



An
Bord
Pleanála

Inspector's Report ABP-307151-20

Development

The demolition of the existing site entrance gates off Monkstown Road to form a new road setback and widened vehicular entrance, the demolition of the existing bungalow and sheds to the rear of the site, partial demolition of the existing boundary wall between the access laneway and northern boundary of 81a, the construction of a new access roadway and path to 7 no. residential units comprised of 3 no. 3-storey semi-detached units (6 units in total) and 1 no. 2 bedroom detached 2 storey unit together with all associated site works, landscaping, services and utilities.

Location

81A Monkstown Road, Monkstown,
Co. Dublin, A94 D9X9.

Planning Authority

Dún Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

D19A/0349

Applicant(s)

Dowlow Limited

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal

First Party v. Decision

Appellant(s)

Dowlow Limited

Observer(s)

Dorothy Murray

Barbara Murray

Date of Site Inspection

31st August, 2020

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located in the suburb of Monkstown, Co. Dublin, approximately 150m west of Monkstown village / neighbourhood centre and c. 350m southwest of Salthill and Monkstown train station, where it occupies a backland position to the south of Monkstown Road. The immediate site surrounds are predominantly residential with the access laneway leading to the site proper and Monkstown Road generally characterised by a variety of period properties although there are several examples of more recent infill housing schemes in the wider area (typically located to the rear of those properties along the southern side of Monkstown Road) such as 'Heathfield' on the adjoining lands to the west (a small cul-de-sac of conventional, detached & semi-detached housing) and 'Purbeck' (a more contemporary scheme of two-and-a-half storey, semi-detached & terraced units).
- 1.2. The site itself has a stated site area of 0.292 hectares and comprises the property at No. 81A Monkstown Road as well as the shared access laneway from that roadway which serves several neighbouring residences. It includes a single-storey dwelling house and associated domestic outbuildings / sheds set within mature landscaped gardens with extensive tree planting, particularly alongside the southern and western site boundaries. The lands to the immediate north, east and west are occupied by existing housing whilst the southern site boundary adjoins the Monkstown / Stradbroom Stream with a former nursing home (approved for redevelopment as an apartment scheme) situated on the more elevated lands on the opposite bank. The perimeter site boundaries generally comprise a combination of fencing, blockwork / masonry walling and mature planting, although the southern site boundary alongside the stream is defined by a concrete post and timber panel fence (which would appear to be of relatively recent construction given its overall condition and a lack of weathering).

2.0 Proposed Development

- 2.1. The proposed development involves the demolition of the existing single-storey dwelling house and associated outbuildings / sheds to the rear of the site to provide for the construction of 7 No. residential units comprising a series of 6 No. three-

storey, semi-detached dwelling houses and 1 No. two-storey, detached dwelling. Access to the site will necessitate the upgrading of the existing shared laneway and includes for the demolition of the existing entrance gates off Monkstown Road to form a new road setback and widened vehicular entrance. Associated site development works include the partial demolition of the existing boundary wall between the access laneway and the northern boundary of No. 81A Monkstown Road, the construction of a new access road and pathway, boundary treatment, landscaping, and assorted infrastructural works.

- 2.2. An application for a Certificate of Exemption pursuant to the provisions of Section 97 of the Planning and Development Act, 2000, as amended, is stated to have accompanied the planning application (Ref. No. V/054/19).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following the receipt of further information, on 26th March, 2020 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following single reason:
- In accordance with Table 3.1 of 'The Planning System and Flood Risk Management Guidelines', residential development is classified as highly vulnerable. From the information provided by the applicant (flood reports and hydraulic modelling), the southern portion of the subject site is located within Flood Zones A & B. In determining the site as undefended, the proposed development is not therefore considered to be in accordance with Section 4.7.1.1 (New Development) and Section 5.1 (Undeveloped land) of Appendix 13 (Strategic Flood Risk Assessment) of the Dún Laoghaire Rathdown County Development Plan, 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. *Planning Reports:*

An initial report details the site context, planning history, and applicable policy considerations before stating that the proposed development is acceptable in principle given the land use zoning, the size and characteristics of the site, the surrounding pattern of development, and the proximity of Monkstown Village. While it is acknowledged that the density of the scheme at c. 24 No. units per hectare is below that recommended by national guidance, it is considered appropriate given the on-site constraints such as the shared communal driveway and the access strip required to be provided alongside Stradbroke Stream. The overall design and layout of the proposed housing is deemed to be acceptable and sympathetic to the character of the Monkstown Architectural Conservation Area. It is further stated that the proposed development will not have a detrimental impact on the residential amenity of neighbouring properties by reason of overlooking, overshadowing, or by being visually overbearing, due to the design, scale and form of the proposed dwellings and the separation distances available. However, concerns are raised as regards the proposal to raise a section of the boundary wall to the immediate south of 'Brown Cottage' whilst it is also considered preferable to retain 2 No. trees which presently screen that property. The report thus concludes by recommending that further information be sought in respect of the foregoing as well as the flooding, drainage, and traffic concerns raised in the reports of the 'Drainage Planning' and 'Transportation Planning' divisions of the Local Authority respectively (as outlined below).

Following the receipt of a response to a request for additional information, a further report was prepared which recommended that permission be refused on the basis that the proposed development would not accord with the requirements of the Strategic Flood Risk Assessment set out in Appendix 13 of the County Development Plan and would not be acceptable in terms of flood risk management as per the report of the Municipal Services Dept., Drainage Planning.

3.2.2. *Other Technical Reports:*

Architectural Conservation Officer. States that there is no objection to the proposal from a built heritage perspective.

Environment: Recommends the submission of a Construction Waste Management Plan and an Environmental Management Construction Plan.

Municipal Services Dept., Drainage Planning: An initial report noted that the application site was bounded by the Monkstown / Stradbroke Stream which was known to flood and therefore recommended that the applicant be requested to submit a Site Specific Flood Risk Assessment to include the identification of the 1% & 0.1% AEP flood extents as well as the results of hydraulic modelling. In this regard, it was further noted that highly vulnerable residential development would not be allowed within the footprint of the 1% & 0.1% AEP flood extents by reference to Sections 4.7.1.1 & 5.1 of Appendix 13 (Strategic Flood Risk Assessment) of the Development Plan. The report also recommended that further information be sought in respect of a number of items pertaining to flood risk management, surface water drainage, and the provision of a c. 10m wide riparian corridor alongside the stream.

Following consideration of the response to a request for additional information, a further report was prepared which considered the site-specific flood risk assessment submitted by the applicant. This states that in determining the flood zones for the site, a critical consideration is the status of the existing concrete post and timber panel fencing in terms of its role as a flood defence mechanism / barrier. It then notes that the FRA has been developed on the basis of the fencing offering the site protection to the top of the (lower) concrete rail / panel. The report proceeds to state that whilst the existing fencing offers a 'degree' of flood protection, it is not accepted that it offers a 'standard' of protection amounting to a flood defence / barrier as it does not satisfy the OPW's design standard for flood defences and thus the site cannot be considered defended. It refers to Drg. No. M02131-01_FL01-1 which shows the extent of the (undefended) site within Flood Zones 'A' & 'B' and asserts that as the proposed development does not accord with Sections 4.7.1.1 ('New Development') & 5.1 ('Undeveloped Land') of Appendix 13 of the Strategic Flood Risk Assessment it should be refused permission (a note is appended to the case planner which suggests that the existing boundary fencing would appear to be of a relatively recent construction before querying its planning status).

The report continues by stating that an assessment of the engineering and flooding impacts of the proposal would not overcome the principle of the recommendation to refuse permission and could potentially give rise to a false expectation that any

subsequent planning application would receive more favourable consideration. It is also noted that no evidence has been provided to support the suggestion that the existing concrete panelling has been constructed as a water barrier.

It is further confirmed that a Development Plan Justification Test would be required if appropriate (i.e. highly vulnerable) development was being proposed in Flood Zones 'A' & 'B' in the event that the concrete post & timber panel fencing could not be relied upon as an existing flood defence.

The report thus concludes by recommending that clarification be sought in respect of a number of matters, including the need to demonstrate that the existing fencing has been constructed as a flood barrier and that the modelling set out in the FRA has accounted for the loss of flood storage between the proposed new wall and the existing fencing.

Parks and Landscape Services: Recommends a series of conditions as regards landscape design and open space provision in the event of a grant of permission.

Transportation Planning: An initial report recommended that further information be sought in respect of the finishes / treatment of the pedestrian pavements and parking areas. It was also submitted that the new gate proposed to the south of Perry House should be omitted in order to avoid any traffic conflict with vehicles exiting the property at No. 81C Monkstown Road.

Upon consideration of the applicant's response to a request for additional information, a further report was prepared which indicated there was no objection to the proposed development, subject to conditions.

Public Lighting: No objection, subject to conditions.

3.3. Prescribed Bodies

- 3.3.1. *Department of Culture, Heritage and the Gaeltacht:* Refers to the large scale of the proposed development and the site location within an area of archaeological potential before recommending that pre-development testing should be included as a condition of any grant of permission.
- 3.3.2. *Irish Water:* An initial report recommended that the applicant consult with Irish Water as regards the disposal of foul effluent to determine what size and type of connection to the sewer would be required and if the existing connection would need to be

upgraded etc. (noting that the sewer is positioned under a surface water stream). It was also stated that if the sewer connection had the potential to impact on the flow of the stream then that should be considered in the Site-Specific Flood Risk Assessment.

A subsequent report stated that the applicant had not addressed the issues previously raised at further information stage, specifically the requirement to engage with Irish Water to confirm the adequacy and location of the existing connection to the 450mm foul sewer (located within the bed of the stream).

3.4. Third Party Observations

3.4.1. A total of 5 No. submissions were received from interested third parties and the principle grounds of objection / areas of concern raised therein can be summarised as follows:

- Detrimental impact on the residential amenity of neighbouring properties by reason of overlooking, overshadowing, excessively overbearing height & appearance, traffic, the obstruction of private property, construction works, and general disturbance.
- Devaluation of property.
- The design, density, scale and height of the proposal is out of keeping with the surrounding pattern of development.
- Concerns as regards the adequacy of the proposed access arrangements.
- The need to consider the provision of suitable access to neighbouring properties.
- The provision of replacement planting / landscaping.
- Concerns as regards the potential to damage / destabilise the existing trees and boundary wall with the neighbouring 'Heathfield' estate.
- The exacerbation of (low) water pressure problems in the area.
- Flooding implications / risk associated with the Stradbrook Stream.
- The increased traffic impact, particularly when taken in conjunction with surrounding development.

- 3.4.2. A further submission was received from the owners of a neighbouring property and the private driveway / avenue leading from Monkstown Road to the development site which confirmed that they had consented to the planning application, were fully supportive of it, and would facilitate the works proposed to be undertaken along the driveway and entrance onto Monkstown Road.

4.0 Planning History

4.1. *On Site:*

None.

4.2. *On Adjacent Sites:*

4.2.1. *(to the immediate east):*

PA Ref. No. D02B/0376 / ABP Ref. No. PL06D.200254. Was granted on appeal on 5th December, 2002 permitting Michael O'Reilly and Patricia Stewart permission for the construction of a two-storey extension/modifications to the side and rear of the existing residential property at Hillsborough, 81 Monkstown Road, Monkstown, Co. Dublin.

PA Ref. No. D07A/1231. Was granted on 6th December, 2007 permitting Judith Kelly permission for the widening of an existing vehicular entrance to include demolition of an existing gate pillar with local adjustments to the existing boundary wall, the provision of a new gate pillar to match the original making good with matching replacement gates and ancillary works, all at 83 Monkstown Road, Monkstown, Co. Dublin.

PA Ref. No. D08A/0219. Was refused on 17th April, 2008 refusing William and Orla Tyrell permission for a two-storey extension over basement to side/rear of existing house including driveways, drainage and landscaping at Thorndean, 87 Monkstown Road, Monkstown, Co. Dublin.

PA Ref. No. D09B/0195. Was granted on 6th August, 2009 permitting Judith Kelly permission for the demolition of existing single storey boiler room and conservatory to rear and construction of a new single storey extension in its place. Permission was also sought for external landscaping works to the front and rear and minor internal

replanning and replacement works, all at 83 Monkstown Road, Monkstown, Co. Dublin.

PA Ref. No. D19A/0444. Was granted on 25th September, 2019 permitting Dowlow Ltd. permission for the demolition of existing front entrance porch and the construction of a new entrance on the south elevation, the construction of a new first floor extension to include a single bedroom, internal alterations at ground and first floors, together with all associated site works, landscaping and utilities, all at Perry House, 81B Monkstown Road, Monkstown, Co. Dublin, A94 X917.

4.2.2. *(to the immediate west):*

PA Ref. No. D12B/0285. Was granted on 29th November, 2012 permitting Dorothy Murray permission for alterations including velux rooflights to front and rear and single storey extensions to side and rear at 6 Heathfield, Monkstown Road, Co. Dublin.

4.2.3. *(to the immediate south):*

PA Ref. No. D16A/0678 / ABP Ref. No. PL06D.247679. Was refused on appeal on 10th April, 2017 refusing Randalswood Construction Limited permission for the demolition of the existing nursing home and 5 No. studio apartments and the construction of a total of 70 No. residential units in 3 No. apartment blocks, all with private terraces/balconies; a basement consisting of bin stores, plant rooms, car parking spaces, motorcycle spaces and bicycle spaces; visitor car spaces and bicycle spaces at surface level; upgrade works to the existing road and footpath serving the development and all ancillary landscaping, boundary treatment, engineering and site development works necessary to facilitate the development, all on lands at the former Richmond Cheshire Home, Richmond Park, Monkstown, Co. Dublin.

PA Ref. No. D17A/0590 / ABP Ref. No. ABP-301533-19. Was granted on appeal on 7th January, 2019 permitting Randalswood Construction Limited for a residential development consisting of the demolition of the existing nursing home and 5 No. studio apartments and the construction of a total of 56 No. residential units in 2 No. apartment blocks (1 No. four-storey block consisting of 16 No. one-beds, 12 No. two-beds and 4 No. three-beds; 1 No. four-storey block consisting of 8 No. one-beds, 12 No. two-beds and 4 No. three-beds), all with private terraces/balconies; a basement

consisting of bin stores, plant rooms, 76 car parking spaces, 5 motorcycle spaces and 41 bicycle spaces; 5 visitor car spaces and 26 bicycle spaces at surface level; upgrade works to the existing road and footpath serving the development and all ancillary landscaping, boundary treatment, engineering and site development works necessary to facilitate the development, all at Richmond Cheshire Home, Richmond Park, Monkstown, Co. Dublin.

PA Ref. No. D19A/0378 / ABP Ref. No. ABP-305843-19. Was granted on appeal on 26th May, 2020 permitting Randalswood Construction Limited permission for revisions to a residential development previously permitted under PA Ref. No. D17A/0590 / ABP Ref. No. ABP-301533-18. The proposed development will consist of minor revisions to the siting and footprint of the 2 No. permitted apartment blocks; reconfiguration of the internal permitted floor layouts of both blocks resulting in a total of 72 No. residential units in these 2 No. apartment blocks (1 No. four-storey block consisting of 17 No. one-beds and 23 No. two-beds [Block A]; 1 No. four-storey block consisting of 17 No. one-beds and 15 No. two-beds [Block B]) (in lieu of a total of 56 No. residential units permitted under PA Ref. No. D17A/0590 / ABP Ref. No. ABP-301533-18), elevational changes to accommodate this reconfiguration; revisions to the permitted basement to provide 79 car parking spaces, 7 motorcycle spaces and 64 bicycle spaces and all associated site works necessary to facilitate the development, all at the former Richmond Cheshire Home, Richmond Park, Monkstown, County Dublin. The proposed development was revised by further public notices received by the planning authority on the 17th day of September, 2019.

ABP Ref. No. PL06D.306773. Was determined on 29th May, 2020 whereby it was held that Randalswood Construction Ltd. had a reasonable basis to lodge an application for the demolition of existing buildings, construction of 127 no. apartments and associated site works, all at lands formerly known as Richmond Cheshire Home, Richmond Park, Monkstown, Co. Dublin.

4.3. *On Sites in the Immediate Vicinity:*

PA Ref. No. D16A/0724. Was granted on 23rd May, 2017 permitting Lulani Development Limited permission for 7 no. residential units consisting of 4 no. two storey (with accommodation at attic level) semi-detached houses and 3 no. two storey (with accommodation at attic level) terraced houses. The proposal includes

vehicular access from Monkstown Road, and all associated landscaping and infrastructural works. All at lands to the rear of Purbeck Lodge, 77 Monkstown Road, Monkstown, Co. Dublin.

ABP Ref. No. 306949. Was granted on 25th August, 2020 permitting Lulani Dalguise permission for a residential development on the lands at Dalguise House (Register of Protected Structures No. 870) comprising 300 No. dwelling units, including the conversion of 'Dalguise House' into two dwellings and a creche, 8 new apartment blocks of 276 No. units, ranging in height from five to nine storeys and 22 No. houses, (including the converted stable yard and refurbishment of an existing gate lodge). All at Dalguise House, Monkstown Road, Monkstown, Co. Dublin.

5.0 Policy and Context

5.1. National and Regional Policy

- 5.1.1. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' note that, in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development, potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.
- 5.1.2. The '*Urban Development and Building Heights, Guidelines for Planning Authorities, 2018*' are intended to set out national planning policy guidance on building heights in relation to urban areas, as defined by the census, building from the strategic policy framework set out in Project Ireland 2040 and the National Planning Framework. They aim to put into practice key National Policy Objectives contained in the NPF in

order to move away from unsustainable “business as usual” development patterns and towards a more compact and sustainable model of urban development. Greatly increased levels of residential development in urban centres and significant increases in the building heights and overall density of development are not only to be facilitated, but are to be actively sought out and brought forward by the planning processes and particularly so at local authority and An Bord Pleanála levels. In this regard, the Guidelines require that the scope to consider general building heights of at least three to four storeys, coupled with appropriate density, in locations outside what would be defined as city and town centre areas, and which would include suburban areas, must be supported in principle at development plan and development management levels.

5.1.3. The ‘*Architectural Heritage Protection, Guidelines for Planning Authorities, 2004*’ provide detailed guidance in respect of the provisions and operation of Part IV of the Planning and Development Act, 2000, as amended, regarding architectural heritage, including protected structures and Architectural Conservation Areas. They detail the principles of conservation and advise on issues to be considered when assessing applications for development which may affect architectural conservation areas and protected structures.

5.1.4. The ‘*Planning System and Flood Risk Management, Guidelines for Planning Authorities*’ published by the Department of the Environment, Heritage and Local Government in November, 2009 introduce comprehensive mechanisms for the incorporation of flood risk identification, assessment and management into the planning process. The core objectives of the Guidelines are to:

- Avoid inappropriate development in areas at risk of flooding;
- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;
- Avoid unnecessary restriction of national, regional or local economic and social growth;
- Improve the understanding of flood risk among relevant stakeholders; and

- Ensure that the requirements of the EU and national law in relation to the natural environment and nature conservation are complied with at all stages of flood risk management.

In achieving the aims and objectives of the Guidelines the key principles to be adopted should be to:

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

The Guidelines outline the need to identify flood zones and to categorise these according to their probability of flood events. Notably, these should be determined ignoring the presence of flood protection structures as such areas still carry a residual risk of flooding from overtopping or breach of defences and as there is no guarantee that the defences will be maintained in perpetuity.

A staged approach to Flood Risk Assessment is advocated with only such appraisal and / or assessment as is needed to be carried out for the purposes of decision-making at the regional, development and local area plan levels, and also at the site specific level. Stage 1 entails the identification of flood risk by way of screening of the plan / project in order to determine whether there are any flooding or surface water management issues related to the area or the site that may warrant further investigation. This is followed by Stage 2 (Initial flood risk assessment) which seeks to confirm the sources of flooding that may affect a plan area or site, to appraise the adequacy of existing information and to scope the extent of the risk of flooding which may involve preparing indicative flood zone maps. Where hydraulic models exist, the potential impact of a development on flooding elsewhere and of the scope of possible mitigation measures can also be assessed. The third and final stage (Stage 3: Detailed flood risk assessment) aims to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of potential flood risk to a proposed or existing development or land to be zoned, its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.

Chapter 3 of the Guidelines states that the key principles of a risk-based sequential approach to managing flood risk in the planning system are to:

- Avoid development in areas at risk of flooding;

If this is not possible, consider substituting a land use that is less vulnerable to flooding.

Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.

- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

It is a key instrument of the Guidelines to undertake a sequential approach in order to guide development away from areas at risk from flooding such as through the use of flood zones and the vulnerability of different development types, however, it is recognised that several towns and cities whose continued growth and development is being encouraged (through the National Development Plan, Regional Planning Guidelines etc.) in order to bring about compact and sustainable urban development and more balanced regional development, contain areas which may be at risk of flooding. Where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the 'Justification Test' set out in Box 5.1 of the Guidelines should be employed.

The vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used. The classification of different land uses and types of development as highly vulnerable, less vulnerable and water-compatible is influenced by various factors including the ability to manage the safety of people in flood events and the long-term implications for the recovery of the function and structure of buildings.

5.2. Development Plan

5.2.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

Land Use Zoning:

The proposed development site is located in an area zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'.

Other Relevant Sections / Policies:

Chapter 2: Sustainable Communities Strategy:

Section 2.1: Residential Development:

Policy RES3: Residential Density:

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- 'Sustainable Residential Development in Urban Areas' (DoEHLG 2009)
- 'Urban Design Manual - A Best Practice Guide' (DoEHLG 2009)
- 'Quality Housing for Sustainable Communities' (DoEHLG 2007)
- 'Irish Design Manual for Urban Roads and Streets' (DTTaS and DoECLG, 2013)
- 'National Climate Change Adaptation Framework
- Building Resilience to Climate Change' (DoECLG, 2013).

Policy RES4: Existing Housing Stock and Densification:

It is Council policy to improve and conserve the housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain

and improve residential amenities in established residential communities.

Policy RES7: Overall Housing Mix:

It is Council policy to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the County in accordance with the provisions of the Interim Housing Strategy.

Chapter 5: Physical Infrastructure Strategy:

Section 5.2: Climate Change, Energy Efficiency and Flooding:

Section 5.2.5: Flood Risk

Chapter 6: Built Heritage Strategy:

Section 6.1.4: Architectural Conservation Areas (ACA):

Policy AR12: Architectural Conservation Areas:

It is Council policy to:

- i. Protect the character and special interest of an area which has been designated as an Architectural Conservation Area (ACA).
- ii. Ensure that all development proposals within an ACA be appropriate to the character of the area having regard to the Character Appraisals for each area.
- iii. Seek a high quality, sensitive design for any new development(s) that are complimentary and/or sympathetic to their context and scale, whilst simultaneously encouraging contemporary design.
- iv. Ensure street furniture is kept to a minimum, is of good design and any redundant street furniture removed.
- v. Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

Policy AR13: *Demolition within an ACA:*

It is Council policy to prohibit the demolition of a structure(s) that positively contributes to the character of the ACA.

(The proposed development site is partially located within the 'Monkstown Architectural Conservation Area').

Chapter 8: Principles of Development:

Section 8.2: Development Management:

Section 8.2.3: Residential Development:

Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas: (vii) Infill:

New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th century suburban 'Garden City' planned settings and estates that do not otherwise benefit from Architectural Conservation Area status or similar. (Refer also to Section 8.2.3.4 (v) corner/side garden sites for development parameters, Policy AR5, Section 6.1.3.5 and Policy AR8, Section 6.1.3.8).

Section 8.2.3.5: Residential Development – General Requirements

Section 8.2.10.4: Flood Risk Management

Section 8.2.11: Archaeological and Architectural Heritage

Appendix 13: Strategic Flood Risk Assessment

5.3. Natural Heritage Designations

5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 200m north-northeast of the site.

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 200m north-northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 200m north-northeast of the site.

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the development proposed, the site location in an established built-up area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest 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.

6.0 The Appeal

6.1. Grounds of Appeal

- The small-scale infill housing development proposed should be granted having regard to '*Rebuilding Ireland, An Action Plan for Housing and Homelessness*' and the unsustainability of the reason for refusal.
- The decision of the Planning Authority did not follow due legal process and should be dismissed.
- The report of the case planner dated 26th March, 2020, which grounds the decision to refuse permission, sets out the acceptability of the proposed development both in principle and in detail. That assessment does not consider flood risk to be a key concern as there is no issue of residual flood risk attached to either the application site or the proposed development. There appears to be no correlation between the conclusion of the planning assessment and the decision to refuse permission which is entirely unsubstantiated.

There appears to be an error on the face of the decision in that the recommendation of the Planning Report is clearly to request further information whereas the First Schedule recommends a refusal of permission. The decision is contradictory and inherently conflicted on the face of the Manager's Order.

The conclusion and recommendation of the Planner's Report was that the proposed development was generally acceptable but that additional information was required, however, that clarification was not sought and thus the decision to refuse permission is not based on any solid planning evidence and does not derive from any proper planning assessment.

- Section 34(10)(a) of the Planning and Development Act, 2000, as amended, requires a Planning Authority to state the main reasons and considerations on which a decision is based, however, no such considerations have been provided with respect to the subject decision.
- The decision to refuse permission differs from the recommendation of the planner's report and in this regard the Board is referred to Section 34(10)(b) of the Act which states that where a decision by a Planning Authority differs from the recommendation set out in the planning report a statement shall set out the main reasons for not accepting the recommendation. No such statement has been provided in the subject instance and, therefore, the decision of the Planning Authority should be dismissed and no weight or credibility attached to the refusal of permission.
- The report from the Drainage Planning & Municipal Services Dept. dated 20th March, 2020 is tangential to the planning report and cannot substitute for the planning report or decision as established by *Ilium Properties Ltd. v. Dublin City Council (2004), IEHC 327* (wherein the Judge ruled that the Planning Authority had relied on the Conservation Officer reporting outside of her area of expertise and had not independently made the planning decision). There must always be a planning overview and recommendation. It is not the function of the Drainage Dept. to make a planning decision; it is merely a contributory element in ensuring the availability and adequacy of services infrastructure.

- It would appear that the report of the Drainage Dept. has been relied upon and thus the issue of flood risk, which was not a key concern of the planning assessment, has subverted the planning process. The decision is not based on the scientific evidence of the site-specific flood risk assessment and instead reflects an incoherent misapplication of the Strategic Flood Risk Assessment policy outside of the scope of the SFRA flood zone mapping and a clear misinterpretation of that policy and the infill nature of the site.

The Drainage Report suggests that permission should be refused on the basis that the Local Authority engineer does not accept that the site is defended from flood risk, however, it also requests clarification of the planning status of the existing flood barrier fence and suggests that it may not be authorised.

This report appears to provide the only thread in the jump from the conclusion of the Planning Report that the development is acceptable in principle and the refusal of permission for a single reason. There is no coherent planning conclusion or assessment and the documentation on file points to alternative potential decisions. Therefore, there is no sustainable basis on which to justify a refusal of permission.

- The decision to refuse permission is predicated on the false assertion that the site is undefended. The submitted plans and particulars clearly show an existing concrete and timber palisade fence along the southern site boundary which currently defends the site against flood events as has been demonstrated in the site-specific Flood Risk Assessment (SSFRA). The proposed development also provides for the upgrading of this fencing through the construction of a new flood defence wall to OPW and Local Authority standards.
- The SSFRA clearly shows that in the context of the existing and proposed flood defences, there is no residual flood risk attached to the proposed development:

'The site is protected, which eliminates the risk of increasing flood levels within the site and both upstream and downstream of the proposed development, the site is suitable for the development proposed'.

- The SSFRA undertaken by McCloy Consulting in February, 2020 provides the scientific basis for the conclusion that there is negligible flood risk. It includes for comprehensive modelling and addresses all potential flood risks including those attributable to climate change and exceptional flood events greater than the 1%AEP / 0.1%AEP flood levels (the Board's attention is also drawn to the summary of mitigation set out in Sections 5.4 & 5.5 of the SSFRA).
- McCloy Consulting were appointed as independent consultants due to their expertise in flood risk modelling (in response to the request for additional information). The SSFRA has assessed the flood risk from first principles and there is no valid planning basis for obviating from its conclusion that there is negligible residual flood risk.
- The Flood Zone Mapping attached to Appendix 13: '*Strategic Flood Risk Assessment*' (SFRA) of the Dún Laoghaire Rathdown County Development Plan clearly shows the application site within Flood Zone 'C'. It is not identified as high risk and is zoned for residential development.
- The policy provisions set out in Sections 4 & 5 of SFRA refer to the strategic flood zone mapping which designates the site as Flood Zone 'C' and reflects its designation for residential use. Any reference to the SFRA policy separate to the mapping results in a misapplication of that policy. The SFRA policy and mapping is not to be confused or cross-referenced with the methodology for the assessment of site specific flood risk which is the next stage in the sequential assessment of flood risk.

The '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' advocate a sequential risk-based approach to flood risk management based on the broad philosophy of 'avoid', 'substitute', 'justify', 'mitigate' and 'proceed'. In the subject case, 'avoidance' was not appropriate as the proposal involves the redevelopment of an infill 'brownfield' site which is zoned for residential development and proximate to local services. The site is also within Flood Zone 'C' and has no history of flood risk. In addition, permission was previously granted for a similar infill scheme at Purbeck (PA Ref. No. D16A/0724) under comparable conditions with the Stradbrook

stream running along the southern site boundary where it was accepted that no flood risk would occur.

- The McCloy Consulting Site-Specific FRA does not include the existing site defences in its determination of the appropriate flood risk in accordance with the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' which had the effect of reclassifying the site as primarily comprising lands within Flood Zones 'A' & 'B'. Therefore, it was only at the detailed proposal stage that the issue of flood risk emerged. The next step was to undertake the 'Justification Test' and if the site passed then the mitigation proposals would be incorporated into the overall assessment of flood risk in order to identify if the development could proceed.

Arising from the proposal passing the 'Justification Test' (which demonstrates that the development is compatible with the management of flood risk), mitigation measures have been incorporated into the site-specific FRA (sections 5.34 & 5.5) which include the construction of a flood defence wall to OPW standards.

The conclusions of the SSFRA derive from the methodology set out in the Guidelines and support a grant of permission on the basis of the mitigation measures proposed and as there will be negligible residual flood risk to the site and lands in the vicinity.

- The decision of the Planning Authority contains the following errors of fact:
 - There is a flood defence in place at present.
 - A new flood defence wall to OPW standards is proposed as part of the application and thus the site is not undefended either presently or as proposed.

The query by the Drainage Dept. as to the planning status of the existing flood defence is outside its remit (please refer to *Ilium Properties Ltd. v. Dublin City Council*) and appears to have been influential in the decision-making process. There has been a fence at this location for over 30 No. years and it constitutes exempted

development by reference to the Planning and Development Regulations.

The reliance of the Drainage Dept. on this error has clouded its judgement and appears to have been instrumental in '*determining the site as undefended*' which is not correct.

- A third error has been to assume the Site Specific FRA flood zone classification as the final stage in the development management / flood risk management process without incorporation of the 'Justification Test' and the mitigation measures which include the construction of a new flood defence wall.
- The Planning Authority has erred in relying on the Strategic Flood Risk Assessment without referencing the fact that it classifies the site as Flood Zone 'C'. It has also misapplied the SFRA policy in the context of the strategic assessment superseding the more detailed Site Specific FRA and mitigation measures.
- In relation to Section 4.7.1.1: '*New Development*' of the Strategic Flood Risk Assessment (and noting that the site is within Flood Zone 'A' as identified in the SFRA), the application site is within Flood Zones 'A' & 'B' on the basis of the site-specific FRA where the use of mitigation measures is appropriate. These mitigation measures include flood defences which are a relevant consideration in Section 4.7.1.1 and there is no justifiable basis for ignoring their inclusion. The 'Justification Test' has been passed.
- Section 4.7.1.2: '*Existing Developed Areas*' of the Strategic Flood Risk Assessment is of relevance as the proposal involves the redevelopment of an infill brownfield site already in residential use and represents a continuation of the existing pattern of development in the area such as at Heathfield and Purbeck Lodge.
- The Site-Specific FRA accords with the Guidelines and supports the case for the proposed development by incorporating appropriate mitigation which results in a negligible flood risk to both the site and lands in the vicinity.

- In pragmatic terms, the Site-Specific FRA has established that with appropriate mitigation in place the site classification could revert to Flood Zone 'C' as the lands are outside of the functional floodplain of the adjacent stream.
- Section 5.1: '*Undeveloped Land*' of Appendix 13 of the Strategic FRA is not relevant to the redevelopment of this brownfield infill site.
- Cognisance should also be had to the 'Technical Rebuttal' prepared by Benchmark Properties (Consulting Engineers) included at Appendix 6 of the grounds of appeal.

6.2. Planning Authority Response

- With respect to the assessment of residual flood risk, it is submitted that this is only of relevance if the proposed development has passed the Development Plan Justification Test (which is key to the Drainage Planning Report).
- It is considered that the Local Authority was correct in its application of Section 5.1: '*Undeveloped Land*' of Appendix 13: '*Strategic Flood Risk Assessment*' of the County Development Plan which states the following '*With the exception of zoned Major Town Centres, District Centres and Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. This applies to undeveloped areas which are zoned for development but are currently undeveloped and to areas of existing low intensity development. Whilst lands may have retained a zoning objective which would include development, applying the guidance in Section 4 means such development is restricted to Flood Zone C, with water compatible uses located within Zone A and B*'.
- The recommendation by Drainage Planning to refuse permission was based solely on the opinion that the site was not defended against flood risk to OPW standards and thus had to be assessed on that basis. The status of the existing wall as referenced in the note to the case planner was not of relevance to the Drainage Planning Report as the following text clearly shows:

'The existing sealed precast conc. post and panel walling / barrier with timber panelling . . . would, based on the lack of weathering, appear to be a recent replacement for a previous boundary treatment. The planning status of this walling / barrier . . . has not, thus far, been raised with the application in relation to Flood Risk Assessment. Clarification of its planning status to the satisfaction of the Planning Authority would be a requirement of any future application'.

- The existing concrete rail and timber panelling fence does not offer a standard of protection that could be considered a flood defence / barrier to the OPW's standard of a designed flood defence mechanism and thus the site cannot be considered defended.
- The McCloy Consulting Site-Specific FRA did not offer an opinion as to the level of protection afforded by the existing wall / fence and instead relied upon an assessment carried out by Benchmark Properties and, as reported to them, the Local Authority.

Although the Drainage Planning Dept. accepts that the existing wall / fence offers a degree of flood protection, it does not accept the applicant's position that it offers a standard of protection such that it could be considered a flood defence / barrier as it is not to the OPW standard of a designed flood defence mechanism.

Furthermore, the Drainage Planning Dept. does not dispute that the analysis contained in the Site-Specific FRA was not appropriately detailed. If the standard of flood protection offered by the existing wall / fence was not disputed then the SSFRA provides sufficient evidence to pass the Development Management Justification Test, possibly subject to conditions.

- It is not accepted that there has been any misapplication of Council policy. Although not shown on the flood zone mapping of the Development Plan, the site location bounding the Monkstown Stream, and the recorded incidences of flooding further downstream, warranted a site-specific FRA which subsequently identified part of the site as being within Flood Zones 'A' & 'B'. Indeed, Section 3.4.2 of the SSFRA notes as follows:

'The DLRCC flood maps do not show any flooding affecting the site or surrounding areas. However, some "minor watercourses" were not included so mapping does not mean there is no risk of flooding at the site' The recorded flood event, shown by the red triangle to the east of the site, coincides with the Alma Place flood discussed in Section 3.2'.

(Note: A site at risk of flooding, even if defended to OPW standards, is still classified as being at risk of flooding and will be shown as thus on flood mapping albeit hatched to indicate a defended area).

- It is always open to a planning authority to impose more stringent requirements as part of its development plan. In the event of a conflict between the requirements of the development plan and statutory guidelines, the former prevails. The subject proposal was therefore assessed with regard to the generally more stringent requirements of Appendix 13 of the Development Plan as opposed to the '*Planning System and Flood Risk Management Guidelines for Planning Authorities*'.
- Section 4.1 of Appendix 13 of the Development Plan sets out the strategic approach to flood risk management in the county and states that the existing density and strategic importance of the County as regards future growth and expansion made it '*. . . impractical to consider flood management on a site by site basis*'.
- The Council's approach to the preparation of the Strategic FRA was to retain existing land use zonings and to include robust policies detailing the manner in which planning applications in flood risk areas would be assessed with more general policies in other areas and at all times being consistent with the over-arching sequential approach of 'Avoid', 'Substitute', 'Justify', 'Mitigate' & 'Proceed'.

The flood risk on site was only identified following submission of the Site-Specific FRA i.e. after the adoption of the Development Plan. Therefore, it is likely that the site would have retained its zoning status even if the rezoning of lands at risk of flooding had been adopted.

Once it was established that part of the site was within Flood Zones 'A' & 'B', Sections 4.7.1.1 & 5.1 of the SFRA apply notwithstanding that the site was not

shown as being at risk of flooding in the flood zone mapping of the County Development Plan.

The grounds of appeal dispute whether or not the site should be classed as infill or new development. Section 4.7.1.1 applies if (as contended by Drainage Planning) the site involves new development, however, should the proposal comprise an 'infill' site (as submitted by the applicant) then Section 4.6 is applicable as follows:

'For Class 2 development [works in relation to infill development], construction of new buildings on what would otherwise be greenfield, or undeveloped land, has generally been found to generate an unjustifiable level of risk, either through introducing additional people into the 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 for highly vulnerable use or in Flood Zone A for less vulnerable uses'

- Section 5.1 of the SFRA: 'Undeveloped Land' is of particular relevance and states the following:

'With the exception of zoned Major Town Centres, District Centres and Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. This applies to undeveloped areas which are zoned for development but are currently undeveloped and to areas of existing low intensity development. Whilst lands may have retained a zoning objective which would include development, applying the guidance in Section 4 means such development is restricted to Flood Zone C, with water compatible uses located within Zone A and B'.

- With regard to the development previously permitted on a nearby site at Purbeck Lodge under PA Ref. No. D16A/0724, the Drainage Planning Dept. does not wish to retrospectively reassess that application although a cursory inspection of its pre-development ground levels (when compared with predicted flood levels now in the public domain) would seem to suggest that the vulnerable elements of that development were located outside the now known Flood Zones 'A' & 'B'.

It is acknowledged that the flood risk for PA Ref. No. D16A/0724 was not assessed to the same level of detail when compared to the subject proposal and other more recent planning applications in the area.

- The Drainage Planning Dept. did not comment on the Justification Test submitted by the applicant for development management purposes as Section 5.1 of the Strategic FRA (Appendix 13) clearly states that new development within Flood Zones 'A' & 'B' will not pass the Justification Test for development plans. If a proposal is deemed not to have passed the Justification Test for development plans then the Justification Test for development management is not open for consideration.
- Mitigation measures can only be considered if a proposal first passes the Justification Test for development plans (which is not the case in this instance by reference to Section 5.1 of the SFRA).

6.3. Observations

6.3.1. Dorothy Murray:

- There are serious reservations as regards the three-storey height and proximity of the proposed development relative to the observer's property, particularly as it is understood that the development approved further west at Purbeck was reduced to two-storeys due to concerns of its potential impact on the amenity of neighbouring property by reason of overlooking, loss of privacy and overshadowing / loss of light.
- Concerns arise with regard to the increase in traffic attributable to the proposed development and its wider impact given the limited capacity of the surrounding road network.

6.3.2. Barbara Murray:

- It should be noted that the shared boundary wall along the proposed access road is lower on the side of No. 81 Monkstown Road.
- There are concerns that the proposed development works will damage the root system of the mature tree and shrub planting (some of which are protected) which defines the boundary with the adjacent Heathfield housing

scheme resulting in destabilisation and falling tree hazards as well as the loss of a natural vista and habitat for wildlife.

- Consideration must be given to the traffic impact of the proposed development on the surrounding road network, including that of Monkstown Village. Particular concerns arise as regards the management of multiple construction projects planned in the immediate area at any one time over a prolonged period and the increased potential for road accidents and traffic congestion. For example, during the construction of the nearby housing scheme at Purbeck, construction vehicles were parked at the entrance to Heathfield which resulted in access being blocked for waste collection and emergency services vehicles.
- The height and three-storey construction of the proposed dwellings is not in keeping with the area and will result in the overshadowing of neighbouring housing with a consequential loss of amenity and devaluation of property.
- The design of the proposed development does not respect or improve the residential amenity of the area and is not sympathetic to the smaller scale and privacy of neighbouring dwellings.
- The Stradbroom Stream to the immediate south poses a risk of flooding as shown in the flood zone mapping prepared by the Local Authority. The observer's back garden area already pools in heavy rain and more development could redirect groundwater into Heathfield and pose an even greater risk of flooding.
- Water pressure in the area is already low and concerns arise as regards the impact of the development on water supply and sewerage services as well as the increased demand on local services, including schools, healthcare facilities, and general amenities.
- There is a need to protect and retain existing trees and hedgerows in the surrounding area.
- Given the parking issues and difficulties in safely navigating the footpath during the recent construction of the nearby housing scheme at Purbeck, in the event of a grant of permission, some form of time restriction or plan should

be put in place so as to minimise the impact of works on the amenity of local residents.

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- Procedural issues
- The principle of the proposed development
- Overall design and layout / built heritage considerations
- Impact on residential amenity
- Flooding implications
- Traffic considerations
- Servicing / infrastructural considerations
- Appropriate assessment

These are assessed as follows:

7.2. **Procedural Issues:**

7.2.1. Within the grounds of appeal, the case has been put forward that the decision-making process employed by the Planning Authority and, by extension, its decision to refuse permission, is fundamentally flawed by reference to the manner in which the decision was reached as set out in the 'Record of Executive Business Chief Executive's Orders' dated 26th March, 2020. More specifically, it has been submitted that the conclusion and recommendation of the final report of the case planner (which forms the basis of the Chief Executive's Order to refuse permission), and which was prepared following consideration of the applicant's response to an earlier request for additional information, is at complete variance with the subsequent decision to refuse permission as set out in the 'First Schedule' of the Order. In this

regard, and in the interests of clarity, I would advise the Board that whilst the final planner's report concludes by stating that a number of outstanding issues would require clarification in advance of any planning decision before subsequently recommending that further information be sought accordingly, the 'First Schedule' of the order instead recommends that permission be refused for the single reason ultimately attached to the 'Notification of Decision to Refuse Permission' (Date of Order: 26th March, 2020). In effect, the applicant has sought to draw attention to the lack of any correlation between the conclusion / recommendation of the planning assessment to seek further information and the decision to refuse permission. By extension, it has also been submitted that the Planning Authority has failed to state the main reasons and considerations on which its decision is based pursuant to Section 34(10)(a) of the Planning and Development Act, 2000, as amended, and that by deviating from the recommendation of the planning assessment, it has similarly failed to comply with the requirements of Section 34(10)(b) of the Act by not setting out the main reasons for not accepting that recommendation. It is further stated that any reliance on the final report of the 'Drainage Planning' Division of the Municipal Services Dept. as a substitute for the planning assessment (as opposed to simply contributing to that assessment) would be flawed by reference to the legal precedent set by *Ilium Properties Ltd. v. Dublin City Council* (2002), IEHC 327 wherein it was held that the Planning Authority had inappropriately relied on the Conservation Officer reporting outside of their area of expertise and had not independently made the planning decision.

- 7.2.2. In response to the foregoing, correspondence was received by the Board from the Planning Authority on 10th June, 2020 by way of email (in part response to the grounds of appeal) which included the 'complete' report of the case planner prepared in respect of the subject application. This also explained that the full report had not issued with the decision to refuse permission by reason of human error and that it was being circulated to the applicant / appellant for their information.
- 7.2.3. From a review of the available information, at the outset, I would acknowledge the legitimate concerns of the first party as regards the manner in which the decision of the Planning Authority was arrived at given that any failure to provide the main reasons and considerations which serve to inform the decision-making process, including the planning assessment, could potentially have significant implications in

undermining the ability of an affected party to lodge an appeal in the full knowledge of the facts of the case. However, in my opinion, in seeking to challenge the validity of the subject decision on such grounds, the first party has raised certain legal issues which would likely be more appropriately considered by recourse to the Courts (in this respect, and by way of further comment, the first party may also wish to consider that any such challenge, should it prove successful, would likely nullify rather than overturn the decision of the Planning Authority).

- 7.2.4. With respect to the 'complete' report of the case planner which has since been forwarded to the Board for consideration as part of the subject appeal, it is clear that the Planning Authority is placing a considerable reliance on the Board's acceptance of same and its explanation that the report was 'missing' from the file by reason of an administrative error. Whilst it is regrettable that this version of the planner's report is neither signed nor dated and is not referred to as a 'Record of Executive Business Chief Executive's Orders', I am not in a position to speculate on its compilation and thus I propose to accept its contents as written and to consider it as forming the basis for the planning decision. In this regard, given that the report includes an analysis of the applicant's response to the request for additional information, and as its conclusions and recommendation tally with the 'First Schedule', I am satisfied that it provides the main reasons and considerations which have informed the notification of the decision to refuse permission.

7.3. The Principle of the Proposed Development:

- 7.3.1. With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is zoned as 'A' in the Dún Laoghaire Rathdown County Development Plan, 2016-2022 with the stated land use zoning objective '*To protect and-or improve residential amenity*' and is located in a primarily residential area where the prevailing pattern of development is generally characterised by a variety of period properties interspersed with more conventional / contemporary infill housing schemes (including several notable examples where the original properties along the southern side of Monkstown Road have been subdivided in order to accommodate the construction of additional dwellings in a manner comparable to the subject proposal) such as 'Heathfield' on the adjacent lands to the west (a small cul-de-sac of detached & semi-detached housing) and

'Purbeck' (a recently completed scheme of two-and-a-half storey, semi-detached & terraced units).

- 7.3.2. In this respect, I would suggest that the subject site comprises a potential infill site situated within an established residential area where public services are available and that the development of appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Such an approach would correlate with the wider national strategic outcomes set out in the National Planning Framework 'Project Ireland: 2040', including the securing of more compact and sustainable urban growth such as is expressed in National Policy Objective 35 which aims to *'increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights'*.
- 7.3.3. Further support is lent to the proposal by reference to Policy RES4: *'Existing Housing Stock and Densification'* of the Development Plan, which aims to increase housing densities within existing built-up areas having due regard to the amenities of established residential communities, wherein it is stated that the Planning Authority will encourage the densification of existing suburbs in order to help retain population levels by way of 'infill' housing that respects or complements the established dwelling types. These policy provisions are further supplemented by the guidance set out in Section 8.2.3.4: *'Additional Accommodation in Existing Built-up Areas'* of the Plan which details the criteria to be used in the assessment of proposals that involve new infill development. The *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* also acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.
- 7.3.4. The site is also readily accessible by public transport with the DART (i.e. Salthill and Monkstown train station) and Dublin Bus services located within a short walking distance and is similarly proximate to Monkstown village / neighbourhood centre as

well as local schools, places of worship, employment opportunities, and other amenities.

- 7.3.5. Therefore, having considered the available information, including the site context and land use zoning, and noting the infill nature of the site itself as well as its established use for residential purposes, I am satisfied that the overall principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the overall character of the wider area.

7.4. Overall Design and Layout / Built Heritage Considerations:

- 7.4.1. The proposed development involves the demolition of the existing single-storey dwelling house and the associated outbuildings / sheds to the rear of the site to facilitate the construction of 7 No. new residential units comprising a series of 6 No. three-storey, semi-detached dwelling houses and 1 No. two-storey, detached dwelling. The overall design and layout of the scheme is relatively uncomplicated and derives from a variety of on-site constraints such as the need to preserve the residential amenity of the neighbouring housing to the immediate north, east and west (including the maintenance of the shared access arrangement and all associated right of ways / wayleaves through the site to adjacent properties e.g. No. 81C Monkstown Road / 'Brown Cottage' to the northeast), and the requirement to provide a 3m wide access strip alongside Stradbroke Stream with a wayleave to same.
- 7.4.2. The site layout comprises a series of 6 No. semi-detached dwelling houses arranged in a linear format along an internal service road which extends southwards from the existing shared access laneway onto Monkstown Road before terminating in a cul-de-sac with a further detached two-storey dwelling on the opposite side of the roadway alongside the eastern site boundary. In terms of the individual house designs / types / sizes and variety of building typology, each pair of the 6 No. three-storey, semi-detached (four-bedroom) dwelling houses differs slightly although they share a common design palette. For example, the internal arrangement of Unit Nos. 1 & 2 differs from that of Unit Nos. 3 & 4 as regards the positioning of the entertainment room and some bedrooms whereas the design of Unit Nos. 5 & 6 provides for the recessing of the second floor and the siting of the entertainment

room to the rear of the units. The remaining two-storey detached (two-bedroom) unit has seemingly been specifically designed to meet the needs of an elderly couple presently resident on site although the design has been future-proofed so as to ensure that the structure can be subdivided at some point in the future (subject to planning permission) to accommodate for 2 No. one-bedroom apartment units to allow for family-carer accommodation. The overall design of all the proposed dwellings is relatively straightforward although efforts have been made to enliven the relatively conventional construction of the two-storey unit through the use of a more contemporary fenestration arrangement.

- 7.4.3. In assessing the density of the development, given the specifics of the site context, at the outset I would refer the Board to Section 5.9 of the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* wherein it is stated that although the provision of additional dwellings and increased densities within the inner suburban areas of cities and larger towns is to be encouraged on the basis that it will serve to revitalise areas by utilising the capacity of existing social and physical infrastructure, there is an acknowledgement that in residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill. Similar provisions are included in Policies RES3: *'Residential Density'* and RES4: *'Existing Housing Stock and Densification'* of the Development Plan. In this regard, whilst I would acknowledge that both the Guidelines and the Development Plan seek to achieve minimum net densities of 50 No. dwellings per hectare in locations proximate to public transport nodes and that the subject site is within a short walking distance of DART and Dublin Bus services, I am cognisant that adherence to this requirement is subject to the caveat of ensuring appropriate design and amenity standards. It is of further relevance to note that whilst the Development Plan refers to a minimum default density for new residential developments of 35 No. units per hectare (excluding lands on zoning Objectives 'GB', 'G' and 'B'), it subsequently concedes that such a density may not be appropriate in all instances (although it will serve as a general guidance rule, particularly in relation to 'greenfield' sites or larger 'A' zoned areas).

- 7.4.4. In support of the proposed development, the applicant has sought to emphasise the infill nature of the site and the limitations arising from the need to preserve the residential amenity of neighbouring properties and to consider the built heritage implications of any development proposal given the partial inclusion of the site within the Monkstown Architectural Conservation Area. It has also been submitted that the development potential is further limited in part by a number of specific on-site constraints, including the extent of the site area utilised as a shared access road serving neighbouring properties, the requirement for a 3m wide access strip along the southern site boundary / Stradbroke Stream, and the need to include for a 6m wide wayleave providing access to the stream. Accordingly, the case has been put forward that the actual effective / developable site area is 0.1894 hectares (as opposed to 0.292 hectares) and thus the proposal achieves a residential density of 37.03 No. units / hectare which exceeds the default minimum of the Development Plan (as was sought during the course of pre-planning discussions).
- 7.4.5. In my opinion, the proposal to redevelop the subject site in order to provide for 7 No. new dwelling houses represents a considerably more efficient and economic use of these zoned and serviced lands than their current occupation by a single dwelling and whilst I acknowledge that the proposed density is relatively low, given the limited size and configuration of this infill site, its relationship with adjacent properties, and the pattern of development in the immediate surrounds, I am satisfied that the proposed development achieves a suitable balance between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill, as per the requirements of the Local Area Plan and the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*'.
- 7.4.6. With regard to the impact of the proposal on built heritage considerations, including the character and setting of nearby protected structures and the Monkstown Architectural Conservation Area, it is clear that the submitted design serves to distinguish the new construction from surrounding period properties in accordance with the '*Architectural Heritage Protection, Guidelines for Planning Authorities, 2004*' and is of a higher architectural standard than the more conventional housing construction within 'Heathfield' to the west. Accordingly, having reviewed the submitted proposal, and in light of the site context, including its 'backland' location

along a minor laneway which is generally screened from view by intervening features / development, the siting of the proposed housing outside of the Architectural Conservation Area, the comparable instances of infill development located elsewhere along the southern side of Monkstown Road, and the limited visibility of the site from within a wider context, I am satisfied that the proposed development will not have an undue or unacceptably detrimental impact on the character or setting of nearby protected structures or the Monkstown Architectural Conservation Area.

- 7.4.7. In relation to the actual design and layout of the scheme, I am satisfied that the submitted proposal represents an appropriate design response given the site context and that the overall scale, height, and architectural treatment of the individual dwelling houses will not detract from the visual amenity or built heritage character of the surrounding area.
- 7.4.8. With regard to the public open space provision, given the restricted nature of this infill site it is clear that difficulties will arise in providing sufficient open space to comply with the requirements of the Development Plan. For example, although it would be possible to increase open space provision on site through the omission of some housing units, the associated lowering of the density would likely give rise to concerns as regards the inefficient use of zoned and serviced lands. Similarly, any proposal to compensate for the foregoing by seeking to increase the housing density through the provision of additional units may encounter difficulties both in terms of its impact on the character of the area and the need to protect the residential amenity of neighbouring properties. Therefore, given the restricted nature of the application site and the small scale of the infill development proposed, it has been submitted that the provision of public open space is not feasible and that it would be reasonable to instead place some degree of reliance on the availability of local amenities etc. within a short walking distance such as the seafront park bedside Salthill and Monkstown DART Station, the wider coastal area, and the nearby village centre. It has also been suggested that it would be appropriate to pay a financial contribution in lieu of the on-site provision of open space and that such an approach would be consistent with that employed in the Planning Authority's previous assessment and subsequent approval of the recently completed housing development at Purbeck (PA Ref. No. D16A/0724).

7.4.9. Having reviewed the available details, whilst I would acknowledge that the proposed development does not comply with public open space requirements of the Development Plan, I am cognisant of the restricted nature of this infill site and the constraints arising from its overall shape, configuration and relationship with adjacent properties. Accordingly, in light of the availability of local amenities and services within the immediate site surrounds (such as the seafront area and the village / neighbourhood centre), the adequacy of the private open space provision for each of the individual dwelling houses, and the need to achieve an acceptable density of development on site in order to promote the efficient use of zoned and serviced lands, I am amenable to a relaxation in the open space provision and thus the proposal as submitted is acceptable.

7.5. Impact on Residential Amenity:

7.5.1. Concerns have been raised that the proposed development may have a detrimental impact on the residential amenity of neighbouring properties by reason of overlooking, overshadowing, and / or an overbearing visual impact. In this respect, I would suggest that particular consideration needs to be given to the overall design, orientation and positioning of the proposed development relative to the adjacent housing to the immediate north, east and west of the application site.

7.5.2. Whilst I would acknowledge the legitimate concerns of the occupants of neighbouring housing (including the observers to this appeal) given the infill nature of the development proposed, having regard to the site context within a built-up urban area and the surrounding pattern of development (both existing and permitted), I am inclined to suggest that the overall design, scale, positioning and orientation of the proposed dwelling houses, with particular reference to their relationship with (and separation from) adjacent housing (as has been detailed in the report of the case planner), has taken sufficient cognisance of the need to preserve the residential amenity of neighbouring properties and will not give rise to any significant detrimental impact on same by reason of overlooking, overshadowing, or an unduly overbearing appearance.

7.5.3. With regard to the potential impact of construction activities on the residential amenities of surrounding property, whilst I would acknowledge that the proposed development site is within an established residential area and that construction

works could give rise to the disturbance / inconvenience of local residents, given the limited scale of the development proposed, and as any constructional impacts arising will be of an interim nature, I am inclined to conclude that such matters, including the management and parking of construction traffic, can be satisfactorily mitigated by way of condition.

- 7.5.4. In reference to the potential impact of the construction works on the root systems of the mature tree planting both within the adjacent 'Heathfield' housing scheme and alongside the western site boundary, whilst the proposed development will necessitate the removal of some understorey planting and trees from within the confines of the site and alongside the shared boundary in order to accommodate the upgrading works to the access laneway, it is proposed to retain the existing boundary treatment and to supplement it with replacement laurel hedging. Furthermore, various tree protection measures (including the erection of protective fencing and limiting works within root protection areas) are to be implemented to ensure the survival of those trees to be retained. Accordingly, I am satisfied that the proposed development is acceptable in terms of its likely impact on planting alongside the western site boundary, subject to conditions.

7.6. Flooding Implications:

- 7.6.1. From a review of the available information, including the notification of the decision to refuse permission, it is apparent that particular consideration needs to be given to the potential flooding implications of the proposed development in light of its proximity to the Stradbroke Stream which adjoins the southern site boundary. In this respect, I would advise the Board at the outset that whilst the National Flood Hazard Mapping available from the Office of Public Works does not record any flood events within or bounding the site itself, flooding has previously been recorded a short distance away (c. 200m downstream to the east) as a result of overtopping of the Stradbroke Stream which overflowed its banks at Alma Place with floodwaters subsequently flowing down to Carrickbrennan Road (with a 500m stretch of the Carrickbrennan Road and 11 No. properties having been affected by a flood event in October, 2011). However, it should be noted that this mapping is not definitive and serves only as a useful tool in highlighting the potential for flood events in a particular area.

- 7.6.2. On examination of the most up-to-date flood mapping for the area prepared by the Office of Public Works as part of its CFRAM programme, which has recently been made available on www.floodinfo.ie and has informed the development of Flood Risk Management Plans for specific areas, there is similarly no indication that the application site is at risk of either coastal or fluvial flooding and thus it would fall within Flood Zone 'C' as defined by the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' in that it is subject to a 'low probability' of flooding (i.e. where the probability is less than 0.1% or 1 in 1,000 for both river and coastal flooding), although it must also be accepted that this mapping has limitations in terms of identifying flood risk in any given area.
- 7.6.3. By way of further analysis, a review of the flood zones detailed in the Strategic Flood Risk Assessment included at Appendix 13 of the Dún Laoghaire Rathdown County Development Plan, 2016-2022 establishes a broad correspondence with the CFRAM mapping and does not identify any specific flood risk at the subject site, although it does reference the incidences of downstream flooding (as derived from the historical National Flood Hazard Mapping). However, I would caution that the Strategic Flood Risk Assessment was informed by a number of datasets (e.g. the Draft Eastern CFRAM maps available in June, 2015) which recorded either historical or predicted flood extents and that the input data was developed at a point in time and, therefore, there may be changes within the catchment that mean a future study or more localised assessment of risk may result in a change in either flood extent or depth. Furthermore, it should be noted that the flood zones identified in the Strategic Flood Risk Assessment only indicate flooding from fluvial and tidal sources and do not take other sources, such as groundwater or pluvial flooding, into account. The strategic nature of this study also limits its reliability as regards site-specific flood risk assessment.
- 7.6.4. Therefore, on the basis of the foregoing (and noting the applicant's assertion in response to Question No. 16 of the planning application form that it has no knowledge of the lands in question having ever flooded), it would appear that the proposed development site is not at risk of flooding. However, notwithstanding the foregoing, the subject application was accompanied by a Site-Specific Flood Assessment Report prepared by Benchmark Property with a view to identifying and quantifying the risk of flooding associated with the proposed development and the

effects on the surrounding environs. This report collated and reviewed data from a number of sources, including the Eastern Catchment Flood Risk Assessment and Management (CFRAM) Study, the Irish Coastal Protection Strategy Study (ICPSS), the OPW's Preliminary Flood Risk Assessment Mapping (PFRA, 2011), and historic flood information for the site, and concluded as follows:

- The site is not at any significant risk of **tidal / coastal flooding** given its distance from the nearest tidal source (i.e. Dublin Bay) and as the Stradbroke Stream bounding the southern site boundary is not influenced by tidal / coastal effects due to its level above Dublin Bay.
- There are no indications of **fluvial flooding** at the site. Moreover, in light of the Strategic Flood Risk Assessment appended to the County Development Plan and the presence of '*an impermeable concrete based boundary fence*', it could be concluded that the application site is within Flood Zone 'C' for fluvial flooding.
- On review of the PFRA, there would not appear to be any **pluvial flooding** proximate to the application site for 1.0%AEP flood events, although two incidents were recorded c. 500m downstream. The reported incidents occurred in 1993 & 2011 and were attributed to a restricted flow through an existing culvert under the access road at Richmond Green (alongside Alma Place) and it is the applicant's understanding that flood alleviation works were undertaken in 2012 to resolve these flooding concerns. Furthermore, having regard to previous FRA reports in the locality, and by assuming a 1.0%AEP flood level of 15.10mOD (derived from lands adjacent to Heathfield) whilst catering for the requirements of Section 6.3.2.1 of the Greater Dublin Strategic Drainage Study and the effects of climate change, a minimum floor level of 16.00mOD is proposed (i.e. over 500mm above the predicted maximum 100-year flood level) thereby ensuring no risk of flooding on site into the future. It is also asserted that the site is presently defended by fencing that includes concrete infill planks up to 450mm above existing ground level (15.4mOD adjacent to the boundary with Heathfield to the west) and that the use of SUDS will avoid any flooding of adjoining lands consequent on the proposed development in the 1 in 30 and 1 in 100 year flood events.

- Given the absence of any record of **groundwater flooding** on site, and in light of the geological and topographical characteristics of the lands, the possibility of groundwater rising above ground level is considered to be low. Furthermore, any such waters would follow overland flow routes and would not collect at the proposed housing units. Therefore, the flood risk represented by groundwater is considered to be negligible.

7.6.5. Following consideration of this initial 'Site Specific Flood Assessment Report', a report was compiled by the Drainage Planning Division of the Local Authority which noted the site location relative to the Monkstown / Stradbroke Stream and its history of flooding. It was subsequently recommended that the applicant be required to submit a further Site-Specific Flood Risk Assessment which showed the proposed development superimposed on the existing 1.0% and 0.1% AEP flood events with the flood extent mapping to be supported by the outputs of hydraulic modelling. The applicant was also to be advised that highly vulnerable residential development would not be allowed within the 1.0% & 0.1% AEP flood extents in accordance with Sections 4.7.11: '*New Development*' & 5.1: '*Undeveloped Land*' of the Strategic Flood Risk Assessment included in Appendix 13 of the Development Plan.

7.6.6. Accordingly, on 28th February, 2020 in response to a request for further information, the applicant submitted a revised / updated Stage 3 'Flood Risk Assessment' prepared by McCloy Consulting (to be read in tandem with the accompanying correspondence and 'Justification Test' compiled by Benchmark Property'). Notably, in acknowledging the limitations of presently available mapping / data sources, this site-specific FRA (SSFRA) included the results of hydraulic modelling in order to better understand the flood risk at the site.

7.6.7. At the outset, the amended SSFRA refers to the OPW's Preliminary Flood Risk Assessment Mapping and states (contrary to the earlier report provided with the application) that whilst no fluvial flooding is shown in the vicinity of the site and the property is not considered to be at risk of groundwater flooding, there are lands within the site which are predicted to be affected by surface water / **pluvial** flooding. (The Board's attention is drawn to the contents of Circular PL2/2014 issued by the Department of the Environment, Community and Local Government on 13th August, 2014 which states that the Draft Indicative Preliminary Flood Risk Assessment Maps

were prepared for the purpose of an initial assessment at a national level, of areas of potentially significant flood risk, and that *'the maps provide only an indication of areas that may be prone to flooding. They are not necessarily locally accurate and should not be used as the sole basis for defining Flood Zones, or for making decisions on planning applications'*. This Circular further recommends that for the purposes of decision-making in respect of planning applications, a Stage II Flood Risk Assessment as set out in *'The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'* should be undertaken where there are proposals for development in areas that may be prone to flooding. Accordingly, I would caution the Board on any overt reliance on the accuracy of the PFRA mapping).

- 7.6.8. The SSFRA continues by referencing those incidences of downstream flooding at Alma Place & Carrickbrennan Road and notes that whilst the Strategic Flood Risk Assessment Mapping included in the County Development Plan does not show any flooding affecting the application site or surrounding areas, it is acknowledged that some 'minor watercourses' were not included so the mapping does not mean that there is no risk of flooding at the site.
- 7.6.9. Section 4.2 and Table 4.1 of the report proceed to consider the possible flooding mechanisms relevant to the application site. The likelihood of any flooding attributable to tidal / coastal, groundwater, and artificial sources is discounted (for reasons similar to the earlier FRA), however, with respect to fluvial flooding, it is noted that the Council has advised that the site may be at risk of flooding from the Stradbrook Stream and that the stream itself is culverted downstream (thereby giving rise to flood risk from any blockage of the culvert). In addition, the possibility of flooding from surface water / urban drainage / pluvial sources is noted with reference being made to the fact that the south of the site lies at a lower elevation than surrounding development and as the OPW's PFRA mapping predicts pluvial flooding on site.
- 7.6.10. Following on from the foregoing, Section 4.3 of the SSFRA details the current pre-development situation on site as regards the potential risk posed by fluvial flooding from the Stradbrook Stream. This has been developed following site-specific hydraulic modelling of the river taking account of the 'pipe-full' flow of the modified upstream surface water drainage network as well as lateral overland flows

downstream of that artificial network. In this regard, it is of particular importance to note that the existing scenario has been modelled on the basis that the existing wall / fence alongside the southern site boundary is such that it prevents the ingress of floodwater up to its crest height. The SSFRA proceeds to determine that the peak 0.1%AEP flood level is more than 150mm below the wall crest level and thus the existing site lies outside the present-day 1%AEP & 0.1%AEP functional floodplains. Similarly, it has been submitted that when account is taken of a maximum increase of up to 0.06m over the current scenario as a result of climate change, the increase in levels within the watercourse will not result in flooding of the (pre-development) site.

7.6.11. However, in determining the flood zoning for the application site, Section 4.3.4 of the SSFRA acknowledges that the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009*' state that the presence of flood defences is to be ignored. Therefore, hydraulic modelling has been undertaken in the absence of the southern boundary wall in order to ascertain the Flood Zones at the site (this modelling approach has retained the influence of adjacent / surrounding flood protection and other controlling structures and thus it is deemed to be inherently conservative as the inclusion of the 'effects' of these structures would cause an increased predicted water level when compared to a wholly 'undefended' scenario'). The result (as shown in Figure 4-2) is that, in the absence of the flood protection claimed to be afforded by the southern site boundary wall, a considerable extent of the application site lies within Flood Zones 'A' (1%AEP) and 'B' (0.1%AEP).

7.6.12. Section 4.4 of the SSFRA subsequently considers the post-development implications for fluvial flooding for both the 'Present-Day' and 'Future Climate Change' scenarios, however, it is of the utmost importance to note that these have been informed by the position adopted by the applicant that the existing southern boundary wall already offers a standard of protection against flooding from the Stradbroke Stream and thus effectively represents the 'status quo' i.e. the application site is protected and is not within a functional floodplain. By extension, the proposed development also includes the following key design parameters:

- A freeboard of 300mm applied to the maximum 1%AEP + Climate Change flood level in setting Finished Ground & Floor Levels.

- The replacement of the existing southern boundary wall with a new flood defence wall designed in accordance with the OPW's and Local Authority's flood protection standards and guidelines.

- 7.6.13. With the aforementioned measures in place, the modelling has determined that in both the 'Present-Day' and 'Future Climate Change' post-development scenarios, floodwaters from the 1%AEP & 0.1%AEP events will be prevented from inundating the site by the proposed flood defence structure along the southern boundary. Furthermore, as the proposed development will be located outside the 1%AEP & 0.1%AEP functional floodplains it will not give rise to any displacement of floodwaters.
- 7.6.14. It is this aspect of the applicant's analysis which is a matter of considerable dispute with the Planning Authority with the primary difficulty arising from the standard, if any, of flood protection afforded by the existing wall / fence along the southern site boundary and whether cognisance can be taken of same in the assessment of the subject proposal. In this regard, concerns arise as to the application of the relevant 'flood zones' pursuant to the Guidelines, the need to satisfy the 'Justification Test', and whether the site can be held to be outside the functional floodplain.
- 7.6.15. The remainder of the SSFRA considers the flood risk posed by the blockage of downstream culverts, the failure of flood defences, and surface water / pluvial runoff.
- 7.6.16. In reference to the potential backwater effect of downstream blockages, consideration has been given to previous incidences of flooding / overtopping at the Richmond Green and Alma Place bridges due to surcharging of their culverts caused by blockages etc. and it has been submitted that in a 'worst-case' joint-probability scenario where both bridges would be subject to a 50% blockage during a 0.1% AEP event (with account taken of climate change), the resulting flood level at the higher upstream extent of the site at Location Point XS05 (please refer to Table 4.7 of the SSFRA and the accompanying mapping) will be 15.48mOD (i.e. an increase of +0.13m over the Post-Development 0.1%AEP flood level of 15.35mOD) and that the impact of same can be suitably mitigated by providing an appropriate freeboard to the proposed development.
- 7.6.17. In this regard, whilst I would acknowledge the calculations set out in Table 4.7, it is unclear why the analysis is based on a Post-Development 0.1%AEP flood level of

15.35mOD at Location Point XS05 given that this figure relates to the definition of the undefended Flood Zones (please refer to Table 4.4) in the absence of climate change considerations as opposed to the higher modelled flood level of 15.44mOD at the same location for a Post-Development 0.1%AEP + Climate Change scenario as shown in Table 4.6.

7.6.18. In the event of a failure of the flood defences, the SSFRA states that water levels at the site are predicted to reach a maximum 0.1%AEP level of 15.40mOD and that whilst the lowest ground level within the proposed development will be 15.40mOD, the land between this 'lowest' area of the site and Stradbroke Stream will sit at a minimum of 15.50mOD. In addition, it is stated that due to the proposed levels and the local topography any failure of surrounding flood defences / protection structures will not cause floodwaters to flow towards the site and thus the proposed development will be protected from flooding in the unlikely event of a flood defence failure. In this respect, the Board may wish to query why it was considered appropriate to reference the Present-Day Post-Development 0.1%AEP flood level of 15.40mOD at Location Point XS05 (as shown in Table 4.5 of the SSFRA) as opposed to the equivalent figure of 15.44mOD in Table 4.6 which takes account of climate change (although the intervening area of land at 15.50mOD would seem to continue to afford flood protection to the wider site area).

7.6.19. With respect to surface water / pluvial runoff, Section 4.5 of the SSFRA states that the site will be unaffected by surface water runoff from the lands to the south and east as it is at a higher or similar level to those areas. Furthermore, it is envisaged that surface water originating from the more elevated and generally developed lands to the north and west of the site will be intercepted by the preferential flow path provided by Monkstown Road and thus will not tend to drain towards the lower-lying areas to the east. Surface water in excess of the drainage capacity of the neighbouring development to the immediate west (i.e. Heathfield) will be intercepted by the boundary wall between the sites and will be contained without any flow path towards or onto the application site. In addition, the lands further west are at a higher elevation and are drained by a surface water drainage network that discharges to the Stradbroke Stream through the existing 1,200mm diameter pipe at the upstream extent of the application site and, in this regard, it has been emphasised that the design flow for the Stradbroke Stream used in the SSFRA is similar to, but higher

than, that given for the watercourse in the Greater Dublin Strategic Drainage Strategy and, therefore, the effect of upstream surface water drainage has been comprehensively assessed as part of the hydraulic modelling for the site (the Local Authority has also stated in consultation that due to the nature of the catchment of the Stradbrook Stream, watercourse hydrology will be based on a hydraulic analysis of the upstream surface water network as it is the primary source of flow at the site. Therefore, the hydraulic modelling / assessment of fluvial flooding includes an analysis of pluvial flooding).

- 7.6.20. Accordingly, it has been submitted that the site is not at significant risk of pluvial flooding from runoff / flow onto the lands, however, I would advise the Board that this would seem to conflict with the mapping of pluvial flood extents contained in the OPW's Preliminary Flood Risk Assessment, although the SSFRA has provided a reasonable basis for its conclusions in this regard.
- 7.6.21. In relation to pluvial runoff emanating from the site itself, it is stated that this will drain towards the Stradbrook Stream given the prevailing topography. Whilst the proposed development will increase the extent of impermeable area on site and thus increase the rate and volume of runoff when compared to the existing scenario, it is anticipated that this will be satisfactorily attenuated and controlled by way of the Sustainable Urban Drainage System proposed as part of the scheme.
- 7.6.22. Section 5 of the SSFRA subsequently concludes by stating that the site-specific hydraulic modelling has demonstrated that the application site lies outside the effective / functional present-day and climate change 1%AEP & 0.1%AEP fluvial floodplains of the Stradbrook Stream due to the presence of a flood protection wall (although in an undefended scenario parts of the site will be within Flood Zones 'A' & 'B') and thus the proposed development will have no effect on fluvial flood risk given that there will be no displacement of floodwaters up to the 0.1%AEP (with climate change) flood horizon. It is also stated that the proposed development will be resilient to the effects of culvert blockages and flood defence failure. In terms of the design of the development in mitigating flood risk, reference is made to a number of measures including, a minimum design Finished Floor Level / Finished Ground Level of 15.63mOD on site (save for a section of roadway within the south-western corner) with the provision of 300mm of freeboard over the 1%AEP (+ climate change) flood

level at the upstream extent of the site, and the proposed new replacement flood defence wall along the southern site boundary.

7.6.23. Upon consideration of the amended / updated Site-Specific Flood Risk Assessment submitted as additional information, a further report was prepared by the Drainage Planning Division of the Local Authority and it is clear that this has formed the basis of the decision of the Planning Authority to refuse permission. Moreover, it is apparent that a key consideration in the assessment of the subject proposal from a flood risk management perspective was whether the site could presently be considered defended by reference to the existing concrete post and timber panel fence (noting that the lowermost panel is of a concrete construction) along the southern site boundary with the Stradbrook Stream. In effect, if the site is considered to be undefended, a considerable extent of the 'highly vulnerable' residential development proposed will be located within Flood Zones 'A' & 'B' as defined by the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* (i.e. within the 1.0% & 0.1% AEP flood extents) and thus the proposed works, including the raising of site levels, will give rise to the displacement of floodwaters. Alternatively, if the site is deemed defended against flooding by the existing wall / fence (which is to be replaced by a new flood defence construction) then the case has been put forward that the proposal will not result in the loss of any functional floodplain and that assorted mitigation measures can be put in place so as to further reduce the flood risk e.g. raising the finished floor / ground levels and implementing a sustainable urban drainage system.

7.6.24. Whilst various arguments and counter-submissions have been made as regards the interpretation of the policy provisions of the Development Plan, with particular reference to the Strategic Flood Risk Assessment included at Appendix 13, in my opinion, the pertinent issue (prior to any consideration of the 'Justification Test' as submitted in response to the request for further information) is the identification of the relevant flood zones in accordance with the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'*. In this regard, I would draw the Board's attention to Section 2.25 of the Guidelines which states that the presence of flood protection structures should be ignored in determining flood zones as any areas protected by such flood defences still carry a residual risk of flooding from overtopping or breach of defences and as there may be no guarantee that the

defences will be maintained in perpetuity. Therefore, notwithstanding the veracity of the applicant's claims that the existing fencing along the southern site boundary provides some degree of flood protection, it is clear that the presence of any such measure is to be disregarded in the determination of the applicable flood zones. Accordingly, I would refer the Board to Drg. No. M02131-01_FL01-1 Rev. 1: '*Flood Zone Map*' of the SSFRA which details the extent of the present-day 1 in 100 & 1 in 1,000 (or 1%AEP & 0.1%AEP) maximum flood levels for the existing terrain. It is clear from this mapping that a significant extent of the wider site as outlined in red would fall within the existing 1%AEP & 0.1%AEP maximum flood levels and thus would theoretically be subject to 1 in 100 and 1 in 1,000 year flood events. More particularly, it can also be ascertained that a considerable proportion of the area envisaged for the development of housing will lie within the 1%AEP & 0.1%AEP flood extents i.e. Flood Zones 'A' & 'B' as defined by the Guidelines. Therefore, the proposal would involve the construction of a 'highly vulnerable' form of development (i.e. dwelling houses) within Flood Zones 'A' & 'B' on lands where there is a high / moderate probability of flooding and where development should be avoided in the first instance and only considered following application of the 'Justification Test'.

- 7.6.25. At this point, whilst I would accept that Section 4.2 of the Strategic Flood Risk Assessment appended to the County Development Plan states that '*this section of the SFRA begins from the point that all land zoned for development has passed the Justification Test for Development Plans, and therefore Part 1 of the Justification Test for Development Management*', I am cognisant of the limitations and uncertainties of this strategic study (as referenced in the disclaimer to the document) and the policy responses set out in Sections 4 & 5 of the SFRA.
- 7.6.26. With respect to the assessment of the subject proposal, it is of relevance to note that Table 4-1: '*Zoning Objective Vulnerability*' of the SFRA states that lands zoned as 'A: *To protect and-or improve residential*' have an '*Indicative Primary Vulnerability*' of being '*highly vulnerable*' before commenting that development is '*generally not appropriate in areas at risk of flooding*' whilst the preceding paragraph emphasises the need to apply the Justification Test for Development Management on a site-by-site basis and with reference to Section 5 of the SFRA.
- 7.6.27. Section 4.6 of the SFRA proceeds to refer to applications for minor developments in areas at risk of flooding and expressly references infill development, such as building

within the curtilage of an existing development, where the construction of new buildings on what would otherwise be undeveloped land has generally been found to generate an unjustifiable level of risk, either through introducing additional people into the 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 highly vulnerable development is stated as not being permitted within Flood Zones 'A' or 'B'. Accordingly, given that the subject proposal would involve the construction of additional highly vulnerable housing development and the introduction of additional persons into the 1%AEP & 0.1%AEP flood extents (Flood Zones 'A' & 'B'), it would not seem to be permissible under the SFRA. However, this is countered somewhat by Section 4.7.1.2: '*Existing Developed Areas*' which states that small scale infill can generally be considered appropriate, subject to site specific flood risk assessment, provided it constitutes a continuation of the existing level of development.

7.6.28. Section 5 of the SFRA subsequently aims to further apply the Plan Making Justification Test taking into account Circular PL02/2014 in relation to existing development. With respect to undeveloped land, Section 5.1 states that new development within Flood Zones 'A' or 'B' (with the exception of zoned Major Town Centres, District Centres and Sandyford Business District) does not pass the Justification Test and will not be permitted. Notably, this includes '*areas of existing low intensity development*' and thus could be applied to the subject proposal. However, in reference to the provisions of Circular PL02/2014 which state that there may be instances of highly vulnerable development (e.g. housing) within Flood Zones 'A' & 'B' where the residential / vulnerable use zoning has been retained as part of the development plan and thus additional development such as small scale infill housing could be expected, Section 5.2: '*Existing, developed, zoned areas at risk of flooding*' of the SFRA suggests that flood risk could be addressed through non-structural responses, such as requiring a site specific flood risk assessment which will identify appropriate mitigation measures such as retaining flow paths, flood resilient construction and emergency planning (in such circumstances Circular PL02/2014 requires a development plan to specify the nature and design of structural or non-structural flood risk management measures prior to future

development in order to ensure that flood hazard and risk to the area and to other adjoining locations will not be increased or, if practicable, will be reduced).

7.6.29. Having considered the available information, in my opinion, the fundamental issue is whether the subject proposal involves works within a floodplain. In this respect, the applicant's own Site-Specific Flood Risk Assessment has established that in the absence of any flood protection measures along the southern boundary, the application site is at risk of flooding as a result of the overtopping of the Stradbrook Stream. More specifically, it has been shown that in such circumstances a substantial part of the site proposed for housing development will lie within the 1.0%AEP & 0.1%AEP flood extents or Flood Zones 'A' & 'B' respectively. Although the case has been put forward that the subject site does not form part of the functional floodplain, a strict application of national guidance as regards the identification of flood zones disregards the presence of any flood defences and thus the site is potentially at flood risk as per the submitted Site-Specific Flood Risk Assessment. In any event, and for the purposes of clarity, I am inclined to concur with the Planning Authority that whilst the existing boundary fencing may offer some degree of flood protection to the site, given the nature and standard of its construction, it cannot be considered to comprise an effective flood defence mechanism and thus the lands in question should not be considered defended.

7.6.30. With respect to the site context, with particular reference to the residential land use zoning, the site location within a built-up area, and its established use (i.e. its occupation by a single private residence), whilst also noting the provisions of the Strategic Flood Risk Assessment, I am inclined to defer to Section 4.27a and 5.28 of the Guidelines as regards the consideration of proposals for small-scale, highly vulnerable, infill development within Flood Zones 'A' & 'B'. In such instances, the application of the sequential approach to flood risk management advocated by the Guidelines cannot be used to locate such development in lower-risk areas and thus difficulties arise in seeking to apply the development management justification test. However, in considering any such proposals, particularly where they would involve the introduction of a significant number of additional people and properties into a flood risk area, a key factor is the need to avoid increasing the flood risk elsewhere as referenced in Section 4.27a of the Guidelines whilst Section 5.28 requires any such applications to be accompanied by a commensurate assessment of the risks of

flooding to demonstrate that they *'would not have adverse impacts'* or *'impede access to a watercourse, floodplain or flood protection and management facilities'*.

7.6.31. Given that the subject site is presently 'undefended' and as the proposal will necessitate the raising of ground levels within a considerable extent of the development area in order to ensure that the proposed housing is situated above the flood levels predicted within Flood Zones 'A' & 'B' as shown in the Site-Specific Flood Risk Assessment, it is my opinion that the proposed development will result in the displacement of flood waters during both 1%AEP & 0.1%AEP flood events to undefended lands located elsewhere alongside the Stradbroke Stream (and potentially beyond). Although the design parameters of the development are such as to protect the proposed housing, no provision has been made to compensate for the loss of floodplain storage consequent on the proposal and I cannot accept the argument that the application site is already adequately defended against flood risk (and that the proposal will not result in the loss of any functional floodplain).

7.6.32. Therefore, on balance, in view of the site location and the risk of flooding, and having regard to the policies and objectives of the County Development Plan in conjunction with the precautionary approach advocated by the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009'*, I am not satisfied that the submitted proposal accords with the provisions of the Guidelines or that it will not have a detrimental impact on the flood regime of the area to the detriment of other properties.

7.7. Traffic Considerations:

7.7.1. The proposed development includes for the upgrading of the existing priority junction and shared access arrangement from Monkstown Road. This will entail the widening of the existing vehicular entrance onto the main roadway and the redesign of the internal access road in accordance with the objectives of the *'Design Manual for Urban Roads and Streets'* (DMURS) to provide for a defined carriageway and pedestrian footpath. The new vehicular access will be limited to 4.8m in width although it will narrow to 3.0m for a distance of 12m in order to incorporate pedestrian footpaths (with priority to be given to inbound vehicles over outbound traffic in this area) before subsequently widening again and terminating in a turning head (intended to accommodate access to any future development of the adjoining

lands to the immediate east). By way of further traffic calming, it has also been submitted that the series of sharp horizontal bends to the south will limit road speeds within the site thereby incorporating the principles of a home zone as set out in DMURS.

7.7.2. On balance, I would concur with the assessment of the Planning Authority and the report of the Transportation Planning Dept. that the submitted proposal represents an improvement over the current situation and provides for a more suitable means of access to both the existing dwelling houses and the proposed development.

7.7.3. Furthermore, having regard to the infill nature of the site in an existing built-up area, the relative scale of the development proposed, the proposal to upgrade an established access arrangement, the proximity and availability of public transport, and the overall condition and planned improvements to public roads in the vicinity of the site, it is my opinion that the surrounding road network has sufficient capacity to accommodate the limited additional traffic volumes consequent on the proposed development and that the subject proposal will not give rise to unacceptable levels of traffic congestion or serve to endanger public safety by reason of traffic hazard.

7.8. **Servicing / Infrastructural Considerations:**

7.8.1. *Foul and Surface Water Drainage:*

It is proposed to connect to an existing 450mm diameter public mains foul sewer set within the bed of the adjacent Stradbroom Stream (which flows towards Carrickbrennan Road) by upgrading the existing connection point that serves the dwelling house currently on site. Although such an arrangement would appear to be feasible, Irish Water has recommended that further details be sought in order to determine the size and type of connection to the mains sewer and if the existing connection would need to be upgraded etc. whilst it has also stated that if the sewer connection has the potential to impact on the flow of the stream then this should be considered as part of a Site-Specific Flood Risk Assessment. In my opinion, such matters can be satisfactorily addressed by way of condition in the event of a grant of permission.

7.8.2. In terms of surface water drainage, I would refer the Board to the updated Engineering Services Report received by the Planning Authority on 28th February, 2020 wherein it is proposed to utilise permeable paving for both interception and

attenuation purposes in conjunction with additional attenuation storage in the form of a reinforced concrete tank with flow controls limiting the rate of discharge to the adjacent Stradbroom Stream to 1.84l/s during a 100-year 6 hour storm event. The final report of the Drainage Planning Division of the Local Authority has raised a number of concerns as regards the design calculations for the proposed attenuation system, although I would suggest that the final design of any such system could ultimately be agreed with the Planning Authority should permission be granted.

7.9. Appropriate Assessment:

- 7.9.1. Having regard to the limited nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below

9.0 Reasons and Considerations

1. Having regard to the location of the proposed development in an area liable to flood events and to the provisions of 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009, the Board is not satisfied, on the basis of submissions made in connection with the planning application and the appeal, that the subject site is an appropriate location for the scale and type of development proposed. It is considered that the proposed development would negatively impact on the flood regime of the surrounding area and the amenities of surrounding properties and would,

therefore, be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

8th January, 2021