



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306191-19

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<b>Development</b>	Construction of 3 no 3-bedroom residential units
<b>Location</b>	Iona ('Abigail House'), Commons Road, Loughlinstown, Co. Dublin, D18 N2X4
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D19A/0721
<b>Applicant(s)</b>	Aultagh Construction Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Aultagh Construction Ltd.
<b>Observer(s)</b>	Brendan Lyons Anne-Marie Smith G. Sheehan and Carmel Barrett
<b>Date of Site Inspection</b>	3 <sup>rd</sup> September 2020

**Inspector**

Emer Doyle

## 1.0 Site Location and Description

- 1.1. The has a stated area of 0.14 hectares and is located on the southern side of Commons Road c. 1.2km to the northwest of the village of Shankill Village, Co. Dublin. Commons Road runs parallel with the Shanganagh/ Loughlinstown River for circa 670m from the junction with the N11 to the junction with the Shanganagh Road. There is a mix of house types along the southern side of the road with some backland developments.
- 1.2. The site currently has hoarding on the roadside boundary and there are construction materials and a construction vehicle within the grounds of the site. There are two buildings on site which are in bad state of disrepair. The dwelling to the front of the site was originally the main dwelling and the dwelling to the rear was an outbuilding previously used for residential purposes.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of 3 No. 3 bedroom terraced dwellings together with 6 parking spaces. Each house comprises of a lower ground floor, an upper ground floor and a first floor. The lower ground floor is left open to allow any flood waters to pass below the structure without obstruction.
- 2.2. The application was accompanied by the following:
  - Proposed Engineering Services Report
  - Planning Design Report
  - Shadow Survey Drawings
  - Review of Sunlight and Daylight Access Analysis
  - Planning Statement
  - Emergency Plan
  - Information to Inform Appropriate Assessment Screening
  - Flood Risk Assessment

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Permission refused for two reasons relating to flooding and impact on residential amenity.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The planner's report considered that the previous use was abandoned having regard to the site history, the condition the buildings and the description of the buildings in used in the site notices in 2009 as 'substandard, dangerous, and derelict.' As such it was considered that the buildings came within Class 2 of Appendix 13 of the Development Plan.
- It was considered that the design was excessively high and would give rise to overbearing impacts and overlooking impacts.

#### 3.2.2. Other Technical Reports

**Drainage Planning-** recommended refusal on the basis that the applicant had not satisfactorily demonstrated that the footprint of the site on which the applicant proposes to build the three houses had been established as that of existing residential units. The proposal was therefore considered to be new development which is not permitted within Flood Zone A or B for highly vulnerable uses.

**Transport Dept.-** required Further Information in relation to access.

### 3.3. Prescribed Bodies

3.3.1. Irish Water: No objection subject to condition.

### 3.4. Third Party Observations

3.4.1. A total of 5 No. observations were made to the Planning Authority.

3.4.2. The issues raised are similar to the issues in the observations submitted to An Bord Pleanála.

## 4.0 Planning History

Detailed planning history in planner's report. The most relevant applications to the site and the surrounding sites are as follows:

On site:

### **V115/19**

Certificate of exemption.

### **PA D17A/0464**

Permission granted for demolition of ground floor storey of partially demolished fire damaged house, including extensive single storey out-buildings, total area of 477 square metres, which are substandard, derelict and dangerous, to clear the site for future development.

A note to the applicant was attached to the grant of permission which stated: 'The requirements of Section 5.3.3 of the Strategic Flood Risk Assessment as set out in Appendix 13 of the Dun Laoghaire Rathdown County Development Plan, 2016-2022, places severe restrictions on the quantum of development allowable at this location in advance of the construction of Flood Defences under the ECFRAMS process.'

### **PA D09A/0447**

Planning permission granted for demolition of all buildings on site.

### **PA D00A/0694**

Permission granted to retain unauthorised rear extension to dwelling and side extension to outbuildings. Condition 4 required that the outbuildings were used for residential purposes in association with the main dwelling only.

Adjacent sites:

**D19A/0082**

Permission and retention permission granted for completion of amendments to previously granted planning permission (Reg. Ref. D09A/0800/, 0800E) for a 2 storey detached dwelling.

**PA D15A/0502/ PL06D.247145**

Permission refused by Planning Authority and on appeal by the Board for amendments to D08A/0800 including a revised house type, revised location and revised site layout.

**PA D09A/0800 E**

Permission granted for extension of duration of permission D09A/0800 for a period of 5 years up to and including 07/12/18.

**PA D09A/0800**

Permission granted for dwelling on site to the east of entrance to Lisnaroe and Brooklands.

**PA D16A/0711/ ABP PL06D.247695**

Permission refused by Planning Authority and by the Board on appeal for the construction of 5 No. dwellings for one reason relating to flooding policy.

**PA D15A/0507**

Permission refused by Planning Authority for the construction of 6 No. dwellings.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant Development Plan is the Dun Laoghaire Rathdown County Development Plan. The site is zoned Objective 'A' with a stated objective 'to protect and/or improve residential amenity.'

- Section 8.2.10.2 refers to Energy Efficiency and Climate Change Adaptation
- (i) Applications for Minor Development in Areas at Risk of Flooding

Minor developments will include small-scale infill, small extensions to houses or the rebuilding of houses, and most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises. The sequential approach and justification test will not apply in these instances. However, an assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. The design of built elements in these applications should demonstrate principles of flood resilient design (Refer also to Section 4 - Designing for Residual Flood Risk of the Technical appendices to the DoECLG Flooding Guidelines).

- Appendix 13 refers to Strategic Flood Risk Assessment

## 5.2. National Policy

### **The Planning System and Flood Risk Management Guidelines 2009**

The key principles are as follows:

- Avoid the risk, where possible –precautionary approach.
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

Flood Zone A has the highest probability of flooding, Zone B has a moderate risk of flooding and Zone C (which covers all remaining areas) has a low risk of flooding.

The sequential approach should aim to avoid development in areas at risk of flooding through the development management process.

An appropriate flood risk assessment and justification for development in and management of areas subject to flooding and adherence to SUDS is recommended.

This document sets out how to assess and manage flood risk potential and includes guidance on the preparation of flood risk assessments by developers. This has regard Screening Assessment, Scoping Assessment and Appropriate Risk Assessment. It provides that only developments which are consistent with the overall policy and technical approaches of these Guidelines should be permitted.

### **5.3. Natural Heritage Designations**

5.3.1. The site is located c. 4.5km from Ballyman Glen SAC and c. 2.43km from Rockabill to Dalkey Island SAC.

### **5.4. EIA Screening**

5.4.1. Having regard to the nature and scale of the proposed development it is considered that 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.

## **6.0 The Appeal**

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

6.1.1. The grounds of appeal can be summarised as follows:

- The proposed development is a Class 1 development and the Planning Authority have incorrectly concluded that it is Class 2.
- The proposed development would contribute to diversifying housing stock and the design is appropriate and in line with the 'Urban Development and Building Height Guidelines'
- A new drawing has been submitted with the appeal- Drawing 04-03 to address overlooking.
- The subject development has integrated sufficient design features to ensure that a reduced garden depth would not give rise to overlooking.
- The Planning Authority accept that the proposed development would not result in any undue overshadowing. They did however consider that the analysis as submitted should be expanded to capture 9am and 6pm. An additional drawing has been included in the appeal in this regard.



## 6.2. Planning Authority Response

- A very detailed report from the Drainage Section is included in the appeal response. The main points are that this is a Class 2 development and there are a number of areas in Dun Laoghaire where Circular PL2/2014 does not apply in relation to small scale infill development and this is one of them. If the Board does not agree with this conditions are included.
- Development represents 'Highly Vulnerable Development' in accordance with Table 3.1 of The Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009 and 'Minor Development – Class 2' under Appendix 13 of the County Development Plan.
- Contrary to Policy UD1 of Development Plan.
- Overlooking impacts and inadequate private open space.
- Planning Authority considers that the applicant has failed to demonstrate that the residential use of the site has not been abandoned.
- Concern regarding 8.9m height of terrace

## 6.3. Observations

The observations submitted can be summarised as follows:

- Support refusal by the Planning Authority.
- Stated site area is incorrect.
- The proposed development represents a new development, not a refurbishment of the existing site.
- Overdevelopment of the site.
- The building has been unoccupied for 'most of the time since the HSE bought it in 2001' as it was deemed unfit for habitation.
- The terrace proposed would be out of keeping with existing development in the area and would be visually incongruous.

## 7.0 Assessment

7.1. The main issues that arise for consideration in relation to this appeal can be addressed under the following headings:

- Class 1 or Class 2?
- Flood Risk and Policy
- Impact on Visual and Residential Amenities
- Appropriate Assessment

### 7.2. Class 1 or Class 2?

7.2.1. The Planning Authority refused permission for two reasons only, the first reason related to risk of flooding. The site is located within the catchment of the Loughlinstown/ Shanganagh River Stream and within Flood Zone A of the Office of Public Works Catchment Flood Risk Assessment and Management (CFRAM). Proposals for highly vulnerable development such as dwelling houses. Flood zone A relates to areas with the highest risk of flooding from rivers (i.e. more than 1% probability or more than 1 in 100). The objective of the 'Planning System and Flood Risk Management' is to integrate flood risk management into the planning process, thereby assisting in the delivery of sustainable development. For this to be achieved, flood risk must be assessed as early as possible in the planning process with one of the core objectives being to 'avoid inappropriate development in areas at risk of flooding.' Section 4.6 of Appendix 13 of the Development Plan outlines two classes of 'Minor Developments.' These are: Class 1- Works directly associated with existing developments, such as extensions, renovations and rebuilding within the footprint of the existing development, and changes of use. Class 2 – Works in relation to infill development, which may include development of previously unused (greenfield) land, or building within the curtilage of an existing development, but outside the footprint of the building. In the case of class 1, the 'Sequential Approach' and 'Justification Test' will not apply as they relate to existing buildings. However an assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a

watercourse, floodplain or flood protection and management facilities. For Class 2 development, construction of new buildings on what would otherwise be greenfield, or undeveloped land, has generally been found to generate an un-justifiable level of risk, either through introducing new people into a floodplain, blocking surface water and overland flow paths or requiring works which are likely to have a negative impact on flood risk elsewhere. For this reason, new, standalone development is not permitted within Flood Zone A or B or highly vulnerable uses or in Flood Zone A for less vulnerable uses.' I consider that the key concern of the Board in relation to flood risk and planning policy for this area is whether or not the development is classified as Class 1 or Class 2.

7.2.2. The Planning Report and the report from the drainage section consider that this is new development which is not permitted in Flood Zone A or B in accordance with the policy. The case made by the Planning Report relates to a number of factors. Firstly, the description used in the site and newspaper notices of the history file- D09A/0477 as follows: 'demolition of existing vandalised house and extensive out-buildings which are sub-standard, derelict, and dangerous, to clear the site for future re-development pending necessary funds'. The planning report notes that it is clear that there was an intention to clear the site for future re-development and that this suggests that the residential use of the site, having regard to the condition of the buildings described and the intention to demolish such structures had been abandoned. Secondly, the report notes the timeframe that has passed since the 2009 application and considers that it is reasonable to consider that the condition of buildings on site may have deteriorated further since that time. Thirdly, the report notes that the footprint that it is intended to develop was granted permission under D00A/0694. Under this application, permission was granted to retain an unauthorised rear extension to dwelling and side extension to outbuildings at this location. Condition 2 required that the entire premises were used as a single dwelling unit. Condition 4 was as follows: 'The outbuildings shall not be used solely for residential purposes in association with the main dwelling and shall not be used, sold, or let independently.' Taken with the drawings submitted under D17A/0464 which indicate that the first floor of the house had already been demolished, and the description of development under D17A/0464 as follows: 'demolition of ground floor of partially demolished fire damaged house including extensive single storey

outbuildings which are substandard, derelict and dangerous, to clear the site for future development', it is clear that the main house was not in residential or guesthouse use at that time and the outbuildings were linked to the main house use by Condition 4. The Planning Authority report considered 'that given that much of the main house has been demolished, it has not been demonstrated in the current application how the use of the outbuildings is linked to an existing residential use.' Furthermore, it also considered that the applicant had not adequately demonstrated to the satisfaction of the Planning Authority that the residential use of the subject buildings has not been abandoned. It states that this matter is of critical importance in terms of differentiating between Class 1 and Class 2 as set out in Section 4.6 of Strategic Flood Risk Assessment, Appendix 13 of the Dun Laoghaire Rathdown 2016-2022 Development Plan. The report from the Drainage Planning Section states that the proposed development may only be considered if it falls into the category of Class 1 Minor Infill Development in accordance with Section 4.6 of Appendix 13 of the County Development Plan. The report references the planning statement submitted with the application together with the planning history under D09A/0447 which describes the outbuildings as 'sub-standard, derelict and dangerous' and concludes that the applicant has not satisfactorily demonstrated that the footprint of the site on which the applicant proposes to build three houses has been established as that of existing residential uses. Therefore, it was considered to be new development which is not permitted in Flood Zones A and B and a refusal was recommended in this regard.

7.2.3. The appeal notes that the applicant purchased the site in 2018. Prior to this the site was under the control of the Health Service Executive from 2001 and before that it was in private use as a residential dwelling and guesthouse. It states that in April 2017, Abigail House suffered fire damage and has not been fit for habitation since then. 'That part of the residential dwelling described as 'outbuildings' in the planning history, escaped the fire.' The case for a residential use is set out in Section 2.1 of the appeal. The main thrust of the appeal response is that the Planning Authority is overly reliant on the link between the outbuildings and the main house as set out in Condition 4 of D00A/0694. It is stated that the fact the main building suffered fire damage does not mean that the residential use of the building has ceased.

7.2.4. Section 2.2 of the appeal response deals with the issue of abandonment. The applicant asserts that it is clear from the history files that it was always the applicant's intention to redevelop the site. The site was always zoned for residential use at the time of each of the history applications. It is submitted that the Planning Authority have incorrectly relied on the sites planning history to suggest that the use has been abandoned. The Irish Courts have 'repeatedly stressed that mere non-use is not proof of abandonment' and the planning authority have disregarded long established criteria for assessing whether a use has been abandoned, namely; (1) the owner's intentions and (2) the physical condition of the buildings. It is stated that the physical layout of the building reflects its use as a dwelling and prior to 2001, it was in use as a residential dwelling and guesthouse and post 2001, it was used for temporary accommodation by asylum seekers by the HSE.

7.2.5. I refer the Board to the observation submitted by Brendan Lyons. In Section E, it is stated that 'the site has lain abandoned and derelict for most of the 20 years. It is easily accessible and as a result has been the location of a lot of unsocial behaviour. It is likely that such behaviour caused the fire in 2017'. The observation also noted that the HSE was trying to sell the site as a site in 2013 and attached 2 newspaper articles. I consider that they contain information that is relevant to the issue of abandonment. The first newspaper article is written by Ms. Justine McCarthy for The Sunday Times dated the 16th day of June 2013. It is stated that Iona House has been unoccupied for nearly all of the 12 years since the HSE bought it. The HSE's original plan was to relocate a mother and baby service from Eglinton Road in Donnybrook to Loughlinstown. Apart from being used for a brief period as temporary accommodation for asylum seekers, it has been unoccupied since being bought in 2001. The total cost to the HSE is now estimated at more than €2m, including €100,000 a year for maintenance and hiring a private security company. Two years after its purchase, a survey by Michael McShane Architects identified structural defects in the single-storey annexe and recommended that part of the property be demolished. In 2004, an internal HSE report described the main house and adjoining annexe as 'in a generally a run down state.' In 2017, the HSE board decided to lease the property, also known as Abigail House, to Sunbeam House Services, a Bray based charity providing training and support for adults with intellectual disabilities. It was confirmed in the article that SHS never moved into the property and John

Hannigan the director of SHS stated that 'The house wasn't habitable... it needed to be renovated and refurbished' The works would have cost at that time c. €500,000 which was not available to the charity and SHS gave the property back to the HSE sometime c. 2012. The second newspaper article dates to the 7th day of May 2017 and was also written by Ms. Justine McCarthy for The Sunday Times. It was written shortly after the fire in April 2017 and states that 'Gardai are investigating the cause of a fire at a house in south Dublin which has mostly lain unused since it was bought 16 years ago by the HSE..' The article also noted that the HSE tried to insure the house for €1m in 2013, but its broker said that as the building was in an extremely poor state of repair, it was unlikely to be reinstated in the event of the loss and offered maximum cover of €50,000.

7.2.6. In terms of whether the site fits into Class 1 or Class 2, Class 1 relates to minor works directly associated with existing developments, such as extensions, renovations and rebuilding within the footprint of the existing development, and changes of use, whilst Class 2 refers to infill development. Based on case law some suggested tests of abandonment (Scannell, 1995) are:

- The intention of the owner and/or occupier to abandon or not abandon
- The period during which the use was discontinued. The longer the period, the more likely the use is to be abandoned.
- Whether or not there have been any intervening issues
- The physical condition of the land or structure.

7.2.7. In this case, I would suggest that having regard to the zoning of the site as residential and the number of planning applications from the time the HSE bought the site until the present, it seems likely that there was always an intention to use the site for residential purposes. However, it seems clear to me that the site has been used minimally for residential purposes for the past 20 years. That is a very significant period of time and taken together with the various descriptions of the buildings as 'substandard, derelict, and dangerous' in planning applications on site together with the information in the newspaper articles, I am satisfied that the house has not been used for residential purposes for many years. This issue was raised in the planning authority report and the onus is on the applicant to prove that residential use was in place. The appeal response does not provide any documentary evidence

to demonstrate that a residential use was in place other than for a brief period by asylum seekers during the past 20 years. Whilst the fire in 2017 could be seen to be an 'intervening issue', in that after this the first floor of the house had to be demolished, it seems likely from the evidence before me that the house had not been in residential use for many years preceding the fire. In terms of the physical condition of the outbuildings, I would consider them to be dangerous and derelict and I also noted that they were partially boarded up. I asked the applicant on the site inspection if it was safe to enter and she advised me that she wouldn't herself but that I could try. I took a look inside the outbuilding and the ceiling was falling in so I decided that it would be prudent not to enter the building. In terms of the physical condition of the main dwelling, known as both Iona House and Abigail House, it is completely boarded up and inaccessible in so far as I could ascertain. The first floor and an adjoining car port has been demolished. I considered that the main house was unrecognisable as a house and a member of the public visiting the site would have difficulty telling the difference between the outbuilding and the main house. There is a photograph of the house in the newspaper article dated May 2017 which shows a large two storey gable fronted house. I refer the Board to photographs of the outbuildings and the main house and I have labelled them as either outbuilding or house in order to be of assistance to the Board. I would consider that both buildings have the appearance of derelict, run-down, sheds in very poor condition. I refer the Board to the photograph on page 4 and 5 of the planning report submitted with the application as this contains aerial photographs of the site and the poor condition of the buildings. For further evidence of the poor condition of the buildings, I note that page 5 of the planning report submitted with the application states that the site is on the Derelict Sites Register. On the basis of the foregoing, it would appear, on balance that the subject site had laid vacant for a considerable period of time and the buildings on the site have not been suitable for human habitation for many years. However, I would suggest that it was the intention of the HSE to redevelop the site for residential use.

7.2.8. I consider that Class 1 of the policy relates mainly to minor works to existing buildings such as extensions, renovations, rebuilding etc. This application is for three new dwellings within the footprint of an outbuilding which was previously associated and linked by condition with a residential use. As such, having regard to

the evidence before me, I consider that the residential use has ceased and has been abandoned. Whilst I would consider the site to be a brownfield site rather than a greenfield site, in terms of the policy, I consider it to be more closely aligned to Class 2 – Class 2 relates to works in relation mainly to infill development. Having regard to the location of the site and the proximity to existing development, the type of development proposed of three new dwellings, and the wording of previous history applications on the site which described the existing buildings on the site as ‘substandard, dangerous, and derelict’ and the need ‘clear the site for future development’, my view is that the development proposed relates to Class 2 development. In this regard, I concur with the conclusions of the planner report and the drainage report.

### **7.3. Flood Risk and Policy**

- 7.3.1. New stand-alone development is not permitted within Flood Zone A for highly vulnerable uses such as housing as it ‘has generally been found to generate an unjustifiable level of risk, either through introducing additional people into the flood plain, blocking surface water and overland flow paths or requiring works which are likely to have a negative impact on flood risk elsewhere’ according to the Development Plan policy. I note that the Board has taken a consistent approach to new development in this area and permission was refused on appeal for residential uses on sites in the vicinity under ABP PL 06D. 247695 and ABP 06D.247145. I note that a single house refused by the Board in 2017 under 06D.247145 was developed recently under a previous permission on the site- PA 09A/0800E together with a further application for retention and completion of amendments under PA D19A/0082. This site is located to the east of the entrance to ‘Lisnaroe’ and ‘Brookfield’ and a photo of same is included in photo 7 of the photos attached to this report. It is not indicated on any of the photographs or documentation submitted with the application.
- 7.3.2. A flood risk assessment was submitted with the application however, this takes the approach that the proposed development relates to Class 1 Development. Section 3.1 acknowledges that a review of past flooding occurrences and a review of current OPW flood predication data indicates that the subject site would be classed as Flood Zone A, with a correspondingly high probability of flooding.



- 7.3.3. It acknowledged that whilst the proposed use would be ‘highly vulnerable’, the ‘sequential approach’ and the justification test do not apply as the scale of development is Class 1. I note that a number of flood design measures have been submitted as part of the application.
- 7.3.4. I refer the Board to the response from the Drainage Section included in the appeal response. It urges the Board to consider this application as a Class 2 Development but suggests conditions if the Board is minded to grant permission. It notes planning circular PL02/2014 in relation to flooding and small infill housing development where Section 5.28 states that such applications are unlikely to raise significant flooding issues. It states that there are a number of areas in Dun Laoghaire where small infill development are exceptions to this policy and this is one of them. It advises the Board that there is Central Government Funding for a Flood Relief Scheme for this area which is in the preliminary stages.
- 7.3.5. The development provides for 3 dwellings at this highly vulnerable location and I consider that the development proposed relates to Class 2 development. As such, I consider that the proposal would generate an unjustifiable level of risk through introducing additional people into the floodplain. Section 5.1 of the Strategic Flood Risk Assessment (SFRA)(Appendix 13 of the CDP), indicates that with the exception of zoned Major Town Centres and the Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. In addition, Section 5.3.3 of the SFRA (Appendix 13 of the CDP), which sets out the policy for the Shanganagh River catchment, indicates that development of the scale proposed (construction of 3 no. houses) is not an allowable development at this location. It is therefore considered that the proposed development would contravene Sections 5.1 and 5.3.3 of the SFRA as set out in Appendix 13 of the CDP.

#### **7.4. Impact on Visual and Residential Amenities**

- 7.4.1. Concerns are raised in relation to overlooking, overbearing impacts, unsuitable design for the location and fear that the existing house may be redeveloped at a later stage.

- 7.4.2. In relation to overlooking, an additional drawing has been submitted with the appeal response- Drawing No. 04-03. It is stated that this is to address the concerns of Mr. Diarmuid Farrell, the occupant of the house to the west of the site. Whilst Mr. Farrell did submit an observation to the Planning Authority, he has not submitted an appeal or observation to the Board. I note that the revised northern elevation provides for screening on some of the windows to the front of the house. Having regard to the separation distance of c. 26m between the house to the west and the proposed dwellings, I do not consider that the proposed development would unduly overlook this house in any case, even in the absence of the revised drawings. As such, should the Board be minded to grant permission, I consider that the drawings as submitted with the application are satisfactory.
- 7.4.3. I note that the closest house to the south of the site is 'Lisnaroe'. This house faces onto its driveway at an angle to the site and there is a garage between the site and the proposed development. I note that there are windows and balconies on the elevation facing Lisnaroe but in my view these have been carefully designed to mitigate any overlooking issues. In addition, there are no windows of habitable rooms directly facing each other and as such, I am satisfied that there is no significant overlooking.
- 7.4.4. I would share the concerns of the Planning Authority in relation to overbearing impacts and design. The planning report considers that the proposed development would be visible from the public road and would be at variance with the existing character of the area by reason of the terrace character and the design. The report expresses concern in relation to the overall height of 8.9m when viewed from the rear elevation, the design, the roof profile and the form of dwellings having regard to Policy UD1: Urban Design Principles. It is also considered that the dwellings would have an overbearing impact and that it would be contrary to Section 8.2.3.4 of the plan which requires that infill development should respect the height and massing of existing residential units.
- 7.4.5. I consider that the proposed development has not been carefully thought out and I do not consider that it can be assimilated into the streetscape at this location. I note that the development has been designed to be left open to raise the lowest habitable level to a datum of 11.5m as a flood mitigation measure. In the event of a flood, this would allow any flood waters to pass below the structure without obstruction. This

has resulted in a building that is overly high and would result in negative and overbearing impacts on neighbouring properties in my view. Furthermore, the terrace of dwellings is not a suitable design approach for this site and would fail to integrate or be compatible with the design and scale of existing properties in the vicinity of the site and result in a discordant feature in the streetscape at this location.

7.4.6. I note that some of the observations submitted have raised concerns that there may be future development on the site of the original dwelling – Iona/ Abigail. I refer the Board to the planning report submitted with the application which states that under the Design Rationale Section on page 6 that ‘the redevelopment of Abigail House was discounted at an early stage as it would compromise the amenity of the existing dwelling to the east.’ As such, I consider that this concern is speculative only and has no basis.

## 7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

8.1. Having regard to the above, it is recommended that permission be refused for the following reasons:

## 9.0 **Reasons and Considerations**

1. Having regard to the Dun Laoghaire Rathdown County Development Plan 2016-2022, including the Strategic Flood Risk Assessment (SFRA) in Appendix 13 of this plan, the subject site is located within the flood plain of the Shanganagh River and within a Flood Zone A area as identified on Map No. 10, Flood Zone Maps, as set out in the 2016-2022 Dun Laoghaire Rathdown County Development Plan (CDP). The subject proposal represents ‘Highly Vulnerable Development’ in accordance with Table 3.1 of the Planning System and Flood Risk Guidelines for Planning Authorities

2009 and 'Minor Development- Class 2' development under Appendix 13 (Strategic Flood Risk Assessment) of the Dun Laoghaire Rathdown County Development Plan 2016-2022. Section 5.1 of the Strategic Flood Risk Assessment (SFRA)(Appendix 13 of the CDP), indicates that with the exception of zoned Major Town Centres and the Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. In addition, Section 5.3.3 of the SFRA (Appendix 13 of the CDP), which sets out the policy for the Shanganagh River catchment, indicates that development of the scale proposed (construction of 3 no. houses) is not an allowable development at this location. It is therefore considered that the proposed development would contravene Sections 5.1 and 5.3.3 of the SFRA as set out in Appendix 13 of the CDP. The proposed development is in area which is at risk of flooding and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the design, scale, massing, and height of the proposal and the proximity of the development to adjoining properties, it is considered that the proposed development would constitute overdevelopment of the site and would have an overbearing impact on adjoining properties. The proposed development fails to integrate or be compatible with the design and scale of adjoining buildings and as a result would have an adverse impact on the character of the area and be contrary to Policy UD1 and Section 8.2.3.4 of the Dun Laoghaire Rathdown County Development Plan 2016-2022. The proposed development would, therefore, by itself and the precedent it would set for other development, seriously injure the amenities of property in the vicinity and would be contrary to the provisions of the Development Plan and the proper planning and sustainable development of the area.

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Emer Doyle  
Planning Inspector

30<sup>th</sup> October 2020