



An
Bord
Pleanála

Inspector's Report

ABP-315564-23

Development	Amended development previously granted permission, consisting of 10 houses and garages (within attendant grounds of protected structure).
Location	Lands at Shankill House, Ferndale Road, Rathmichael, Dublin 18
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D22A/0800
Applicant	Charton Homes Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Charton Homes Limited.
Observer(s)	None.
Date of Site Inspection	2 August 2023.
Inspector	Terence McLellan

1.0 Site Location and Description

- 1.1. The appeal site refers to the 3.05 hectare plot located on Ferndale Road, Shankhill. The plot lies adjacent to and within the attendant grounds of Shankhill House which is a Protected Structure (PS). Shankhill House and its outbuildings are located to the north and west of the site. The site is bounded by Rathmichael Haven to the north and Ferndale Road to the east. The roadway of Hillfield and the associated residential properties lie to the south and west respectively. The existing plot is largely vacant save for some small outbuildings towards the western end of the site. The plot boundaries are marked by soke fencing/boundary wall and dense hedgerows, in addition to some trees particularly along the northern, south eastern and south western boundaries.
- 1.2. There is an access to the site from Ferndale Road which does not appear to be in current use. The access on Rathmichael Haven primarily serves Shankhill House. Levels increase considerably towards the west, rising from Ferndale Road towards Shankhill House. The surrounding area is characterised by large detached residential properties set within generous plots.

2.0 Proposed Development

- 2.1. Planning permission is sought for amendments to the previously granted and extended permission to develop the site to provide 10 detached homes. The proposed amendments include changes to the proposed house/garage types, including changes to the design of the houses and their positioning within their respective plots (including minor plot realignment). Amendments are also sought to the proposed boundary treatments and the proposed landscaping works, including perimeter hedge planting and the provision of play equipment. All other aspects of the development would remain as previously approved.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Notification of the Decision to Refuse Permission was issued by Dún Laoghaire Rathdown County Council on 14 December 2022. Permission was refused for the following two reasons:

1. Under the Dún Laoghaire Rathdown County Development Plan 2022-2028, the site is subject to Zoning Objective A1 which seeks 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved Local Area Plans'. The site is located within the Rathmichael Local Area Plan boundary, for which a Local Area Plan will be prepared. The proposed development which would comprise of significant material amendments to the development permitted under permission D15A/0403 (extended under extension of duration D15A/0403/E) and therefore represents a new development comprising the construction of 10 no. residential detached dwellings and associated landscaping and boundary works on a stated area of 3.05 hectares, would be contrary to the provisions of section 2.6.1.3 which seeks to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved Local Area Plans, would set an undesirable precedent for other similar development and would be contrary to the A1 zoning objective of the area. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.
2. Having regard to refusal reason No. 1 above and the importance of Ferndale Road in supporting the delivery of the Core Strategy of Dún Laoghaire Rathdown County Development Plan 2022-2028 and the settlement strategy of the RSES, the proposed development is premature pending the design and completion of upgrade works to Ferndale Road in accordance with the 6 Year Road Objective/Traffic Management/Active Travel Upgrade in Table 5.3 of the Dún Laoghaire Rathdown CDP 2022-2028 and the current lack of safe facilities for pedestrians and cyclists on Ferndale Road as per Clause 1 (e) of the Fourth Schedule of the Planning and Development Act 2000. The proposed

development would therefore endanger public safety by reason of a traffic hazard or obstruction of road users or otherwise, per Clause 4 of the Fourth Schedule of the Planning and Development Act 2000.

3.2. Planning Authority Reports

- 3.2.1. The Planner's Report was issued on the 14th December 2022 and forms the basis of the Council's assessment and decision. The report notes the A1 zoning objective which seeks 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved Local Area Plans'. The report also notes that the site is located within the Rathmichael Local Area Plan boundary, for which a Local Area Plan will be prepared.
- 3.2.2. The report confirms the Planning Authority's view that the proposal would differ significantly from the parent permission, that the changes would not be considered minor, and that they would have an impact on the receiving environment. As the parent permission has not been commenced, the report states that the development would not comprise of minor modifications or extensions to permitted dwellings. The Planning Authority have taken the view that the proposal cannot be considered as an amendment and that it should be assessed as a new development. On this basis, the Planning Authority have concluded that the development would be contrary to the zoning objective.
- 3.2.3. Concerns are raised that not enough information has been submitted with the application to allow a full comparison to take place, with only the proposed amendments shown and without clear reference to the parent permission. Due to the substantive reasons for refusal, the Council chose not to pursue this by way of Further Information.
- 3.2.4. The development is considered to satisfy policy requirements regarding housing quality, private open space, and general separation distances. Issues are raised regarding open space and landscaping due to the absence of a written schedule and colour coded drawings. The Planning Authority consider that insufficient information has been provided to assess impacts on residential/visual amenity and impacts on the Protected Structure.

3.2.5. In Transport terms, the report considers that the site is not adequately served by supporting infrastructure. The report notes that Ferndale Road is a key road in developing new communities in the area and that it is specifically designated to be upgraded with the proposed development being premature in advance of final design and completion of these works. The Planning Authority therefore consider the development to be unacceptable on this matter.

3.2.6. Finally, the report notes that the Part V proposal to make a financial contribution has since ceased to be a valid Part V compliance option and that an alternative compliance option should be proposed. This point was not actioned due to the substantive reasons for refusal.

3.2.7. **Other Technical Reports**

3.2.8. **Drainage (24.11.2022):** No objection subject to the conditions and obligations of the parent permission being reapplied.

3.2.9. **Environmental health Officer (23.11.2022):** No objection subject to conditions regarding a Construction Environmental Management Plan, Construction Hours, Community Liaison, Dust Management, and Noise and Vibration.

3.2.10. **Housing (11.11.2022):** The Part V proposal to make a financial contribution has since ceased to be a valid Part V compliance option and an alternative compliance option should be proposed.

3.2.11. **Transport Planning (21.10.2022):** The Transportation Planning Team consider that the site is not adequately served by supporting transportation infrastructure and that the proposed development would endanger public safety by reason of traffic hazard. It is further stated that the proposed development would be considered premature pending the design and completion of improvement works to Ferndale Road.

3.2.12. Transportation Planning consider that accessing the site from Ferndale Road would be unacceptable and that any new planning approval would require access to the site via Rathmichael Haven.

3.3. **Prescribed Bodies**

3.3.1. **Irish Water (21.10.2022):** No objection.

3.3.2. It is noted that An Comhairle Ealaoin, An Taisce, the Department of Housing, Local Government and Heritage, Fáilte Ireland, and the Heritage Council were consulted on the proposed development but that no responses were received.

3.4. **Third Party Observations**

3.4.1. An observation was received from Patrick Hurley of 1 Willow Cottage, requesting that the application be rejected on the basis that the Engineering Report related to the proposal relies on the findings and conclusions of that submitted as part of the parent permission in 2015 and is now out of date/insufficient.

4.0 **Planning History**

4.1.1. There is a long and detailed planning history available for this site as set out below, starting with the parent permission:

Parent Permission

4.1.2. **Planning Authority Ref D15A/0403:** Permission was granted by DLRCC in November 2015 for the construction of 10 no. 5-bed, 2-3 storey detached with stand-alone garages. The development included new boundary treatments, including the provision of a new boundary around the curtilage of Shankill House. This development was granted subject to 28 conditions as set out below:

1. Compliance with plans and particulars.
2. Use as single dwellings.
3. Materials.
4. Street naming and numbering.
5. Revisions to boundary treatment.
6. Underground services.
7. Taking in Charge and expenses.
8. Services provided before occupation.
9. Road Opening Licence.
10. Construction Management Plan.

11. Development works expenses.
12. Amended Arboricultural Assessment.
13. Tree Bond.
14. Post Completion Arboricultural Assessment Certificate.
15. Appointment of Arboricultural Consultant.
16. Details of soft landscaping.
17. Appointment and retention of Landscape Architect.
18. Compliance with Section 5 of Ecological Impact Assessment.
19. Archaeology.
20. Part V.
21. Surface Water Drainage.
22. Owners Management Company.
23. Services and wayleave documentation.
24. Payment of a Bond.
25. Financial Contribution (Surface Water Public Infrastructure).
26. Financial Contribution (Roads and Infrastructure).
27. Financial Contribution (Community and Parks Public Infrastructure)
28. Agreement on payment of contributions.

- 4.1.3. **Planning Authority Ref D15A/0403/E**: Permission was granted by DLRCC on 25 May 2020 to extend the parent permission until 01.01.2026.

Other Recent Relevant Planning History

- 4.1.4. **Planning Authority Reference D20A/0194**: Permission was granted by DLRCC in July 2020 for alterations to the site boundary to approved planning ref: D15A/0403, and all ancillary site development works.
- 4.1.5. **ABP Ref 301786-18/Planning Authority Ref D18A/0203**: Permission was refused by the Board in October 2018 for the development of 17 no. four-five bedroom two storey detached and four garages, new boundary treatments, revisions to vehicular entrance

to the east at Ferndale Road, all associated site development and landscaping and engineering works to create connections to main services. Permission was refused for the following two reasons:

1. Having regard to the location of the site and its identification for future residential capacity as set out in the Core Strategy of the Dún Laoghaire Rathdown County Development Plan, 2016 - 2022 under Section 1.2.4 (Residential Land Supply), it is considered that development of the kind proposed on the land would be premature by reference to the significant infrastructural constraints in the area being addressed in addition to the upgrading of the local road network to facilitate increased traffic and pedestrian levels and enhanced linkages to public transport infrastructure. The development is considered prejudicial to the delivery of a sufficient quantum and density of development on these lands in tandem with the necessary social and physical infrastructure. The development would set an undesirable precedent, would represent a piecemeal and haphazard form of development and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed reduction in the size of the curtilage and site area relating to Shankill House would have a material adverse impact on the setting and character of the protected structure and would be contrary to the proper planning and sustainable development of the area.

4.1.6. **ABP Ref PL06D. 246249/ Planning Authority Ref D15A/0809:** Permission was refused by the Board in July 2016 for the development of 50 dwellings comprising 15 detached, 20 semi-detached, and 15 terraced houses, new boundary treatments to the east (Ferndale Road) and north (Rathmichael Haven) including provision of new boundary treatments to the front of Shankill House, new vehicular entrance to the east at Ferndale Road, vehicular entrance to the north remains as permitted with proposed realignment of access road to Shankill House (under planning register reference number D14A/0110). Permission was refused for the following reason:

1. The site of the proposed development is located in an area lacking in community facilities and with poor connectivity and remote from public transport, neighbourhood facilities and at a location poorly served by

supporting infrastructure including adequate footpaths, public lighting and wastewater treatment facilities. It is considered that residential development of the scale proposed would result in uncoordinated, piecemeal and an unsustainable car dependent form of development which would be contrary to the Ministerial Guidelines set out in the Sustainable Residential in Urban Areas Guidelines issued by the Department of the Environment, Heritage and Local Government in May, 2009. Furthermore, it is considered that, by reason of pedestrian/vehicle conflict along the local road network serving the site, significant sections of which are rural in character and lacking in public footpaths, the proposed development would endanger public safety by reason of a traffic hazard. Accordingly, it is considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

4.1.7. **ABP PL06D.232498/Planning Authority Ref D08A/1191**: Permission was refused by the Board in August 2009 for the development of a two storey nursing home, comprising 58 number bedrooms, creation of a new vehicular entrance off Ferndale Road and provision of new access road to serve the proposed nursing home building and Shankill House (all as previously permitted under planning register reference number D05A/0168), construction of a single storey facilities building to the south-west of the proposed nursing and other ancillary development/facilities. Permission was refused for the following reason:

1. Having regard to the restricted size of the site, the lack of external open space to serve future occupants, the scale of the proposed development, including associated parking and sewage treatment areas, the proximity to site boundaries and the subdivision of the curtilage of Shankill House, a protected structure, it is considered that the proposed development would be out of character at this location, would result in an unsatisfactory standard of residential amenity for future occupants of the nursing home and would result in overdevelopment of the site. Furthermore, the subdivision of the curtilage of Shankill House in the manner proposed would be contrary to the policies of the planning authority, as set out in the Dún Laoghaire-Rathdown County Development Plan, 2004-2010 relating to protection of

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

5.0 Policy Context

5.1. Development Plan

Dún Laoghaire-Rathdown County Development Plan 2022-2028

- 5.1.1. The Dún Laoghaire-Rathdown County Development Plan 2022–2028 (CDP), categorises the site as zoning objective ‘A1’, the stated objective of which is to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans. The site is also located within the boundary of the of the Rathmichael/Ferndale Road Local Area Plan for which a Local Area Plan (LAP) will be prepared.
- 5.1.2. Shankhill House, a Protected Structure (RPS Ref. 1829) lies adjacent to the site to the north and west. The site is located within Landscape Character Area No. 10-Rathmichael. Ferndale Road which bounds the site to the east and south is included in the 6 Year Road Objective/Traffic Management/Active Travel Upgrades.
- 5.1.3. Section 2.6.1.3 of the Core Strategy relates to the Council’s Local Area Plan making programme and states that on lands subject to zoning objective A1, a wide range of uses are both permitted in principle and open for consideration. This acknowledges the fact that the Local Area Plan process will allow for a more granular breakdown of land uses. It is noted that within the A1 zoned lands at both Old Connaught and Rathmichael there are a number of existing properties. The CDP states that minor modifications and extensions to these properties can be considered in advance of the relevant Local Area Plans.
- 5.1.4. Chapter 4: Neighbourhood – People, Homes and Place, sets out the policy objectives for residential development, community development and placemaking, to deliver sustainable and liveable communities and neighbourhoods. The relevant policy objectives from this chapter are:
- PHP18: Residential Density
 - PHP20: Protection of Existing Residential Amenity

- PHP27: Housing Mix
- PHP35: Healthy Placemaking

5.1.5. Chapter 5: Transport and Mobility, seeks the creation of a compact and connected County, promoting compact growth, and ensuring that people can easily access their homes, employment, education and the services they require by means of sustainable transport. The relevant policy objectives from this chapter include:

- T11: Walking and Cycling
- T19: Car Parking Standards
- T23: Roads and Streets
- T28: Road Safety

5.1.6. Chapter 8: Green Infrastructure and Biodiversity includes policies for the protection, creation, and management of this resource in an integrated manner by focusing on key themes within GI such as: landscape and the coast; access; biodiversity; and parks. The relevant policies from this chapter include:

- GIB2: Landscape Character Areas

5.1.7. Chapter 11: Heritage and Conservation includes specific objectives and guidance relating to the protection of the County's heritage including architectural heritage. The relevant policies from this chapter include:

- HER7: Record of Protected Structures

5.1.8. Chapter 12: Development Management, contains the detailed development management objectives and standards that are to be applied to proposed developments. The relevant sections of this chapter include:

- 12.3: Neighbourhood, People, Home, and Place
- 12.3.1: Quality Design
- 12.3.3: Quantitative Standards for All Residential Development.
- 12.3.4: Residential Development
- 12.3.7: Additional Accommodation in Built Up Areas
- 12.3.7.7: Infill
- 12.4.6: Cycle Storage: Urban Greening
- 12.4.8: Vehicular Entrances and Hardstanding Areas

- 12.4.8.3: Urban Greening and SUDS
- 12.4.8.4: ACAs/Protected Structures
- 12.8.3: Open Space Quantity for Residential Development
- 12.8.3.1: Public Open Space
- 12.8.3.3 (i): Private Open Space for Houses
- 12.8.7.1: Separation Distances
- 12.8.7.2: Boundaries
- 12.8.8: Financial Contributions in Lieu of open Space
- 12.8.11: Existing Trees and Hedgerows
- 12.11.2.3: Development Within the Grounds of a Protected Structure

5.2. Regional Policy

Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031

- 5.3. The primary statutory objective of the Strategy is to support implementation of Project Ireland 2040 - which links planning and investment through the National Planning Framework (NPF) and ten year National Development Plan (NDP) - and the economic and climate policies of the Government by providing a long-term strategic planning and economic framework for the Region. The RSES seeks to promote compact urban growth by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and employment choice for the Region's citizens. The RSES seeks to build a resilient economic base and promote innovation and entrepreneurship ecosystems that support smart specialisation, cluster development and sustained economic growth.

5.4. National Policy

The National Planning Framework - Project Ireland 2040

- 5.4.1. The NPF addresses the issue of 'making stronger urban places' and sets out a range of objectives which it considers would support the creation of high quality urban places. Relevant Policy Objectives include:

- National Policy Objective 2a: A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs.
- National Policy Objective 6: Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.
- National Policy Objective 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.
- National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- National Policy Objective 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.5. Section 28 Ministerial Guidelines

5.5.1. Having considered the nature of the proposal, I consider that the directly relevant section 28 Ministerial Guidelines and other national policy documents are:

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009).
- Architectural Heritage Protection, Guidelines for Planning Authorities (October 2011). Guidance is provided in terms of the criteria and other considerations to be taken into account in the assessment of proposals affecting Protected Structures. The guidelines seek to encourage the sympathetic maintenance, adaptation, and re-use of buildings of architectural heritage. Chapter 13 deals with curtilage and

attendant grounds whilst Section 13.8 of the guidelines relates to development affecting the setting of a Protected Structure or an architectural conservation area.

5.6. Natural Heritage Designations

- 5.6.1. The site is not located within any designated site. The nearest European Sites are the Ballyman Glen SAC (000713) (3km), Rockabill to Dalkey Island SAC (003000)(3.6km), Knocksink Wood SAC (000725)(4km), Bray Head SAC (000714)(5km), and the Dalkey Islands SPA (5.4km).

5.7. EIA Screening

- 5.7.1. 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 of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A First Party appeal has been submitted by Genesis Planning Consultants of Dean Swift Building, Armagh Business Park, Hamiltonsbawn Road, Armagh, for and on behalf of Charton Homes Limited, the applicant. The grounds of appeal can be summarised as follows:

Reason for Refusal 1

- The proposal is plan led and consistent with the zoning for the land.
- Policy context has a clear presumption in favour of residential development on such zoned lands.
- The proposal does not represent a new development. It seeks to amend house/garage type and plot layouts. The application is therefore an amendment to an existing permission.

- The planning authority have failed to give regard to the existing permission which remains valid until 01.01.2026.
- Section 2.6.1.3 of the CDP is not applicable, no issues of precedent arise as the proposal is not a stand alone permission and the development is not contrary to the zoning objective of the area.
- The zoning objective refers to approved Local Area Plans and not potential or future Local Area Plans for which the plan making process has not commenced. There has not been an LAP for in excess of 15 years.
- The legal principles as per the judgement of the High Court in South West Regional Shopping Centre Promotion Association Ltd V. An Bord Pleanála have not been applied.
- The High Court judgement states that matters that are the subject of an extant grant of planning permission ought not to be reassessed.

Reason for Refusal 2

- The development does not alter units from particulars as per the parent permission (numbers, density etc). and therefore, has no material change.
- The proposal does not result in the increase in traffic, pedestrian or cycling volumes and therefore does not result in a material change to infrastructure requirements for users of the site or the existing road and footpath network.
- The proposal does not alter the approved entrance, footpath or road design from the permitted scheme and therefore no issues arise in terms of safety for pedestrians or cyclists.
- Under the parent permission, the applicable CDP also had an objective to prepare an LAP. The Planner's Report states that this has been in place since 2004. The report also noted that the development would not be inappropriate or premature and notes that a precedent was set by an earlier permitted development on this site (D05A/0168).
- The current Planner's Report is silent on the relevant planning history and fails to recognise the planning history of the extant permission.

- It is not open to the Planning Authority to come to a different conclusion in this respect (see Narconon Trust V. An Bord Pleanála).
- The refusal states that the proposal is premature pending the design and upgrade works to Ferndale Road but this fails to take account of the extant permission and the proposal does not alter these details from the parent permission.
- It is requested that the Board undertake a De Novo assessment.

6.2. Planning Authority Response

- 6.2.1. A response was received from Dún Laoghaire Rathdown County Council on 9th February 2023 requesting that the drainage conditions applied to the parent consent be reapplied should permission be granted.

6.3. Observations

- 6.3.1. None.

6.4. Further Responses

- 6.4.1. None.

7.0 Assessment

- 7.1. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

- Zoning and Policy Issues
- Parent Permission and Significance of Amendments
- Acceptability of Amendments

- Adequacy of Information Submitted
- Transport and Infrastructure
- Other Matters
- Appropriate Assessment

7.2. Zoning and Policy Issues

- 7.2.1. A key issue in the Council's argument in refusing planning permission is that the development would be contrary to the zoning objective of the area on the basis that the zoning objective has changed, that the proposed amendments are significant and constitute a new development, and that the development would set an undesirable precedent.
- 7.2.2. The parent permission was granted under the 2010-2016 CDP whereby the site was zoned objective A – To protect and/or improve residential amenity. This zoning objective was carried through to the subsequent 2016-2022 CDP, although I note that this changed to zoning objective A1 under the current 2022-2028 CDP. Zoning objective A1 seeks to provide for new communities and Sustainable Neighbourhood Infrastructure in accordance with approved Local Area Plans. The key difference here is the provision that development should be in accordance with approved LAPs.
- 7.2.3. The site is within the boundary of lands earmarked for the future Rathmichael LAP and the CDP notes at section 2.6.1.3 (Table 2.16) that a new LAP is to be prepared for this area. As noted by the applicant, this has been a long held objective of the Council. However, at the current time there is no draft LAP or an Issues Paper available. Section 2.6.3.1 of the current CDP states "It is noted that within the A1 zoned lands at both Old Connaught and Rathmichael that there are a number of existing properties. Minor modifications and extensions to these properties can be considered in advance of the relevant Local Area Plans". I note the Council's view that the proposal would not be considered a minor modification/extension and I will address that issue later in this report, however, no consideration appears to have been given to the extant permission which remains valid until January 2026. The extant permission is, in my opinion, a material consideration that should be afforded significant weight.
- 7.2.4. Section 18(3)(a) of the Planning and Development Act 2000 (as amended), states that, when considering an application for permission under section 34 of the Act, a planning

authority, or the Board on appeal, shall have regard to the provisions of any local area plan prepared for the area to which the application relates, and the authority or the Board may also consider any relevant draft local plan which has been prepared but not yet made.

7.2.5. In my opinion, the Council's interpretation that only minor development will be considered until the point that a LAP is adopted is unreasonable. As previously stated, there is no current draft LAP or Issues Paper available, and the Council have not indicated any potential timeline in terms of plan preparation. I consider that such a restriction would be disproportionate and contrary to section 7.16.1 of the Development Management Guidelines which state that prematurity should not be used as a reason for refusal unless a specific time frame is stated within which there is a reasonable prospect of the plan being completed.

7.2.6. Section 34(2)(a) of the Planning and Development Act 2000 (as amended), states that when making its decision in relation to an application, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, having regard to

- i. the provisions of the development plan,
- ii. the provisions of any special amenity area order relating to the area,
- iii. any European site or other area prescribed for the purposes of section 10(2)(c),
- iv. where relevant, the policy of the Government, the Minister or any other Minister of the Government.

7.2.7. Indeed, in the absence of an LAP or a draft LAP as referred to in Section 18 of the Act, applications for permission must be decided in accordance with the provisions of Section 34 outlined above and the development plan that applies at the time a decision is made. In the absence of an approved LAP, it is my opinion that the proposed development should be assessed against the zoning objective for the area and the development management criteria relevant to the proposed development. On that basis, I am satisfied that the provision of residential accommodation is compliant with the zoning objective of the site.

7.3. Parent Permission and Significance of Amendments

- 7.3.1. The primary issue in the appeal relates to the Council's view that the proposed amendments are significant and as such should be considered as a new development as opposed to an amendment to an existing permission. The applicant refutes this position on the basis that the majority of the development principles from the extant permission remain as approved and quote extensively from the High Court judgement in *South West Regional Shopping Centre Promotion Association Ltd V. An Bord Pleanála*, taking the view that the principles established in this judgement have not been applied by the Council.
- 7.3.2. I agree with the applicant that the outcome of the aforementioned judgement is of relevance to this case. The main crux of the judgement is that it is only the proposed amendments or revisions that are to be assessed and that those elements of the development that are not being modified or varied, and which have the benefit of planning permission (and thus issues relating to the totality of the development), should not be revisited. The key issue here is whether or not the proposed amendments are so significant that they outweigh the balance of what was previously approved.
- 7.3.3. Planning permission D15A/0403 (and extension permission D15A/0403/E) granted permission for the redevelopment of the site to provide 10 new detached homes with garages (nine detached and one integral). Each approved home would provide five bedrooms and heights were in the range of between two and three storeys. The main access to the site is from Ferndale Road.
- 7.3.4. The current proposal seeks amendments to the house and garage type as well as repositioning of the dwellings within their respective plots in addition to some minor plot realignments. Amendments are also proposed to the boundary treatments and landscaping in order to provide perimeter hedge planting and the provision of play equipment. All other aspects of the development would remain as previously approved, including:
- Unit numbers and unit mix.
 - Site boundary.
 - SUDS design.
 - Internal plot positions and entrances.

- Site entrance, footpath, street lighting and general arrangement of the site.
- Public open space.
- Parking strategy.
- Tree retention.

7.3.5. Most of the key principles of the development would remain as permitted, including the general layout of the site and location of individual plots, unit numbers and unit mix, density, site access and egress, parking, open space, and services regarding drainage. I do accept that the design of the dwellings and the garages are changing completely from that approved under the parent consent. However, given the many principles of the approved development that are remaining as permitted, I am satisfied that, on balance, these changes can be assessed as amendments to the existing permission. As such, I do not agree with the Council's position that the proposed amendments would constitute a new development and I am satisfied that the Board can consider the acceptability of the proposed changes only.

7.4. Acceptability of Amendments

7.4.1. The table below sets out a comparison between the specifications of the dwellings approved and those proposed by the amendments:

Site	Approved House Type	Height (m)	Area (sqm) (House)	Area (sqm) (Garage)	Proposed House Type	Height (m)	Area (sqm) (House)	Area (sqm) (Garage)
1	Type 2	10.10	402.64	73.60	E	7.72	424.6	69.6
2	Type 4	10.59	420.56	73.60	F	9.19	378.5	44.3
3	Type 6	9.78	416.4	73.60	B	10.02	407	21.1
4	Type 1	9.79	479.96	73.60	B1	9.87	407.8	70.2
5	Type 5	10.58	436.94	73.60	E1	7.72	421	70.2
6	Type 1A	9.79	479.96	73.60	G	10.45	362.8	44.3
7	Type 2A	10..33	402.64	73.60	D1	9.66	465	49.5
8	Type 4A	10.59	420.55	73.60	D	9.66	465	70.2
9	Type 3	10.27	387.96	38.70	C	9.48	490	Inclusive
10	Type 7	9.80	359.75	73.60	A	10.58	478.4	70.2

Sub Total			4207.34	701.10			4300.1	509.6
Total			4908.44				4809.7	

Site 1

Design

7.4.2. As stated previously, the design of the dwellings and garages are changing completely from that approved under the existing permission. Each of the proposed dwellings has been designed individually, which was generally the case on the permitted scheme as well. Importantly, the dwellings approved on the extant permission, whilst individually designed, shared common design features such as the style of windows/doors, general roof form, and the general character of built form which, despite the individual design of the dwellings, allowed for a cohesive form of development.

7.4.3. The proposed dwellings exhibit various different architectural styles/finishes, roof forms, and proportions. For example, some dwellings have modern entrance doors whilst others have Edwardian and Georgian style doors. Some dwellings have casement windows, some have sash and case windows with traditional glazing bars, other dwellings have more contemporary fixtures. Roof form also differs between properties in terms of height, pitch and depth. Further differences are noted in the style of dormer windows, with some dwellings incorporating box dormers and other dwellings incorporating arched dormers. Whilst the design changes are not objectionable on an individual basis, collectively, I am of the view that they would result in a development that lacks a cohesive architectural language that would be a discordant feature that would have an adverse impact on the visual amenity of the area. Overall, I do not consider that the design amendments would be positive, and the design amendments would fail to create a sense of place in line with CDP policy 12.3.1.

Height

7.4.4. Whilst I note that there would be changes to the massing, particularly in the case of those dwellings providing roof accommodation, the overall heights are generally comparable to those previously approved, and in all but four instances, would actually reduce. The heights that would increase are Site 3 (240mm increase), Site 4 (80mm

increase), Site 6 (660mm increase), and Site 10 (780mm increase). In terms of Sites 3, 4 and 6, I do not consider the increase in height to result in any additional amenity impacts and as such I would consider the increased height to be broadly acceptable in the context of the existing permission.

7.4.5. The Planner's Report for the extant permission makes specific reference to the approved dwelling on Site 10 in terms of its height, bulk, massing and positioning (due to proximity to the adjacent dwelling at no. 11 Hillfield). As part of the assessment of the permitted scheme, the Planning Authority required the height of the dwelling on Site 10 to be reduced and for the dwelling to be repositioned centrally within the plot. This was to minimise visual and residential amenity impacts.

7.4.6. The current proposal not only increases the height of the proposed dwelling on Site 10, but it moves the dwelling much closer to the boundary with No. 11 Hillfield. Site 10 is perhaps the most prominent part of the site, sitting on a substantially higher level than the remainder of the dwellings and the PS. I consider the increased height bulk and massing of the dwelling on Site 10 to be unacceptable in terms of its overbearing relationship to the adjacent dwelling and garden ground at 11 Hillfield which sits immediately to the north west and its impact on the visual amenity of the area.

Repositioning of Dwellings and Garages Within Plots

7.4.7. With the exception of Sites 9 and 10, the re-positioning of dwellings is minor. The approved dwelling on Site 9 was offset within the plot, being orientated due north as opposed to north east to face the access road. Under the proposed amendment, the proposed dwelling on Site 9 would be re-positioned to face the access road which, in my opinion, is a more rational layout that would be beneficial in visual amenity terms as it would move the bulk of the dwelling further away from the plot boundary on Hillfield and the adjacent dwellings to the south west, thereby reducing the visual impact when compared to the approved scheme, particularly given the level change when moving towards Ferndale Road.

7.4.8. As mentioned previously, the dwelling on Site 10 was approved in a central position within its plot in order to minimise impacts on the adjacent dwelling at 11 Hillfield and to ensure a more appropriate relationship with the dwelling on Site 9. The proposed amendments would move the garage and dwelling much closer to the boundary with 11 Hillfield. The existing boundary is orientated north east, the proposed dwelling

would be positioned 5m closer to this boundary as well as being located 9.5m further to the north east. This would achieve a separation distance of 8m against a proposed dwelling height of 10.58m. I am of the view that the proposed dwelling on Site 10 would have an overbearing impact on the garden ground of 11 Hillfield and would create a sense of enclosure due to the amended position of the dwelling in combination with its height, depth and separation distance from the boundary. I am also of the view that these amendments would increase the prominence of the dwelling at Site 10 in relation to the Protected Structure at Shankhill House (PS), and that the overall visual amenity of the area would be affected. I have considered the reasonableness of seeking to amend the height and position of the dwelling by way of a condition however, in my opinion this would be a significant material change and would be beyond the scope of an amending condition.

Realignment of Plot Boundaries

- 7.4.9. I note that the boundary of Site 3 lies adjacent to Ferndale Road and the site entrance. The amendment to the plot boundary of Site 3 where it meets the site entrance could potentially interfere with visibility splays in the future, depending on the type of planting used in the garden. There would appear to be no significant beneficial reason for this amendment other than rationalising the shape of the plot. Due to the potential impact on visibility, I do not consider this particular amendment to be acceptable and I am of the view that it should be omitted in favour of the previously approved Site 3 boundary layout. I am satisfied that this can be secured by way of a condition should the Board be minded to grant permission.

Quantum of development

- 7.4.10. I acknowledge that some of the dwellings will increase in terms of floorspace (Sites 1 and 7-10). However, the remaining dwellings (Sites 2-6) would be reducing, and the overall quantum of development is comparable to that previously approved, with approximately 4,908sqm approved and 4,809sqm proposed. The proposed dwellings would continue to comply with the housing quality standards of the CDP, and private open space and amenity standards within the site would remain acceptable.

7.5. Adequacy of Information Submitted

- 7.5.1. Whilst not forming a reason for refusal, the Planning Authority have stated in the Planner's Report that limited information has been submitted to compare the proposed changes and that no clear reference is made to the existing permission.
- 7.5.2. I have considered the information on file which includes proposed plans, elevations and sections of the proposed dwellings, contextual elevations, and a proposed site plan which shows the approved and proposed site/plot boundaries and the approved/proposed position of dwellings. I acknowledge that plans, elevations, and sections of the approved dwellings were not submitted, and that this information should ideally have been provided as part of the application in the interests of completeness. However, these details are readily available on the Planning Authority's public planning register, and whilst I would advise the Board that this information could be requested if necessary, I am satisfied that sufficient information has been provided and made available to allow an appropriate comparison of the approved and proposed developments.

7.6. Transport

- 7.6.1. The Planning Authority take the view that the site is not adequately served by supporting transportation infrastructure and that the proposed development would endanger public safety by reason of a traffic hazard. It is further stated that the proposed development would be considered premature pending the design and completion of improvement works to Ferndale Road. This forms the basis of the second reason for refusal.
- 7.6.2. The Council's position on transport related matters, including the issue of prematurity pending upgrades to Ferndale Road are, in my opinion, unreasonable in the context of the extant permission, and I consider that the Council have not given appropriate weight to matters that were settled as part of the previous permission. The transport related elements of the proposed development would remain as previously permitted (save for my earlier comments regarding the plot boundary of Site 3), and there would be no intensification of development that would warrant a change in approach when considering the context of the amendments being sought. Given that unit numbers, density, and access/egress would remain as previously granted, I am satisfied that the development would not endanger public safety by reason of a traffic hazard or obstruction of road users. In any event, the development would not impact on the

Council's ability to deliver the 6 Year Road Objective/Traffic Management/Active Travel Upgrade as set out in the CPD, and as amendments to an existing permission I do not consider that it would set a precedent.

7.7. Other Matters

- 7.7.1. The Planning Authority note that the site plan for the parent permission was amended by application D20A/0194 in July 2020 and that the site plan submitted with the current application reflects the boundary of the original permission. The site plan amendments approved by D20A/0194 relate to two small sections of the boundary with Shankhill House. The amendments were relatively minor and sought to provide a more linear boundary. Furthermore, they do not have any impact on the assessment of the proposed amendments sought by the current application. I am satisfied that this could be addressed by condition should the Board be minded to grant permission.

7.8. Appropriate Assessment

- 7.8.1. The parent permission was screened for Appropriate Assessment and the Planning Authority concluded that the development would not have a negative effect on any European sites either by itself or in combination with other developments. As previously mentioned, the proposed development remains as approved in terms of drainage, general layout, and unit numbers. An updated Appropriate Assessment Screening Report has been submitted as part of the current application. This assesses the potential impact of the development on the nearest European Sites. I have considered the findings of this report in my screening assessment.
- 7.8.2. Having regard to the nature of the development, its location and the lack of any direct hydrological pathways, the lack of any biodiversity corridor linking directly to conservation sites, the minimal additional loading of the development on the Shanganagh Waste Water Treatment Plant, dilution ability/capacity, and the separation distance to the nearest European sites, it is concluded that no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, I recommend that planning permission should be refused for the reasons set out below.

9.0 Reasons and Considerations

- 9.1.1. The proposed design amendments would result in dwellings with a varied and inconsistent design approach that lack a cohesive architectural language. The design amendments would compromise the visual coherence and integration of the approved development and would result in a discordant development that would have an adverse impact on the visual amenity of the area. As such the design amendments would fail to create a sense of place in line with Policy 12.3.1: Quality Design of the Dún Laoghaire-Rathdown County Development Plan 2022–2028. Additionally, the proposed amendments to the dwelling on Site 10, by reason of the excessive height, bulk and depth of the dwelling and garage in close proximity to the boundary, would result in the creation of a sense of enclosure and an overbearing and injurious impact on the residential amenity of the dwelling and garden ground at No. 11 Hillfield, Shankhill House, and the visual amenity of the wider area. 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.

Terence McLellan
Senior Planning Inspector

12th January 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-315564-23		
Proposed Development Summary	Amended development previously granted permission, consisting of 10 houses and garages (within attendant grounds of protected structure).		
Development Address	Lands at Shankill House, Ferndale Road, Rathmichael, Dublin 18		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		N/A	Conclusion
No			No EIAR or Preliminary Examination required
Yes	X	Class 10 (b) (i), threshold >500 dwellings.	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	<input checked="" type="checkbox"/>	Preliminary Examination required
Yes	<input type="checkbox"/>	Screening Determination required

Inspector: _____ **Date:** _____

Appendix 2

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-315564-23	
Proposed Development Summary	Amended development previously granted permission, consisting of 10 houses and garages (within attendant grounds of protected structure).	
Development Address	Lands at Shankill House, Ferndale Road, Rathmichael, Dublin 18	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development is for residential, in an area that is largely characterised by residential use. The proposed development would therefore not be exceptional in the context of the existing environment in terms of its nature.</p> <p>The development would not result in the production of any significant waste, emissions or pollutants. Waste during construction and operation could be managed in line with a Construction Environmental Management Plan</p>	No.
<p>Size of the Development</p> <p>Is the size of the proposed</p>	<p>The development would generally be consistent with the scale of surrounding developments and would not be exceptional in the context of the existing environment.</p>	No.

<p>development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>There would be no significant cumulative considerations with regards to existing and permitted projects/developments.</p>	
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The development would be located in an area characterised by large dwellings and would not have the potential to significantly impact on an ecologically sensitive site or location. There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors). The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other urban developments.</p> <p>Given the nature of the development and the site/surroundings, it would not have the potential to significantly affect other significant environmental sensitivities in the area. It is noted that the site is not designated for the protection of the landscape or natural heritage and is not within an Architectural Conservation Area.</p>	<p>No.</p>
<p>Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

Inspector: _____

Date: _____