



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313311-22

#### Development

Permission is sought for the subdivision of an existing residential property and the construction of a new, 4-bedroom 2-storey, split level, flat roof, detached house; revisions to existing vehicular entrance & all associated site works.

#### Location

'Stella Maris', Commons Road, Loughlinstown, Dublin 18.

#### Planning Authority

Dun Laoghaire Rathdown County Council.

#### Planning Authority Reg. Ref.

D22A/0036.

#### Applicant(s)

Stefanie and Ben Murphy.

#### Type of Application

Planning Permission.

#### Planning Authority Decision

Refuse.

#### Type of Appeal

First Party.

#### Appellant(s)

Stefanie and Ben Murphy.

#### Observer(s)

None.

#### Date of Site Inspection

2<sup>nd</sup> day of February & 18<sup>th</sup> day of July, 2023.

#### Inspector

Patricia-Marie Young.

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## 1.0 Site Location and Description

- 1.1. The appeal site has a given area of 0.0668ha. It forms part of the curtilage of a residential property called 'Stella Maris', which consists of a detached dwelling with an attached double garage and separate side residential unit and a detached garage on mature landscaped grounds served by an entrance onto Common's Road to the north. This entrance is situated c325m to the north west of the Bray Road and c345m to the west of Commons Road's intersection with Shanganagh Road, in the suburb of Shankill, circa 16km to the south of Dublin's city centre.
- 1.2. Access to the site is via a long driveway that is bound on either side by detached dwellings that occupy higher site levels. This driveway and its entrance onto Commons Road is on Third Party lands. The ground levels drop from the entrance of this driveway in a southerly direction towards the location of the site.
- 1.3. To the south the site backs onto Seaview Woods open space with the boundary between the two containing mature planting. There is a significant drop between the adjoining estate access road to the south of this pocket of open space with the area in between containing mature planting and grass.
- 1.4. The opposite side of Commons Road contains a pedestrian pathway, grass verge and a drop down to a fast-flowing Loughlinstown/Shanganagh Stream. The southern side of Common's Road is characterised by residential development of varying architectural styles, periods and built forms. This is in contrast to the opposite side of the road where buildings and structures are limited.

## 2.0 Proposed Development

- 2.1. Planning permission for development comprising of the subdivision of an existing residential property; a new, 4-bedroom 2-storey, split level, flat roof, detached house with a given 214m<sup>2</sup> floor area; revisions to existing vehicular entrance & all associated site work. The proposed dwelling would be served by two car parking spaces, connection to the public sewer and water supply. This planning application is accompanied by the following documentation:

- Planning Application Report.
- Flood Risk Assessment.

- Arboricultural Impact Assessment & Method Statement.
- Engineering Assessment Report.
- An undated letter of consent from the owners of Stella Maris for the making of this application.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 15<sup>th</sup> day of March, 2022, the Planning Authority decided to **refuse** retention permission for the following stated reasons:

“1. *The northern section of the subject site is located within the catchment of the Loughlinstown/Shanganagh River Stream, and within Flood Zone B of the Office of Public Works (OPW) Catchment Flood Risk Assessment and Management (CFRAM) final flood maps. The northern section of the site will provide vehicular and pedestrian access to the proposed dwelling, and no alternative viable emergency vehicular and pedestrian access is proposed that will satisfy the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009 and Appendix 13 Strategic Flood Risk Assessment of the Dún Laoghaire-Rathdown County Development Plan 2016-2022. The proposed development, whose vehicular and pedestrian access is located in an area which is at risk of flooding and with no alternative viable emergency access would, therefore, if permitted would be contrary to the proper planning and sustainable development of the area.*”

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Officer’s report is the basis of the Planning Authority decision. It can be summarised as follows:

- General principle of residential development is acceptable.
- The extent of excavation works and the fact that these works are not included in the description of the proposed development is a concern.

- Separation distances between the proposed dwelling and existing dwellings in its immediate vicinity is acceptable.
- The minimum depth of 11m for private open space has not been provided; however, given the large quantum of open space provided on site the failure to provide this minimum depth to the rear boundary is not considered to be an issue.
- The removal of trees given their low quality and/or damage to facilitate the proposed development in this case is considered acceptable, subject to safeguards.
- The proposed development gives rise to no adverse visual and/or residential amenity impact concerns.
- The concerns of the Drainage Department are reiterated.
- Given the location of the site within Flood Zone B and the driveway being dependent on land that is zoned Flood Zone A and B concern is raised that the pedestrian route to Seaview Woods given its nature and winding alignment means it is unlikely to provide reasonable access during an adverse event including access for emergency services. It is also access dependent upon land outside of the applicant's legal interest.
- Given the substantive concerns that arise it is not considered appropriate to request further information.
- Procedural concerns are raised in terms of the red line boundary and excluding the driveway.
- The letter of consent to use the driveway is undated.
- Concludes with a recommendation of refusal.

### 3.2.2. Other Technical Reports

**Transportation:** Further information sought on the matter of sightlines. I note the following points raised in this report:

- The site access onto Commons Road is located within a 50km/h zone and the submitted drawings show a 1m by 45m sightline; however, DMURS does not allow a reduction in sightline setback to 1.0m.

- A reduced sightline appropriate to the traffic speed will also be acceptable to them if the applicant can demonstrate that the existing traffic speeds are lower than the speed limit by submitting a speed survey, subject to safeguards.
- Revised drawings and details requested for the proposed shared vehicular access showing compliance with relevant standards. This should be requested by way of further information.
- The gates serving the existing entrance are automatic with no setback from the edge of the footpath. A setback of 6m from the back of the footpath is required in accordance with Development Plan requirements. This should be requested by way of further information.
- The shared access laneway is located within a flood zone.

**Drainage:** Recommendation of refusal is made on the basis of flood risk. I note the following points raised in this report:

- Reference is made to the restrictions on development on flood zone land associated with the Shanganagh River and the limiting of development to infill and other minor development until such a time as the defences are brought up to the 1 in 100-year standard.
- The vehicular access to the proposed development is to the north via Commons Road and located in Flood Zones A and B. This proposed access is predicted to experience flood depths of up to 1.0m for the 1.0%AEP event making it an unacceptable route for access and egress during flood events.
- The secondary access is not confirmed in the documentation provided as being suitable or accessible for emergency services. The presence of such access is questionable given the heavy vegetation.
- There is 11m between Seaview Woods and the FFL of the proposed house and the space in between is heavily vegetated and steep.
- In an emergency situation it would be highly unlikely that emergency services would even be aware of this pedestrian route to the development, nor could it be considered reasonable for emergency services to use a heavily vegetated and unpaved pedestrian route for emergency access.

- The applicant's proposal to use the pedestrian access proposed for emergency services access is not considered to be a response that will satisfy the requirements of The Planning System and Flood Risk Management Guidelines and therefore should be refused.
- In addition to the recommendation of refusal further information was sought. This can be summarised as follows:

- Item No. 1: Surface water drainage proposals are unacceptable and do not demonstrate compliance with their SuDS policy.
- Item No. 2: Inadequate infiltration measures proposed.
- Item No. 3: Consent for discharging to a ditch on Third Party land is sought.
- Item No. 4: Seeks that they demonstrate that all proposed hardstanding areas are designed to meet required permeability standards.

### 3.3. Prescribed Bodies

- 3.3.1. **Irish Water:** Further information requested on the matter of feasibility of connection to public mains water.

### 3.4. Third Party Observations

- None.

## 4.0 Planning History

### 4.1. Site

- **P.A. Ref. No. D19A/0564:** Permission sought for the construction of a 4-bedroom 2-storey dwelling **withdrawn** after request for clarification of further information.
- **P.A. Ref. No. D05A/0052:** Permission **granted** for a two-storey building to provide a double garage at ground floor level and a two-bedroom residential unit at first floor level to the side of the existing dwelling.
- **P.A. Ref. No. D02A/0211:** Permission **granted** for amendments to P.A. Ref. No. D00A/0681 which sought to reposition the dwelling house and garage on site,

amendments to the dwelling including but not limited to the provision of increased floor space.

- **P.A. Ref. No. D00A/0681:** Permission was **granted** for the demolition of a two-storey dwelling and a replacement 4-bedroom house and garage.

#### 4.2. **Setting**

- **ABP-315270-22 (P.A. Ref. No. D22A/0687)**

*Site East of Entrance to 'Lisnaroe', & 'Brooklands', Commons Road, Loughlinstown, Dublin 18 (Note: 58m to the east as the bird would fly at its nearest point).*

Concurrently before the Board is a First-Party and Third-Party Appeal in relation to planning application for the retention of amendments to previously granted planning permission (Reg Ref D09A/0800, 0800E, 19A/0082) for a 2-storey detached dwelling at this site and all associated site works. This development was refused by the Planning Authority for the following stated reason:

*“The subject site is located in an area identified as within Flood Zone A and, to a lesser extent, Flood Zone B in Appendix 15, Strategic Flood Risk Assessment of the Dún Laoghaire Rathdown County Development Plan 2022-2028. The development proposed to be retained, which includes development comprising retention of a single-storey detached structure, is located in Flood Zone A. Under Section 6.2.10 ‘Shanganagh River’ of Appendix 15, Strategic Flood Risk Assessment of the Dún Laoghaire Rathdown County Development Plan, 2022-2028, it is stated that ‘.....Until a Flood Relief Scheme to the 1.0% AEP event standard is complete, any development in Flood Zone A is not permitted and development in Flood Zone B should be limited to Minor development, as defined in Section 5.2.1....’ The development proposed to be retained would not therefore be in accordance with the provisions of the Dún Laoghaire Rathdown County Development Plan, 2022-2028 regarding flood risk management, specifically Section 12.10.1 Flood Risk Management and Appendix 15: Strategic Flood Risk Assessment, specifically Section 6.2.10. The development proposed to be retained would, therefore, be contrary to the provisions of the Dún Laoghaire Rathdown County Development Plan, 2022-2028, and to the proper planning and sustainable development of the area.”*



- **ABP-314055-22 (P.A. Ref. No. D22A/0310)**

*Roseville, 60 Commons Road, Loughlinstown, Co. Dublin. (Note: c186m to the north east of the site at its nearest point and located on the opposite side of Commons Road).*

Concurrently with the Board is a First-Party and Third-Party appeal in relation to the Planning Authority's refusal of permission for retention of a dormer dwelling with two-storey extension on rear and single storey extension on side with roof garden above, with open sided canopy above front door together with all associated site works.

- **ABP-306191-19 (P.A. Ref. No. D19A/0721)**

*Iona ('Abigail House'), Commons Road, Loughlinstown, Co. Dublin. (Note: c82m to the east of the appeal site as the bird would fly at its nearest point).*

On appeal to the Board permission was **refused** for the construction of 3 No. 3 bedroom terraced dwellings together with 6 parking spaces. Each house comprises of a lower ground floor, an upper ground floor and a first floor. The lower ground floor is left open to allow any flood waters to pass below the structure without obstruction. The Boards reason and consideration for refusal reads:

*"The subject site is located within the catchment of the Loughlinstown/Shanganagh River Stream, and within Flood Zone A of the Office of Public Works Catchment Flood Risk Assessment and Management (CFRAM) final flood maps. The subject proposal represents 'Highly Vulnerable Development' in accordance with Table 3.1 of the Planning System and Flood Risk Guidelines for Planning Authorities 2009 and 'Minor Development- Class 2' development under Appendix 13 (Strategic Flood Risk Assessment) of the Dun Laoghaire Rathdown County Development Plan 2016-2022. Class 2 development is not permitted within Flood Zone A. Furthermore, under Section 5.3.3. of Appendix 13 of the Plan, development should be limited to Class 1 developments within the Shanganagh River flood risk area. In addition, Section 5.1 of Appendix 13 of the Plan indicates that with the exception of zoned Major Town Centres and the Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. It is therefore considered that the proposed development would be contrary to Sections 5.1 and 5.3.3 of the Strategic Flood Risk Assessment as set out in Appendix 13 of the Dun Laoghaire County*

*Development Plan 2016-2022. The proposed development is located in an area which is at risk of flooding and would, therefore, be contrary to the proper planning and sustainable development of the area”.*

Decision date: 06/11/2020.

- **ABP Ref No. PL06D.247145 (P.A. Ref. No. D15A/0502)**

*Loughlinstown, Dublin 18. (Note: 58m to the east as the bird would fly at its nearest point).*

On appeal to the Board retention permission was **refused** for a part dormer dwelling with two-storey extension on rear and single storey extension on side with roof garden above, with open sided canopy above front door to house together with associated works. The Boards reason and consideration for refusal reads:

*“The subject site is a greenfield site located within the catchment of the Shanganagh River Stream, which is located in Flood Zone B, and the Draft Catchment Flood Risk Assessment and Management (CFRAM) outputs indicate possible flooding in this location, in particular the area along Mill Lane which has flooded in the past, both before and after construction of the defences. Section 5.3.3 of Appendix 13 of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, specifies that the area should be limited to Class 1 Minor Developments in Areas at Risk of Flooding (as per section 4.6 of Appendix 13 of Dún Laoghaire-Rathdown County Development Plan 2016-2022) until such as time as the defences are brought up to the 1 in 100-year standard. The proposed development is, therefore, not in accordance with Appendix 13 (Strategic Flood Risk Assessment), in particular section 5.3.3 Shanganagh River, of the Dún Laoghaire-Rathdown County Development Plan 2016-2022. The proposed development is located in an area which is at risk of flooding and would, therefore, be contrary to the proper planning and sustainable development of the area.”*

Decision date: 4/01/2017.

- **ABP Ref. No. PL06D.247695 (P.A. Ref. No. PA D16A/0711)**

*Loughlinstown, Dublin 18. (Note: 131m to the east as the bird would fly at its nearest point).*

On appeal to the Board permission for the construction of 5 No. dwellings was **refused** for the following reasons and considerations:

*“Having regard to the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, including the Strategic Flood Risk Assessment (SFRA) in Appendix 13 of this Plan, the subject site is located within the flood plain of the Shanganagh River and within a Flood Zone A area as identified in Map No. 10, Flood Zone Maps, as set out in the 2016 – 2022 Dun Laoghaire-Rathdown County Development Plan (CDP). Section 5.1 of the Strategic Flood Risk Assessment (SFRA) (Appendix 13 of the CDP), indicates that with the exception of zoned Major Town Centres, District Centres and the Sandyford Business District, new development within Flood Zones A or B does not pass the Justification Test and will not be permitted. In addition, Section 5.3.3 of the SFRA (Appendix 13 of the CDP), which sets out the policy for the Shanganagh River catchment, indicates that development of the scale proposed (construction of 5 no. houses) is not an allowable development at this location. It is therefore considered that the proposed development would contravene Sections 5.1 and 5.3.3 of the SFRA as set out in Appendix 13 of the CDP. The proposed development is in an area which is at risk of flooding and would be contrary to the proper planning and sustainable development of the area.”*

Decision date: 25/04/2017.

## 5.0 Policy Context

### 5.1. National Policy

- **The Planning System and Flood Risk Management Guidelines**, 2009, is of particular relevance to this case. It sets out the following key principles:
  - Avoid the risk, where possible – precautionary approach.
  - Substitute less vulnerable uses, where avoidance is not possible.
  - Mitigate and manage the risk, where avoidance and substitution are not possible.

In relation to ‘Flood Zone A’ land, it sets out that this has the highest probability of flooding, ‘Flood Zone B’ has a moderate risk of flooding, and ‘Flood Zone C’ (which covers all remaining areas) has a low risk of flooding. The sequential approach should

aim to avoid development in areas at risk of flooding through the development management process.

An appropriate flood risk assessment and justification for development in and management of areas subject to flooding and adherence to SUDS is recommended. This document sets out how to assess and manage flood risk potential and includes guidance on the preparation of flood risk assessments by developers. This has regard Screening Assessment, Scoping Assessment and Appropriate Risk Assessment. It provides that only developments which are consistent with the overall policy and technical approaches of these Guidelines should be permitted.

- **Project Ireland 2040 - National Planning Framework (NPF)**, 2018. One of the national core principles to guide the delivery of future housing, at every level of governance, is to tailor the scale and nature of future housing provision to the size and type of settlement.
- **Housing for All - A New Housing Plan for Ireland**, 2021: This plan aims to improve Ireland's housing system and deliver more homes of all types for people with different housing needs (with Ireland needing an average of 33,000 No. homes to be constructed per annum until 2030 to meet the targets set out for additional households outlined in the NPF). The Plan itself is underpinned by four pathways: 1. Pathway to supporting homeownership and increasing affordability. 2. Pathway to eradicating homelessness, increasing social housing delivery, and supporting inclusion. 3. Pathway to increasing new housing supply. 4. Pathway to addressing vacancy and efficient use of existing stock.
- **Climate Action Plan**, 2021.
- **National Development Plan**, 2021 to 2030.

5.1.1. Other Ministerial Guidance: The following Section 28 Ministerial Guidelines and other national policy documents are relevant:

- **Quality Housing for Sustainable Communities – Best Practice Guidelines**, 2007.
- **Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities**, 2009 / **Urban Design Manual: A Best Practice Guide**, 2009.
- **Design Manual for Urban Roads and Streets**, 2019.

## 5.2. Regional

### 5.2.1. Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy (RSES), 2019 to 2031.

This is a strategic plan which identifies regional assets, opportunities and pressures as well as sets out appropriate policy responses in the form of Regional Policy Objectives (RPO's). It provides a framework at a strategic level for investment to better manage spatial planning and economic development to sustainably grow the Region to 2031 and beyond.

## 5.3. Development Plan

5.3.1. Since the Planning Authority issued its decision in respect of the subject proposed development, they have adopted a new development plan for their administrative area. The applicable plan for the determination of this application is therefore the **Dun Laoghaire Rathdown County Development Plan, 2022-2028**. Under this plan the appeal site is located in an area zoned as 'A' with the stated land use zoning objective: *"to protect and/or improve residential amenity"*.

5.3.2. Chapter 2 sets out the Development Plans Core Strategy.

5.3.3. Chapter 12.3 of the Development Plan deals with the matter of Neighbourhood, People, Homes, and Place. 5.3.4. Section 12.3.7.7 of the Development Plan deals with the matter of Infill development which it sets out shall accord with Policy Objective PHP19. It states that: *"new infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area"*. It also sets out that reference be had to Section 10.7 deals with the matter of Flood Risk.

5.3.4. Section 12.3.7.6 of the Development Plan which deals with the matter of 'Backland Development' sets out these types of residential development usually involves the establishment of a new single dwelling, and a building line to the rear of an existing line of houses. Residential development within the boundary of larger detached houses does not constitute backland development and will not be assessed as such.

5.3.5. Policy Objective EI22 of the Development Plan states: *"it is a Policy Objective to support, in cooperation with the OPW, the implementation of the EU Flood Risk*

*Directive (20010/60/EC) on the assessment and management of flood risks, the Flood Risk Regulations (SI No 122 of 2010) and the Department of the Environment, Heritage and Local Government and the Office of Public Works Guidelines on 'The Planning System and Flood Risk Management' (2009) and relevant outputs of the Eastern District Catchment and Flood Risk Assessment and Management Study (ECFRAMS Study). Implementation of the above shall be via the policies and objectives, and all measures to mitigate identified flood risk, including those recommended under part 3 (flood risk considerations) of the Justification Tests, in the Strategic Flood Risk Assessment set out in Appendix 15 of this Plan".*

5.3.6. Section 10.7.2 of the Development Plan also sets out that the implementation of The Planning System and Flood Risk Management Guidelines will include:

- Through the policies and objectives set out in Appendix 15 (Strategic Flood Risk Assessment) in accordance with the over-arching sequential approach of Avoid, Substitute, Justify, and Mitigate. As set out in Section 5.1 of Appendix 15 all applications for development must be accompanied by an appropriately detailed SSFRA.

5.3.7. Section 12.4.8.1 of the Development Plan sets out general specifications for residential developments.

5.3.8. Section 12.4.8.2 of the Development Plan deals with matters relating to visual and physical impacts of development, including boundaries.

#### **5.4. Natural Heritage Designations**

5.4.1. This appeal site is located c2.5km to the north west of Special Area of Conservation: Rockabill to Dalkey Island SAC (Site Code: 003000).

5.4.2. Of note Natural Heritage Area: Loughlinstown Woods (Site Code: 001211) is located c55m to the north of the site at its nearest point.

#### **5.5. EIA Screening**

5.5.1. See completed Form 2 on file. Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood significant

effects on the environment arising from the proposed development. EIA, therefore, is not required.

## 5.6. Other

- **Dun Laoghaire Rathdown County Council Climate Change Action Plan, 2019 to 2024.** This includes a section on Flood Resilience. It states that: *“flooding is a key climate change risk facing the Dublin Region. Climate change increases the frequency and duration of heavy rainfall events and storm surges, which increase the risk of pluvial, fluvial and tidal flooding in vulnerable areas of the County. Extreme rainfall and weather events can also place additional pressure on the urban drainage network.”*

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The First Party’s grounds of appeal can be summarised as follows:

- The Appellants seeks that the Planning Authority’s decision is overturned.
- The Appellants have been living in the family home for the past five years and this proposed development is their best option to securing their own dwelling.
- The Planning Authority’s reasons for refusal are minor and this application sought to overcome the concerns raised under P.A. Ref. No. D19A/0564.
- The existing pedestrian access to the rear of the property would be upgraded and maintained as proposed in the original application and this rear access to Seaview Wood is located completely outside the flood zone and provides safe access to the property outside of the flood zone.
- Other proposed developments have been permitted whereby the sole means of access is a pedestrian access in a flood event.
- Planning policy provisions seek to reduce the use of cars and car parking.
- Pedestrian access is becoming increasingly more common.
- The pedestrian access is for emergency access only and is reasonable in this site context.

- Emergency services would have direct access to it via an open space area in the Seafield View residential scheme.
- Being an emergency access only which opens onto a public space it is not proposed to have a highly identifiable opening due to trespassing concerns.
- There is a low probability such an access would ever be used given the type of storm event has an occurrence once during every 100 years.
- It is common practice in the event of flooding to park outside of the flood zone area and therefore pedestrian access is standard procedure during a flood event.
- The proposed infill dwelling is consistent with planning provisions.
- There are no objections to this development.

## 6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Board is referred to their Planning Officer's report.
- The grounds of appeal do not raise any new matter that would justify a change of attitude to the proposed development.

## 6.3. Observations

6.3.1. None.

## 6.4. Further Responses

6.4.1. The Appellant submitted a response from their Waterman Moylan Ltd which was referenced in their appeal submission to the Board but in error not attached to it. It includes the following comments:

- Review of the relevant OPW Flood Maps show that the subject site is wholly located outside of the flood zone for both the access road and the northern section of the subject site which the dwelling is placed. The probability of a flood event on these maps is 10% in a given year and does not affect the subject site.



- The Medium Probability Flood event is for a 100-year storm event. With this event having a probability of 1% in any given year.
- A portion of the access serving the site is within the flood zone, but the northern section of the site is outside the flood zone.
- The worst-case scenario on the access is located within the flood depth in between 0.5m and 1m. At the lowest point the access road, the flood depth is c600mm.
- Contact was had with the Chief Fire Officer of Dublin Fire Brigade regarding their need of emergency access and how they would proceed during a flood event.

## 7.0 Assessment

### 7.1. Preliminary Comment

- 7.1.1. I consider the key issue in this appeal case is the reason given by the Planning Authority to refuse planning permission for the development sought under this application. A development that can be summarised as consisting of the subdivision of the curtilage for a detached dwelling known as 'Stella Maris' to provide a 0.0668ha plot with no independent access onto the public road network on which a four-bedroom two storey split level dwelling together with revisions are proposed. Revisions are also sought under this application for alterations to the existing vehicular entrance.
- 7.1.2. It is of note that the vehicular entrance lies outside of the redline area and there is no accompanying letter of consent for these works or indeed any works that may occur outside of the redline area such as those associated with connecting to water supply and foul drainage with the host dwelling served by connections to the public mains water as well as foul drainage. The letter of consent that is provided with this application from the owners of Stella Maris sets out their consent to make this application and provides no other clarity in terms of works on their land through to any legal provisions that would be made for the proposed dwelling for access and egress to the public road network from their property.
- 7.1.3. Of further note is that attached to the main dwelling on site there is also a separate two-bedroom independent dwelling unit located at first floor level over a double garage located to its side. These were permitted under grant of permission P.A. Ref. No. D05A/0052. The host dwelling and a detached garage was permitted under P.A. Ref.

No. D00A/0681 at a backland site located behind residential properties of New House, Browntops Cottage, Gleneevin, Saint Anns and No. 6 Woodview. The parent permission was subject to modifications under P.A. Ref. No. D02A/0211.

7.1.4. The site is also bound by residential development on its western side and bounds a pocket of open space in the Seaview Woods residential scheme. The application proposes pedestrian access onto this open space which would be for emergency use only. There is no consent provided by the owners of this land and there is no evidence of the Stella Maris property having an established right of way, way leave or other form of consent over these adjoining lands.

7.1.5. Whilst the main issue in this case relates to the Planning Authority's decision to refuse planning permission on the basis of essentially flood relating concerns and I concur with the Planning Authority that the general principal of residential development on land residentially zoned, where infill development does not have the potential to give rise to any undue overlooking, overshadowing or any other serious residential or visual amenity concerns, where there is potential to connect to public mains water as well as foul drainage and where there is connectivity to public transport as well as other services and amenities that are synergistic to residential development is acceptable subject to safeguards there are other issues in my view that require consideration by the Board in its consideration of this appeal case. In particular:

1) *Access/Traffic Considerations*

2) *Planning Precedent*

7.1.6. In addition, the matter of '*Appropriate Assessment*' also requires assessment.

## 7.2. **Flooding**

7.2.1. The Planning Authority refused planning permission for the proposed development on the basis that the northern section of the subject site is located within the catchment of the Loughlinstown/Shanganagh River Stream, and within Flood Zone B of the Office of Public Works (OPW) Catchment Flood Risk Assessment and Management (CFRAM) final flood maps.

7.2.2. I propose to deal with the matter of access and traffic considerations more broadly in the following section of this assessment.

- 7.2.3. Notwithstanding, the Planning Authority single reason for refusal intertwines flooding and access concerns. That is to say in their reason for refusal considered that the northern section of the site will provide vehicular and pedestrian access to the proposed dwelling with no alternative viable emergency vehicular and pedestrian access is proposed that will satisfy the requirements of The Planning System and Flood Risk Management Guidelines for Planning Authorities 2009 and Appendix 13 Strategic Flood Risk Assessment of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022. For these reasons it was considered that the proposed development would be contrary to the proper planning and sustainable development of the area.
- 7.2.4. I note that the said Development Plan referred to in the Planning Authority's notification to refuse permission has been since superseded by the Dún Laoghaire-Rathdown County Development Plan, 2022-2028.
- 7.2.5. The First Party in their appeal to the Board consider that the Planning Authority's reasons for refusal are minor in nature. Particularly in a context of a national housing crisis where infill applications like that proposed under this planning application should be supported. In relation to what is described as an existing pedestrian access to the rear of the property they assert that it would be upgraded and maintained as proposed in the application submitted. This access opens onto land outside of the flood zone and its use in an emergency situation is therefore reasonable and not dissimilar to other contexts in the city. On this point they assert that there is a low probability such an access would ever be used given the type of storm event has an occurrence once during every 100 years. It also contended that they are willing to accept a condition requiring further upgrading of the path on the proviso that any such upgrade would not be highly visually apparent when viewed from Seaview Wood in order not to draw too much attention to it. This is on the basis of safeguarding the property from trespassing.
- 7.2.6. The Planning Authority in their response to the grounds of this First Party appeal seek that the Board uphold its decision and they seek that the Board have regard to their Planning Officer's report. This report notes the Flood Risk Assessment provided by the applicants as part of the documentation provided with the subject planning application to the Planning Authority. They also noted and concurred with the concerns raised by the Planning Authority's Drainage Section in their report which concluded with a recommendation of refusal on the basis of the proposed emergency

access not satisfying the requirements of The Planning System and Flood Risk Management Guidelines as well as opens onto land that is outside of the applicants legal interest and concerns relating to emergency access to the lands in the event of an adverse flooding event.

- 7.2.7. Section 12.10 of the Development Plan deals with the matters of drainage and flood risk. Section 12.10.1 sets out that applications shall adhere to the policies and objectives set out in Appendix 16 Strategic Flood Risk Assessment and Section 10.7 Flood Risk whilst also having regard to 'The Planning System and Flood Risk Management Guidelines for Planning Authorities', 2009, and DECLG Circular PL2/2014.
- 7.2.8. It is also of note that the said plan defines 'Flood Risk Management' as risk management that aims: *"to reduce the human and socio-economic losses caused by flooding while taking into account benefits from floods. Therefore, one important part of Flood Risk Management is to analyze the relationships between physical system, the institutional framework and socio-economic environment. The most effective approach is through the development of flood risk management programmes incorporating prevention, protection, preparedness, emergency response and recovery and lessons learned"* and that Section 12.3.4.1 primary considerations residential developments will include access for emergency vehicles.
- 7.2.9. Appendix 16 of the Development Plan provides the Strategic Flood Risk Assessment and under Section 5.2.3 in relation to the Shanganagh River it states that the: *"Carrickmines/Shanganagh' river catchment comprises several tributaries including the Carrickmines River, Loughlinstown River, Shanganagh River, Glenamuck Stream, Brides Glen River, Foxrock Stream and Cabinteely Stream. The boundaries of these sub-catchments are not definitive and may indeed overlap and thus are to be considered indicative only. Upstream of the crossing point between the Shanganagh River and the N11, and at the confluence of the Shanganagh and Loughlinstown Rivers, lands within Flood Zone A and B are mainly zoned for water compatible uses, which should be retained (10), see Figure 5-2. There are some areas of existing residential development including parts of Beech Park (11) and Sunnyhill Park (12) that are located in Flood Zone A and B. In these areas of existing development, flood risks are generally moderate and risks to Minor Development, as defined in Section 4.3.1, can be managed through site specific risk assessments in accordance with the*

*specification guidance in this SFRA. New development within Flood Zone A and B cannot be justified and floodplain land should be retained as open space. Downstream of M11 and upstream of the DART line, Flood Zone A extends into areas of existing residential development (13) along the Commons Road, with some additional flood risk indicated by Flood Zone B. The area along Mill Lane has flooded in the past, both before and after construction of the defences. The defences consist of a combination of reinforced concrete walls and embankment. The walls were designed to provide a 1 in 50-year standard of protection, which is below the required standard of protection for Flood Zone A so it must be assumed that the lands are undefended”.*

7.2.10. It also states that: *“whilst Parts 1 and 2 of the Justification Test for Development Plans have been passed, the CFRAM outputs indicate possible flood depths up to 2m and therefore Part 3 cannot be passed at present. Until a Flood Relief Scheme to the 1.0% AEP event standard is complete, any development in Flood Zone A is not permitted and development in Flood Zone B should be limited to Minor Development, as defined in Section 4.3.1. Care should also be taken to ensure minor developments will not have a negative impact on the CFRAM's POR outline scheme, or the FRS as the design progresses. Upon completion of a Flood Relief Scheme to the 1.0% AEP event standard, proposals for all development will be considered subject to a Site Specific Flood Risk Assessment satisfying the requirements of Section 4 of this SFRA”.*

7.2.11. Section 4.3 in relation to development in Flood Zone A or B in relation to minor developments describes them as applications for small extensions to houses or the rebuilding of houses, and most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises. It sets out that these are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances. Since such applications concern existing buildings or developed areas, the sequential approach cannot be used to locate them in lower-risk areas and the Justification Test will not apply. The proposed development does not involve existing buildings and relates to greenfield land on a larger residential plot.

7.2.12. Section 4.3. provides further clarity in that it states that: *“infill development of any scale is not, as part of this SFRA, considered minor development and should be assessed under Sections 4.3.2 and 4.3.3”.* It also sets out that there are a number of

areas within Dún Laoghaire-Rathdown that prove to be exceptions to this approach however, the subject site does not benefit from this locational exception benefit.

- 7.2.13. In a manner consistent with the Flood Risk Planning Guidelines Section 4.3.2 includes dwellings houses in its list of vulnerable developments in Flood Zone A and B. Further Section 4.3.2.1 of the SFRA sets out that new, highly vulnerable, development is not appropriate in Flood Zones B outside of the core of a settlement. It indicates that such proposals do not pass the Justification Test for Development Plans and instead a less vulnerable or water compatible use should be considered. It also indicates that land use objectives which include highly vulnerable uses that other factors should be considered including the presence or absence of defences through to safe access and egress.
- 7.2.14. In this case the residential zoning of the site does not overcome the inadequacy of defences at this location as identified under Section 5.2.3 of the SFRA alongside the concerns raised in relation to the proposal failure to demonstrate safe access and egress to the site which is discussed in more detail below.
- 7.2.15. The proposed development is one that is inconsistent with the above provisions of the Development Plan, in particular Appendix 16 of the Development Plan.
- 7.2.16. In relation to national planning context, The Planning System and Flood Risk Management Guidelines for Planning Authorities, is of particular relevance with Section 3.5 characterises Zone B land as having a 'Moderate Probability of Flooding'. This section of the guidelines also states that: "*highly vulnerable development, such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure, would generally be considered inappropriate in this zone, unless the requirements of the Justification Test can be met*". Flood Zone B defines areas with a moderate risk of flooding from rivers (i.e., 0.1% to 1% probability or between 1 in 100 and 1 in 1000) and the coast (i.e., 0.1% to 0.5% probability or between 1 in 200 and 1 in 1000).
- 7.2.17. It is also of note in close proximity to the entrance is located in close proximity to Flood Zone A land with Commons Road to the immediate west defined as Flood Zone B land and in close proximity to the east Flood Zone A. With Flood Zone A land continuing along the eastern stretch of Commons Road to where it intersects with Shanganagh Road. At this point is the bridge over the Shanganagh River.

- 7.2.18. In addition, the Shanganagh River at its closest point is located c58m to the site area at its nearest point and c11m to the north of the entrance serving the site. With the ground levels falling steadily to the site area from Commons Road to the site area. Of additional concern the northern portion of the site, the access serving the site is located on Flood Zone B land. The ground levels fall from the Commons Road to the northern boundary of the site by almost 2metres. In addition, the ground levels within the site appear to raise from the northernmost portion to the southern boundary by circa 6m. There would also appear to be significant undulating of the adjoining open space to the south which appears to raise significantly to where it meets the Seaview Woods access road. Further the drawings show that the proposed development includes significant ground augmentation to accommodate the proposed dwelling with this including further lowering of ground levels.
- 7.2.19. It is therefore of note given the site's proximity to Flood Zone A land to note that the aforementioned guidelines states for such lands that: *"most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Only water-compatible development, such as docks and marinas, dockside activities that require a waterside location, amenity open space, outdoor sports and recreation, would be considered appropriate in this zone"*. Flood Zone A relates to areas with the highest risk of flooding from rivers (i.e., more than 1% probability or more than 1 in 100).
- 7.2.20. The high sensitivity of the site and its setting is directly related to its proximity to Shanganagh River/Loughlinstown Stream and its location that overlaps with this watercourse's catchment area. In addition, the Loughlinstown watercourse feeds into the Shanganagh River c560m to the north west.
- 7.2.21. The aforementioned guidelines identify dwelling houses as being highly vulnerable development. The main footprint of the proposed dwelling is located on land outside of Flood Zone A and B with the main private open space and car parking area situated within Flood Zone B land.
- 7.2.22. In addition, the access and entrance to the public road network which is on Third Party lands is as said on Flood Zone B land with the entrance in c11m proximity to the banks

of the Shanganagh watercourse. A watercourse at the time of inspection was fast flowing and the ground within its vicinity heavily waterlogged. The latter appearing to reflect the high levels of precipitation experienced preceding the last site inspection, but similar volumes of water flow were apparent on the previous inspection, but the ground levels were not as waterlogged.

- 7.2.23. It should also be noted that works are proposed in the northern area of the site as well as on land outside of the red line area as part of connecting the proposed dwelling to public infrastructure, i.e., the public water supply and foul sewer that runs along Commons Road. In this regard the aforementioned guidelines also define essential infrastructure, including water and sewage, as highly vulnerable development. It also recognises that these have the potential to be a significant source of pollution in the event of a flooding event.
- 7.2.24. Section 3.6 of the aforementioned guidelines set out that development on Flood Zone B land would be required to meet the Justification Test and it sets out that development that does not meet the criteria of the Justification Test should not be approved within the development management process.
- 7.2.25. Box 5.1 of the Justification Test for development management requires a number of criteria to be satisfied and whilst the site is located on residentially zoned land I raise a concern that the documentation provided do not include robust effective measures to deal with residual risks.
- 7.2.26. In particular and as discussed in the following section of this assessment provisions of emergency services access but also the surface water drainage measures identified in the suite of drawings are not consistent with best practices, including confining runoff appropriately on site and they do not demonstrate consent for the discharge onto Third Party lands through to it is not clear that hard standing areas and the like upon which the proposed development reliant upon for parking and access would consist of semi-permeable surfaces. These drainage concerns were some of the issues that the Planning Authority's Drainage Section sought to be addressed by way of further information.
- 7.2.27. The appeal submission does not seek to address this shortfall in demonstrating compliance with the residual risks arising from this development as required under Box 5.1 of the Justification Test.



- 7.2.28. Moreover, the appeal submission seeks to concentrate on hearsay that fire services would have no difficulty accessing the proposed development via the pocket of open space, albeit outside of the flood zone (Note: Flood Zone C – where the probability of flooding from rivers and the sea is low, i.e., less than 0.1% or 1 in 1000 for both river and coastal flooding and Flood Zone C covers all other areas that are not in zones A or B) via a pedestrian entrance that would be obscured from view and via a steep ungraded route over a soft landscaped area not designed to accommodate pedestrian access. With no consent from the owners of this land for any improvements to this access.
- 7.2.29. It is also of note that the aforementioned guidelines also set out that new developments in flood risk areas, that: “*details of the flood risk, mitigation measures and residual risk should be supplied by the planning authority to the major emergency management committee (MEMC) of the relevant local authority for inclusion in their major emergency risk assessment*”. This does not appear to have been done in this case. Notwithstanding this, the Drainage Section of the Planning Authority after assessing the proposed development, the flood risk of this location through to the residual risks considered that the pedestrian access on the southern boundary of the site in this case deemed it was not acceptable or consistent with the said guidelines.
- 7.2.30. In relation to the Flood Risk Assessment provided and the additional comments made by the Appellants experts in this field as part of their appeal submission I am not satisfied that these overcome the proposed developments inconsistent with local through to national planning provisions for development at such a sensitive to flooding location through to the impacts that climate change are having where adverse flooding events, in particular fluvial and pluvial events, frequency on A and B zoned land is increasing. And as said there is no consent in place for the pedestrian access onto the adjoining Seaview Wood estate nor demonstrated for the existing Stella Maris dwelling units.
- 7.2.31. In conclusion, and when taken together with the further concerns raised below on access during a flooding event I consider that the proposed development is one that is inappropriate development for a building with a vulnerable use where appropriate flood defences are not in place and a type of development that does not demonstrate safe access for emergency service vehicles during an adverse flooding event.

### 7.3. Access/Traffic Considerations

- 7.3.1. The proposed development sought under this application includes revisions to the existing entrance serving the larger residential plot referred to as 'Stella Maris'. The drawings do not show any significant changes to the entrance and would appear to show that the main revisions shown relate to the provision of connections to public mains water and the public foul sewer. They also show that the width of entrance excluding physical obstructions including pillars is 6m in its width. The entrance width is significantly reduced by physical features in particular its pillars which I note support an electric gate with no setback from the public footpath and the driveway's width restricts towards its end. With its width also further encroached by mature evergreen hedging. The drawings show that this would not be amended and that the 1m by 45m sightline is achievable in both directions onto the Commons Road from this entrance. The footpath itself between the entrance gate and Commons Road is dropped and also of restricted depth. On either side of the entrance the southern side of Commons Road is obstructed by ad hoc car parking. This together with the limited 1m setback from the carriage edge, the obstructions of the pillars as well as the boundary treatments of the properties to the east and west further obstructs sightlines for vehicles egressing from the entrance onto Commons Road. Moreover, the gates serving the site are automatic and this raises a concern when vehicles are egressing in terms of potential conflict with vulnerable road users, i.e., pedestrians. Further there is *ad hoc* car parking along the southern side of Commons Road also obstructs views for road users both vulnerable and vehicle. With the obstruction of cars parked due to the restricted width of Commons Road, which is just sufficient for two-way traffic, being only suitable for one-way passage of vehicles where vehicles are parked.
- 7.3.2. I therefore raise concern that additional vehicle movements from this entrance would give rise to additional road safety and traffic hazard issues for road users of Commons Road. On the basis of the entrance being of a substandard design to cater for vehicle movements associated with effectively two dwelling units.
- 7.3.3. With this substandard nature arising from the inadequate 1m setback, a setback that does not meet the minimum standard of 2m in difficult circumstances where a reduction of setback may be considered in a 50km/h posted speed limit road set out under Section 4.4.5 DMURS; the lack of any safe dwell area should the circumstance arise where one vehicle is egressing and one vehicle is accessing; the nature of the

driveway whose width is only sufficient for one way vehicle movements along its 45m length with no dwell space along its length through to the fact that there is no space provided at the entrance to accommodate the bin storage needs of the existing and proposed dwelling units with the storage of bins on collection days on the public footpath being such that it would result in further obstruction of the footpath for vulnerable road users as well as would obstruct sightlines for vehicles egressing properties to the east and west of the entrance.

- 7.3.4. I also noted during the inspection that there was a steady flow of vehicles in both directions along Commons Road and that there appears to be a significant issue with car parking overspill from the quantum of residential development along its southern side.
- 7.3.5. Of further concern there is a lack of clarity in relation to the manner in which the subdivision is proposed in relation to the land and the building to the immediate west of the site. The use of this building is also unclear. The subdivision arising from this proposal effectively would result in another potential plot for future development on residentially zoned land. If this is the case, arguably the approach put forward is *ad hoc* and piecemeal, given the lack of a unified plan for the larger curtilage of Stella Maris.
- 7.3.6. In terms of the submitted drawings I also raise a concern that these do not show the access and entrance onto Commons Road as forming part of the defined red line area of the site but rather shows the driveway and a section of land to its immediate south and south east to fall inside a red hatched separate parcel of land that sits inside the larger blue lined area of the curtilage of Stella Maris which appears to be in the ownership of the one of the applicants parents. It also shows that this driveway serves a detached building located to the immediate west of the site. With this adjoining plot appearing to be dependent upon this driveway and entrance for access as well as egress from the public road network via Commons Road.
- 7.3.7. In addition to this and as previously noted it would appear that the main dwelling consists of a four-bedroom property with a separate two-bedroom unit attached at first floor level to its side above a double garage. The main site area itself is generous for a suburban backland plot with aerial images of the site showing ample room to accommodate the car parking needs above that required under the Development Plan

for these existing dwelling units. The proposed development which includes the provision of a separate detached four-bedroom dwelling also shows in the drawings provided that it would be served by two carparking spaces. Whilst this accords with the requirements of Section 12.4.5 of the Development Plan it further adds to the concern in relation to the number of dwelling units that would be dependent on what is a substandard in design driveway and entrance that in essence is not suitable to serve the existing quantum of development at Stella Maris.

- 7.3.8. Furthermore, whilst an undated letter of consent is provided with this application from one of the applicant's parents who are asserted to be the owners of Stella Maris this document does not provide any clarity on what civil arrangements would be put in place for the permanent use of the driveway and entrance. It also does not indicate that there is any consent in place for any other works outside of those required to connect to essential services.
- 7.3.9. Therefore, there is no improvements proposed to address their substandard nature and design to serve the quantum of development that would arise. Further, there is no consent either from adjoining properties to the east and west of the entrance and driveway for any consent to make any changes including addressing obstructions to sightlines through to addressing deficiencies in their width.
- 7.3.10. I bring the Boards attention to Section 12.4.8 of the Development Plan which states that: "*vehicle entrances and exits shall be designed to avoid traffic hazard for pedestrians and passing traffic*"; and, that: "*proper provision shall be made for sightlines at the exit from driveways in accordance with the requirements in DMURS, and as appropriate to the particular road type, and speed being accessed*".
- 7.3.11. On the matter of automatic electronic gates in residential developments it sets out that these are not favoured and should be omitted. It states: "*electronic or automatic gates are not acceptable in terms of road safety unless the entrance is set back from the footway, to avoid the roadway or footway being obstructed by a vehicle while the gate is opening*".
- 7.3.12. In addition, it sets out that a minimum of a 1.2m access path shall be provided for each dwelling and sufficient space shall be provided for refuse storage and SuDs.
- 7.3.13. I also bring the Boards attention to Section 12.3.7.6 of the Development Plan. This relates to backland residential development. In this regard I note that the relationship

of Stella Maris, i.e., a property that occupies a backland site L-shaped site with the main area of the site opening out just over 45m to the south of Commons Road, with the main site area being bound to the north, east and west by residential development. As well as to the south by a pocket open space at the Seaview Wood residential scheme. Given these facts I consider that in this situation the larger detached house of Stella Maris already occupies a backland site for the purposes of Section 12.3.7.6 of the Development Plan. It is therefore reasonable for the Board to have regard to the criteria set out in Section 12.3.7.6 alongside those set out in the Development Plan for infill development. These standards include but are not limited to requiring adequate vehicular access of a lane width of 3.7 metres must be provided to the proposed dwelling (3.1 metres at pinch points) to allow easy passage of large vehicles such as fire tenders or refuse collection vehicles and a wider entrance may be required to a backland development to or from a narrow laneway. Given that vehicle access and egress is dependent on third party land outside of the red line area. Alongside given its substandard nature and design. The proposed development as set out in this application has not demonstrated that the entrance and driveway that it would be dependent upon is suitable to safely accommodate the additional traffic movements this additional dwelling unit would generate on them, including service emergency vehicles.

- 7.3.14. Further, the driveway itself steadily slopes in southerly direction towards the red line area of the site with the ground levels of the site being considerably below that of Commons Road. In addition, as noted above this proposal includes lowering of ground levels to accommodate the proposed dwelling. Commons Road is located in Flood Zones A and B with part of the site itself located in Flood Zone B. This proposed access is predicted to experience flood depths of up to 1.0m for the 1.0%AEP event making it an unacceptable route for access and egress during flood events.
- 7.3.15. In addition, whilst the adjoining land to the south is outside of Flood Zone A and B there is a significant fall in ground levels between the site, the open space, and the access road of the adjoining Seaview Woods residential scheme. Of additional concern the documentation provided with this application and on appeal does not provide sufficient mitigation measures to deal with surface water runoff relative to the flood sensitivity of the site's setting. In this regard I concur with the Planning Authority's Drainage Division report which sets these concerns out in detail.

- 7.3.16. In relation to the pedestrian access onto the open space of Seaview Woods residential scheme, I consider that this access would be dependent upon improvements that would extend outside of the red line area of the site as this access does not link to a suitable gradient and surfaced pedestrian link to this schemes access road as well as footpath.
- 7.3.17. Moreover, as noted there is no consent from the Third Party for any consent to provide the necessary upgrades outside of the red line area for this pedestrian access to be a viable safe access should it be used in an adverse weather or flooding event or otherwise.
- 7.3.18. I also concur at the time of inspection the entrance was not apparent as located in the submitted drawings and the upgrades proposed to the southern boundary are unlikely to make it more visually apparent to emergency services should they require access during an emergency event where access to the proposed dwelling can not be achieved from Commons Road. Moreover, the ground conditions were very poor underfoot and there is no safe route from the access road of Seaview Woods through the open space adjoining the southern boundary of the site where the pedestrian access in the case of an emergency flooding event is proposed.
- 7.3.19. In conclusion, I consider that the entrance and driveway serving the proposed dwelling is substandard and the proposed development would if permitted give rise to further obstruction to road users as well as would give rise to serious road safety issues in a manner that would not accord with the proper planning and sustainable development of the area.

#### **7.4. Planning precedents**

- 7.4.1. Both the Board and the local authority under the current and previous Development Plan have refused permission for additional dwelling units to the south of Commons Road, including those that overlapped with Flood Zone C defined lands, where access and egress of these lands for emergency services during an adverse flooding event was an issue due to the relationship of these lands with Flood Zone A and B lands. With Flood Zone A and B lands overlapping with these sites. I have set out under Section 4.2 of this report above. With these examples relating to dwelling units, i.e., vulnerable land uses at a location where such new developments were not deemed to be minor developments and where such developments were also considered to

conflict with the limiting of development on Flood Zone A and Flood Zone B land as part of retention of flood plain as open space and were deemed to be inappropriate given that the flood defences in place were not satisfactory to meet the flood risks at Commons Road. I therefore raise a concern that to permit the proposed development sought under this application would set an undesirable precedent and would be premature pending such a time as Flood Zone A and Flood Zone B land at this location could safely accommodate such development without adversely impacting upon the Shanganagh River floodplain alongside accommodating new dwelling units that are accessible for emergency services during adverse flooding events.

## 7.5. Other Matters Arising

- 7.5.1. **Civil Matters:** Given that the proposed dwelling would be dependent upon Third Party land for the proposed pedestrian access on the southern boundary of the site in the event of an emergency flooding event through to the fact that this access needs to be safe for users thus requiring improvements to Third Party lands between it and the pedestrian footpath / access road of Seaview Woods residential scheme it is not in my view reasonable in this situation to grant permission in the absence of these necessary consents.

Whilst I am cognisant that legal consents are considered to be civil matters outside the remit of this planning appeal, notwithstanding, given that access in the event of an adverse flooding event for emergency services and the like I am not satisfied, based on this information provided with this application and on appeal that the applicant has demonstrated sufficient legal interest to carry out this component of the development sought.

I am also of the view that Third Party consents for other components of the proposed development including use of a drainage ditch to discharge onto Third Party land through to the implications of the proposed development during construction through to operational phases in the case of the driveway and entrance onto Commons Road are also not demonstrated to be in place.

- 7.5.2. **Excavation:** The extent of excavation works proposed to accommodate the proposed development is significant and I concur with the Planning Authority that this should have been detailed in the description of the development alongside more clarity provided on it.

- 7.5.3. **Drainage:** Should the Board be minded to grant permission for the proposed development I recommend that it first seek the further information request set out by the Planning Authority's Drainage Section given the inadequate SuDs measures proposed.
- 7.5.4. **Irish Water:** The submission from Irish Water raises feasibility concerns in terms of connection to public water supply and requests further information to deal with this matter. As such the documentation provided with this application fails to demonstrate that the proposed dwelling can be served by the public water supply in the absence of this matter being examined.
- 7.5.5. **Landscaping:** The site has a mature sylvan landscape setting, and this proposal would require the loss of trees in order to facilitate the proposed development. This loss does not include the loss of any trees of significant merit or afforded any protection alongside the landscaping plan accompanying this application provides for their appropriate replacement. I therefore raise no significant concern in relation to this component of the proposed development.
- 7.5.6. **Development Contribution:** This development is not exempt from the payment of Section 48 Development Contributions under the applicable scheme for this locality.

## 7.6. **Appropriate Assessment**

- 7.6.1. The proposal consists of the subdivision a residential plot that is called Stella Maris in order to provide an independent residential plot upon which a detached dwelling that would be connected to public water and foul drainage is sought.
- 7.6.2. I note that the development at its nearest point is located c 2.5km to the north west of Special Area of Conservation: Rockabill to Dalkey Island SAC (Site Code: 003000) with the intervening landscape being serviced. would appear uphill of the Blackwater River. The site at its nearest point is located c55m downhill of Natural Heritage Area: Loughlinstown Woods (Site Code: 001211). The northern part of the site is located on Flood Zone B lands.
- 7.6.3. The nearest European Sites with a potential connection to the referral site (based on the principle of source-pathway-receptor) are the Special Area of Conservation: Rockabill to Dalkey Island SAC. The qualifying interests of this SAC are:
- Reefs [1170]



- Harbour porpoise *Phocoena Phocoena* [1351]

The site-specific conservation objective for the SAC seeks the maintenance of the habitats and species at favourable conservation status at a national level.

- 7.6.4. Given the nature of the development, the significant lateral separation distance together with the nature of landscape in between despite the absence of an appropriate assessment screening report and/ or a natura impact statement through to the fact that the proposed development includes excavation to lower ground levels to accommodate the proposed dwelling, I consider that the Board can be satisfied that the proposal individually or in combination with other plans or projects would not result in an adverse effect on the integrity of either of these European Sites.

## 8.0 Recommendation

- 8.1. I recommend that retention permission be **refused**.

## 9.0 Reasons and Considerations

1. The subject site is located within the catchment of the Loughlinstown/Shanganagh River Stream, and part of the site is situated on Flood Zone B lands and with the access and entrance serving the site on Third Party lands also situated on Flood Zone B lands providing connection onto Commons Road that is within the vicinity of the site Flood Zone A and Flood Zone B lands as identified under the Office of Public Works Catchment Flood Risk Assessment and Management (CFRAM) final flood maps.

The subject proposal represents 'Highly Vulnerable Development' in accordance with Table 3.1 of the Planning System and Flood Risk Guidelines for Planning Authorities 2009 and under Appendix 16 of the Development Plan Section 3.5 Flood Zone B land is assessed as having a 'Moderate Probability of Flooding'. Whilst the proposed dwelling is located on Flood Zone C land the northern portion of the site alongside the access and entrance serving the proposed dwelling onto the public road network the proposed works involve connectivity to public mains water and foul drainage on Flood Zone B lands, with these works, i.e., serving also being deemed under the said Guidelines as highly vulnerable development.

As such Appendix 16 of the Development Plan requires such developments to demonstrate that the requirements of the Justification Test.

Of concern Box 5.1 of the Justification Test for development management requires a number of criteria to be satisfied and whilst the site is located on residentially zoned land the documentation provided does not satisfactorily demonstrate suitable safe access for emergency services access and robust surface water drainage measures consistent with best practices.

Further, it sets out that development in Flood Zone B should be limited to Minor Development as defined in Section 4.3.1. In the said section minor developments are described as applications for small extensions to houses or the rebuilding of houses, and most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises. The proposed development does not meet this definition.

Moreover, Section 4.3. sets out that infill development of any scale is not, as part of this SFRA, considered minor development and in a manner consistent with the Flood Risk Planning Guidelines Section 4.3.2 includes dwellings houses in its list of vulnerable developments that are not deemed appropriate in Flood Zones B outside of the core of a settlement. The site is not located within a core settlement within the Development Plan area.

In addition, it indicates that development outside of minor developments will not be considered at this location until completion of a Flood Relief Scheme to the 1.0% AEP event standard, proposals for all development will be considered subject to a Site Specific Flood Risk Assessment satisfying the requirements of Section 4 of this SFRA of the Development Plan.

It is therefore considered that the proposed development would be contrary to the Section 12.10.1 of the Development Plan which sets out that applications shall adhere to the policies and objectives set out in Appendix 16 Strategic Flood Risk Assessment and also The Planning System and Flood Risk Management Guidelines for Planning Authorities', 2009. The proposed development includes land that is at risk of flooding and is dependent upon land that is also at risk of flooding with no alternative viable emergency access. The proposed development, if permitted, would also give rise to an undesirable precedent for similar residential

development along Commons Road. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

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Patricia-Marie Young  
Planning Inspector

8<sup>th</sup> day of March, 2023.