



Development

Retention permission is sought for 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.

Location

'Roseville Cottage', 60 Commons Road, Shankill, Dublin 18.

Planning Authority

Dun Laoghaire Rathdown County Council.

Planning Authority Reg. Ref.

D22A/0310.

Applicant(s)

Conor Gott.

Type of Application

Retention Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First and Third Party.

Appellant(s)

1. Commons Road Residents Group.
2. Conor Gott.

Observer(s)

None.

Date of Site Inspection

18th day of November, 2022.

Inspector

Patricia-Marie Young.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	5
3.4. Third Party Observations	5
4.0 Planning History.....	6
5.0 Policy Context.....	8
5.1. National Policy	8
5.2. Development Plan.....	9
5.4. EIA Screening	10
6.0 The Appeal	11
6.1. Grounds of Appeal	11
6.2. Third Party Response to the Applicant's grounds of appeal.....	15
6.3. Applicant Response to the Third Party's grounds of appeal.....	16
6.4. Planning Authority Response	17
6.5. Observations	17
6.6. Further Responses.....	17
7.0 Assessment.....	19
8.0 Recommendation.....	39
9.0 Reasons and Considerations.....	39

1.0 Site Location and Description

1.1. 'Roseville Cottage', the appeal site has a given area of 0.085ha. The site contains a detached dormer dwelling with the site's main boundaries adjoining Loughlinstown Woods/Commons. This dwelling backs onto the public amenity space of Loughlinstown and its main amenity space is in the setback area to the front of the dwelling house and the Loughlinstown/Shanganagh Stream bank to the immediate south. Access to the site is via a single vehicle in width bridge that crosses over the Loughlinstown River. This opens onto the northern side of Common's Road, c80m to the west of Shanganagh Road and c540m to the south east of Bray Road, in the city suburb of Shankill, circa 16km to the south of Dublin's city centre. This bridge contains flood barriers that were open at the time of inspection. The southern side of Common's Road is characterised by residential development of varying architectural styles, periods and built forms.

2.0 Proposed Development

2.1. Retention permission is sought for:

- Part dormer dwelling with two-storey extension on rear.
- Single storey extension on side with roof garden above.
- Open sided canopy above front door to house.

2.2. According to the Planning Application form the gross floor space of buildings on site given as existing is 77m²; the gross floor works proposed is 135.67m²; and the gross floor space of works to be retained is 212.67m².

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 17th day of June, 2022, the Planning Authority decided to **refuse** retention permission for the following stated reasons:

"1. 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 (OPW) Catchment Flood Risk Assessment and Management (CFRAM) final flood maps. The subject proposal represents 'Highly Vulnerable Development' in accordance with Table 2-2: 'Classification of vulnerability of different types of development', and under the provisions of Section 5.2 Development in Flood Zone A or B in the Strategic Flood Risk Assessment (SFRA), Appendix 15 of the Dun Laoghaire Rathdown County Development Plan 2022-2028. Under Section 5.2.1 Minor Development of the SFRA, it is stated that infill development of any scale is not, as part of this SFRA, considered minor development. Under Section 5.2.2 of Appendix 15, 'It is not appropriate for new, highly vulnerable, development to be located in Flood Zones A or B'. It has not been demonstrated to the satisfaction of the Planning Authority that the subject structure comes within the meaning of Minor Development in accordance with Section 5.2.1 of Appendix 15. The development proposed for retention within Flood Zone A would not, therefore, accord with the Strategic Flood Risk Assessment, in particular Sections 5.2.1 and 5.2.2, of the Dun Laoghaire-Rathdown County Development Plan 2022-2028. The development proposed to be retained is located in an area which is at risk of flooding and would, therefore, if permitted be contrary to the proper planning and sustainable development of the area.

2. *Having regard to the overall design, bulk and scale of the development proposed to be retained, and in particular the bulk and roof profile of the two-storey rear extension, the rear extension to be retained is considered be visually incongruous, would not integrate satisfactorily with the structure on site nor the wider streetscape and would thereby, be seriously injurious to the visual amenities of the area. The development proposed to be retained would depreciate the value of property in the vicinity and 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 includes the following comments:

- The public notices and drawings do not reflect the actual development.
- Evidence of this property shows that it was in an advanced state of disrepair prior to the works for which retention is now sought.
- The applicant has not demonstrated that the subject property was not derelict prior to the works for which retention is now sought.
- The subject property is in Flood Zone A.
- Concerns are raised in relation to the window serving Bedroom 4.
- Bedroom 2 falls short of the minimum standards for a double room as provided for under the Quality Housing for Sustainable Communities, 2007.
- The 2-storey addition is visually incongruous with the host dwelling and its setting.
- The comments of the Drainage Section are concurred with.
- No AA or EIA issues arise.
- Concludes that development should be refused on flooding and visual amenity grounds.

3.2.2. **Other Technical Reports**

Transportation: No objection, subject to safeguards.

Municipal Services: It is not appropriate for development which is highly vulnerable to be permitted on lands zoned Flood Zone A or B other than those that have satisfied the Justification Test. The applicants have not demonstrated that the subject structure comes under the definition of Minor Development in accordance with Section 5.2.1 of Planning Guidelines for Flood Risk Management. Recommends refusal of permission.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. Several Third-Party Observations were received to the development sought under this application. The main concerns raised can be summarised as follows:

- This development, if permitted, would exacerbating flooding in a flood plain.
- This development has resulted in the removal of flood barriers that are there to protect residential properties in this area. On this particular matter concern is raised with the applicant's failure and refusal to raise the flood barriers during flood type events.
- This development was carried out without permission and is therefore an offence.
- This planning application together with the previous application are attempts to subvert the planning process.
- This application relates to an abandoned derelict property that was not in habitable use for a significant period of time prior to the works being carried out to it.
- This application provides erroneous facts and misrepresents the development.
- To permit the proposed development would be contrary to the planning provisions set out in the Development Plan, particularly those relating to flooding.
- There is significant evidence of past flood events impacting adversely on this site and properties on Commons Road.
- Inadequate flood risk assessments have been carried out.
- Concerns are raised in relation to the visual and residential amenity impacts arising from this development.
- The second-floor additions and the roof garden are incongruous in their streetscape scene.
- This application relates to a new dwelling of Flood Zone A lands.

4.0 Planning History

4.1. Site

- **P.A. Ref. No. D21B/0709:** Retention permission was **refused** for the retention of part dormer with storey extension on rear, single storey extension on side with roof garden and open sided canopy above front door for the same reasons as those cited by the Planning Authority for the development sought under this application which of note are the same.

4.2. Setting

- **Iona ('Abigail House'), Commons Road, Loughlinstown, Co. Dublin.** Note: c70m to the south west of the appeal site at its nearest point.

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

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 PL06D.247695 (P.A. Ref. No. PA D16A/0711):

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

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

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

5.2. Development Plan

- 5.2.1. The relevant Development Plan is the Dun Laoghaire Rathdown County Development Plan 2022-2028. The site is zoned 'F residential with the objective to: "*preserve and provide for open space and ancillary active recreational amenities*". Part of the site is also located within the boundaries of pNHA Loughlinstown Wood and the site is located within the Shanganagh River catchment which is designated 'Flood Zone A' (Map 10). In addition, the site is subject to a Development Plan objective "*to protect and preserve Trees and Woodlands*".
- 5.2.2. Section - 4.3.1.2 Policy Objective PHP19: Existing Housing Stock - Adaptation states that it is a policy objective to: "*conserve and improve existing housing stock through supporting improvements and adaption of homes consistent with NPO 34 of the NPF. Densify existing built-up areas in the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods*".
- 5.2.3. Section 8.7.1.1 - Policy Objective GIB18 of the Development Plan sets out that it is a Policy Objective: "*to protect and conserve the environment including, in particular, the natural heritage of the County and to conserve and manage Nationally and Internationally important and EU designated sites - such as Special Protection Areas (SPAs), Special Areas of Conservations (SACs), proposed Natural Heritage Areas (pNHAs) and Ramsar sites (wetlands) - as well as non-designated areas of high nature conservation value known as locally important areas which also serve as 'Stepping Stones' for the purposes of Article 10 of the Habitats Directive*".

- 5.2.4. Section 10.7 deals with the matter of Flood Risk.
- 5.2.5. 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 (2001/60/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”.*
- 5.2.6. 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.
- 5.2.7. Section 12.3.7 of the Development Plan deals with the matter of Additional Accommodation in Existing Built-up Areas

5.3. Natural Heritage Designations

- 5.3.1. This appeal site is located c2.2km to the north west of Special Area of Conservation: Rockabill to Dalkey Island SAC (Site Code: 003000).
- 5.3.2. Of note this appeal site in its entirety is located within the boundaries of Proposed Natural Heritage Area: Loughlinstown Woods (Site Code: 001211).

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can,

therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

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

- The decision of the Planning Authority is welcomed though it is considered that the refusal is not sufficiently comprehensive enough.
- The Board is referred to the enforcement action in relation to recent works.
- The applicant has been previously refused permission under P.A. Ref. No. D21B/0709. Rather than appeal this decision they have made a repeat application for the same development, with no alterations and no evidence to indicate that the former dwelling was not derelict when works commenced as well as had not been derelict for a number of years. In addition, the applicant has not sought to address the reasons for refusal for P.A. Ref. No. D21B/0709.
- The applicant has continued to build this unauthorised house within the catchment and flood zone of the Loughlinstown/Shanganagh River despite enforcement action.
- Since the prior application was refused a new Development Plan has been adopted which includes more stringent provisions.
- Evidence that the property was habitable at the time of sale is not robust.
- Residential development is not permitted in principle or open for consideration on land zoned F under the Development Plan.
- The site is also located within a proposed Natural Heritage Area and the proposed development is entirely contrary to the protection and preservation of the pNHA.
- The Planning Authority's Drainage Department were unequivocal in their recommendation for refusal.
- No evidence is provided to prove that the new dwelling is adequately served by public services in terms of sewerage, water supply through to that adequate attenuation is present to facilitate it.

- The new dwelling includes the creation of a new roof with three south facing dormers facing Commons Road. These are visually incongruous features within its streetscape scene and at odds with the more modest double pitch roof of the original property that occupied this site.
- It is not in question that there was once a habitable property on the northern side of Commons Road but this over time became derelict.
- The applicant is seeking to retain significant remodelling, extension and redesign a property from a derelict state.
- The site can only be accessed via a bridge over the Shanganagh River that is accessed off Commons Road.
- Contrary to what is suggested by the applicant there is no flood protection wall to the west or east of the site and there is no spillway. This proposal does not integrate with the wider flood mitigation measures.
- The Council in making their decision was clearly of the mind that the property was derelict prior to the unauthorised works commencing.
- The lack of a roof over the majority of the structure for over 15 years provides clear support that residential use had been abandoned and that the house was derelict prior to the unauthorised works commencing.
- A Water Services Report prepared by the Council following flooding of Commons Road in 2011 refers to this property as a derelict house.
- A dwelling house is identified as being a 'Highly Vulnerable development' in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities'.
- This development is contrary to the flooding provisions set out in the Development Plan.
- The removal of the ability to erect the flood barrier at the entrance to the site off Commons Road significantly increases the potential flooding risk of properties on Commons Road.
- The repeat application seeks to delay the Council and this appellant from taking action.

- The applicant continues to undertake unauthorised development at this site.
- The works have the potential to cause negative impact on the sensitive environment of the pNHA.
- In 2007 the dwelling following it becoming derelict did not have a working sewer.
- The Board is sought to refuse the proposed development.

6.1.2. The First Party's appeal submission can be summarised as follows:

- Reference is made to the Planning Authority's reasons for refusal.
- The dwelling is bound on the north and western side by Loughlinstown Wood, a pNHA. In the 2016 to 2022 Development Plan the western portion of the site is incorrectly shown as including the western portion of the site. This portion of the site does not include any part of Loughlinstown Wood.
- The applicant has rented a home for his family for the last fourteen years and this is his opportunity to provide a stable family home environment for his family.
- The Planning Authority's Planning Officer noted the discrepancies between the description of the development and the submitted documents. These discrepancies are minor and could have been addressed by further information or they could have invalidated the application.
- Bedroom 4 has sufficient daylight to function as a bedroom and there are flank walls on the east and east where additional windows could be installed by way of condition.
- The Planning Authority's professionals have made unreasonable and unsubstantiated assumption in relation to the habitability of the dwelling.
- The Parks and Landscape Services Report as well as the Biodiversity Report raise no objection to the proposed development.
- The streetscape of Commons Road is characterised by a variety of house types, roof profiles and generally two storey dwellings.
- Because of this dwellings setback and the dense growth in Loughlinstown Wood no visual injury would arise.

- The works to this dwelling were substantially complete prior to the adoption of the new Development Plan.
- Only the western portion of the site is zoned Objective F.
- Both the current and form zoning maps are incorrect in relation to the pNHA as none of Loughlinstown Wood was ever within the subject site.
- The existing dwelling is connected to a foul drain within the site.
- The pre-planning consultation referenced in the Planners Report did not involve the First Party or their agent.
- Flood defence works were carried out around the site on the north and west sides of each side of Loughlinstown/Shanganagh Stream at some time in the recent past.
- The flood defences are adequate to eliminate the risk of flooding on Commons Road.
- Flooding has not occurred on Commons Road since 2011.
- It is reasonable to address the flood risk by way of condition.
- The works constitute a minor extension to an existing dwelling and would not give rise to any flood risk impact in the area.
- It is practical to provide further protection to the site by raising the flood walls in the area around the site.
- The extended family home provides no new or greater flooding risk in the area and raises the ground floor level above any potential risk.
- Irish Water raised no objection to the proposal.
- A dormer roof the front with a flat roof behind is not an uncommon and cannot be considered bulky or out of character.
- The works do not impact on residential amenity of the area.
- The proposal is not of a scale that would justify a flood risk assessment.

6.2. Third Party Response to the Applicant's grounds of appeal

6.2.1. The Third-Party Response to the Applicants grounds of appeal submission includes the following comments:

- There is no evidence or reasoning provided to overturn the Planning Authority's decision.
- They are also referring to a Development Plan that is now superseded to justify the acceptability of the development at this location.
- In order to provide added clarity Statutory Declarations were provided in relation to fire damage and the period in which the dwelling has not been in use.
- Whether the pNHA was drawn correctly or incorrectly under the previous Development Plan is not a consideration for the Board.
- The boundary of the pNHA is not defined by the Development Plan but the NPWS where the site is clearly within the boundaries of the pNHA.
- The discrepancies noted by the applicant in their submission relating to the Planning Officer's report were minor in nature.
- The onus is on the applicant to prove that the dwelling was habitable.
- There is no evidence to suggest that this dwelling has been habitable for at least 15 years.
- There is no basis for the Board to consider this application under the previous Development Plan.
- The applicant is completely ignoring the fact that the site is within a flood zone and is a type of development that is classified as being a highly vulnerable development in both the Development Plan and under 'The Planning System and Flood Risk Management Guidelines for Planning Authorities', 2009.
- The onus is on the applicant to provide an appropriate flood risk assessment for the application.
- The Board upheld a recent refusal of permission under ABP Ref. No. PL06D.306191 (P.A. Ref. No. D19A/0721) in relation to unauthorised development on a Flood Zone.

- There is no evidence of any discussions with the Senior Executive Engineer in the CFRAM's team in the Council or any evidence of any agreement with them about flooding.
- The assumption made that Irish Water has no objection to the proposed retention application is not based on any evidence.

6.3. Applicant Response to the Third Party's grounds of appeal

6.3.1. The Applicants response to the Third Party's grounds of appeal includes the following comments:

- It is unusual for a Third Party to lodge an objection to a Planning Authority's decision to refuse planning permission.
- The Third Party is not a registered organisation, registered name or company or a registered resident's association.
- The objection to the subject dwelling relies on wholly hearsay and unverified evidence.
- No dates are provided in relation to the fire damage.
- This dwelling was in part fire damaged in 2009 but was repaired within two years after the damage occurred.
- Reference is made to the dwelling being advertised for sale in 2002 in the Irish Examiner.
- The current access serving the site is a concrete road bridge that replaced the pedestrian access. This would not have been provided by the Council if this dwelling was derelict.
- Letters provided to the Credit Union were made by Independent Valuers in 2021.
- The letter submitted on the planning file from the previous owner states that the property was habitable.
- The enforcement notice simply lists works that are alleged to be unauthorised. It does not state that the dwelling was uninhabitable or derelict.

- The bulk of the original walls of the subject dwelling were kept and only minor alterations to them to facilitate the fourth bedroom and the shower enlargement.
- There is no evidence that this property was ever flooded.
- This development is simply the refurbishment and extension of an existing dwelling on serviced land.
- The first and second applications on this site is simply as a result of being away on holiday and not being aware of the decision that an appeal was not made in relation to the first refusal.
- The works have had no impact on the pNHA.
- There is a functioning sewer running through these lands.
- It is requested that the Board overturn the Planning Authority's decision.

6.4. Planning Authority Response

6.4.1. 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.

6.5. Observations

6.5.1. None.

6.6. Further Responses

6.6.1. The First Party's further response includes the following comments:

- Concerns are raised in relation to the Statutory Declarations provided.
- The declarations should be treated with scepticism and not as factual evidence.
- Google street views are out of date and cannot be verified.
- No evidence has been provided by the Third Parties to support their content that the dwelling was not habitable prior to the works being carried out.

- There were 20 objectors to the application submitted to the Planning Authority. Yet not all of these are party to the Third-Party Appeal.
- There is no evidence to support fire damage of the property.
- 60 Commons Road has never been registered by the Council on the Derelict Sites Register.

6.6.2. The Third-Party Appellant further response can be summarised as follows:

- Contrary to the claims of the First Party, this and the previous application are the same.
- It is not uncommon for a Third Party to lodge an appeal in relation to a Planning Authority's reason to refuse permission.
- The comments made by the First Party on Commons Road Residents Group are not relevant.
- The local residents who made submissions have first-hand knowledge of the history of the subject property. With this including knowledge of it being fire damaged in 2004.
- The First Party makes reference to a newspaper article in the Irish Examiner in 2002. This article did not relate to the subject property and the property it related to, Nevil's House, was demolished in 2004.
- The First Party provides no evidence that the property was habitable following its fire damage.
- The images provided have not been altered to misrepresent the property.
- There is no evidence that the previous owner repaired the property to its post 2009 state after the fire damage.
- The lack of a roof over the property for circa 13 to 15 years is substantive proof that the dwelling was not in habitable use.
- It is incumbent on the First Party to prove that the property was not derelict and abandoned.
- There are a number of misleading and inaccurate comments and claims made by the First Party.

- There is no basis for the First Party to claim that the pNHA boundaries are incorrectly shown.

7.0 Assessment

7.1. Preliminary Comment

7.1.1. Having examined all documentation on file, including observation and responses received to the grounds of appeal, having reviewed the planning history, inspected the site, and having had regard to the relevant local through to national planning policy provisions and guidance, I consider the key issues in the appeal to be as follows:

- Procedural
- Planning History & Principle of Development Sought
- Flooding
- Visual Amenities
- Depreciation of Property Values

7.1.2. The matter of 'Appropriate Assessment' requires examination. It is my considered opinion that no other substantive issues arise that require examination.

7.2. Procedural

7.2.1. I firstly note that this application relates to an application for permission for retention of development, which it is submitted has been in place sometime after the First Party's purchase of the site in 2019. For the purposes of clarity, it should be noted that the period for which a development has been in place is immaterial to consideration of a planning application for permission for retention, although, there are implications regarding enforcement proceedings. The latter is a matter for the Planning Authority to deal with as it sees fit.

7.2.2. It should also be noted that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered "*as with any other application*". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were

proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.

7.2.3. In terms of the public notices I concur with the Planning Authority that the development for which retention is sought is not accurately presented in them. For example, the Site Notice sets out that retention permission is sought for a dormer dwelling with two storey extension on rear and single storey extension on side with roof garden above and an open sided canopy above front door. Whilst the drawings submitted with this application do not accurately reflect what has been constructed or allude to any subsequent alterations that may occur in order to rectify the inconsistencies between the two. It is of concern that there is no mention to the material change of use that has occurred in tandem with the works that have been carried out, that is to say permission for retention of habitable use on a site where this use has been abandoned for a significant period of time.

7.2.4. On this point I note that the Planning & Development Act, 2000, as amended, provides the following interpretation of a '*Habitable House*' as follows:

“(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied”.

7.2.5. Of concern, there is substantive evidence to support that the subject property was not used as a dwelling for a significant period of time prior to the First Party's purchase and subsequent substantial works to what appears to be an abandoned and derelict structure on the site. A structure which would appear to have been significantly demolished to facilitate the habitable dwelling that is now present on the site.

7.2.6. On this point I therefore note that Section 3(1) of the said Act defines '*Works*'; '*Use*' and '*Development*' as follows:

“works” means -

“includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal

of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.

“**use**”, in relation to land, does not include the use of the land by the carrying out of any works thereon.

“**Development**” means:

“except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.

- 7.2.7. It is clear in my view that both ‘works’ and a change of ‘use’ has occurred at this appeal site in recent years. With the documentation provided by the First Party insufficient in its own right to demonstrate that this application relates to habitable house with the retention sought for alterations and additions to it.
- 7.2.8. It is also important to note that there is substantive case law on such matters including *Dublin County Council v. Tallaght Block Co. Ltd.*
- 7.2.9. In this case it was determined that a use of land can be abandoned and that a change of use will occur when an abandoned use is recommenced. In this regard I note the following comment made by Hederman J: *“where a previous use of land has been not merely suspended for a temporary period and determined period, but has ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the tribunal of fact was entitled to find that the previous use had been abandoned, so that the resumption constituted a material change of use.”*
- 7.2.10. Another case is that of *Cork County Council v. Ardferf Quarries Ltd.*
- 7.2.11. In this case a site had been used as an animal food processing plant during the years of 1953 to 1966. It has then been vacant from 1966 to 1970 and at some point in 1970 it was used to manufacture and store tyres. With this use ceasing in 1974. The High Court held that the use of the premises as a general industrial building from 1953-1956 had been abandoned by its none use from 1966-1970. Murphy J stated: *“having regard to the elapse of time and the absence of any satisfactory explanation therefore, I must conclude that the use as of the operative date was subsequently abandoned.”*
- 7.2.12. Finally, I also note *Meath County Council v. Daly.*

- 7.2.13. In this case the High Court held that the resumption of the use of premises which had been used for car repairs and petrol sales pre-1964, after that use had been abandoned since 1964 from time to time by the user of the premises for other purposes, and particularly by its user from 1969 for some years by a double-glazing company, was a material change of use.
- 7.2.14. Therefore, when regard is had to the above and to the public notices given, prior to any grant of retention permission revised public notices are required to address the fact that a material change of use in planning terms has occurred at this site. With the documentation provided by the First Party with this application, on appeal and under previous planning applications made not in my considered opinion providing sufficient evidence to unequivocally demonstrate that the subject building which is referred to as 'Roseville Cottage' was in habitable use and not as the evidence suggested for a substantial period a structure that was it in a derelict state with no functional use habitable or otherwise occurring in it or within its associated curtilage.
- 7.2.15. It is the most probable scenario on the basis of all available information that 'Roseville Cottage' has not been in habitable use since at a minimum 2009 after an adverse fire event. After this time there appears to have been no intention to resume habitable use and the subject building was subject to further fire, flood and vandalism damage alongside the plot of land associated with it became overgrown.
- 7.2.16. It is also highly probable on the basis of information available that for a considerable time this building was not structurally in a good state of repair and that it was structurally as sound as the documentation provided with this application suggest. Through to it is highly probable for the most part what may have survived of this building on site was substantially and/or completely demolished to facilitate the scope of works including the provision of the second floor level and increased footprint to create a habitable house for the occupants of the dwelling that now sits on the site in the location of the dwelling formerly called 'Roseville Cottage'. With this name being carried through to the dwelling that now sits on the site.
- 7.2.17. In tandem with this I also concur with the Planning Authority's Planning Officer in terms of the drawings submitted with this application also do not correspond to the actual scope of works carried out at this location. It is for example noted in the drawings and public notices that retention of a canopy structure to the front is proposed. I observed

that there is no canopy structure present to the front of this building. I also noted that the dormer windows on the front slope of the roof; a number of the windows on the exterior elevations, the western elevation profile, and heights through to the dormer window finishes are not accurately presented.

7.2.18. Moreover, it would appear the demolition and new build is not reflective of the works that were carried out and shown in the various photographs presented on file from the construction works phase.

7.2.19. It is also of note that it would appear that other information provided is not accurate, i.e., the spillway and this application despite the site being located on 'Flood Zone A' is not accompanied by any expertly prepared Flood Risk Assessment nor is the design concept for what is substantially a new structure one that has had regard to the site's high vulnerability to flooding. This concern is addressed in more detail in my assessment below.

7.2.20. Given the above procedural concerns I am of the view that the Board is precluded from granting permission for the development sought under this application in the absence of seeking new public notices. Alongside these matters requiring clarification by an accurate suite of drawings and documentation. The latter is essentially to making a fully informed examination of the development sought on this site.

7.3. Planning History of the Site and Setting

7.3.1. This application seeks permission for the same development as that refused retention permission under P.A. Ref. No. D21B/0709. The First Party contends that they were unable to appeal the Planning Authority's decision in relation to P.A. Ref No. D21B/0709 as they were on holidays.

7.3.2. Outside of the local planning context changing in the duration between the Planning Authority's notification to refuse permission for P.A. Ref. No. D21B/0709 with the adoption of the Dún Laoghaire Rathdown Development Plan, 2022-2028, there are no significant and/or material alterations to the development sought to address the reasons for the refusal of this previous application.

7.3.3. The two reasons for refusal are largely the same with the exception of referring to the provisions within the Dún Laoghaire Rathdown Development Plan, 2022-2028, for flooding, including the lack of compliance with Section 5.2.1 and Section 5.2.2 of

Appendix 15 of the Development Plan as well as the adverse visual amenities that would arise.

- 7.3.4. It is of note that the Board refused permission for the construction of dwellings under appeal case ABP-306191-19 (P.A. Ref. No. D19A/0721) on similar flooding concerns with this site being situated at further distance from the Loughlinstown/Shanganagh River Stream, but within Flood Zone A and located c70m to the south west of the site and on the southern side of Common's Road. (Note: Iona ('Abigail House'), Commons Road). The design concept for the residential development refused under this application included leaving the lower ground floor open to allow any flood waters during adverse conditions.
- 7.3.5. In addition, the Board also refused permission for similar flooding reasons under appeal case ABP PL06D.247695 (P.A. Ref. No. PA D16A/0711) for a parcel of land immediately adjoining the western boundary of the site to which appeal case ABP-306191 related to. This site was also located on Flood Zone A lands in proximity to Loughlinstown/Shanganagh River Stream but not as close as this appeal site.
- 7.3.6. These particular decisions were made by the Board in 2017 and 2020, with the planning history case relating to the site dating to 2021. In these intervening years the local through to national planning policy provisions have become more robust on flooding matters.
- 7.3.7. Having regard to the planning history of the site and Board decisions in the vicinity it is of concern that this application has not sought to address the fact that the site is on Flood Zone A land where there is a presumption against residential development. Of further concern, the development as sought has made no amendments to overcome the visual amenity concerns that were also cited separately by the Planning Authority in its given reasons for refusal. Moreover, despite the presence of established residential development on the opposite side of Common's Road there has been a presumption against residential developments in this highly vulnerable and at risk of flooding location. With the sensitivity of this site added to by the fact that it forms part of a Proposed Natural Heritage Area: Loughlinstown Woods (Site Code: 001211).
- 7.3.8. In relation to pNHA of Loughlinstown Woods which the site forms part of Section 8.7.1.1 Policy Objective GIB18: Protection of Natural Heritage and the Environment

sets out that the Planning Authority seeks to protect and conserve the environment of such sites.

7.3.9. In conclusion, the development sought under this application should in my view seek to address and overcome the reasons given for its previous recent refusal and relevant planning provisions, including those set out in the new Development Plan. In addition, the recent residential development along Commons Road, in particular, those determined by the Board as the higher planning authority, there is precedent for these being refused mainly on flooding related grounds. This further adds to the importance of any development on these Flood Zone A lands needing to demonstrate that the flooding concerns are overcome for any future habitable house on this site.

7.4. Principle of Development Sought under this Application

7.4.1. As discussed in my assessment above, I do not accept that the development sought under this application relates to alterations and extensions to an existing habitable dwelling. But rather to a development that relates to the provision of a habitable dwelling at a location where there was an abandoned as well as derelict dwelling with little of the surviving structure likely to have been incorporated into the habitable dwelling that is now present on site.

7.4.2. Based on the information available, I concur with the Planning Authority's conclusion that the development should be assessed as a new residential development on a site that is not just as mentioned highly vulnerable to flooding due to its location within the Shanganagh River Catchment, is of biodiversity value as a result of its pNHA designation, as part of a parcel of land zoned for preserving and providing open space with ancillary active recreational amenities is subject to an objective to protect and preserve trees and woodland under the applicable Development Plan. In addition, the bridge serving the site contains flood barrier to that during adverse conditions seeks to provide a measure of protection from flooding for the properties on the opposite side of Commons Road.

7.4.3. In relation to land zoned 'F', the land use objective is: "*to preserve and provide for open space with ancillary active recreational amenities.*" It is also of note that the Development Plan defines open space as follows:

"Open space is a parcel of land in a predominantly open and undeveloped condition that is suitable for the following:

- *Outdoor and indoor sports facilities and cultural use - owned publicly or privately, and with natural or artificial surfaces including tennis courts, bowling greens, sports pitches, golf courses, athletic tracks and playing fields.*
- *Amenity green space - often around housing - including formal recreational spaces.*
- *Provision for community play areas including playgrounds, skateboard parks and outdoor basketball hoops.*
- *Green corridors.*
- *Natural Areas.*
- *Community gardens.*
- *Wildlife and native plant habitats.*

Open space should be taken to mean all open space of public value, including not just land but also areas for water such as rivers, canals, beaches, lakes and reservoirs, which offer important opportunities for sport and recreation and can also act as a visual amenity”.

7.4.4. Table 13.1.9 of the Development Plan sets out that residential land use is not ‘*permitted in principle*’ or ‘*open for consideration*’. This is a concern given that the residential nature of the development through to the lack of substantive proof that its historical residential use was not abandoned.

7.4.5. Alongside given the fact that Section 13.1.5 of the Development Plan clearly sets out that uses which are not indicated as being ‘*permitted in principle*’ or ‘*open for consideration*’ will not be permitted.

7.4.6. Section 13.1.5 of the Development Plan provides guidance on such scenarios and states that: “*there may, however, be other uses not specifically mentioned throughout the Use Tables that may be considered on a case-by-case basis in relation to the general policies of the Plan and to the zoning objectives for the area in question*”.

7.4.7. For the reasons set out in this report, together with the above considerations that residential use is not one that is compatible with achieving the land use objectives and vision for ‘F’ zoned land as provided for under the Development Plan. With this lack of compatibility added to the developments not demonstrating compatibility with the general policies of the plan, particularly as discussed below those relating to flooding.

And further added to by the fact that the development is also not compatible with circumstance set out under Table 13.1.9 where in development may be considered. For example this section of the Development Plan sets out that on land zoned 'F' development should not result in more than 40% of the land in terms of built form and surface car parking combined shall be developed upon; any built form shall be of a high standard of design and quality; the owner shall enter into a Section 47 agreement or some alternative legally binding agreement restricting the further development of the remaining area of the site which shall be set aside for publicly accessible passive open space. With said space provided and laid out in a manner designed to optimise public patronage of the residual open space and/or to protect existing sporting and recreational facilities which may be available for community use.

7.4.8. In the case of the development sought under this application I am not satisfied that for the most part this has not been demonstrated. Firstly, it has not been demonstrated that 40% of the land only has been developed upon. Secondly, the design as put forward in this application is not one that could be considered to be of a high standard or of high quality. With this conclusion being based on a number of factors in particular that flood risk assessment, the residential use vulnerability to flooding through to the lack of subordination of the overall structure when viewed from the public domain, particularly in terms of it eroding the visual integrity of Loughlinstown Woods, a pNHA, and part of a larger open space amenity area that is devoid of such structures. It would appear from being on site that minimal measures have been incorporated to maintain deep soil and to provide adequate surface water drainage measures. Such measures are required to be demonstrated as part of all developments. Thirdly, the applicants do not express any willingness to enter into a Section 47 agreement or the like. Nor fourthly, does the design and layout of the proposed development optimise public patronage of residual open space but rather the development erodes optimising, preserving and protecting open space like Loughlinstown Woods and the long linear strip of open space lands associated with it.

7.4.9. Of further concern, the land zoned F at this location is subject to Specific Local Objective 68. This SLO seeks to create a linear park along Loughlinstown river incorporating a pedestrian route and cycleway (greenway), which will link Cabinteely Park to the sea at Rathsallagh. At the time this report is being prepared the design of this linear park is not clear, however, I note that the site is accessed via one of the

bridges with the site itself forming part of the lands designated as pNHA Loughlinstown Woods. The Woodlands and Trees in this locality are also afforded protection. It is clear that extensive removal of plant species has occurred on this site to accommodate its recent development. This was not subject to any expert advice nor would it appear that the new landscaping of the site has had regard to the protection given to proposed Natural Heritage Areas (pNHA). I note that Section 8.3 of the Development Plan recognises the amenity and biodiversity importance of Woodlands and Trees as part of Green Infrastructure and Policy Objective GIB18 of the Development Plan seeks to protect and conserve the environment of pNHAs.

7.4.10. Based on the above considerations, I am not satisfied that the development sought under this application is one that is consistent with achieving the objectives of land zoned 'F', particularly in terms of the public good of open space lands. Nor is it a type of development that is consistent with protecting and safeguarding this highly vulnerable land from inappropriate change. With this being said to permit the development sought under this application would give rise to undesirable precedent for other similar developments and it would be a type of development that would be contrary to the proper planning and sustainable development of the area. Accordingly I am of the view that the general principle of residential development cannot be deemed to be acceptable on first principles.

7.5. Flooding

7.5.1. The first reason given by the Planning Authority to refused permission for the development sought under this application relates to the risk of flooding.

7.5.2. The site is located within the catchment of the Loughlinstown/Shanganagh River Stream and within Flood Zone A of the Office of Public Works Catchment Flood Risk Assessment and Management (CFRAM).

7.5.3. The subject residential development represents 'Highly Vulnerable Development' in accordance with Table 3.1 of the Planning System and Flood Risk Guidelines for Planning Authorities 2009 as well as under Table 2-2: 'Classification of vulnerability of different types of development'. As well as under the provisions of Section 5.2 Development in Flood Zone A or B in the Strategic Flood Risk Assessment (SFRA), Appendix 15 of the Dun Laoghaire Rathdown County Development Plan 2022-2028 of the Dun Laoghaire Rathdown County Development Plan, 2016-2022.

- 7.5.4. To this I note that the main southern boundary of this irregular T-shaped site bounds the northern banks of the Loughlinstown/Shanganagh River Stream. The bridge serving the site, which is also indicated as part of the red line area of the site crosses over the Loughlinstown/Shanganagh River Stream. In addition, the front elevation of the dwelling is within 9m of its banks. On either side of the bridge on the main southern side of the site there are flood protection walls.
- 7.5.5. In relation to the aforementioned bridge there is also a flood protection gate which there appears to be a dispute for its use by the applicants and the local authority. This appears to result in a scenario that as the bridge is the only means of access and egress to the dwelling that this piece of flooding infrastructure to provide protection for properties in the vicinity of this weak point of the river that is at risk of flooding alongside has a history of flooding events is not put in place. Thus placing dwellings on the opposite side of Commons Road at more increased vulnerability of flooding in adverse weather events.
- 7.5.6. It would also appear from inspection of the site and its setting alongside the limited information provided on its ground levels that the dwelling is positioned at a low point in the land.
- 7.5.7. It is of note that the Planning Authority's Drainage Report recommends a refusal of permission which considered that the development sought under this application to be new development and that this type of new development cannot be justified with the floodplain be retained as open space. In relation to the existing flood defences in place it sets out that defences consist of reinforced concrete walls and embankments designed for a 1 in 50-year standard protection which is below the standard of protection for Flood Zone A lands. In this context the lands are considered to be 'undefended'.
- 7.5.8. This report also sets out that until a Flood Relief Scheme to the 1.0% AEP standard is complete any development on Flood Zone A lands should not be permitted and any proposals must be subject to a 'Site Specific Flood Risk Assessment' satisfying all relevant requirements. It concludes that it is not appropriate for any new highly vulnerable development, i.e., residential, to be located on Flood Zone A lands with this conclusion supported by Section 5.2.2 and Section 6.2.10 of Appendix 15 of the Development Plan.

- 7.5.9. In relation to proposals for highly vulnerable development such as dwelling houses I note that 'Flood Zone A' lands relates to areas with the highest risk of flooding from rivers (i.e. more than 1% probability or more than 1 in 100). Therefore, the provisions of the 'Planning System and Flood Risk Management Guidelines' is of significant and material relevance. It seeks to integrate flood risk management into the planning process, thereby assisting in the delivery of sustainable development. For this to be achieved, flood risk must be assessed as early as possible in the planning process with one of the core objectives being to 'avoid inappropriate development in areas at risk of flooding' .
- 7.5.10. In relation to local planning provisions I note that for the reasons already discussed in this report above the development sought under this application relates to new development, in terms of both works carried out and functional use. Therefore Section 5.2.1 of Appendix 15 which sets out the specific requirements for minor development, which are indicated to include small extensions to houses or the rebuilding of houses, and most changes of use (Note: changes of use that do not increase the level of vulnerability of the development) of existing buildings, is not applicable in this case.
- 7.5.11. In relation to Sections 5.2.2 of the Development Plan, development that is highly vulnerable development, which is the case of residential development as defined by the said Guidelines above and is given to include dwelling houses. It sets out that is not appropriate for these to be located in Flood Zone A lands other than those that are deemed to have passed the Justification Test as set out in Section 6 of the Development Plan. The documentation submitted with this application do not support that this development passes the said Justification Test. In the absence of demonstrating the same the only uses deemed to be acceptable are less vulnerable or water compatible use. Residential development does not fall under these category of uses.
- 7.5.12. Of additional concern Section 5.2.2 of the Development Plan sets out where specific development proposals have passed the Justification Test, which as stated this is not the case with the development sought under this application, there are other requirements for flood risk assessment and flood risk management as set out in the Development Plans SRFA that should also be detailed.

- 7.5.13. In this regard it sets out of prime importance is the requirement to manage risk to the development site and not to increase flood risk elsewhere alongside to consider residual risks.
- 7.5.14. In particular, it advocates a sequential approach to land use within the site must be taken and will consider the presence or absence of defences, land raising and provision of compensatory storage, safe access and egress during a flood event and the impact on the wider development area. The supporting Flood Risk Assessment must take into account residual risks, including the impacts of climate change.
- 7.5.15. The documentation provided with this application in terms of its design, layout, drainage through to flood risk mitigation measures do not demonstrate this. Of further concern the presence of this dwelling effectively results in the flood gates at the bridge serving the site being of no practical use in an adverse flooding event given that the applicants are dependent upon this access and egress during such an event. It is also clear from the documents provided on file that there are civil issues to the closure of these as the applicant does not consent for their closure. Thus, in an adverse event the bridge is a weak point over and above the situation that was present prior to the development that was carried out on site. Further this development has been carried out in a manner that occupants of the dwelling would be highly vulnerable in such an event. The dwelling is also not of a design that has had meaningful regard to its location on Flood Zone A lands and therefore a flooding event is likely to result in significant damage to it as well as time in which it would not be fit for habitable use and/or as a structure it could potentially be prejudicial to health. Moreover, this development would result in less deep soil and the dwelling itself would result in obstruction to the assimilation and runoff of flood waters. Overall, this development would, if permitted, result in its setting being more vulnerable to flooding in an adverse event.
- 7.5.16. I note that the Development Plan sets out under Section 5.5 of Appendix 15 the requirements for a Flood Risk Assessment. It further reiterates that firstly to have demonstrating in the case of Flood Zone A land passing the Justification Test. As discussed above this has not been demonstrated in the documentation provided with this application.

- 7.5.17. It is also sets out that: *“an assessment of the risks of flooding should accompany applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. Where possible, the design of built elements in these applications should demonstrate principles of flood resilient design (See Section 4 - Designing for Residual Flood Risk of the Technical Appendices to the DoECLG Flooding Guidelines). Emergency access must be considered as in many cases flood resistance (such as raised finished floor levels and flood barriers) and retrofitting flood resilience features may be challenging in an existing building. Within the FRA the impacts of climate change and residual risk (including culvert/structure blockage) should be considered and remodelled where necessary, using an appropriate level of detail, in the design of FFL” and “that any proposal that is considered acceptable in principle shall demonstrate the use of the sequential approach in terms of the site layout and design and, in satisfying the Justification Test for Development Management (where required), the proposal will demonstrate that appropriate mitigation and management measures are put in place”.*
- 7.5.18. The design put forward with this application does not demonstrate any of this and this adds to the concerns already raised that the development sought is one that is not suitable for its location and one that would be highly prone to flooding. Alongside has the realistic potential, if permitted, to give rise to added flood risk over and above the previous context of the site. That is to say the situation prior to the works having been carried and change of ownership appears to have been one that allowed closure of the flood defence gates at the bridge accessing the main area of the site.
- 7.5.19. Under Section 5.6 of Appendix 15 of the Development Plan it sets out at this location that proposals must also be accompanied by a drainage impact assessment. This is not provided with this application nor does the design clearly demonstrate it has had a reasonable regard to the impact of surface water in general outside of the more concerning flood risk for developments like this on Flood Zone A land.
- 7.5.20. Under Section 5.7 of Appendix 15 of the Development Plan it also sets out that regard should be had to climate change when assessing flood risk and in particular residual flood risk. With areas of residual risk being highly sensitive to climate change as an increase in flood levels will increase. Therefore, the precautionary approach is advocated.

- 7.5.21. This section sets out that OPW guidance which is more up to date to the Planning Guidelines on flood related matters recommend two climate change scenarios. These are the 'Mid-Range Future Scenario' (MRFS) and the 'High-End Future Scenario' (HEFS). A revised suite of recommendations has been adopted for accounting for climate change within development proposals. In all cases, the allowances should be applied to the 1% AEP fluvial. It also sets out that where development is critical, which is not the case with this once off dwelling or is extremely vulnerable which is considered to be the case with residential developments on Flood Zone A lands the impact of climate change on 0.1% AEP flows should also be tested. It is therefore a concern that the documentation provided with this application has not done this as part of any flood risk assessment.
- 7.5.22. Under Section 5.8 of Appendix 15 of the Development Plan on the matter of Flood Mitigation Measures in relation to development on Flood Zone A land it reiterates the requirement for such development to have passed the Justification Test set out in the Development Plan. Alongside this it requires development to demonstrate appropriate mitigation measures can be put in place and that residual risks can be managed to acceptable levels.
- 7.5.23. It sets out that proposals should provide adequate measures to deal with residual risks, that they should demonstrate the use of flood-resistant construction measures that are aimed at preventing water from entering a building and that mitigate the damage floodwater causes to buildings. Alternatively, it sets out that designs for flood resilient construction may be incorporated into the development design where it can be demonstrated that entry of floodwater into buildings is preferable to limit damage caused by floodwater and allow relatively quick recovery.
- 7.5.24. It also provides reference to the various mitigation measures outlined in the Technical Appendices of the Planning Guidelines and in a manner consistent with the Planning Guidelines it sets out that an approach of engineering solutions in order to justify the development which would otherwise be inappropriate is not supported.
- 7.5.25. Section 5.9 of the Development Plan recommends that, where possible, and particularly where there is greenfield land adjacent to the river, a 'green corridor', is retained on all rivers and streams. It sets out that this will have a number of benefits, including but not limited to:

- Retention of all, or some, of the natural floodplain.
- Opportunities to undertake works to restore natural in-river processes and habitats.
- Potential opportunities for amenity, including riverside walks and public open spaces.
- Maintenance of the connectivity between the river and its floodplain, encouraging the development of a full range of riparian and floodplain habitats.
- Natural attenuation of flows in the immediate floodplain may help prevent an increase in flood risk downstream.
- Helping to achieve “Good” Ecological Status for river waterbodies under the EU Water Framework Directive (WFD).
- Retention of clearly demarcated areas where development is not appropriate on flood risk grounds, and in accordance with the Planning Guidelines, and provides a buffer to allow for climate change impacts on flood extents.

7.5.26. Arguably the land zoned ‘F’ on the northern side of this stretch of the Loughlinstown/Shanganagh River Stream and Commons Road acts as a ‘Green Corridor’. In so doing it gives rise to the above stated benefits.

7.5.27. Conclusion

On the basis of the above I consider that the residential use has ceased and has been abandoned at this site. Whilst I would consider the site to be a brownfield site rather than a greenfield site, in terms of the policy this development should be considered as new development and therefore the provisions of Section 5.2.2 of Appendix 15 of the Development Plan is applicable.

This sets out that development like that proposed cannot be approved until such a time as a Flood Relief Scheme to the 1.0% AEP equivalent is complete and this development relates to a highly vulnerable use that does not meet any of the requirements for the limited circumstances where development may be permitted on Flood Zone A land.

I consider that the proposal would generate an unjustifiable level of risk through introducing additional people into the floodplain, reducing floodplain land through to providing greater risk to other properties within its setting.

In addition, the Strategic Flood Risk Assessment set out under Appendix 15 of the Development Plan, indicates that new development within Flood Zones A that do not pass the Justification Test and will not be permitted.

Further, Section 6.2.10 of the SFRA (Appendix 15), which sets out the policy for the Shanganagh River catchment, indicates that development of the type proposed is not an allowable development at this location.

It is therefore considered that the proposed development would contravene Sections 5.2.2 and 6.2.10 of the SFRA as set out in Appendix 15 of the Development Plan.

On this basis I concur with the Planning Authorities first given reason for refusal and recommend that it is upheld by the Board in its determination of this application.

7.6. Visual Amenities

- 7.6.1. The second given reason for the Planning Authority to refuse permission related to the overall design, bulk and scape of the proposed development. In this regard particular concern was raised in relation to the bulk and roof profile of the two storey rear extension component of the development sought. It was considered that it was visually incongruous and did not satisfactorily integrate with the structure on site or with its streetscape. For these reasons it was considered that the proposed development, if permitted, would seriously diminish the visual amenities of the area.
- 7.6.2. In relation to this concern, I consider that the single storey structure previously present on the site would not have been highly visible from the public domain of Common's Road or indeed its setting as part of Loughlinstown Wood. The two storey structure that is now in place visibly erodes the sylvan appearance of this pNHA when viewed from the public domain as well as erodes the visual appearance by its suburban residential built form of what is a distinct parcel of open space located along the northern side of Common's Road.
- 7.6.3. In addition, the provision of large roof open space over part of the development sought is out of character with the pattern of development in its setting.
- 7.6.4. Further, if the development sought under this application were to be considered as an extension to a habitable dwelling, which as set out is not accepted to be the case there are various requirements for such developments set out in the Development Plan. In particular those set out under Section 12.3.7 of the Development Plan. With this type

of development required to complement, not be overly dominant against the host dwelling through to not giving rise to any adverse visual and/or residential amenity impacts. In this context the host dwelling has as a built form and in terms of its overall character been lost by the overly dominant nature, scale and extent of the development carried out.

- 7.6.5. In relation to the provision of a new dwelling on this site, regard should be had to Section 12.3.7.7 of the Development Plan. This deals with the matter of 'Infill' development and such developments are required to retain the physical character of the area.
- 7.6.6. In the context of the northern side of Commons Road where the site is located, in my view the primary physical character of concern arises from its location within Loughlinstown Wood and within an area of zoned to preserve and provide open space. As well as being subject to the objective of protecting and preserving trees and woodlands. Whilst the opposite side of Commons Road contains a variety of residential built forms this is not the case with the northern side of Commons Road. Up to recent times there was no discernible residential suburban type development present or visible from the public domain.
- 7.6.7. Against this context the two-storey built form together with the design and bulk of the roof structure over is at odds with its setting in a manner that is seriously injurious to the visual amenities of the area.
- 7.6.8. In conclusion, I concur with the Planning Authority's second reason for refusal and recommend that this reason is upheld.

7.7. Depreciation of Property Values

- 7.7.1. Concerns are raised by Third Parties that this development has resulted in depreciation of property values with this arising from residential developments in the setting of the site, in particular those also forming part of the floodplain and Flood Zone A and B land being more at risk of flooding due to the loss of flood barriers at the bridge serving the habitable dwelling on the site.
- 7.7.2. This fact has been supported by accompanying documentation provided by real estate agents that set this out and with a monetary sum of depreciation.

7.7.3. In this case, on the basis of the information provided, and given that this development gives rise to change in context with a development on a floodplain 'Flood Zone A' land where flood risk assessment and mitigation measures have not informed the design I consider that this concern is with merit and foundation. I therefore concur with the Planning Authority that the development sought under this application, if permitted, would depreciate the value of property in the vicinity and as such is a reasonable basis upon which refusal of retention permission be based.

7.8. Other Matters Arising

7.8.1. Residential Amenity Impact

The Planning Authority in their assessment of the development sought under this application raise concerns, that the proposed development, would if permitted, give rise to substandard residential amenity for future occupants. In this regard, particular concerns were raised in terms of the space standards, lighting, and ventilation. I also note that there is no qualitative and/or quantitative private amenity space that accords with the Development Plan standards.

On the matter of private open space I note that the drawings indicate that this is a four bedroom detached dwelling with 5 bed spaces.

Section 12.8.3.3 of the Development Plan states that: "*all houses (terraced, semi-detached, detached shall provide an area of good quality usable private open space behind the front building line*".

There is no private open space provided behind the front building line of the subject dwelling. There is space to the side and front but arguably the provision of any screening for that to the side would result in this space being significantly overshadowed. The roof garden is not considered to be private open space under the Development Plan which under Table 12.10 requires four bed dwellings to have a minimum requirement of 75m².

When regard is had to the fact that retention applications are not to be considered any differently from any other application. That is to say no account can, or should, be taken of the fact that the development has already taken place these matters could be addressed by way of further information.

In conclusion I consider that there is basis to consider that the dwelling house does not provide a satisfactory standard of residential amenity on the basis of its private open space provision failing to accord with Development Plan standards.

Other residential amenity concerns raised in terms of the interior spaces, including sizes of bedrooms, window openings, ventilation and the like arguably are matters that could be addressed by way of revised design.

7.8.2. Error in Mapping of pNHA

There is no evidence to support the First Party's contention that it is in error that the site forms part of the pNHA of Loughlinstown Wood.

7.8.3. Impact on the pNHA

The site forms part of the pNHA of Loughlinstown Wood which as previously noted in this assessment above Section 8.7.1.1 Policy Objective GIB18: Protection of Natural Heritage and the Environment seeks to protect and conserve. To permit a dwelling house at this location would result in the diminishment of the pNHA in a manner that would conflict with Section 8.7.1.1 Policy Objective GIB18 and would give rise to an undesirable precedent for other types of similar developments that cumulative erode the intrinsic quality and intactness of these natural habitats and the species they contain. Moreover, such developments cumulatively erode an adverse manner the Green Infrastructure within the County afforded protection under the Development Plan as well as the biodiversity value of land zoned 'F' at this location.

7.8.4. Development Contribution

This development is not exempt from the payment of Section 48 Development Contributions under the applicable scheme for this locality.

7.9. Appropriate Assessment

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

8.0 Recommendation

8.1. 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 within Flood Zone A of the Office of Public Works (OPW) Catchment Flood Risk Assessment and Management (CFRAM) final flood maps. The subject proposal represents 'Highly Vulnerable Development' in accordance with Table 2-2: 'Classification of vulnerability of different types of development', and under the provisions of Section 5.2 Development in Flood Zone A or B in the Strategic Flood Risk Assessment (SFRA), Appendix 15 of the Dún Laoghaire Rathdown County Development Plan 2022-2028. This classification is consistent with 'Highly Vulnerable Development' set out under Table 3.1 of the Planning System and Flood Risk Guidelines for Planning Authorities 2009. Under Section 5.2.1 Minor Development of the Strategic Flood Risk Assessment (SFRA), it is stated that infill development of any scale is not, as part of this SFRA, considered minor development. Under Section 5.2.2 of Appendix 15, *'it is not appropriate for new, highly vulnerable, development to be located in Flood Zones A or B'*.

Further, Section 6.2.10 of Appendix 15 in relation to the Shanganagh River sets out that new development within Flood Zone A cannot be justified and floodplain land should be retained as open space and that until a Flood Relief Scheme to the 1.0% AEP event standard is complete, any development in Flood Zone A is not permitted. It also requires that all development will be considered subject to a Site Specific Flood Risk Assessment satisfying the requirements of Section 5 of this SFRA.

The development proposed for retention within Flood Zone A has not demonstrated compliance with the requirements of Section 5 and would not, therefore, accord with the Strategic Flood Risk Assessment, in particular 5.2.2 and Section 6.2.10 of Appendix 15, of the Dún Laoghaire-Rathdown County Development Plan, 2022-2028.

Therefore, development proposed to be retained is located in an area which is at risk of flooding and would, if permitted be contrary to the proper planning and sustainable development of the area.

2. Having regard to the overall design, bulk and scale of the development proposed to be retained, in particular the bulk, mass and roof profile of its two-storey built form, the site setting as part of Loughlinstown Wood, a setting which has a strong sylvan character and forms part of a Green Corridor running alongside the northern banks of Shanganagh River which at this location of Commons Road is not characterised by residential development and forms part of public open space, it is considered be at odds with the pattern of development, would be visually incongruous and diminish the sylvan character as well as qualities of Loughlinstown Woods as appreciated from the public domain, it would not integrate satisfactorily with the original single storey structure on site and would thereby, be seriously injurious to the visual amenities of the area. The development proposed to be retained would depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

8th day of March, 2023.