



An
Bord
Pleanála

Inspector's Report ABP-308729-20

Development

The demolition of existing dwelling and replacement with a proposed 2-storey dwelling with attic space, to accommodate 4 bedrooms and associated living spaces; the proposed modification of existing vehicular entrance with the addition of a proposed pedestrian gate; proposed new boundary fencing and associated landscape works.

Location

The Flags, Dalkey Avenue, Dalkey, Co. Dublin, A96 DX94.

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D20A/0300

Applicant(s)

Timo and Ruth Barry

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal

First Party v. Decision

Third Party v. Decision

Appellant(s)

Timo and Ruth Barry

Suzanne & Brendan Nangle and
Others

Observer(s)

Cormac Murphy

Edward & Helen O'Neill

Yvonne Lynch & Stewart Andrews

David & Maria Bourke

Date of Site Inspection

15th March, 2021

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located in a well-established residential area off Dalkey Avenue, Dalkey, Co. Dublin, and comprises the property known as 'The Flags' which occupies a locally elevated hillside position to the immediate east of a pedestrian right-of-way known as 'The Flags' / 'The Metals' that connects Dalkey Avenue to the north with Ardbrough Road to the south. The surrounding area is generally characterised by a variety of conventional housing construction interspersed with more contemporary additions / buildings while the broader topography is dominated by Dalkey Hill which rises steeply to the south and serves as a popular recreational resource.
- 1.2. The site itself has a stated area of 0.25 hectares, is broadly rectangular in shape, and is presently occupied by a detached, single-storey, bungalow-style dwelling house with a large garden area bounded by mature planting. It adjoins a recently developed detached, two-storey dwelling with attic level (constructed as part of a scheme of 3 No. houses) to the north, the mature housing estate of Cunningham Drive (which comprises a combination of detached single-storey and dormer-style properties) to the east, and by a small cul-de-sac of 6 No. two-storey houses known as Ardbrough Close to the south. In this regard, a defining characteristic of the wider area is the rising topography on travelling southwards with the result that the proposed dwelling house will occupy a location approximately midway along the hillside between Dalkey Avenue and Ardbrough Road. To the immediate west, the site adjoins 'The Metals' candidate Architectural Conservation Area, a historical right of way originally laid out as a railway / tramway to provide a means of access for carrying stone from Dalkey quarry to the harbour at Dún Laoghaire. The stretch of this route between Dalkey Avenue and Ardbrough Road is known as 'The Flags' (lending its name to the existing dwelling on site) and is characterised by a line of granite flagstones that run over most of its length with the boundary shared with the application site defined by stone walling of varying quality / construction. Although the more southerly extent of 'The Flags' opens into a wider grassed area on the approach to Ardbrough Road, the route is considerably narrower alongside the site boundary with the base of a concrete reservoir tank opposite the site entrance.

2.0 Proposed Development

- 2.1. The proposed development consists of the demolition of an existing single-storey, detached bungalow (floor area: 265m²) and its replacement through the construction of a large, contemporary, two-storey dwelling house with additional living space at attic level (floor area: 431m²). The proposed construction will be set into the hillside atop a raised plinth / platform with its principal elevation orientated north to avail of views towards Dublin Bay. The design is based on an irregular plan with an asymmetrical hipped roof construction and the overall building height will extend to 11.3m although measurement from the lowermost (split-level) finished (ground) floor level to the roof ridge is 9.4m. It is proposed to utilise extensive glazing to the front (north) and rear (south) elevations in addition to front-facing balcony / patio areas at first floor and attic levels. External finishes will include light-coloured render, linear brickwork, charred timber, and light-coloured stone cladding panels which will be applied to the first-floor elevations and roof construction.
- 2.2. The proposal also provides for the opening of a new vehicular entrance further north along 'The Metals' and the associated closure of the existing site access by reinstating the stone boundary wall (save for a section which will be utilised as a pedestrian gateway).
- 2.3. Associated site development works include connection to existing services and various landscaping.
- 2.4. Amended proposals were subsequently received by the Planning Authority on 1st October, 2020 in response to a request for further information which included a revised entrance arrangement from 'The Metals'.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Following the receipt of a response to a request for further information, on 23rd October, 2020 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following single reason:

- The proposed development, as clarified by way of Significant Further Information submitted on 01/10/2020, would not accord with the provisions of Section 8.2.3.4(xiv) of the Dún Laoghaire Rathdown County Development Plan 2016-2022 regarding Demolition and Replacement Dwellings in that strong justification has not been provided for the demolition of a dwelling of adequate structural condition. Furthermore, the proposed development, if permitted, would set an undesirable precedent for other similar development which would in themselves be contrary to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, and would thus 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 and the applicable policy considerations, including the site location alongside 'The Metals' Candidate Architectural Conservation Area (which is also a public right of way). It proceeds to state that while the principle of a replacement dwelling on site is acceptable, the justification for the demolition of the existing house was insufficient and therefore further details were required to demonstrate compliance with Section 8.2.3.4: (xiv) '*Demolition and Replacement Dwellings*' of the Development Plan. With respect to the overall design of the proposal, concerns were raised that it would appear visually overbearing when viewed from within adjacent properties and thus there was a need for contextual drawings and photomontages etc. to allow for an assessment of its relationship with neighbouring properties. It was also considered that proposals should be submitted to mitigate the potential for undue overlooking of those properties to the east from the upper-level patio / balcony areas. Further concerns arose as regards the impact of the works on the western boundary wall shared with the cACA, including the relocation of the vehicular entrance, the proposal to rebuild a section of walling, and the need to protect the existing flagstones from damage during the construction phase. The report thus concluded by recommending that further information be sought in relation to a number of issues, including the aforementioned items.

Upon the receipt of a response to the request for additional information, a further report was prepared which concluded that notwithstanding the higher standard of accommodation and improved energy performance of the proposed development, it had not been demonstrated that there was sufficient cause for the demolition of the existing dwelling house, which was acknowledged as being of adequate structural condition. Therefore, it was considered that the proposal would not comply with Section 8.2.3.4 (xiv) of the Development Plan. Concerns also remained as to the potential impact of the proposal on the residential and visual amenities of neighbouring properties to the east by reason of overlooking and / or an overbearing appearance. It was further considered that insufficient information had been provided to allow for a fully informed assessment of the impact on 'The Metals' cACA. In this regard, reference was made to the report of the Conservation Division which stated that it was not satisfied that the works to the wall would be entirely suitable in the context of the cACA or that the new vehicular entrance arrangement would not be visually incongruous given the historic character of the cACA. The absence of mitigation measures to protect the granite 'Flags' was also noted. The report concluded by stating that the proposed development would not accord with Section 8.2.3.4 (xiv) of the Development Plan as a strong justification had not been provided for the demolition of a dwelling of adequate structural condition and that it would also set an undesirable precedent contrary to the provisions of the Plan. It thus recommended a refusal of permission for the reason stated.

3.2.2. *Other Technical Reports:*

Drainage Planning, Municipal Services Dept.: An initial report recommended that revised proposals in relation to surface water drainage be sought by way of further information.

Following the receipt of a response to a request for additional information, a further report was prepared which stated that there was no objection to the proposal, subject to conditions.

Transportation Planning: An initial report stated that the replacement nature of the proposed dwelling house would not result in any significant increase in traffic movements along 'The Metals' while the relocated position of the vehicular entrance would also serve to marginally reduce the extent of 'The Metals' traversed by

vehicles accessing / egressing the property. However, concerns arose as regards the adequacy of the visibility onto 'The Metals' from the proposed entrance and the installation of outward opening gates which would further impinge on the available sightlines. Accordingly, it was recommended that the applicant be requested to submit further details, including an amended entrance layout demonstrating sightlines of at least 7m in both directions along the centreline of 'The Metals' and the omission of the outward opening gates.

Following the receipt of a response to a request for additional information, a further report was prepared which stated that there was no objection to the proposal, subject to conditions.

Conservation Officer: An initial report noted the site location within 'The Metals' candidate Architectural Conservation Area before acknowledging that the historic character of this industrial pathway can vary along its route although each zone is of importance in its own right. It was further noted that the proposed development site relates to an important surviving section of 'The Metals' known as 'The Flags' which retains much of its original character with some of the eastern boundary wall and a granite-flagged path (which originally extended the full length to Dalkey Avenue) remaining in situ (this section of 'The Metals' was laid out in 1816 and was the second inclined plane facilitating the removal of granite from the quarry to the third incline on its way to the harbour works).

It was stated that the proposed development appeared to be acceptable in principle and that the Conservation Division was primarily focused on protecting the character and surviving fabric along the route of the pathway. In reference to the proposal that the *'existing stone boundary wall be demolished in sections and reinstated in other locations'*, it was recommended that to fully assess the visual impact of the works on the cACA, the applicant should be required to clarify the appearance of the repaired / rebuilt wall bounding 'The Metals' (with a specification for the repairs). It was also considered that clarity should be provided of any mitigation measures to limit the risk of damage to 'The Flags' due to the development.

Following the receipt for a response to a request for additional information, a further report was prepared which stated that the details provided were inadequate to allow for a fully informed assessment of the proposed development in terms of its impact

on 'The Metals' cACA. Insufficient information had been provided on the condition of the existing boundary wall and those sections to be repaired and no drawings / specifications prepared by a specialist contractor or heritage consultant were supplied. Accordingly, the Conservation Division was not satisfied that the works to the wall would be entirely suitable in the context of the cACA (noting that an architectural heritage impact report did not form part of the application). It was also considered that the vehicular entrance arrangement would be visually incongruous given the historic character of the cACA and that its design / finish would not be sympathetic to the setting. In addition, no details of mitigation measures for the protection of the granite flags had been submitted. In the event the Planning Authority was minded to grant permission, it was recommended that the foregoing issues be addressed by way of condition.

3.3. Prescribed Bodies

3.3.1. *Irish Water*. No objection, subject to conditions.

3.4. Third Party Observations

3.4.1. A total of 18 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The proposed three-storey development has been misrepresented as a two-storey construction.
- Detrimental impact on the character, views, and visual amenity of the surrounding area.
- The overall design, scale, height and massing of the proposal is inappropriate to the site context (including the prevailing topography) and is out of character with the surrounding area.
- Adverse impact on natural, cultural & built heritage considerations etc., with particular reference to the character, setting and surviving fabric of 'The Metals' candidate Architectural Conservation Area.
- Inadequate justification for the demolition of the existing habitable dwelling house.

- The loss of trees and planting both on site and alongside 'The Metals'.
- The need to protect 'The Metals' and / or 'The Flags' from damage / interference during construction works.
- Concerns as regards pedestrian and cyclist safety along 'The Metals' in light of the proposed vehicular access arrangements.
- Detrimental impact on the residential amenity of surrounding properties by reason of overlooking, loss of privacy, overshadowing, overbearing / visual appearance, light pollution, noise, general disturbance, construction impacts, and the obstruction of views.
- Devaluation of property.
- The impact of construction works on traffic safety and use of 'The Metals'.
- The planning application is invalid by reference to the requirements of the Planning and Development Regulations, 2001, as amended.
- The description of the proposed development in the public notices is misleading and gives rise to confusion.
- Deficiencies in the display of the site notice.
- Inaccuracies / inconsistencies in the submitted drawings.
- Disturbance / disruption of the water table and the potential to exacerbate localised flooding.

4.0 Planning History

4.1. On Site:

PA Ref. No. D98B/0906. Was granted on 19th January, 1999 permitting F. & J. McKenna permission for a single storey extension, conservatory, extended deck, alterations to windows, and pitched roof over existing side extensions to form a new porch to front.

4.2. On Sites in the Immediate Vicinity:

4.2.1. *(to the north of the subject site):*

PA Ref. No. D11A/0193. Was granted on 22nd July, 2011 permitting Mrs. Iris O'Malley permission for the demolition of a two-storey house and the construction of 3 No. two-storey detached dwellings, modifications to the access at Dalkey Avenue, landscaping and ancillary site development works, all at No. 21 Dalkey Avenue (The White House), Dalkey, Co. Dublin.

(For the purposes of completeness, I would advise the Board that there is an extensive planning history relating to the development of the existing housing on these lands, including several applications for modifications to the approved house designs as has been outlined in the report of the case planner. I do not propose to comment further on this multitude of applications other than to confirm that I have had regard to same in my assessment of the proposal).

4.2.2. *(to the east of the subject site):*

PA Ref. No. D05B/0754. Was granted on 7th December, 2006 permitting P. & S. Bewley permission for a balcony and patio doors at ground floor level above basement to the rear of the existing dwelling at No. 15 Cunningham Drive, Dalkey, Co. Dublin.

PA Ref. No. D08B/0467. Was granted on 14th September 2008 permitting Gerard Glendon permission for the extension and alteration of the existing dwelling at No. 4 Cunningham Drive, Dalkey, Co. Dublin.

4.2.3. *(to the southwest of the subject site):*

PA Ref. No. D02A/0047. Was granted on 13th September, 2002 permitting Simon Lunt permission for the demolition of an existing two-storey house and the erection of new two-storey-over-part-basement house, single-storey garage, and remedial work to boundary walls, all at Nirvana, The Flags, Dalkey, Co. Dublin.

PA Ref. No. D04B/0890 / ABP Ref. No. PL06D.212871. Was granted on appeal on 14th December, 2005 permitting Simon Lunt permission for part retention, part amendments and completion to the detached dwelling previously approved under PA Ref. No. D02A/0047 at Nirvana, The Flags, Dalkey Avenue, Co. Dublin.

4.2.4. *(to the west of the subject site):*

PA Ref. No. D03A/0225. Was granted on 21st August, 2003 permitting Courtyard Business Centre permission for the demolition of an existing attached two-storey house and the construction of new three-storey detached house, garage, and associated siteworks, all at No. 23C Dalkey Avenue, Dalkey, Co. Dublin.

4.2.5. *(to the northwest of the subject site):*

PA Ref. No. D08A/0542. Was granted on 8th January, 2009 permitting Frank and Lorraine Costello permission for the demolition of an existing house and the construction of a new two-storey-over-basement house with associated site works including new boundary walls, widened entrance gates and rear pedestrian entrance, all at No. 22 Dalkey Avenue, Dalkey, 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.

5.2. Development Plan

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

Land Use Zoning:

The proposed development site is 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 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.

Chapter 4: Green County Strategy:

Section 4.1.4: Heritage:

Section 4.1.4.2: The Metals is an historic industrial pathway which was originally created to transport stone from the quarry at Dalkey to the harbour works in Dún Laoghaire. Today the pathway is an important recreational, walking and cycling route.

Policy LHB31: The Metals:

It is Council policy to manage and enhance The Metals from the Peoples Park to Dalkey giving due regard to its historic importance while continuing to facilitate and encourage its use as a walking and cycling route between Dún Laoghaire and Dalkey

Chapter 6: Built Heritage Strategy:

Section 6.1: Archaeological and Architectural Heritage:

Section 6.1.3: Architectural Heritage:

Policy AR11: *Industrial Heritage:*

It is Council policy to:

- i. Have regard to those items identified in the Industrial Heritage Survey listed in Appendix 5 when assessing any development proposals.
- ii. Identify further sites of industrial heritage significance with a view to assessing them for inclusion in the Record of Protected Structures.
 - Site No. 979 (23h) Pumping Station: Above Dalkey Avenue on The Metals.
 - Site No. 980 (23h) Water Tank: Above Dalkey Avenue on The Metals.

Section 6.1.4: *Architectural Conservation Areas (ACA):*

Policy AR16: *Candidate Architectural Conservation Areas (cACA):*

It is Council policy to assess candidate Architectural Conservation Areas (cACA) to determine if they meet the requirements and criteria for re-designation as Architectural Conservation Areas.

Policy AR17: *Development within a cACA:*

It is Council policy that development proposals within a candidate Architectural Conservation Area will be assessed having regard to the impact on the character of the area in which it is to be placed.

(The proposed development site adjoins 'The Metals Candidate Architectural Conservation Area' to the immediate west).

Chapter 8: Principles of Development:

Section 8.2.3: Residential Development:

Section 8.2.3.1: Quality Residential Design

Section 8.2.3.4: Additional Accommodation in Existing Built-Up Areas: (xiv)

Demolition and Replacement Dwellings:

The Council will sometimes state a preference to retain existing houses that, while not Protected Structures, do have their own merit and/or contribute beneficially to the area in terms of visual amenity, character and/or accommodation type.

Demolition of an existing house in single occupancy and replacement with multiple new build units will not be considered simply on the grounds of replacement numbers only, but will be weighed against other factors. Better alternatives to comprehensive demolition of, for example, a distinctive detached dwelling and its landscaped gardens, may be to construct structures around the established dwelling and seek to retain characteristic site elements.

In larger proposals for demolition of existing structures, the balance between the greater energy efficiency ratios of the new build, its size for running costs/impacts, and resources used for its construction - and those of the existing dwelling and the 'embodied energy' lost in its demolition, will be considered.

The Planning Authority will assess single replacement dwellings within an urban area on a case-by-case basis and may only permit such developments where the existing dwelling is beyond repair due to structural defects. For all applications relating to replacement dwellings, a strong justification / rationale shall be provided by the applicant.

Applications for replacement dwellings shall also have regard to Policies AR5 and AR8 (Sections 6.1.3.5 and 6.1.3.8). In this regard, the retention and reuse of an existing structure will be encouraged over replacing a dwelling. Applications for replacement dwellings within the rural area will be assessed under the provisions of Section 8.2.3.6(iv).

Section 8.2.3.5: Residential Development - General Requirements

Section 8.2.11.3: Architectural Conservation Areas

5.3. Natural Heritage Designations

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

- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206), approximately 90m south of the application site.
- The Dalkey Islands Special Protection Area (Site Code: 004172), approximately 1.1km east of the application site.
- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000), approximately 1.2km east of the application site.

5.4. EIA Screening

5.4.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site, the nature of the receiving environment in an existing built-up area, the intervening pattern of development, 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

6.1.1. *First Party Appeal (Timo and Ruth Barry):*

- In response to the concerns raised in the report of the case planner as regards the potential for overlooking of properties in Cunningham Drive to the east of the development site, the Board is referred to the accompanying amended design option (illustrated on Drg. No. 19054/2/DWG/012) which provides for screening to the eastern elevation of the easternmost first-floor patio area to negate the potential for overlooking.

- In relation to the concerns of the Conservation Division of the Local Authority, the Board is referred to the accompanying '*Architectural Heritage Impact Submission*' which provides clarity on the condition of the existing wall along the western site boundary (adjoining 'The Metals') and concludes that '*the stonework on its lower boundary wall and its curved driveway wall are not in design tandem with the original boundary wall on The Metals. It is clear that the full length of that wall section is a rebuild, uncoursed, with cement ribbon pointing*'. This report also makes suggestions on how works to the wall should be carried out and the materials & construction techniques etc. that should be used for the construction of the wall associated with the provision of the new vehicular entrance and the infilling of the existing entrance. Furthermore, in response to the recommendations of the '*Architectural Heritage Impact Submission*', a revised design for the new vehicular entrance has been submitted with the grounds of appeal (Drg. No. 19054/2/DWG/011) which provides for alterations to the wall construction, including the replacement of the previously proposed concrete wall & piers with random rubble coursed stone walling (these revisions could be imposed by way of condition in the event of a grant of permission).
- The response to the request for further information (which included discussions on the existing dwelling's architectural merit and historic significance as regards 'The Metals' cACA; the substandard condition of the existing building as regards contemporary Building Regulations; and the economic feasibility of the remedial works needed to improve the building energy rating, reduce its carbon footprint, and to bring the dwelling in line with modern standards) sufficiently justified the demolition of the existing house.
- By way of further justification for the demolition of the existing dwelling, the Board is referred to the accompanying reports (the key conclusions of which are summarised below):
 - The '**Energy Report**' prepared by Johnston Reid & Associates:
 - A comparison of the energy performance of the existing property and the proposed dwelling has determined that the new

construction will achieve an 'A2' BER which represents a considerable improvement over the 'F' BER of the existing house.

- Using the BER data of the existing and proposed dwellings, it has been possible to establish the CO₂ production of each structure per year whilst a review of the proposed design has also allowed for the calculation of the embodied CO₂ of the materials to be used in its construction. This information allows for a review of the 30-year CO₂ impact of the new building in comparison to the existing dwelling and has revealed that the new construction will result in a large improvement in the energy efficiency of the pre-existing dwelling and will be CO₂ positive after 6-7 years. It has been concluded that *'though there is an immediate impact from demolition and building materials, the increase in energy efficiency mitigates them in a very short time in comparison to the reasonable usage period of the dwelling'*.

In this regard, the Board's attention is drawn to the Development Plan which states:

'For demolition of existing structures, the balance between the greater energy efficiency ratios of the new build, its size for running costs / impacts, and resources used for its construction – and those of the existing dwelling and the 'embodied energy' lost in its demolition, will be considered'.

- The **'Engineering Report'** prepared by O'Neill Consulting Engineering Services:
 - With respect to the structural integrity of the existing dwelling, given the haphazard nature of the construction, significant concerns arise as regards its structure and, in particular, the foundations. The report strongly disagrees with the suggestion that the existing dwelling is of adequate structural condition.
 - Given the extent of demolition and engineering / construction works that would be required to modify the existing dwelling to accommodate the desired layout (including the strengthening of

walls and the possible underpinning of foundations), the existing property should be demolished in order to construct the proposed dwelling.

- The **'Suitability Assessment Report'** prepared by Wherity Chartered Surveyors Ltd.:
 - o The proposal to demolish the existing building and to construct a new dwelling should be favourably considered as the energy and environmental benefits of constructing a new building far outweigh the downsides of attempting remedial works and upgrades to the existing house when the long term and life cycle building costs and benefits of providing a new dwelling are fully considered.
 - o A new purpose-built building with sustainable design & construction related to the users' comfort (with consideration of life-cycle costs) would be a more suitable investment in the future and would provide for a more sustainable building and living environment.
- The **'Architectural Heritage Impact Submission'** prepared by Architectural Heritage Partners:
 - o The existing dwelling not a historic property and is of a poor quality and design.
- The proposal will not set an *'undesirable precedent for other similar development'* but will follow the precedent already set in the wider area for comparable demolition / infill developments. In this regard, the Board is referred to the following examples of replacement development:
 - PA Ref. No. D1A/0193: No. 21 Dalkey Avenue, Dalkey, Co. Dublin.
 - PA Ref. No. D14A/0151 / ABP Ref. No. PL06D.243484: Lands at No. 25 Dalkey Avenue, Dalkey, Co. Dublin.
 - PA Ref. No. D14A/0260 / ABP Ref. No. PL06D.244307: Lands at Cunningham Drive, Dalkey, Co. Dublin.
 - PA Ref. No. D17A/0769 / ABP Ref. No. ABP-300245-17: Redan House, Ardbrough Road, Dalkey, Co. Dublin.

- PA Ref. No. D15A/0089: 'Topcliffe', Ardbrough Road, Dalkey, Co. Dublin.

The aforementioned approvals indicate that the Planning Authority considers it acceptable to demolish existing dwellings to facilitate the construction of sizeable infill developments / dwellings.

The Board's attention is also drawn to PA Ref. Nos. D08A/0662 (No. 8 Rocklands, Dalkey, Co. Dublin), D19A/0505 (Thornfield, Westminster Road, Dublin 18), D14A/0748 (18 Wilson Road, Mount Merrion, Co. Dublin), D09A/0609 (14 Mount Anville Road, Co. Dublin), D09A/0507 (as upheld on appeal under ABP Ref. No. PL06D.235694 at Ardcairn, Hillcrest Road, Sandyford, Dublin 18) & D18A/0650 (No. 40 Shanganagh Vale, Loughlinstown, Dublin), wherein energy performance / efficiency and life-cycle costs were pertinent considerations in the grants of permission.

- The proposed development is consistent with the wider policy provisions of the Dún Laoghaire Rathdown County Development Plan, 2016-2022, the Regional Spatial and Economic Strategy for the Eastern and Midland Region, 2019-2031, and Project Ireland 2040 – The National Planning Framework.
- Given its size and topography (amongst other factors), the subject site has the capacity to accommodate a larger dwelling without compromising the residential amenity of neighbouring properties. Nevertheless, it is prudent to include a discussion of potential residential amenity impacts:
 - *Overlooking:*
 - The proposed dwelling provides for adequate levels of natural light while maintaining the privacy of neighbouring properties.
 - The proposed dwelling is not proximate to the first-floor windows of any surrounding properties.
 - The new construction will be positioned further north and orientated to reduce its outlook towards the private amenity spaces / garden areas of properties in Cunningham Drive to the east.
 - The side elevations of the proposed dwelling have been designed to minimise the potential for overlooking of adjacent sites (including

any potential future development on those lands). The number of windows has been kept to a minimum and where windows / balconies are proposed privacy measures have been implemented throughout the design, including screening on either side of the first-floor patio areas.

- The amended design submitted with the grounds of appeal (as illustrated on Drg. No. 19054/2/DWG/012) provides for screening to negate the potential for overlooking of properties to the east.
- *Overshadowing:*
 - Due to the orientation of the proposed dwelling, its positioning on site, and the setback from site boundaries, there will be no undue overshadowing of neighbouring properties.
- *Overbearing / Visual Impact:*
 - Due to the size and topography of the site, the positioning of the proposed dwelling, and the generous setback from surrounding lands, the proposed development will not have an overbearing or visual impact on adjacent properties.
 - The contextual drawings illustrate how the dwelling will sit comfortably on site.
 - The apex of the roof will be below that of immediately adjacent dwellings, including 'Chacalna' and No. 23 Dalkey Avenue.
 - In relation to the potential visual impact on the wall along the western site boundary, the 'Architectural Heritage Impact Submission' clarifies the nature of the works while the new vehicular entrance design included with the grounds of appeal provides for various revisions, including the replacement of the previously proposed concrete wall & piers with random rubble stone walling.

6.1.2. *Third Party Appeal (Suzanne & Brendan Nangle and Others):*

- There are further substantial and significant reasons for refusal that warrant inclusion in the decision to refuse permission, with particular reference to the scale and height of the proposal and its impact on built heritage considerations such as 'The Flags'.
- The scale and height of the development is excessive given the sensitivities of the site context and will have an adverse impact on the amenities of neighbouring dwellings and the surrounding area. It will be visually obtrusive and overbearing in a highly sensitive landscape setting.
- The proposed development will be visually intrusive while its scale and height is significantly greater than that of the existing dwelling and will produce a gap in the pattern of development and landscape character.
- The plans and particulars submitted in response to the request for further information are inconsistent with the application as initially lodged. In this regard, although Drg. No. 19054/2/DWG/006 originally showed the height of the proposed development below the eaves of Nos. 4, 5 & 6 Ardbrough Close, Drg. Nos. 19054/2/DWG/002 & 19054/2/DWG/007 of the additional information indicate that the building height will exceed the eaves level of Ardbrough Close thereby implying that the adverse impact on those properties is worse than was originally portrayed.
- Given the prevailing topography and the surrounding pattern of development, the excessive height and width of the proposal will be overbearing and will obstruct the seaward views available from Ardbrough Close to the detriment of the residential amenity and market value of those properties.
- The proposed dwelling will be visually overbearing when viewed from along 'The Metals' and will also block seaward views. The relationship between landscape form, development scale, and the human context will be eroded given that the overall size, scale, height, massing & form of the proposal will overwhelm the human scale along 'The Metals'.
- The established pattern of development whereby properties are stepped along the hillside allows for views from those houses further up the hill and

thus provides for a pleasing visual composition while protecting the amenity and character of the area. The proposal will breach the mannerly relationship between the different levels of development along the hillside from Dalkey Avenue to Ardrugh Close.

- The description of the development in the public notices as a two-storey dwelling with an attic space is misleading given that the design is three-storey and equivalent to four storeys in height. This is compounded by the difference of 2m between the parking level and that of the front entrance door which effectively inserts a fourth floor to the overall development height. The stated building height of 11.3m would equate to a 4-storey apartment block.
- The photomontages are misleading and the applicant has sought to rely on the screening effect of existing vegetation notwithstanding that the proposed construction and change in levels will result in the significant loss of existing trees etc.
- The suggestion that the applicant intends to maintain all existing soft vegetation is in direct contradiction with the plans for the site boundary alongside 'The Metals'. The footprint of the proposed dwelling will extend into the crown spread / root zone of the trees along that boundary thereby impacting on the trees themselves. In addition, the plans show significant alterations to the site boundary to facilitate the new entrance and parking. Furthermore, given the proximity of the proposed dwelling, it is likely that the contractor will remove the boundary wall for the entire length of the depth of the house as construction access would otherwise be problematic.
- The proposed works will have a significant impact on the landscape and local biodiversity given that the area is likely to be important for bat foraging and serves as a wildlife corridor to the Proposed Natural Heritage Area in Dalkey Quarry.
- The proposed entrance arrangement and any requirement to remove part of the existing wall to provide for construction access would undermine the historic character of 'The Metals'.
- The design of the proposed entrance and the associated wing walls is incongruous given the historic character / context of 'The Metals'.

- No details have been provided of the mitigation measures to be employed to protect the historic flags & walls or the trees & hedgerows.
- The fact that the application was not accompanied by a Heritage Impact Assessment is a significant omission.
- Cognisance should be taken of the wider implications arising from the encroachment of the construction works into the root zones of the existing trees. Any impacts on the trees could have consequential impacts on the historic boundary wall.
- The proposal does not take cognisance of the need to protect 'The Metals' or its priority for pedestrian use as expressed in Policy LHB28: 'The Metals' of the Development Plan which states the following:

'It is Council policy to manage and enhance The Metals from the People's Park to Dalkey giving due regard to its historic importance while continuing to facilitate and encourage its use as a walking and cycling route between Dún Laoghaire and Dalkey'.

- The designation of 'The Metals' as a candidate Architectural Conservation Area warrants the protection of the historic character of the flags, walls, and vegetation. The proposed development is contrary to Development Plan policy which seeks to protect the historic character of 'The Metals'.
- The construction works could potentially last up to 24 No. months and would severely impede use of the right of way along 'The Metals'.
- The proposed development should be refused permission for the following additional reasons:
 - The proposed development would give rise to significant adverse impacts on the historic character and natural heritage value of 'The Metals'. Having regard to the extent of development proposed on this elevated and prominent site, it is considered that the proposed development would constitute overdevelopment by reason of its scale, massing and height, would be out of character with the surrounding area, would seriously injure the visual amenities of the area and would,

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

- The proposed development would undermine the land use zoning objective for the area which seeks to protect and improve residential amenity. It will have a materially adverse impact on the residential amenity of properties at Cunningham Drive and Ardbrough Close due to its visual obtrusiveness and overbearing mass, height and scale.
- Due to the insensitive removal of large sections of historic walls, the potential damage to historic flags, the removal of vegetation & trees, and by reason of its excessive scale, height, massing and floor area, the proposed development would materially contravene the policy of the Development Plan to protect the historic character of 'The Metals'.
- The proposed development, by reason of its scale, layout and height, would overlook and be visually obtrusive in respect of existing residential development. The development would, therefore, seriously injure the amenities and depreciate the value of property in the vicinity.

6.2. Response of First Party to Third Party Appeal

- With respect to the differences / inconsistencies between the plans lodged with the planning application and those provided by way of further information, the Board is advised that in preparing the second set of drawings required in response to the request for further information, a wider survey, including a more detailed analysis of the heights of surrounding buildings, was undertaken. This survey revealed that the eaves of the lower houses in Ardbrough Close were shown too high relative to the proposed ridge line in the original set of drawings. This discrepancy was therefore corrected in the further information to ensure consistency and accuracy and not to mislead the Planning Authority.
- Inaccurate claims have been made by the appellant as regards the height of the existing dwelling and that of the replacement construction while the suggestion that the proposal is the '*equivalent of four floors of development*' is also refuted.

The appellant has claimed that the proposed dwelling is 11.4m high stepping up from +62m to +73m, whereas the existing dwelling is 6m high stepping up from +62.8m to +68.9m. In calculating the height of the proposed building, the appellant has chosen to use a lower existing ridge level (68.9m) rather than the higher ridge level of 69.9m which is clearly marked on the drawings. It has also been claimed that the steps to the north of the proposed dwelling leading to the front door equate to an additional floor level but no such consideration has been applied to the steps which lead to the storage room and garage serving the existing dwelling when describing it as a single-storey bungalow.

The assumptions made by the appellant in calculating overall heights are inconsistent and skewed to support the grounds of appeal. In order to consistently assess and compare building heights, the existing and proposed construction must be measured from the same base level. If the existing ground floor level is taken to be +64.0m, the existing dwelling measures 5.9m in height to its highest ridge level (+69.9m) while the proposed development would be 8.6m in height to its highest ridge / parapet level (+72.6m) and, therefore, the height difference between the existing and proposed dwellings would be 2.7m and not 5.4m as has been suggested by the appellant.

- The proposed replacement dwelling is appropriate and will not negatively impact on the surrounding area or adjacent dwellings (please refer to the points raised in the first party appeal as regards the measures to provide for adequate levels of natural light while maintaining the privacy of neighbouring properties).
- Due to the large size and topography of the site, the positioning of the proposed dwelling, and the generous setback from surrounding lands, the proposal will not have an overbearing or visual impact on adjacent properties. The contextual elevations and sections provided with the further information illustrate how the proposal will sit comfortably on site with the apex of the roof below that of immediately adjoining dwellings (including 'Chacalna and No. 23 Dalkey Avenue).
- The proposal accords with the applicable land use zoning objective which seeks '*to protect and / or improve residential amenity*'.

- The suggestion that the works will *'impact a section of historic wall of the order of 20m and possibly more'* is misleading and exaggerated. The new entrance will span 7.9m while the existing access is 8m wide which equates to a total span of 15.9m and thus the appellant is factually incorrect.
- The Conservation Division of the Planning Authority has indicated that *'the proposed development appears acceptable in principle'*.
- The 'Architectural Heritage Impact Assessment' submitted with the first party appeal provides clarity on the condition of the boundary wall shared with 'The Metals' and concludes that *'the stonework on its lower boundary wall and its curved driveway wall are not in design tandem with the original boundary walls on The Metals. It is clear that the full length of that wall section is a rebuild, uncoursed, with cement ribbon pointing'*. That report also makes suggestions on how the works to the wall should be carried out and the materials / finishes etc. that should be used for the construction of the wall associated with the vehicular entrance and the infilling of the existing access.
- The proposed development is of the highest architectural merit and provides for an exemplary design and layout that will contribute to the built environment of Dalkey.
- The existing dwelling is not protected and has no semblance of architectural merit for which its retention could be considered beneficial to the area in terms of visual amenity.
- The proposed development will provide for a higher level of residential accommodation than presently exists on site and offers a rejuvenation of the streetscape of Dalkey Avenue.
- The proposed development is consistent with the wider policy provisions of the Dún Laoghaire Rathdown County Development Plan, 2016-2022, the Regional Spatial and Economic Strategy for the Eastern and Midland Region, 2019-2031, and Project Ireland 2040 – The National Planning Framework.

6.3. Response of Third Party to First Party Appeal

- The first party appeal is short on evidence or strong justification to warrant the demolition proposed and much of the accompanying documentation is irrelevant.
- The proposal fails to recognise the sensitivity of the site location and the need to respect the historic character of 'The Metals', the pedestrian nature of 'The Flags', and the wider landscape context whereby the surrounding pattern of development is stepped into the hillside.
- The height of the proposed development and the failure to respect the site topography will materially impact on the residential amenity of Ardrugh Close.
- The applicant failed to adequately respond to the request for further information and while additional plans have accompanied the grounds of appeal, the Board has no authority to accept such plans which preclude the majority of the public from comment or participation.
- The scope of development on site is restricted by the nature of the access along the pedestrian 'Flags'.
- There are concerns that the scale / quantum of development proposed will serve as a 'Trojan Horse' by which to establish a potential 'envelope' for apartments or such other form of development as to maximise the development capacity of the site.
- The references to certain provisions in the Development Plan, the Regional Economic and Spatial Strategy, and Project Ireland: 2040, are without relevance given that the application does not seek to increase the number of units on site. Furthermore, the proposal would not be supported by the policies referred to in Project Ireland: 2040 which promote the protection of heritage while neither regional nor national policy is in favour of over-scaled development in visually sensitive landscapes.
- The development is ill-considered and materially contravenes the land use zoning objective and Policy LHB28: 'The Metals' of the Development Plan.

- There is ample scope to refurbish the existing dwelling house to achieve an improved energy rating by way of an appropriate energy-driven design thereby negating any need to demolish the property.
- The CO₂ analysis does not take cognisance of the demolition waste generated or the energy and other inputs required for the construction materials necessary for the new dwelling. The 'Energy Report' has been motivated by a desire to maximize the floorspace rather than environmental sustainability.
- The use of heavy machinery / equipment during the construction & demolition phase would likely destabilise and undermine the integrity of the flags thereby impacting on the public realm.
- There are no similar planning precedents referenced in the first party appeal given the specific circumstances of the site location / context, including the need for access along 'The Metals' and the associated heritage implications.
- In the event of a grant of permission, a general precedent would be set whereby demolition would be justified merely on the grounds of an improved energy rating.
- The first party appeal has failed to address the planning precedents referred to in the appellants' original submission that would support a refusal of permission.
- The proposed development has been retrofitted on site without reference to the historic context of the 'Flags' or the environmental sensitivity of the site.
- The scope of the analysis provided in the 'Architectural Heritage Impact Submission' is limited to the impact on the boundary wall and does not justify the scale or extent of the changes proposed as regards the new vehicular and pedestrian access arrangements. It is not a conservation assessment of the wider merits of the development or its impact on the candidate Architectural Conservation Area and the proposed Natural Heritage Area.
- The conservation report is of no value in justifying the proposed development and there is no sustainable basis in conservation terms to adopt the demolition / new build approach.

- The suggested use of ground protection mats will not protect the flags from damage arising from the weight of cranes or heavily loaded vehicles. There has been no conservation assessment of the impact of the construction works on the flags.
- The conservation report is predicated on the fundamental invalidity of the application as the applicant has no legal right to undertake any works (including restoration) on 'The Metals' which is a public right of way.
- The planning application is invalid by reference to the requirements of the Planning and Development Regulations, 2001, as amended.
- The description of the proposed development in the public notices is misleading and gives rise to confusion.
- The location of the site notice does not comply with the requirements of the Planning and Development Regulations, 2001, as amended.
- The proposed development should be refused permission for the additional reasons set out in the third party grounds of appeal.

6.4. Planning Authority Response

- States that the reasoning for the decision to refuse permission is set out in the planning report already forwarded to the Board which comprehensively deals with the issues raised.

6.5. Observations

6.5.1. Cormac Murphy:

- Concerns arise as regards the visual impact of the development by reason of its overall scale, height, bulk, and proximity to neighbouring properties.
- The proposed dwelling would be overbearing and out of character with the existing scale and pattern of development along 'The Metals'.
- The proposal would not '*represent a positive precedence for the surrounding area*' nor would it '*rejuvenate the streetscape*'.

- If permitted, the proposed development could potentially injure the residential and visual amenities of the area.

6.5.2. *Edward & Helen O'Neill:*

- The existing dwelling at 'Topcliffe', Ardbrough Road, is a substantial structure which has been set into the hillside. It does not affect the buildings to the north or south and is in keeping with neighbouring properties. There can be no comparison between the impact of that construction and the likely negative impact attributable to the proposed development.
- The development at 'Redan' on Ardbrough Road has been set into the hillside and does not impact on dwellings to the south. Considerable excavation lowered the building to road level, however, its height is very much in line with the original dwelling (Redan House) and does not impact on the dwellings to the north (which were overlooked anyway). There is no comparison between the impact of that building and the proposed development.
- The housing to the north of the application site (formerly No. 21 Dalkey Avenue) occupies an area of flat / gently rising land while the dwellings themselves have been positioned to have a minimum impact on neighbouring properties. The impact of these dwellings is not comparable to the negative effects of the proposed development.
- The property known as 'Ardbrough House' is set into the hillside and does not impact on neighbouring residences.
- The applicant's reference to properties in Foxrock etc. is irrelevant given the differing topographical considerations.
- There are serious concerns as regards the adequacy / suitability of the surface water drainage arrangements and the potential for localised flooding.
- Having regard to the site context, it is considered that the design, size, scale & height of the proposal will have a negative impact on the neighbouring housing to the south & east, will be visually obtrusive, and will detract from the amenity value of 'The Flags' / 'The Metals'.
- The proposal does not comply with the Development Plan and is contrary to the proper planning and sustainable development of the area.

6.5.3. *Yvonne Lynch & Stewart Andrews:*

- The proposed development adjoins 'The Metals', a public right-of-way and a candidate Architectural Conservation Area, which is an important recreational, walking & cycling route of great historical interest.
- The proposed dwelling would be sited only 2.5m from the western boundary wall and would be very visible from 'The Metals' – unless it is screened by very high fencing, trees or hedging, although the associated loss of light would be extremely detrimental to this important walkway.
- Due to its excessive height, mass and bulk, the proposed dwelling would be overbearing and visually obtrusive. It would not be in harmony with the surrounding setting and would overshadow 'The Metals'.
- Views of Dublin Bay from 'The Metals' would be obscured by the proposed development thereby reducing public amenity.
- The design / construction of the new vehicular entrance would not conform with the requirements of Section 8.2.3.4(vii) of the Development Plan which states that infill development should retain the physical character of the area, including features such as boundary walls and pillars.
- No proposals have been put forward for the protection of the historic flags / flagstones.
- The proposal does not respect the established pattern of development along this section of 'The Metals' whereby building heights are such that they broadly follow the slope of the hillside thereby avoiding any obstruction of the visual aspect of those dwellings at higher elevations whilst also affording users of 'The Metals' views towards Dublin Bay. The replacement of the existing dwelling with a much taller, wider and bulky construction would be completely out of harmony with the surrounding area and would set a worrying precedent. It would be hugely dominant, visually obtrusive and overbearing when viewed from 'The Metals', Dalkey Avenue, Ardbrough Road and, in particular, Nos. 4-6 Ardbrough Close & Cunningham Drive.
- The residential amenity of neighbouring housing would be adversely impacted by the proposed development with an associated devaluation of property.

- Given the size of the south-facing windows spanning the rear of the first floor of the proposed dwelling, and the inclusion of various balconies, there are serious concerns as regards the potential for overlooking of the observers' property (No. 6 Ardrugh Close) with an associated loss of amenity and privacy. There would also be undue overlooking from the first-floor rear windows of those properties in Cunningham Drive to the southeast of the application site.
- With regard to the reference by the applicant to the subject site being located in an established residential area of '*large dwellings with generous gardens featuring to the north, south, east and west*', it is considered that on account of the excessive height, mass and bulk of the proposal relative to the neighbouring dwellings to the north, south and east, the proposed dwelling would be entirely incongruous. Section 8.2.3.4(vii) of the Development Plan requires new infill development to respect the height and massing of existing residential units while Policy UD1: '*Urban Design Principles*' states that all development must give proper consideration to its context.
- Due to the separation of those dwellings to the west by 'The Metals' walkway, they are not as relevant to the consideration of the subject application as they will not be materially impacted by the proposed development. The context that must be considered is the established pattern of development along the eastern boundary of 'The Metals' as well as that within Cunningham Drive.
- No evidence has been provided to support the assertion that the economic cost of the remedial works needed to bring the existing dwelling in line with modern standards in terms of its BER etc. would justify its demolition. There are multiple examples of older properties having been successfully upgraded / retrofitted to modern standards with no need for demolition.
- There is no evidence of any structural problems at the existing dwelling.
- The 'planning precedents' referenced in the grounds of appeal are not relevant to the proposal as they fail to take account of the differing site contexts.

- The proposed development would be hugely detrimental to the residential amenity of neighbouring properties, with particular reference to Nos. 4 - 6 Ardbrugh Close and the bungalows within Cunningham Drive.
- The proposal will obstruct views of Dalkey Castle and will have a detrimental impact on the streetscape of Dalkey Avenue.
- The intensification of the residential land use on site could be achieved by extending outwards and down the hillside rather than by raising the building height. Such a proposal would be more likely to respect the surrounding pattern of development and established residential amenity.

6.5.4. David & Maria Bourke:

- The first party appeal does not alleviate the concerns of the observers as regards the likely adverse impact of the proposed development.
- The appeal lodged by the applicant has focused on the decision by the Planning Authority that a *'strong justification has not been provided for the demolition of a dwelling of adequate structural condition. Furthermore, the proposed development, if permitted, would set an undesirable precedent'*. However, it does not address the basis for the decision to refuse permission which states *'For the avoidance of doubt, the reason and recommendations set out in the planner's report were generally adopted as set out in the Executive Order'*. That statement forms part of the decision to refuse permission.

- The Engineering Report has concluded that:

'Given the extent of works that would be required to the existing dwelling in order to accommodate the new proposal, . . . the existing dwelling should be demolished in order to construct the proposed new dwelling.'

Such a conclusion is unsurprising given that the proposed construction will be significantly larger in terms of height and floorspace than the existing building.

- The appropriate response to the decision to refuse permission would have been to propose a design that provided for the retention of the existing building which is of adequate structural condition. The Engineering Report

provides no support for the argument that permission should be granted for the demolition of the existing dwelling.

- The overall scale, height and massing of the development would visually dominate and overshadow 'The Metals'. Such an incongruous intrusion on the views to / from 'The Metals' would be further exacerbated by the patio / balcony areas which are intended to provide for uninterrupted and dominant views towards the historic walkway.
- The grounds of appeal state that the proposal '*will offer a rejuvenation to the streetscape of Dalkey Avenue, providing a more appropriate and sustainable form of development*'. The existing (and proposed) dwelling is located c. 100m off Dalkey Avenue along 'The Metals'. The appropriate development of the subject site would not involve 'rejuvenation' but rather preservation in a manner that would be sensitive to the character of the walkway.
- The proposal would have a significant adverse visual impact on Nos. 4-6 Ardbrugh Close.
- No evidence has been provided to support the assertion that the existing building fabric is nearing the end of its functional life. The Planning Authority has taken the view that the existing dwelling is of an adequate structural condition.

6.6. 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:

- The principle of the proposed development
- Overall design and layout / visual impact
- Impact on residential amenity
- Impact on built heritage considerations

- Procedural issues
- Appropriate assessment
- Other issues

These are assessed as follows:

7.2. The Principle of the Proposed Development:

- 7.2.1. 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' with the stated land use zoning objective '*To protect and-or improve residential amenity*' and that the surrounding area is primarily residential in character. It is of further importance to note that the proposal involves the replacement of an existing dwelling house with a newly constructed residence and that there are multiple examples of comparable developments having been permitted in the immediate site surrounds, including the demolition of older properties to make way for contemporary replacement housing or the further densification of lands through the construction of multiple-unit schemes. Therefore, in light of the foregoing, including the established use of the site for residential purposes, in my opinion, the redevelopment of the subject site and the construction of a replacement dwelling is acceptable in principle.
- 7.2.2. In its decision to refuse permission, the Planning Authority has referenced Section 8.2.3.4: '*Additional Accommodation in Existing Built-Up Areas: (xiv) Demolition and Replacement Dwellings*' of the Development Plan wherein it is stated that proposals for single replacement dwellings in urban areas will be assessed on a case-by-case basis (with all such applications to be accompanied by a strong justification / rationale for the works) and that any such developments may only be permitted where the existing dwelling is beyond repair due to structural defects.
- 7.2.3. Notwithstanding the applicant's assertions in response to the request for further information that the existing dwelling house is of minimal architectural merit and holds no historical significance as regards 'The Metals' candidate Architectural Conservation Area; the emphasis placed on the higher standard of accommodation and energy efficiency to be provided in the replacement dwelling; and the seemingly prohibitively high costs likely to be incurred in any attempt to retrofit / upgrade the existing construction so as to achieve a Building Energy Rating commensurate to

that of the proposed development; the Planning Authority has formed the opinion that a sufficiently strong justification has not been provided for the demolition of the existing dwelling given the acknowledgement by the applicant that the property was of an *'adequate structural condition'*. It is this determination which forms the basis of the decision to refuse permission with further concerns arising that if permission were to be granted in the absence of a 'strong justification' for the demolition of the existing dwelling, it would set an undesirable precedent for similar development.

- 7.2.4. Having reviewed Section 8.2.3.4:(xiv) *'Demolition and Replacement Dwellings'* of the Plan, it is my interpretation that the requirement to assess proposals for single replacement dwellings on a 'case-by-case' basis can be readily distinguished from the second part of that sentence which states that the Planning Authority 'may' only permit such developments where the existing dwelling is beyond repair due to structural defects, notwithstanding that all applications concerning replacement dwellings should be accompanied by a strong justification / rationale for the works. The use of the terminology 'may' as distinct from 'shall' or 'will' would seem to suggest that there is no overt requirement for an existing dwelling to be structurally unsound and beyond repair so as to warrant its replacement, but rather that any such proposals will be assessed on their merits with a key consideration being the justification provided for same. Indeed, I am aware of multiple examples of replacement housing having been permitted by both the Planning Authority and the Board pursuant to the current Development Plan without there being a need to establish that the dwelling to be replaced is *'beyond repair due to structural defects'*. Therefore, it is my opinion that the reliance placed on the 'adequate structural condition' of the existing property as a basis upon which to refuse permission is flawed and thus I propose to assess the proposal on its own merits.
- 7.2.5. In support of the proposed development, the grounds of appeal have been accompanied by a series of reports which aim to lend weight to the wider sustainability of the project. In this regard, a particular emphasis has been placed on the comparative building energy ratings and energy performance / efficiency of the existing and proposed dwellings.
- 7.2.6. By way of summation, the 'Energy Report' prepared by Johnston Reid & Associates has determined that the replacement dwelling will achieve an 'A2' BER (in excess of the minimum requirement for compliance with Part L of the Building Regulations),

which represents a considerable improvement over the 'F' BER of the existing house. It also asserts that the new construction will provide for a significant improvement in energy efficiency over the pre-existing dwelling and will be CO₂ positive after 6-7 years.

- 7.2.7. The 'Engineering Report' prepared by O'Neill Consulting Engineering Services disputes the suggestion that the existing dwelling is of adequate structural condition and states that the haphazard nature of its construction gives rise to significant concerns, with particular reference to the foundations. It further asserts that given the extent of demolition and engineering / construction works that would be required to modify the existing dwelling to accommodate the desired layout (including the strengthening of walls and the underpinning of foundations), the existing property should be demolished in order to construct the proposed dwelling.
- 7.2.8. The foregoing 'energy' and 'engineering' conclusions subsequently inform the 'Suitability Assessment Report' prepared by Wherity Chartered Surveyors Ltd. which essentially states that the energy and environmental benefits of constructing the proposed replacement dwelling far outweigh the downsides of attempting to remediate and upgrade the existing house (noting the significant costs likely to be incurred in any attempt to retrofit / upgrade the existing construction and considering the longer term and life-cycle costs and benefits of providing a new dwelling).
- 7.2.9. At this point, and for the purposes of completeness, I would also draw the Board's attention to the 'Architectural Heritage Impact Submission' provided with the grounds of appeal and I would concur with the conclusions therein that the existing dwelling is of no architectural or historical significance.
- 7.2.10. Having considered the available information, and in light of the wider provisions of Section 8.2.3.4(xiv), which provide an indication of those factors to be taken into account in the assessment of proposals involving demolition and replacement (such as the balance between the greater energy efficiency ratios of the new build, its running costs / impacts, and the resources used in construction - and those of the existing dwelling and the 'embodied energy' lost in its demolition), I am satisfied that the applicant has put forward a sufficient case for the demolition and replacement of the existing dwelling as to comply with the requirements of Development Plan.

7.3. Overall Design and Layout / Visual Impact:

7.3.1. By way of context, the proposed development site is located in a well-established residential area off Dalkey Avenue where it occupies a locally elevated hillside position to the immediate east of a right-of-way and candidate Architectural Conservation Area known as 'The Metals' that connects Dalkey Avenue to the north with Ardbrough Road to the south. The broader topography of the area is dominated by Dalkey Hill with the lands rising steeply on travelling southwards from Dalkey Avenue while the prevailing pattern of development is generally characterised by a variety of conventional housing construction interspersed with several examples of more contemporary architecture.

(For the purposes of clarity, it should be noted that the route of 'The Metals' and the extent of the cACA extends beyond Dalkey Avenue and Ardbrough Road given that it comprises an historical right of way originally laid out as a means of access for carrying stone from Dalkey quarry to the harbour at Dún Laoghaire. Furthermore, it is my understanding that 'The Flags', which lends its name to the existing dwelling on site, refers to that stretch of 'The Metals' between Dalkey Avenue and Ardbrough Road which is characterised by a line of granite flagstones that run over most of its length).

7.3.2. Concerns have been raised as to the appropriateness of the overall design, scale, height and massing of the proposed dwelling given the sensitivities of the site context and its relationship with neighbouring properties, with particular reference to Cunningham Drive to the east and Ardbrough Close to the south. It has been suggested that the proposal will be visually obtrusive and excessively overbearing when viewed from adjacent lands and will be out of keeping with the established pattern of development along 'The Metals' whereby building heights are such that they follow the slope of the hillside in a stepped arrangement thereby preserving the views enjoyed by the occupants of those dwellings at higher elevations.

7.3.3. While I would acknowledge that the proposed development involves the demolition of a single-storey dwelling and its replacement with a more substantial, contemporary construction of an increased height, in my opinion, the overall design of the proposal is not in itself incompatible with the emerging pattern of development in the area as evidenced by the increasing proliferation of more innovative housing

types (including several examples of up to three storeys in height) developed on neighbouring sites by way of infill or replacement housing. The broader trend in recent years has seen a noticeable shift towards more contemporary architectural design and in this regard I would draw the Board's attention to the three-storey properties developed at 'Chacalna' & No. 23 Dalkey Avenue on lands to the west of 'The Metals' which are at a comparable elevation to the application site; the three-storey / two-storey-over-basement property known as 'The Mill House' ('Nirvana') located on more elevated lands further south; and the recent housing developments completed on the lower-lying lands at Nos. 21 & 22 Dalkey Avenue which encompass a combination of two-storey-over-basement, two-storey plus roof level, and three-storey units. In general, there has been a clear move towards more contemporary housing types in the area, a key aspect of which has been the introduction of structures of an increased height which extend over multiple floor levels.

- 7.3.4. In my opinion, the primary concerns as regards the overall scale, height and massing of the proposed dwelling derive from its perceived impact on the residential amenity of those properties to the south and east, however, I would suggest that these matters are to be distinguished from the broader visual impact of the proposal.
- 7.3.5. Although the overall scale and massing of the proposed development will be noticeably greater than that of the existing house while the hillside location will also serve to increase the overall prominence / visibility of the construction, I am cognisant that this is a large site in a well-established built-up urban area which is characterised by a variety of architectural styles and a mix of scales that includes several examples of contemporary housing up to three storeys in height. Furthermore, the site context is such that views of the development from surrounding public roads will be largely screened by intervening buildings and other features, although I would acknowledge that the visual impact of the proposal will be more appreciable to users of 'The Metals'.
- 7.3.6. With respect to the suggestion that the proposal does not follow the established pattern of development between Dalkey Avenue and Ardbrough Road whereby building heights have been stepped in line with the changing topography so as to follow the slope of the hillside, I am unconvinced by the arguments put forward that the new construction would be at odds with this arrangement. Much of the objection

to the height of the proposed development derives from its potential to interfere with the views available from those properties located further along the rise towards Ardbrough Road & Dalkey Hill, with specific reference to the housing in Ardbrough Close, and it is clear that this is a key factor in the proposition that the proposal is not in keeping with the established pattern of development. Such an assertion is based on an assumed line of sight from the upper floor levels of properties rather than any relationship between the respective building heights. In my opinion, the more appropriate datum upon which to assess the appropriateness of the building height proposed and its relationship with development between Ardbrough Road & Dalkey Avenue is its ridge height relative to neighbouring properties and not an assumed 'line of sight' seemingly thought to preserve the views of private property. In this regard, I would advise the Board that notwithstanding the overall increase in building height on site, the actual finished ridge line of the proposed development will be stepped between that of Nos. 4, 5 & 6 Ardbrough Close on the more elevated lands to the south and No. 21C Dalkey Avenue to the north thereby maintaining the graduated fall in ridge heights along the hillside. In effect, the proposed building height follows the stepped roofscape prevalent along this section of 'The Metals'.

- 7.3.7. By way of further comment, it is notable that the ridge height of 'The Mill House' / 'Nirvana' is greater than those of Nos. 4, 5 & 6 Ardbrough Close despite the properties being at a comparable elevation which would suggest that the real cause of concern for third party interests is not the building height *per se* but its impact on residential amenity i.e. the views from private property.
- 7.3.8. (With respect to the differences / inconsistencies between the plans lodged with the initial planning application and those provided by way of further information, the applicant has advised that in preparing the response to the request for further information, a more detailed analysis of surrounding building heights was undertaken which revealed that the eaves of the lower houses in Ardbrough Close were shown as being too high relative to the proposed ridge line in the original set of drawings. In the absence of any clear information to the contrary, I am amenable to accepting the veracity of the amended plans, although it is regrettable that any such error should have arisen in the first instance).
- 7.3.9. The contiguous elevational and sectional drawings in support of the application provide a further basis upon which to assess the relationship between the proposed

development and neighbouring housing with the finished ridge height of the proposed dwelling shown to be comparable to that of the three-storey properties of 'Chacalna' & No. 23 Dalkey Avenue to the west.

7.3.10. Therefore, having regard to the site context, including its relationship with neighbouring property, and the existing pattern of development in the vicinity of the site, it is my opinion that the overall design, scale and height of the proposed dwelling house can be satisfactorily accommodated on site and would not be unduly visually obtrusive or out of character with the prevailing pattern of development.

7.4. Impact on Residential Amenity:

7.4.1. Having regard to the site context, 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, an overbearing visual impact, and the loss / obstruction of views. 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 adjacent housing on those lands to the south and east of the application site.

7.4.2. Overlooking:

Considering the overall design, positioning and orientation of the proposed dwelling, with particular reference to its separation from adjacent housing, it is my opinion that the proposal will not give rise to any significant detrimental impact on the residential amenity of neighbouring property by reason of overlooking.

7.4.3. In support of the foregoing, I would draw the Board's attention to the considerable separation distance between the principal elevations of the proposed dwelling house and the neighbouring residences at No. 21C Dalkey Avenue & Nos. 4, 5 & 6 Ardrugh Close (to the north and south respectively).

7.4.4. Furthermore, with the exception of a first floor stairwell window, the absence of fenestration serving the upper floor levels within the eastern and western elevations of the proposed dwelling avoids any overlooking of those properties to the east (within Cunningham Drive) and to west (beyond 'The Metals'). In the interests of clarity, circulation areas such as stairwells are not typically afforded the same level of amenity or privacy as living areas / bedrooms etc. nor are they considered to give rise to overlooking concerns. In any event, the window in question will be set back c.

9m from the eastern site boundary and in excess of 30m from the nearest dwelling house while not directly opposing same. In addition, views from the stairwell will be screened in part by a series of timber fins (as detailed in the amended proposal shown on Drg. No. 19054/2/DWG/012 Rev. A submitted with the first party grounds of appeal).

7.4.5. In relation to the potential for overlooking from the exterior patio / balcony areas at first & second (attic) floor levels to the front of the property, the primary concern of the Planning Authority pertains to the easternmost first floor patio area given its proximity to the rear gardens of Cunningham Drive. However, having considered the relationship between the respective properties, including the 12m setback of the proposed balcony from the eastern site boundary, the depth of the rear garden areas within Cunningham Drive, and noting that views from the balcony will not be directly orientated towards the housing itself, it is my opinion that the inclusion of the planted bed and the timber screening fins (as shown on Drg. No. 19054/2/DWG/012 Rev. A provided with the first party appeal) will sufficiently militate against any potential for undue overlooking of neighbouring residences.

7.4.6. By way of further comment, I would advise the Board that views from the attic level patio towards Cunningham Drive will be obstructed by a linear brick 'faux chimney' feature to east of same.

7.4.7. *Overshadowing:*

Given the site context, including the site location in a built-up urban area, and having reviewed the comparative 'solar impact' diagrams and analysis, which includes an examination of the overshadowing impact of the proposal, I am satisfied that while the proposed replacement dwelling will result in some increased overshadowing of neighbouring properties (including the rear garden areas of Nos. 14 & 15 Cunningham Drive), this will not give rise to such a loss of residential amenity as to warrant a refusal of permission.

7.4.8. *Overbearing Impact:*

Having regard to the site location, the overall design, scale, height and siting of the proposed development, and its positioning relative to both the site boundary and surrounding properties, I am satisfied that the subject proposal will not give rise to

any detrimental impact on the residential amenity of property in the area by way of an excessively overbearing or domineering appearance.

7.4.9. Obstruction of Views:

While I would acknowledge that there may be some concerns that the proposed development will have a detrimental impact on the residential amenity of neighbouring dwellings (with particular reference to Ardrugh Close to the south) by reason of the obstruction (in part) of views over the wider Dalkey area available from those properties, it is of the utmost relevance to note that any such views are not of public interest nor are they expressly identified as views worthy of preservation in the relevant Development Plan. They are essentially views enjoyed by a private individual from private property. A private individual does not have a right to a view and whilst a particular view from a property is desirable, it is not definitive nor is it a legal entitlement and, therefore, I am of the opinion that the proposed development would not seriously injure the amenities of property in the vicinity simply by interfering with their views of the surrounding area.

7.5. Impact on Built Heritage Considerations:

7.5.1. The proposed development site adjoins 'The Metals' candidate Architectural Conservation Area and in this regard I would draw the Board's attention to Section 6.1.4: '*Architectural Conservation Areas*' of the Development Plan and, in particular, to Policy AR17: '*Development within a cACA*' which seeks to ensure that development proposals within candidate Architectural Conservation Areas are assessed having regard to the impact on the character of that area with a view to preserving or enhancing the established character of its buildings and streetscape. However, without seeking to undermine the built / industrial heritage value of 'The Metals', it should be noted that a 'candidate' ACA is not afforded the same level of protection as an adopted Architectural Conservation Area.

7.5.2. (While Policy AR16: '*Candidate Architectural Conservation Areas (cACA)*' of the Dún Laoghaire Rathdown County Development Plan, 2016-2022 states that the Planning Authority will assess cACA's to determine if they meet the requirements and criteria for re-designation as Architectural Conservation Areas, it is of relevance to note that 'The Metals' was also identified as a cACA in the previous County Development Plan, 2010-2016 and has similarly been included as a cACA in the Draft County

Development Plan, 2022-2028. In my opinion, this continued deferring of any decision on whether 'The Metals' warrants inclusion as an ACA is unhelpful and results in difficulty in assessing the merits of development proposals that may impact on its character and setting).

- 7.5.3. Notwithstanding the rather protracted determination by the Planning Authority as to whether 'The Metals' candidate Architectural Conservation Area warrants re-designation as an Architectural Conservation Area, it is apparent that the area in question is of local heritage interest with 'The Metals' comprising a historical right of way which was originally laid out as an industrial pathway / railway / tramway to provide a means of access for carrying stone from Dalkey quarry to the harbour works at Dún Laoghaire. The stretch of the route between Dalkey Avenue and Ardbrough Road comprises the 'Second Inclined Plane' and is known locally as 'The Flags' (lending its name to the existing dwelling on site) in reference to the line of granite flagstones that run over most of its length (with a section of same passing alongside the site).
- 7.5.4. In further recognition of the industrial heritage value attributed to 'The Metals', Policy AR11: '*Industrial Heritage*' refers to the need to consider those items identified in the 'Industrial Heritage Survey' contained in Appendix 5 of the Development Plan when assessing any development proposals, including the sites of a 'Pumping Station' and a 'Water Tank' above Dalkey Avenue on 'The Metals'. The concrete base of the former water tank is situated directly opposite the existing site entrance while the remains of the pumping station (and the base of a former windmill) are located further south.
- 7.5.5. In addition to the aforementioned heritage considerations, 'The Metals' also serves as an important recreational, walking and cycling route with the entirety of its length (Marine Road to Summerhill Road, Dún Laoghaire and Summerhill Road to Old Quarry, Dalkey) and that section identified as 'The Flags' between Dalkey Avenue and Ardbrough Road having been listed as an established public right of way in Appendix 8 of the Development Plan.
- 7.5.6. The culmination of the foregoing is that Policy LHB31: '*The Metals*' of the Plan aims to manage and enhance 'The Metals' giving due regard to its historic importance

while continuing to facilitate and encourage its use as a popular walking and cycling route.

- 7.5.7. In terms of assessing the impact of the proposed development on 'The Metals' cACA, at the outset, I would advise the Board that the demolition of the existing dwelling house is not of concern given that it is of no significance from an architectural or heritage perspective (with the construction dating from the 1980s and having been extensively remodelled in the intervening years).
- 7.5.8. With respect to the suggestion that the overall design, height and bulk of the proposed replacement dwelling house will detract from the historic character of 'The Metals' and will also obstruct views available over the wider area from the pathway, while noting the provisions of Policy AR17: '*Development within a cACA*', I would reiterate my earlier observations that a 'candidate' ACA is not afforded the same level of protection as an Architectural Conservation Area and cannot be assessed as such. Therefore, in assessing the potential impact of the proposal on the historic character and built heritage value of 'The Metals', it would perhaps be prudent to revert to the provisions of Policy AR11: '*Industrial Heritage*' and Policy LHB31: '*The Metals*' of the Plan which require consideration to be given to the broader historical importance and heritage of 'The Metals'.
- 7.5.9. Having considered the specifics of the development proposed and the site context, it is my opinion that the proposal will not unduly detract from the visual amenity or inherent character & appreciation of 'The Metals' (both in terms of its designation as a candidate ACA and from a broader heritage perspective). In this regard, while I am mindful of the overall scale of the proposal, it be noted that the development itself is not located within 'The Metals' / cACA and will share a position broadly comparable to that of the existing dwelling house on site. Furthermore, the extent of the gable elevation and overall structure visible from 'The Metals' will be limited to a short narrow stretch of the route enclosed by existing housing to the west and, more particularly, the large concrete bases associated with the former water tank and pumping station etc. I am also cognisant that the character / context of this stretch of 'The Metals' / 'The Flags' is largely defined by the narrowing of the route and the enclosure of same by existing housing / walling as opposed to the wider and more open sections further north and, therefore, the limited impact of the proposed dwelling on the appreciation of the historic character of this section of the pathway

will be assimilated in large part by the existing site context. The proposal to retain the existing hedging alongside the site boundary shared with 'The Metals' will further serve to screen the development from view and this effect could be supplemented through the provision of additional planting. The relocation of the site entrance and the provision of a new boundary wall and planting in the area vacated by same will similarly reduce visibility of the development from the pathway.

- 7.5.10. With respect to the purported obstruction of views towards Dublin Bay and over the surrounding area as a result of the proposed development, in the first instance, it should be noted that there are no views or prospects from 'The Metals' listed for preservation in the Development Plan. Moreover, views over the wider Dalkey area are generally confined to the upper reaches of 'The Metals', such as alongside Ardbrough Road and from Dalkey Hill, with the change in elevation and the narrowing of the route on travelling towards Dalkey Avenue severely limiting the expanse of any viewpoints available and instead channelling views along the pathway itself. Accordingly, given the site location along a narrower section of 'The Metals' in an increasingly built-up area, and the obstruction of views at this location already attributable to a combination of factors, including the screening effect of existing development and planting, I am unconvinced that the proposal could be construed as interfering with any notable view / prospect from this part of 'The Metals'.
- 7.5.11. In my opinion, the principal areas of concern as regards the effect of the proposed development on the historic character of 'The Metals' derive from the direct impacts attributable to the relocation of the site entrance, the works to the boundary wall with the cACA, and the potential for damage to the flagstones as a result of the route being traversed by heavy construction machinery.
- 7.5.12. With regard to the proposal to relocate the site entrance and to reinstate a section of the boundary wall, I would refer the Board to the 'Architectural Heritage Impact Submission' submitted in support of the first party appeal. This submission has sought to allay the concerns of the Architectural Conservation Division of the Planning Authority by stating that the section of walling to be removed to facilitate the new entrance is not original to 'The Metals'. It asserts that the pattern of stonework along the northernmost extent of the site boundary alongside 'The Metals' and the curved section of walling which extends along the driveway to the existing dwelling differs from that of the original boundary walls of 'The Metals'. The walling in

question is characterised by an uncoursed rubble stone pattern with cement ribbon pointing and may have been rebuilt during construction of the existing bungalow in the 1980s. Accordingly, the relocation of the site entrance will not result in the loss of any original wall construction while the stonework recovered from these works will be used to close off the existing site access with an appropriate random rubble wall built to courses with lime mortar by an experienced stonemason (to match the original wall construction bounding 'the Metals').

7.5.13. In relation to the actual siting and design of the proposed entrance, I am satisfied that its relocation further north towards Dalkey Avenue to a position almost opposite the existing access serving 'The Mill House', 'Chacalna' & No. 23 Dalkey Avenue, particularly when taken in combination with the reinstatement and restoration of the wider boundary wall as proposed, will not be to the detriment of the historic character of 'The Metals' / 'The Flags' given that this stretch of the route has already been degraded to some extent through the opening of the entrance to the housing opposite and the loss of the original flagstones further north. Indeed, I would accept that the works to the site boundary and its walling could potentially enhance the setting of the existing walkway. In addition, the relocation of the site entrance would reduce the extent of 'The Metals' / 'The Flags' traversed by vehicular traffic to the overall benefit of its historic character (by avoiding potential damage to the flagstones) and use as an important recreational, walking and cycling route. The design of the new entrance has also evolved considerably from the original planning application and the amended proposals provided with the grounds of appeal have sought to replace the cast-concrete wing walls & piers with a more suitable random rubble stone construction in keeping with that of 'The Metals'.

7.5.14. In order to mitigate the potential for damage to the flagstones on the approach from Dalkey Avenue during the course of building works, it is proposed to remove the boundary wall at the new site entrance in the first instance to provide for ease of access by machinery etc. while negating any requirement for heavy equipment to traverse a greater length of 'The Metals'. It is also proposed to utilise ground protection mats with a view to avoiding damage to the existing flagstones. Such matters, including the avoidance of parking along 'The Metals' or the obstruction thereof (subject to health and safety requirements) during construction, could be addressed by way of an agreed Construction Management Plan.

- 7.5.15. In reference to the suggestion that repair works to the surface route / flagstones of 'The Metals' could be undertaken as part of the proposed development, I would share the concerns of third parties that any such works would be beyond the confines of the application and would likely necessitate the consent of the Local Authority.
- 7.5.16. Therefore, on the basis of the available information, and in light of the foregoing, I am satisfied that the proposed development will not detract from the historic character or built heritage value of 'The Metals' / cACA.

7.6. Procedural Issues:

7.6.1. *The Adequacy of the Submitted Drawings:*

It has been asserted that the planning application is invalid as the site location map does not identify the wayleave / right of way along 'The Metals' in yellow. In this regard, I am inclined to suggest that as 'The Metals' right of way is not within the confines of the application site and as it would seem to comprise a 'public road' (as detailed later in this assessment) there is no obligation to show it on the site location map. I am also cognisant that repeated references are made to 'The Metals' throughout the application documentation, including on the site layout plan.

- 7.6.2. With regard to the contiguous elevational drawings provided with the initial application, I note that the Planning Authority was satisfied that these drawings adequately identified the 'main features' of buildings in the vicinity as to accord with the requirements of the Regulations.

7.6.3. *Potential Works to 'The Metals' Right of Way:*

Although the 'Architectural Heritage Impact Submission' provided with the first party appeal recommends that repair works to the surface route / flagstones of 'The Metals' could be undertaken for the benefit of the proposed replacement dwelling, in my opinion, this is merely a suggestion and is not intended to be construed as an inherent part of the proposed development, particularly as no further details of any such works are included in the application nor are they referenced in the description of the proposed development. In any event, I would reiterate my earlier comments that any such repair works would be beyond the confines of the subject application and would likely necessitate the consent of the Local Authority.

7.6.4. *The Adequacy of the Public Notices:*

In relation to the suggestion that the description of the proposed development in the public notices is misleading on the basis that it refers to a '2-storey dwelling with attic space' and does not provide for an accurate representation of the overall height of the proposed construction, it is my opinion that procedural matters, such as a determination as to the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application. Nevertheless, I would advise the Board that Article 18(1)(d) of the Planning and Development Regulations, 2001, as amended, requires a newspaper notice to provide '*a brief description of the nature and extent of the development*' and in this regard I am satisfied that the description of the subject proposal provides for a sufficient and reasonable explanation of the nature of the proposed works for the benefit / notification of third parties.

7.6.5. With respect to the concerns as regards the location of the site notice, I would advise the Board that Article 19(1)(c) of the Regulations requires a site notice to be '*securely erected or fixed in a conspicuous position on or near the main entrance to the land or structure concerned from a public road, or where there is more than one entrance from public roads, on or near all such entrances, or on any other part of the land or structure adjoining a public road, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time*'. By way of clarification, Section 2 of the Planning and Development Act, 2000, as amended, states that the term "*public road*" is to be construed as having the same meaning as in the Roads Act, 1993 which in turn defines a "*public road*" as '*a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority*' with Section 2 of that Act further defining a "*road*" as including '*any street, lane, footpath, square, court, alley or passage*'.

7.6.6. Therefore, given that 'The Metals' comprises a lane / passage over which there is a public right of way and as responsibility for its maintenance would seem to fall to Dún Laoghaire Rathdown County Council as Roads Authority, it would seem to accord

with the definition of a 'public road' for the purposes of the planning regulations and thus the location of the site notice (as shown on the site location map) at the entrance to the application site from 'The Metals would seem to satisfy the necessary regulatory requirement.

7.6.7. Further Comments:

Notwithstanding the foregoing, I would reiterate that procedural matters, such as the validation of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the application documentation as lodged satisfied the minimum statutory requirements. I do not propose to comment further on this matter other than to state that the right of third parties to make a submission or to subsequently lodge an appeal would not appear to have been prejudiced in this instance.

7.7. Appropriate Assessment:

- 7.7.1. Having regard to the minor 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.

7.8. Other Issues:

7.8.1. Biodiversity Considerations:

Having regard to the site location in a built-up urban area, the 'brownfield' nature and limited ecological value of the lands in question, the nature and scale of the works proposed, the submitted landscaping proposals, and the implementation of best practice construction management measures, I am satisfied that the subject proposal will not give rise to any significant impact on wider biodiversity considerations.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be granted for the

proposed development for the reasons and considerations, and subject to the conditions, set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the location of the site on residentially zoned lands as set out in the current Dún Laoghaire-Rathdown County Development Plan, the established use of the site for residential purposes, the extent, topography and context of the site, including its relationship with adjoining property, the adjacent 'The Metals' candidate Architectural Conservation Area, and the existing pattern of development in the vicinity of the site, the Board considered that the scale and design of the proposed replacement dwelling house, subject to compliance with the conditions set out below, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not be out of character with the prevailing pattern of development, and would comply with the provisions of the Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 1st day of October 2020 and by the further plans and particulars received by An Bord Pleanála on the 19th day of November, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services, details of which shall be submitted to,

and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of public health.

3. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to commencement of development.

Reason: In the interest of public health.

4. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

Reason: In the interests of visual and residential amenity.

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

Reason: In the interest of visual amenity.

6. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

a) A plan to scale of not less than 1:500 showing –

- (i) Existing trees, hedgerows and shrubs, specifying which are proposed for retention as features of the site landscaping
- (ii) The measures to be put in place for the protection of these landscape features during the construction period
- (iii) The species, variety, number, size and locations of all proposed trees and shrubs, which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder
- (iv) Details of screen planting which shall not include *cupressocyparis x leylandii*

- (v) Hard landscaping works, specifying surfacing materials and finished levels.
- b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- c) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

7. All reconstruction, repair & restoration works to the boundary wall shared with 'The Metals' shall be carried out in accordance with best conservation practice as detailed in the application and the "Architectural Heritage Protection Guidelines for Planning Authorities" (Department of Arts, Heritage and the Gaeltacht, 2011). The repair / restoration works shall retain the maximum amount possible of surviving historic fabric in-situ and shall be designed to cause minimum interference to the structure of the wall.

Reason: To ensure that the historic character and integrity of 'The Metals' is maintained and protected from unnecessary damage or loss of fabric.

8. Site development and building works shall be carried out only between the hours of 0700 and 1900 Mondays to Fridays inclusive, between the hours of 0800 and 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the

development, including measures to protect the integrity of 'The Metals' / 'The Flags' from damage, details of on-site car parking facilities for site workers during the course of construction, noise management measures, and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Robert Speer
Planning Inspector

4th June, 2021