1 no. house and 2 no. apartments
  - Demolition of existing garage to facilitate parking for the 3 no. units.
  - The exterior of the existing property will remain unchanged.
  - All access and egress points will remain unchanged.
  - All physical changes will be undertaken internally and have no effect on the existing exterior structure.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Grant permission for the subject development, subject to 6 no. conditions. I note the following conditions of particular relevance:
- Condition 2: Time limitation of site works.
  - Condition 3: Surface water and drainage details.
  - Condition 4: Occupation shall be individual purchasers and not a corporate entity.
  - Condition 5: Obscure glazing to windows on upper floors.
  - Condition 6: Landscaping.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- The first Planner's Report had regard to the submitted documentation, locational context of the site, planning history in vicinity, policy framework of relevant development plans and inter departmental/referral reports. Further Information was sought in relation to 3 no. items which have summarised as follows:

Item 1      Demonstrate the design and layout of the scheme is acceptable and in accordance with the relevant objectives of development plans and national guidance in terms of private amenity area, storage area and minimum unit sizes; separation distances; access/sightlines; and, car and cycle parking.

Item 2      Applicant to clarify how each unit will be accessed and which open space area is allocated to each dwelling along with boundary treatments.

Item 3      Clarify the planning status of the works permitted under PRR 02/630139 which showed obscure glazing to the 2no. windows along the eastern elevation at first floor level.

- The second Planner's Report provides an analysis of the applicant's Further Information response and forms the basis for the grant of permission with conditions.
- With respect to Item 1 of the Further Information Request, private amenity space for each unit was demonstrated; the dwelling/apartments are shown to meet unit size requirements and have minimum storage spaces; no changes are proposed to window opens; screening measures through provision of trees are proposed; cycle parking has been demonstrated for each unit; and, the applicant provided measures to reduce speeding; provision of visibility mirrors at the entrance for increased visibility and a swept path analysis for the 3 no. cars to enter/egress the site.
- In respect of Item 2 of the Further Information Request, the Planning Authority noted that the shared amenity space can be divided if required. Boundary fencing will comprise 1.8m high timber fencing with concrete posts. To the rear of the parking area, stone from the garage will be used with a timber fence above. Timber bicycle

parking and bin stores will be provided. 3 no. front doors to each of the units has been demonstrated.

- In respect of Item 3 of the Further Information Request, the applicant indicates that the windows to the rear will remain obscured but has provided no details. Should permission be granted a condition shall be attached requiring obscure glazing to prevent overlooking.

#### 3.2.2. Other Technical Reports

- Bray M.D Engineer: No response received.

#### 3.3. **Prescribed Bodies**

- Irish Rail – Ireland East: No response received.
- Uisce Eireann: No response received.

#### 3.4. **Third Party Observations**

3.4.1. One third party observation was received by the Planning Authority. The main issues raised are summarised as follows:

- Development will intensify the use of a Right of Way over property. The Right of Way was not envisaged for such a use and an intensification would be seriously detrimental to existing residential amenities. A condition is requested prohibiting the continuance of the use of the existing pedestrian passage to Meath Road over Observer's property.
- Concerns of overlooking from existing first floor windows which were to be fitted with obscure glazing on foot of a previous planning permission. A condition is requested that the windows be glazed with obscure glazing.

#### 4.0 **Planning History**

The following planning history is associated with the appeal site:

**02/630139** Permission GRANTED to demolish 2 existing derelict houses and construct a new house and garage.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The Wicklow County Development Plan 2022-2028 is the relevant Development Plan for the appeal site.

5.1.2. Chapter 4 of the Development Plan relates to 'Settlement Strategy' with the following objectives considered to be relevant:

*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 4.6 To require new housing development to locate on designated housing land within the boundaries of settlements, in accordance with the development policies for the settlement.*

5.1.3. Chapter 6 of the Development Plan relates to 'Housing' with Section 6.4 setting out a number of general housing objectives. The following housing objective is considered to be relevant:

*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 6.4 All new housing developments (including single and rural houses) shall achieve the highest quality of layout and design, in accordance with the standards set out in the Development and Design Standards (Appendix 1) and the Wicklow Single Rural House Design Guide (Appendix 2).*

**CPO 6.5** *To require that new development be of the highest quality design and layout and contributes to the development of a coherent urban form and attractive built environment in accordance with the following key principles of urban design:*

- *Strengthening the character and urban fabric of the area;*
- *Reinforcing local identity and sense of place;*
- *Optimise the opportunities afforded by the historical and natural assets of a site / area;*
- *Providing a coherent, legible and permeable urban structure;*
- *Promoting an efficient use of land;*
- *Improving and enhancing the public realm;*
- *Conserving and respecting local heritage;*
- *Providing ease of movement and resolving conflict between pedestrians/cyclists and traffic;*
- *Promoting accessibility for all; and,*
- *Cognisance of the impact on climate change and the reduction targets for carbon emissions set out by the Government.*

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

**CPO 6.21** *In areas zoned 'Existing Residential' house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity will normally be permitted (other than on lands permitted or designated as open space, see CPO 6.25 below). While new developments shall have regard to the protection of the residential and architectural amenities of houses in the immediate environs, alternative and contemporary designs shall be encouraged (including alternative materials, heights and building forms), to provide for visual diversity.*

**CPO 6.22** *In existing residential areas, small scale 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. However, on large sites or in areas where previously unserved, low density housing becomes served by mains water services, consideration will be given to densities above the prevailing density, subject to adherence to normal siting and design criteria.*

*CPO 6.23 To facilitate mews lane housing in suitable locations, subject to high quality design that respects the existing character and heritage of the area and provides for a high standard of residential amenity for existing and future occupants.*

*CPO 6.24 To facilitate family / granny flat extensions for use by a member of the immediate family subject to protection of existing residential amenity and compliance with the criteria set out in the Development and Design Standards (Appendix 1).*

*CPO 6.28 Apartments generally will only be permitted in settlements Levels 1 to 6 and in accordance with the location requirements set out in Section 2.4 of the Design Standards for New Apartments, Guidelines for Planning Authorities (2020). All apartment development should be served by high quality usable open space.*

5.1.4. Volume 3 of the Development Plan contains a number of Appendices of which Appendix 1: 'Development and Design Standards' is considered to be of particular relevance to the subject development.

5.1.5. Chapter 12 of the Development Plan relates to 'Sustainable Transportation' and the following objective is considered to be relevant with respect to parking:

*CPO 12.56 New / expanded developments shall be accompanied by appropriate car parking provision, including provision for electric vehicle charging points as set out in Objective CPO 12.8, with particular regard being taken of the potential to reduce private car use in locations where public transport and parking enforcement are available. At such locations, the car parking standards set out in Appendix 1 Table 2.3 shall be taken as maximum standards, and such a quantum of car parking will only be permitted where it can be justified.*



*In locations where public transport and parking enforcement are not available, the car parking standards set out in Appendix 1 Table 2.3 shall be taken as minimum standard in order to ensure that haphazard unregulated car parking does not occur in the vicinity of the development. Deviations from this table may be considered in multi-functional developments (e.g. hotels, district centres), where the developer provides a robust model of car parking usage to show that dual usage will occur and that peak car parking demand at any time of the day / week will always be met or other situations that may be considered on a case-by-case basis.*

*In situations where a developer cannot meet the necessary car parking requirement on or near the development site, the developer may request the Local Authority to accept a special payment in lieu, to be utilised by the Local Authority in providing car parking in the area.*

## **5.2. Bray Municipal District Local Area Plan 2018 – 2024**

5.2.1. It shall be noted that the Bray Municipal District Local Area Plan 2018 – 2024 (LAP) is no longer in force having expired in 2024. For context, I note that the appeal site was zoned 'RE- Existing Residential' with an objective '*to protect, provide and improve residential amenities of existing residential areas*'.

## **5.3. National Guidance**

5.3.1. The following national planning guidance are relevant:

- *Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024).*
- *Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022).*

## **5.4. Natural Heritage Designations**

5.4.1. The appeal site is not located on or within any designated Natura 2000 sites, with the nearest designated site being the Bray Head Special Area of Conservation (Site Code: 000714) which is located approximately 0.850km to the southeast of the site. This site is also a proposed Natural Heritage Area (pNHA).

## 5.5. EIA Screening

5.5.1. Having regard to the nature and scale of the development, which is for the division of an existing residential building into 3 no. residential units within an urban area, is not considered to fall within the classes listed in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended), and as such preliminary examination or an Environmental Impact Assessment is not required. See Form 1 attached to this report.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The Third Party appeal has been received in relation to the Planning Authority's decision to grant permission. The grounds of appeal are submitted from the neighbouring property to the immediate east of the appeal site. The grounds of appeal is summarised as follows:

#### Wayleave/Right of Way

- The use of the pedestrian wayleave across the appellant's property between the subject site and Meath Road would be intensified.
- The use of the wayleave from the proposed development has potential to diminish existing residential amenities.
- There is sufficient vehicular/pedestrian access via Glenard Avenue without needing to continue the use of the wayleave.
- The Planning Authority dismissed the observations raised in the submission to include a condition prohibiting the continuation of the wayleave.
- The Board are requested to include a condition prohibiting the continuation of the use of the existing pedestrian wayleave.

#### Overlooking

- A condition of a previous permission (Reg. Ref. 02630139) relating to obscure glazing was never complied with as coating was affixed to clear glazing on the upper floor windows of the eastern gable which overlooks the appellant's property.
- A condition should be attached requiring that obscure glazing be fitted to the upper floor of the rear (east) gable.

## **6.2. Applicant Response**

- A response has been received on behalf of the applicants which is summarised as follows:
  - The main issue of the appeal is the Right of Way. This is an undisputed fact and has been continually used by the applicant since inhabiting the house.
  - It is incorrect to state that this is a pedestrian wayleave and was given to a named individual. It is a Right of Way and exists for the benefit of the property, 4/5 Raheen Villas, and is an inalienable property right protected in law.
  - Wicklow County Council dismissed the contention of the appellant regarding the Right of Way.
  - The argument regarding the intensity of the use of the Right of Way is irrelevant.
  - The only person using the Right of Way after the conversion will be the applicant (from the dwelling) and the boundary fence will deter occupants of the apartments from using the Right of Way therefore reducing its use.
  - The current arrangement on the appeal could see up to 10 people utilising the Right of Way however this will be limited from the proposal.
  - The issue of overlooking has been dealt with by the Planning Authority and is accepted by the applicant.

## **6.3. Planning Authority Response**

- None.

## **6.4. Observations**

- None.

## **7.0 Assessment**

Having examined the application details, the appeal and all other documentation on file, the reports of the Planning Authority, having conducted an inspection of the site, and having reviewed relevant planning policies and guidance, I am satisfied that the main issues to be considered are those raised by the Third Party. I am satisfied that no other substantive issues arise. This appeal can be addressed under the following relevant headings:

- Principle of Development
- Right of Way
- Overlooking
- Appropriate Assessment (Screening)

## **7.1. Principle of Development**

7.1.1. The proposed development seeks permission to divide an existing two storey property 3 no. separate dwelling units comprising 1 no. house and 2 no. apartments. An existing garage is to be demolished to facilitate 1 no. car parking space for each of the units. According to the submitted particulars, the works will be confined to the interior of the existing building.

7.1.2. Having reviewed the appeal file, I consider that the proposal complies with the overarching objectives of the Development Plan in terms of compact growth within existing settlements; increased densities and reuse of existing buildings; provision of high standards of living and quality design/layout. I also consider that the development would be in accordance with the 'Development and Design Standards' as contained in Appendix 1 of the Development Plan.

7.1.3. Overall, I am satisfied that the principle of residential development is acceptable and that the material change of use of the existing dwelling to provide 3 no. habitable units would not be out of character within an urban location.

## **7.2. Right of Way**

7.2.1. A primary issue raised in the grounds of appeal relates to a Right of Way/Wayleave traversing the Third Party's property to the immediate east at Raheen House on Meath Road to the rear of the appeal site. The appellant is concerned that the development will intensify the use of this wayleave and would diminish the residential amenity of Raheen House. The Third Party has requested that a condition be imposed prohibiting the continuation of this wayleave/Right of Way across their property.

7.2.2. The applicant's response to the appeal informs that the Right of Way has been continually use since inhabiting the house on the appeal site and is protected in law. It is the contention of the applicant that the argument regarding the intensity of the use of the Right of Way is irrelevant. It is further indicated that the layout from the proposal

will deter the occupants of the apartments from using the wayleave and that there will be no intensification from the proposal.

7.2.3. In respect to the above, I note that issues to do with title or Rights of Way are not matters which can be adjudicated by the Board. I refer to Section 5.13 of the Development Management Guidelines for Planning Authorities (2007) which states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. I also refer to Section 34(13) of the Planning and Development Act 2000 (as amended) states that '*a person shall not be entitled solely by reason of a permission under this section to carry out any development*'. In this regard, I consider that the Board has no role in this matter in so far as it relates to the wayleave over land - it is a civil matter between the respective affected parties.

### 7.3. **Overlooking**

7.3.1. The Third Party raises concerns in respect of overlooking arising from the appeal site. Reference is made to a planning condition of a previous permission on the appeal dating back to 2002 (Reg. Ref. 02630139) requiring that the two windows at first floor level on the east-facing gable contain obscure glazing. However, the appellant states that this condition was never complied with and that a coating was affixed to clear glazing on these windows. The appellant has requested that should permission be granted that a condition should be attached requiring that obscure glazing be fitted to the first floor windows of the rear (east) gable.

7.3.2. The Planning Authority sought clarity on this matter in Item No. 3 of the Request for Further Information. The applicant indicated that windows would be retained as at present and that includes the two windows which will remain obscured. The Planning Authority included a condition addressing the matter of the windows. This condition states as follows:

*5. (a) The 4no. windows located on the upper floor of the side (south) elevation shall be fitted with obscure glazing.*

*(b) The 2no. windows located on the upper floor of the rear (east) gable elevation shall be fitted with obscure glazing.*

*Note: The application of a translucent film does not satisfy the requirements of this condition.*

- 7.3.3. The applicant's response to the appeal indicates that the matter of overlooking has been accepted and therefore is not opposed to the above condition being attached. I therefore consider that the condition of the Planning Authority in relation to obscured glazing is both reasonable and appropriate to address the concerns of the appellant and would ensure that the privacy of the adjacent property to the east. Should the Board be minded to grant permission, a similar condition can be attached.

## **8.0 Appropriate Assessment (Screening)**

- 8.1. Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

## **9.0 Recommendation**

- 9.1. I recommend that permission be GRANTED for the following reasons and consideration and subject to the conditions listed below.

## **10.0 Reasons and Considerations**

- 10.1. Having regard to the site location within a residential area of an urban settlement, the policy framework provided in the Wicklow County Development Plan 2022-2028 and, the requirements of the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities (2024); it is considered that the proposed development for the sub-division of an existing two-storey property into 3 no. separate dwelling units comprising 1 no. house and 2 no. apartments, subject to conditions, would provide a reasonable standard of accommodation on the site, would not have a significant adverse impact of the existing residential amenities of adjoining properties and would be consistent with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 9<sup>th</sup> August 2024 and as amended by Further Information received on the 29<sup>th</sup> October 2024, 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. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason: In the interest of clarity.**

2. Each of the proposed units shall be used as a single residential unit only and for residential purposes only. The units shall not be subdivided or used for short-stay accommodation.

**Reason: In the interests of orderly development.**

3. The glazing to the 4no. windows located on the upper floor of the side (south) elevations and the 2no. windows located on the upper floor of the rear (east) gable elevation shall be fitted with obscure glazing. This glazing shall be manufactured opaque or frosted glass and shall be permanently maintained. For the interests of clarity, the application of a translucent film to the surface of clear glass does not satisfy the requirements of this condition.

**Reason: In the interest of residential amenity.**

4. Prior to commencement of development, a comprehensive Landscaping and Boundary Treatment Plan shall be submitted to and agreed in writing by the Planning Authority. This plan shall demonstrate and specify tree planting along the northern site boundary. 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, 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 interests of residential and visual amenity.**

5. 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.

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

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

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

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

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Matthew O Connor  
Planning Inspector

27<sup>th</sup> March 2025



# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	ABP-321498-24		
<b>Proposed Development Summary</b>	Division of existing house into one house and two apartments. Demolition of existing garage.		
<b>Development Address</b>	4/5 Raheen Villas, Glenard Avenue, Bray, County Wicklow, A98 HH21		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	<b>X</b>
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			Proceed to Q3.
<b>No</b>	<b>X</b>		No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>			Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>			Preliminary examination required (Form 2)

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	<b>X</b>	<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<b>Yes</b>		<b>Screening Determination required</b>

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