

Material Contravention Statement

Proposed SHD Planning Application

**At Glenamuck Road North,
Carrickmines, Dublin 18**

**On behalf of
Moran Park Homebuilders Ltd**



April 2022



Planning & Development Consultants

63 York Road

Dun Laoghaire

Co. Dublin

www.brockmcclure.ie



Table of Contents

1	INTRODUCTION.....	3
1.1	LEGISLATIVE CONTEXT.....	3
2	ELEMENTS OF MATERIAL CONTRAVENTION.....	6
2.1	BUILDING HEIGHT	6
2.2	RESIDENTIAL MIX	9
2.3	RESIDENTIAL DENSITY	10
2.4	CAR PARKING	11
3	MATERIAL CONTRAVENTION JUSTIFICATION.....	12
3.1	NATIONAL /STRATEGIC IMPORTANCE.....	12
3.2	COMPLIANCE WITH NATIONAL POLICY AND SECTION 28 MINISTERIAL GUIDELINES	13
3.2.1	<i>Project Ireland 2040 – National Planning Framework.....</i>	<i>13</i>
3.2.2	<i>Design Standards for New Apartments (2020).....</i>	<i>16</i>
3.2.2	<i>Specific Planning Policy Requirements (SPPRs)</i>	<i>17</i>
3.2.3	<i>Urban Development and Building Height Guidelines (2018)</i>	<i>20</i>
3.2.4	<i>Specific Planning Policy Requirements.....</i>	<i>21</i>
3.2.5	<i>Development Management Criteria.....</i>	<i>22</i>
4	CONCLUSION.....	30



1 INTRODUCTION

We, Brock McClure Planning & Development Consultants, 63 York Road, Dún Laoghaire, Co. Dublin, have prepared this Material Contravention Statement on behalf of **Moran Park Homebuilders Limited, 19 Fitzwilliam Square, Dublin 2, D02 CD40**, for a Strategic Housing Development on lands at **lands at Glenamuck Road North, Carrickmines, Dublin 18**.

For clarity, the site is located within the administrative boundary of Dún Laoghaire-Rathdown County Council.

The proposed development will provide for 118 no. residential units in 3 no. blocks, car and cycle parking, open space, and all associated site development works. A full description of the development is contained within the accompanying application documentation.

This statement details the basis for consideration by An Bord Pleanála ('the Board' / 'ABP') of a grant of permission in material contravention of certain non-land use policies and objectives of the Dun Laoghaire Rathdown County Council Development Plan 2016-2022 in relation to:

1. **Building Height**
2. **Residential Mix**
3. **Residential Density**
4. **Car Parking**

For the purpose of this statement, the proposed development comprises the following principal elements:

1. **Building Heights of 6 to 7 storeys**
2. **Residential Unit Mix of 34 no. 1 bed units (29%); 76 no. 2. bed units (64%); and 8 no. 3 bed units (7%)**
3. **A residential density of 159 units per ha based on the substantive development area of 0.74ha for 118 no. units.**
4. **A total of 103 no. car parking spaces (67 no. at basement level and 36 no. at surface level) are proposed. In addition, 5 no. motorcycle parking spaces (3 no. at basement level A and B, and 2 no. at basement level C).**

It is acknowledged that it is ultimately the decision of the Board as to whether the proposed development represents a material contravention of the County Development Plan. If it so concludes, the Board has power to grant permission for the proposed development by reference to the provisions of section 37(2)(b) of the Planning and Development Act 2000 (as amended).

1.1 Legislative Context

The Planning and Development (Housing) and Residential Tenancies Act 2016 sets out three conditions that must be satisfied before the Board can grant permission under that Act for development that materially contravene the Development Plan, namely:

Section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act, 2016:

"Before an applicant makes an application under section 4(1) for permission, he or she shall –

- (a) Have caused to be published, in one or more newspapers circulating in the area or areas in which it is proposed to carry out the strategy housing development, a notice – ...*
- (iv) stating that the application contains a statement – ...*

(II) Where the proposed development materially contravenes the said plan, other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.





Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016

(6) (a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned.

(b) The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land.

(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2) (b) of the Act of 2000 were to apply, it would grant permission for the proposed development [Our Emphasis].

Section 37 (2)(b) of the Planning and Development Act, 2000 (as amended):

“37 (2)(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

(i) the proposed development is of **strategic or national importance**,

(ii) there are **conflicting objectives in the development plan or the objectives are not clearly stated**, insofar as the proposed development is concerned, or

(iii) **permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28**, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”

We can confirm that the published notices have been prepared in compliance with section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

The proposed material contraventions relate only to building height, residential mix, density and car parking. For completeness, it is noted that the Zoning Objective A of the site has the stated aim “to protect and/or improve residential amenity” and as such the residential use as proposed is permitted under the said Zoning Objective A of the site.

This material contravention statement is submitted on the basis that (i) the proposal currently before An Bord Pleanála is of strategic importance; (ii) there are conflicting objectives in the relevant Development Plan; (iii) permission for the proposed development should be granted having regard to Section 28 guidelines and (iv) having regard to the pattern of development and permissions granted in the area since the making of the development plan.

A response to the relevant criteria above is provided in section 3 of this report and demonstrates that one or more of the criteria in section 37 (2)(b) are satisfied in respect of the proposed Chigwell SHD, thereby enabling the Board to decide to grant permission, notwithstanding the material contravention of Section 8.2.3.3 (iii) of the Development Plan in respect to unit mix and/or Policy UD6 in relation to Building Heights.

In considering whether to grant permission notwithstanding the material contravention of the CDP, it is also necessary for the Board to carefully to consider the requirements of Specific Planning Policy Requirements (SPPRs) under relevant ministerial guidelines issued pursuant to section 28 of the Act of 2000. Such guidelines include:





- The ‘Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)’
- The ‘Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020)’

In this regard, please also refer to the Planning Report and Statement of Consistency, which address compliance with the aforesaid Guidelines and SPPRs.

In this context, section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 refers to SPPRs and provides:

(3) (a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.

(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.

(c) In this subsection “specific planning policy requirements” means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.

This material contravention statement is submitted on the basis that:

- i. The proposal is of **national importance**;
- ii. There are **conflicting objectives in the Development Plan**; and
- iii. The proposal can be positively considered having regard to **Section 28 Ministerial Guidelines** published post the adoption of the relevant Development Plan for the area, namely, the Dún Laoghaire Rathdown County Development Plan 2016-2022; and

We now invite An Bord Pleanála to consider the justification set out in this report, which supports this position.



2 ELEMENTS OF MATERIAL CONTRAVENTION

The provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022 as they relate to the matters subject of this material contravention statement are outlined below. The position of the applicant with regard to these provisions is also identified.

2.1 Building Height

As a summary, we note the following proposals for height across the scheme submitted to An Bord Pleanála:

Block	Heights Proposed
Block A	7 Storeys
Block B	6 - 7 storeys
Block C	6 Storeys

Table 1 - Proposed Building Heights

These proposals for height may be considered by An Bord Pleanála to materially contravene the Dún Laoghaire Rathdown County Development Plan 2016-2022 and the Building Height Strategy (Appendix 9) as they are in excess of the general 3-4 storey recommendations for height as set out in the Building Height Strategy within the County.

For the purpose of this material contravention statement, the following sections set out the key policy and provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022 as they relate to height and the subject site.

Policy UD6

Policy UD6 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 states that ***“it is the Council’s objective to adhere to the recommendations and guidance set out within the Building Height Strategy for the County”***.

Building Height Strategy

Appendix 9 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 contains the ‘Building Height Strategy’, which is the document referred to by the Planning Authority in consideration of proposal for height within the county. We wish to acknowledge however that the national guidance for height has significantly changed since the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022 (which includes the ‘Building Height Strategy’) with the publication of the ‘Urban Development and Building Height - Guidelines for Planning Authorities December (2018)’. These guidelines, in effect, now supersede the requirements of the said ‘Building Height Strategy’.

With regard to suburban infill sites, it is stated that the general approach in terms of building heights in these sites has been to taper height from a high point in the centre of the site down to the site boundaries where the height of adjacent buildings can often be lower. This approach has been delivered within the current scheme with particular care taken at sensitive locations at Chigwell, Tullybeg, Stafford Lodge and properties along Brennanstown Road.

In terms of building height, Section 4.8 of the Building Height Strategy sets out a policy approach for residual suburban areas not included within cumulative Areas of Control as set out in the Building Height Strategy.



“Apartment of town-house type developments or commercial developments in the established commercial core of these areas to a maximum of 3-4 storeys may be permitted un appropriate locations – for example on prominent corner sites, on large redevelopment sites, or adjacent to key public transport nodes – providing they have no detrimental effect on existing character and residential amenity.”

The Height Strategy goes on to state that “this maximum height (3-4 storeys) for certain developments clearly cannot apply in every circumstance. There will be situations where a minor modification up or down in height could be considered. The factors that may allow for this are known as 'Upward or Downward Modifiers' ”.

Importantly, the height strategy refers to certain **Exceptional Circumstances**, where a case may be made **for additional height at certain locations**. It is stated that a proposal **must meet more than 1 upward modifier** in order to qualify as a location suitable for additional building height.

Importantly, the height strategy refers to certain **Exceptional Circumstances** where a case may be made **for additional height at certain locations**. It is stated that a proposal **must meet more than 1 upward modifier** in order to qualify as a location suitable for additional building height

Upward Modifiers

The modifiers in question are as follows:

a) The development would create urban design benefits.

The proposal will further complement the frontage along Glenamuck Road North and will deliver a new and improved road frontage on a site that is significantly underutilised at present

b) The development would provide major planning gain;

- **Significant improvements to the public realm.**
- **The provision or significant enhancement of a public transport interchange.**
- **The provision of new or improved transport infrastructure.**

The proposal delivers a significant improvement to the public realm by way of:

- The proposal will offer a range of wider planning gains including a high-quality public realm proposal in the form of new public open spaces and new pedestrian connections .
- The delivery of a network of new open space areas including courtyards and play areas etc.
- The subject site is located within an existing central and accessible urban location and is opportunely located in proximity to a number of quality, high capacity and frequent, public transport services/nodes, local shopping facilities, quality venues and surrounding employment opportunities. This will result in a future provision of new or improved transport infrastructure.

c) The development would have civic, social or cultural importance.

The proposal provides for a key connection to the adjoining site to the south. The current proposal offers an exceptional level of improvement to the local public realm with increased permeability.

d) The built environment or topography would permit higher development without damaging the appearance or character of the area, for example: - In an area where the location or scale of existing buildings would allow the recommended height to be exceeded with little or no demonstrable impact on its surroundings, - In a dip or hollow, behind a rise, or near a large tree screen, where the impact of a higher building would have little or no additional impact on its surroundings

The proposal responds to the natural and built environment, and careful consideration has been given to the proposal in relation to how it addresses the existing surrounding development and local topography.





- e) **A development would contribute to the promotion of higher densities in areas with exceptional public transport accessibility, whilst retaining and enhancing high quality residential environments.**

The site is located within approx. 150m of the Luas Green Line stop at Carrickmines, which is a high frequency transport node. The site is therefore well placed in terms of exceptional public transport accessibility. The overall proposed development of 118 units provides for a residential density of 159 units per ha based on the substantive development area of 0.74ha and is considered an appropriate residential density for a suburban site proximate to public transport infrastructure.

The site is therefore well placed in terms of exceptional public transport accessibility. The current density proposal provides for 159 units per ha is considered an appropriate residential density for a suburban site proximate to public transport infrastructure. It is our view that the proposal contributes to the promotion of higher densities in areas with exceptional transport accessibility.

- f) **The size of a site, e.g. 0.5ha or more, could set its own context for development and may have potential for greater building height away from boundaries with existing residential development.**

The site is over 0.5 ha in size (c. 1.075 ha) and therefore would be in a position to justify a modest increase in height at this location.

The proposed development will provide for heights of 4 storeys, transitioning to a height of 6-7 storeys. Whilst the proposal exceeds the 3-4 storey maximum, it meets more than 1 Upward Modifier, qualifying it as a suitable location for additional building height. Notwithstanding this, it is our opinion that the Board may consider that the proposed development would give rise to a Material Contravention in respect of building height.

The above considered, we are of the view that upward modifiers apply to the site and as such additional heights of 1 and 2 floors above the 3-4 storey maximum can be considered for this site. Notwithstanding this, the current proposal provides for heights of up to 7 storeys, which is an increase above that envisioned by the 'Building Height Strategy' governing the site context for height.

Should the Board be of the opinion that the proposed height materially contravenes the key provisions of the Development Plan as they relate to height, it is our view that there is adequate support at national level (by way of ministerial guidelines) to justify the height as currently proposed and a material contravention may be permitted. We refer An Bord Pleanála to the enclosed Material Contravention Statement in this regard.

Whilst the Board may reach this conclusion, it is considered that a grant of permission is appropriate in circumstances where Section 9 (3) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016) of the 2000 Act provides **that the requirements of a specific planning policy requirement (SPPR) take precedence over any conflicting provisions of a Development Plan:**

“(b) where specific planning policy requirements of Guidelines referred to in sub-section 2(aa) differ from the provisions of the Development Plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the Development Plan.”

Specifically, it is our opinion that a grant of permission for increased building height is justified by reference to SPPR 3A of the 'Urban Development and Building Heights, Guidelines for Planning Authorities (2018)', as detailed in Section 3 of this report.

Downward Modifiers

The applicant is also obliged to consider downward modifiers, where a decrease in height may be required where a proposal would adversely affect:

1. Residential living conditions through overlooking, overshadowing or excessive bulk and scale.
2. An Architectural Conservation Area (or candidate ACA) or the setting of a protected structure.
3. Strategic protected views and prospects.





4. A planning or social objective, such as the need to provide particular types of housing, employment or social facility in an area.
5. An Area of Particular character including a coastal fringe or mountain foothills

As a response, we note the following:

1. The material enclosed has clearly demonstrated that there is no adverse impact posed by the development by way of overlooking or overshadowing or excessive bulk and scale.
2. The proposed development is not in close proximity to any Architectural Conservation Area or within the setting of a protected structure.
3. The proposal does not affect any strategic protected views or prospects.
4. The proposal is consistent with national guidance on the types of housing to be delivered.
5. The site is not located within an Area of Particular Character such as the coastal fringe or mountain foothills.

As such, we consider none of the downward modifiers to apply to the subject site.

It is having considered both the policy approach on height and the general principles that are applied when considering new proposals for development that we consider the proposal submitted herewith to be acceptable in terms of building height. Notwithstanding this, it is our opinion that it could be interpreted that a Material Contravention in respect of building height is occurring this is a matter for An Bord Pleanála to ultimately adjudicate on.

2.2 Residential Mix

Section 8.2.3.3 (iii) of the County Development Plan sets out the requirements in relation to the mix of units provided as part of new apartment development as follows:

*“Apartment developments should provide a mix of units to cater for different size households, such that larger schemes over **30 units should generally comprise of no more than 20% 1-bed units and a minimum of 20% of units over 80 sq.m.** Schemes with less than 30 apartments will be assessed on a case-by-case basis according to their unit numbers, configuration and location but should generally accord to a percentage ratio of 40/40/20% mix for 1/2/3+ bedroom units respectively. Some one-bed or two-bed units could be provided on the ground floor to potentially cater for elderly people ‘downsizing’ from more traditional housing types and should, where possible, have direct access onto public open spaces.*

CSO results from the 2011 Census indicate that 55% of all private households are composed of one or two persons in the County, compared to the 53% Nationally. These 2011 results also indicated that 62% of private households in the County were residing in detached or semi-detached houses with 19.4% in a flat or apartment.”

The following statement contained on the cover page of Chapter 8 of the Development Plan appears to exclude **Section 8.2.3.3.(iii)** as referred to above.

*“ADVISORY NOTE - Sustainable Urban Housing – Design Standards for New Apartments’ DoECLG(2015) - Users of this Dún Laoghaire-Rathdown County Development Plan 2016-2022 are advised that the standards and specifications in respect of Apartment Development- as set out in **Section 8.2.3.3. (i), (ii), (v), (vii) and (viii)** of the Development Plan Written Statement –have been superseded by Ministerial Guidelines ‘Sustainable Urban Housing – Design Standards for New Apartments’ published by the Department of Environment, Community and Local Government (DoECLG) on 21st December 2015.”*

In consideration of this matter, we note that the proposed development provides for the following mix of units:

- **34 no. 1 bed units (29%)**
- **76 no. 2 bed units (64%)**





- **8 no. 3 bed units (7%)**

Should the Board be of the opinion that the proposed residential mix materially contravenes the key provisions of the Development Plan as they relate to mix, it is our view that there is adequate support at national level (by way of ministerial guidelines) to justify the mix as currently proposed and a material contravention may be permitted.

Whilst the Board may reach this conclusion, it is considered that a grant of permission is appropriate in circumstances where Section 9 (3) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016) of the 2000 Act, provides that the requirements of a *specific planning policy requirement* (SPPR) take precedence over any conflicting provisions of a Development Plan:

“(b) where specific planning policy requirements of Guidelines referred to in sub-section 2(aa) differ from the provisions of the Development Plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the Development Plan.”

Specifically, it is our opinion that a grant of permission for increased residential mix is justified by reference to SPPR 1 of *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’2020’*, as detailed in Section 3 of this report.

2.3 Residential Density

Policy RES3 of the County Development Plan refers to Residential Density:

“It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development...”

Where a site is located within circa 1 kilometre pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and/or 500 metres of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged.”

We also note Section 8.2.3.2 states:

“In general, the number of dwellings to be provided on a site should be determined with reference to the Government Guidelines document: ‘Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities’ (2009). As a general principle, and on the grounds of sustainability, the objective is to optimise the density of development in response to type of site, location and accessibility to public transport. However, the overriding concern should be the quality of the proposed residential environment to be created and higher densities will only be acceptable if the criteria which contribute to this environment are satisfied. Higher residential density will not be appropriate in every circumstance and qualitative built form can sometimes be a more important determinant. Higher densities should have regard to surrounding dwellings and should be achieved in tandem with the protection of the amenity of the future residents of the proposed development (Refer also to Policy RES3 in Section 2.1.3.3).”

Policy RES5 provides that densities should be in the region of 35-50 units per ha. Higher densities will be allowed where it is demonstrated that the site is located within circa 1km pedestrian catchment of a Luas Line and where there is a quality proposal set out.

A residential density of 159 units per ha based on the substantive development area of 0.74ha, and a proposal for 118 residential units on a central site. This is considered appropriate and achievable at this location given the quality of the scheme proposed, the proximity to public transport, and the protection of existing levels of residential amenity for sites surrounding.

The open character and residential amenity of the site is also retained through a high quality, open landscape design that reflects the existing character whilst ensuring that a higher density is delivered. The open character and recreational amenity of the site has been integral to the design of the proposal. The landscape plan provides for quality landscaping, leaving open areas of the site, and reflects its existing character.





Notwithstanding the detail above, the Board may consider that the proposed development gives rise to a Material Contravention of the Development Plan in respect of residential density. In this case, it is our view that the proposal is of national / strategic importance and the current proposals for density are fundamentally supported by the National Planning Framework and specifically National Policy Objective 35. On this basis, permission can be granted for the proposal.

We therefore set out a full justification of this matter in Section 3 of this report.

2.4 Car Parking

Section 8.2.4.5 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 prescribes minimum standards for the quantum of car-parking spaces that are to be provided in new developments. Those quantum's depend on the land-use proposed within a given development.

Table 8.2.3 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 sets out the standards for residential land-use and takes account of both resident and visitor requirements. For apartments, the standards are based on the size of the unit in question. 1 No. car parking space is required for each 1-bedroom unit; 1.5 No. car parking spaces are required for each 2-bedroom unit; and 2 No. car parking spaces are required for each 3-bedroom unit. When those standards are applied to the proposed development, a total 169 No. spaces are required for the residential proposal.

The proposed development provides for 103 no, car parking spaces to cater for the residential element of the proposed development, which it is acknowledged does not meet the standards set out in the Dun Laoghaire Rathdown Development Plan 2016-2022. It is set out that the current proposal provides for 103 car parking spaces for residents (or a ratio of 0.87 per apartment); We note that 5% of all spaces (5 spaces) will be disabled parking spaces and 16.5% (17) will have electric power charging points. This is considered an exceptional provision.

Notwithstanding this, we note that there is provision within the Development Plan, within Section 8.2.4.5., which states that reduced car parking standards for any development (residential and non-residential) may be acceptable dependant on a number of factors, which include:

- *The location of the proposed development and specifically its proximity to Town Centres and District Centres and high density commercial/business areas.*
- *The proximity of the proposed development to public transport.*

For clarity, we can confirm the following distances to public transport:

- Luas – The site is situated approx. 150 m/1-minute walk from the Carrickmines Luas Line. The Luas provides regular services to Dublin City Centre.
- Bus – The site is directly served by an existing bus route running along the Glenamuck Road North. It is approximately a 150m walk from the proposed site entrance to the bus stops travelling both directions. The subject bus stops – which are located on Glenamuck Road North, are served by Route 63. This bus route connects Kilternan to Dun Laoghaire via different itineraries.

This considered, it is our view that reduced car parking standards can be applied to the site within the context of the Development Plan.

Notwithstanding this, the Board may consider that the proposed development gives rise to a Material Contravention of the Development Plan in respect of car parking. We therefore set out a full justification of this matter in Section 3 of this report and specifically how the proposal complies with the Ministerial Guidelines for Apartments 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020)'.



3 MATERIAL CONTRAVENTION JUSTIFICATION

In the event that the Board considers that the proposed development constitutes a material contravention of the 2016-2022 Dún Laoghaire-Rathdown County Development Plan by virtue of the proposed height, residential mix and density, the justification for deciding to grant permission in circumstances of such a material contravention is set out below, as required under the relevant criteria under Section 37(2)(b) of the 2000 Act, as amended.

It is our considered view that An Bord Pleanála can grant permission for the proposal on the following basis:

- i. The proposal is of **national / strategic importance**; and
- ii. The proposal can be positively considered having regard to **Section 28 Ministerial Guidelines** published post the adoption of the relevant Development Plan for the area, namely, the Dún Laoghaire Rathdown County Development Plan 2016-2022.

The justification for this view is now set out below.

3.1 National /Strategic Importance

The Planning and Development (Housing) and Residential Tenancies Act 2016, in the long-title to same, provides that it is “[a]n Act to facilitate the implementation of the document entitled “Rebuilding Ireland - Action Plan for Housing and Homelessness” that was published by the Government on 19 July 2016”. Rebuilding Ireland – Action Plan for Housing and Homelessness provides:

“The overarching aim of this Action Plan is to ramp up delivery of housing from its current under-supply across all tenures to help individuals and families meet their housing needs(pg.8)...

In addition to the scale of housing provision, the delivery of housing in the right place is also central to enabling a good standard of living and improving quality of life. Locating housing in the right place provides the opportunity for wider family and social networks to thrive, maximises access to employment opportunities and to services such as education, public transport, health and amenities, while also delivering on sustainability objectives related to efficiency in service delivery and investment provision.”

The aforesaid policy recognises the importance of larger residential developments (including those over 100 units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.

The significant shortfall in housing output to address current and projected demand is a national problem, with lack of housing having social and economic ramifications for sustainable national growth. The pressing need for housing development is clearly recognised in the National Planning Framework (e.g. National Policy Objective 32: To target the delivery of 550,000 additional households to 2040; 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; and National Policy Objective 35: Increase residential density in settlements).

The proposed development comprises of inter alia the provision of 118 no. residential units on lands zoned for residential use, located on a well serviced site in proximity to high quality transport.

As outlined in the Planning Report and Statement of Consistency, the proposed development falls within the definition of a Strategic Housing Development in accordance with the definition of same provided under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. On this basis, it is submitted that the proposed development is, by definition, strategic in nature and of strategic importance.

The Rebuilding Ireland Action Plan, and consequently the 2016 Act, recognise the strategic importance of larger residential developments (including developments of over 100 residential units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.



It is our view that the proposal submitted contributes positively to the current national shortfall in housing supply providing for a total of 118 residential units on zoned, serviced and highly accessible lands at a key suburban site at Glenamuck Road North, Carrickmines in Dublin 18.

Having regard to this legislative and policy context and the nature of the proposal submitted, it is considered that this proposed Strategic Housing Development is of national /strategic importance for the purposes of section 37(2)(b)(i) of the 2000 Act as amended. Specifically, we note that the proposed development is deemed to positively contribute to meeting the deficient or national shortfall in housing supply.

Part (iii) – permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government.

Should the proposal be determined to be a material contravention of any of the policies set out above, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b)(ii) of the Planning and Development Act 2000, as amended.

3.2 Compliance with National Policy and Section 28 Ministerial Guidelines

The following section demonstrates how the proposed building heights, residential mix and residential density are justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned serviced lands adjacent to public transport corridors, and which have been published post the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022, which is a key consideration for this site and proposal.

The national policy and ministerial guidance documents now considered include:

- **Project Ireland: National Planning Framework 2040.**
- **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guidelines 2020).**
- **Urban Development and Building Heights, Guidelines for Planning Authorities (2018).**

3.2.1 Project Ireland 2040 – National Planning Framework

The National Planning Framework (NPF) is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040. As a strategic development framework, 'Project Ireland 2040' sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.

The '**National Planning Framework 2040**' sets out the following key objectives in bold. A response from the applicant on how these objectives are met is set out thereafter:

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."

The current proposal provides for 118 no. residential units within the boundary of Dublin City and suburbs, close to highly accessible public transport nodes. The site is in a mature suburban residential area at a site on Glenamuck Road North, Carrickmines, Dublin 18. The site is situated 150m to the north Green Luas Line which is a fundamental asset to the site's location. In addition, the site is also well serviced by the M50 motorway, with the nearest junction located 400m to the southwest, and by cycle lanes/bus services on the North Glenamuck Road. The 63-bus route provides services from Dun Laoghaire to Kiltarnan, with c.20-minute frequencies. Glenamuck Road is well served by existing pedestrian and cycle facilities. There are two no.63 bus stops from the proposed site, 140m travelling south of the proposed site and 100m travelling north of the proposed site. Specifically, we note that the bus stop is located 150m from the site with a service from Kiltarnan to Dun Laoghaire. The overall proposed development of 118 units provides for a residential density of 159 units per ha based on the



substantive development area of 0.74ha and is therefore supportive of the objective to accommodate population growth in the Dublin region.

National Policy Objective 4:

“Ensure the creation of attractive, liveable well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being”.

The current proposal for 118 no. units in a development of 4-7 storeys is a well-designed and high-quality scheme and one that has carefully considered existing levels of residential amenities at adjoining residential developments. The proposed development consists of a variety of sizes of apartments to cater for a wide range of households and individuals. All apartments are generous in size and in excess of current residential design guidelines. The design and layout provide ease of access by lifts or stairs to clearly define public open spaces which will be privately maintained and provide an enclosed secure space for children and elders. The sense of security in the development is reinforced and enhanced by the surveillance and overlooking provided by Blocks A and B, and by accessibility afforded from the community facilities building which address and access the space.

National Policy Objective 5:

“Develop cities and towns of sufficient scale and quality to compete internationally and to be drivers of nation and regional growth, investment and prosperity”.

The proposed development will deliver a significant number of residential units which will assist in the realisation of a critical mass of population at an accessible location, thereby according with this objective.

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”.

The proposed development will accommodate the increasing residential population in the area, withing a scheme of considerable architectural merit. Therefore, the proposed development accords with this policy.

National Policy Objective 7:

“Apply a tailored approach to urban development, that will be linked to the Rural and Urban Regeneration and Development Fund, with a particular focus on Dublin....and the need to encourage population growth in strong employment and service centres”.

The proposed development will accord with this objective, via the delivery of additional residential accommodation to accommodate the growing population of the Dublin Area, at a location which is accessible and proximate to significant employment opportunities.

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.”

The subject site is located within an existing central and accessible urban location and is opportunely located in proximity to a number of quality public transport nodes, local shopping facilities, quality venues and surrounding employment opportunities. It is ideally suited to ensure a better quality of life via access to services and facilities, while ensuring a more efficient use of land and allowing a greater integration of existing amenities and infrastructure. The site is therefore opportunely located adjacent to key employment areas. The overall site is 0.74 ha which allows for a quality design and layout, and the site is appropriately zoned for residential use under the statutory Development Plan governing the



site. The proposal will offer a range of wider planning gains including a high-quality public realm proposal in the form of new public open spaces and new pedestrian connections.

National Policy Objective 13:

“In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected”

The proposed development has been designed as an exemplar architectural model by award-winning architects, McGrane and Partners Architects. The proposed development will contribute positively towards the achievement of this targeted growth, whilst promoting compact growth and urban consolidation objectives through the intensification of a centrally-located and accessible site that is well served by existing public transport. Accordingly, the application site is considered highly suitable for high-density residential development purposes.

National Policy Objective 27:

“To ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity for all ages”

The proposed development is located at an accessible location with access to high frequency, high capacity public transport in the form of the nearby Luas Green Line. The scheme also provides access to existing cycle facilities in the area and new pedestrian and cycle linkages within the scheme and crossing Glenamuck road. The site is also accessible by bus. The proposed development, by virtue of its accessible location and the ratio of car and cycle parking provided will encourage the use of sustainable transport modes, minimising the use of private cars to the greatest degree possible. .

National Policy Objective 32:

“To target the delivery of 550,000 additional houses by 2040”

The current proposal will deliver 118 units which will go a significant way towards addressing the delivery of 550,000 houses by 2040.

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.”

As detailed above, the subject site is zoned for residential development and is opportunely located in proximity to public transport, all of which support a sustainable approach to development.

Careful consideration has been given to the proposal in relation to how it addresses the existing surrounding development and local topography. The high-quality design submitted provides for an appropriate transition between the neighbouring sites through the delivery of 4-storey heights with a transition to 6 and 7 storeys at set back levels.

The Daylight and Sunlight assessment prepared by Digital Dimensions confirms that there are acceptable levels of access to natural daylight and sunlight. Similarly, the detailed Wind and Microclimate Study also confirms that the proposal does not impact or give rise to negative or critical wind speed profiles at the nearby adjacent roads, or nearby buildings.

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’.

The overall proposed development of 118 units provides for a residential density of 159 units per ha based on the substantive development area of 0.74ha. The subject proposal aims to rebalance





residential density in the area and provides a variety of 1-bed, 2-bed, and 3-bed unit typologies to cater for the current lack of supply of this type in the area. Proposals for heights of 4-7 storeys are well considered and cognisant of established levels of residential amenity in the area. It is on this basis that the proposed residential density is considered to align with National Policy Objective 35.

In summary, the NPF shows broad policy support for residential development as proposed in an existing settlement area on appropriately zoned land, within the metropolitan area of the GDA, and in close proximity to good public transport. The proposals will achieve compact growth and densification of urban areas and ensure efficient use of zoned land under which residential development is permissible and constitutes effective land and transport planning.

The existing site is underutilised and presents a key opportunity site as identified in the NPF for redevelopment as a residential scheme. The proposed building height from four storey and transitioning to a 6-7 storey. The proposed density and height of the development is considered appropriate for the location of the site and the availability of public transport facilities.

Thus, having regard to the above, it is respectfully submitted that the proposal is a suitable form, design and scale of development for this strategically located underutilised site and is considered with the objective of the NPF.

3.2.2 Design Standards for New Apartments (2020)

The 'Sustainable Urban Housing: Design Standards for New Apartments (2020)' are ministerial guidelines issued under section 28 of the 2000 Act. The Board is obliged to have regard to these Guidelines and, where they prescribe an SPPR, it must comply with same. These Guidelines were published after the publication of the Dún Laoghaire Rathdown County Development Plan 2016-2022 and this is a key point for consideration when the Board considers whether a grant of permission in material contravention of the Development Plan is justified.

These Guidelines were published after the publication of the Dún Laoghaire Rathdown County Development Plan 2016-2022 and this is a key point for consideration in addressing the appropriateness of the proposal under Section 28 Guidelines.

They are intended to promote sustainable housing by ensuring that the design and layout of new **apartments** provide satisfactory accommodation for a variety of household types and sizes, including families with children, over the medium to long term.

Section 2.2. of the Guidelines stated that *"apartments are most appropriately located within urban areas. As with housing generally, the scale and extent of apartment development should increase in relation to proximity to core urban centres and other relevant factors. Existing public transport nodes or locations where high frequency public transport can be provided, that are close to locations of employment and a range of urban amenities including parks/waterfronts, shopping and other services, are also particularly suited to apartments."*

Section 2.23 of the Guidelines also recognise that the National Planning Framework *"signals a move away from rigidly applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high-quality outcomes. In particular, general blanket restrictions on building height or building separation distance that may be specified in development plans, should be replaced by performance criteria, appropriate to location."*

As set out above, the 2020 Apartment Guidelines explicitly direct that the scale and extent of apartment development should increase on sites that are proximate to urban centres and public transport. The subject site is well served by public transport and located within 500metres of the Carrickmines Green Luas Stop. In addition to the proximate Luas Stop, the site is also located in close proximity to bus routes operating along Glenamuck Road. The 63-bus route provides services from Dun Laoghaire to Kiltarnan, with c.20 minute frequencies. Glenamuck Road is well served by existing pedestrian and cycle facilities.



The Guidelines also state that the rigid application of numerical limits on height (as set out in the County Development Plan) is not appropriate and performance based standards should be relied upon in the assessment of such schemes. It is submitted that the proposed development performs exceptionally well when tested against the relevant criteria – as set out in the following section of this Report.

The current proposal provides for 118 no. residential units. This report sets out the compliance of the proposed development with the key policy requirements and standards as follows:

Location

The ‘Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities’, identify a number of locations suitable for apartment development primarily ‘Intermediate Urban Location’ and ‘Central and/or Accessible Urban Locations.’

Central and/or Accessible Urban Locations are defined as follows:

“Such locations are generally suitable for small-to-large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, including:

- Sites within walking distance (i.e. Up to 15 minutes or 1,000 – 1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions:
- **Sites within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m) to/from high capacity urban transport stops (such as DART or LUAS):**
- Sites within easy walking distance (i.e. up to 5 minutes of 400-500) to/from high frequency (i.e. min 10 minute peak hour frequency) urban bus services.” **(Emphasis added)**

The subject site falls into the category of “Accessible Urban Locations” given that the site is well served by public transport and located within 500metres of the Carrickmines Green Luas Stop. In addition to the proximate Luas Stop, the site is also located in close proximity to bus routes operating along Glenamuck Road. The 63-bus route provides services from Dun Laoghaire to Kiltarnan, with c.20 minute frequencies. Glenamuck Road is well served by existing pedestrian and cycle facilities.

3.2.2 Specific Planning Policy Requirements (SPPRs)

SPPRs considered relevant for consideration in this case are set out below, followed by a compliance response for the current proposal.

Specific Planning Policy Requirement 1

Housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city, or metropolitan area basis and incorporated into the relevant development plan(s).

Applicant Response to SPPR1

The proposed residential mix is as follows:

- 34 no. 1-bed units (approx. 29%).
- 76 no. 2-bed units (approx. 64%).
- 8 no. 3-bed units (approx. 7%).

This unit mix is consistent with the guidelines set down in SPPR 1, as the percentage of 1 bed units do not exceed 50%. There is no requirement for 3 bed units under SPPR1, however 7% has been provided to provide a good range of unit types within this substantial development.

Specific Planning Policy Requirement 3





Minimum Apartment Floor Areas:

- 1-bedroom apartment (2 persons) 45 sq. m
- 2-bedroom apartment (4 persons) 73 sq. m
- 3-bedroom apartment (5 persons) 90 sq. m

Applicant Response to SPPR3

The subject proposal complies with the minimum apartment floor areas as follows:

- 1-bed units 50.6 to 64.3 sq. m.
- 2-bed units 70.8 to 95.6 sq. m.
- 3-bed units 103.5 to 122.8 sq. m.

The subject proposal complies with the minimum apartment floor areas as set out in the enclosed Housing Quality Assessment from McGrane & Partners Architects.

Section 3.8 of the Apartment Guidelines state “The majority of all apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1,2 or 3 bedroom unit types, by a minimum of 10%”. As demonstrated in the HQA, the majority of units within the proposed development will exceed the minimum apartment size by at least 10% thereby complying with this requirement.

Specific Planning Policy Requirement 4

“In relation to the minimum number of dual aspect apartments that may be provided in any single apartment scheme, the following shall apply:

- (5) ***A minimum of 33% of dual aspect units will be required in more central and accessible urban locations, where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate.***
- (ii) In suburban or intermediate locations it is an objective that there shall generally be a minimum of 50% dual aspect apartments in a single scheme.***
- (iii) For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, planning authorities may exercise further discretion to consider dual aspect unit provision at a level lower than the 33% minimum outlined above on a case-by-case basis, but subject to the achievement of overall high design quality in other aspects.”***

Applicant Response to SPPR4

A proposal for dual aspect of 67.8% is delivered. Specifically, we note that a total of 80 of the 118 no. units proposed deliver dual aspect as follows:

- Block A – 33 units.
- Block B – 28 units.
- Block C – 19 units.

This is an exceptional provision for dual aspect and is well in excess of the 50% requirement as set out in the Apartment Guidelines 2020.





Specific Planning Policy Requirements 5

“Ground level apartment floor to ceiling heights shall be a minimum of 2.7m and shall be increased in certain circumstances, particularly where necessary to facilitate a future change of use to a commercial use. For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha planning authorities may exercise discretion on a case-by-case basis, subject to overall design quality.”

Applicant Response to SPPR5

We can confirm that the ground floor of the proposed scheme provides floor to ceiling heights of 2.7 metres in compliance with the above policy requirements.

Specific Planning Policy Requirements 6

“A maximum of 12 apartments per floor per core may be provided in apartment schemes. This maximum provision may be increased for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha , subject to overall design quality and compliance with building regulations.”

Applicant Response to SPPR6

SPPR 6 is the predominant policy on the number of apartments per core. However, we can confirm that the number of apartment units per core varies and aligns with policy requirements at 6-12 per core. We refer the competent authority to the floor plans enclosed herewith.

We submit the proposal is in compliance with the above SPPR's . Any potential material contravention of the Development Plan in relation to residential mix can therefore be granted.

Car Parking

The Apartment Guidelines 2020 generally encourage reduced standards of car parking in accessible locations. The document defines accessible locations as falling into 3 categories:

1. Central and/or Accessible Urban Locations
2. Intermediate Urban Locations
3. Peripheral and/or Less Accessible Urban Locations

Our review of these 3 categories identified that the site can be categorised as a Central and/or Accessible Urban Location. This categorisation is made on the basis that the site is “within easy walking distance (i.e., up to 5 minutes or 400-500m) to / from high frequency (i.e., min 10 minute peak hour frequency) urban bus services”. (page 5)

With regard to car parking, the Apartment Guidelines set out the following requirements for Central and/or Accessible Urban Locations:

“Central and/or Accessible Urban Locations:

*In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, **the default policy is for car parking provision to be minimised, substantially reduced, or wholly eliminated in certain circumstances.** The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.*

*These locations are most likely to be in cities, especially in or adjacent to (i.e., within 15 minutes walking distance of) city centres or centrally located employment locations. **This includes 10 minutes walking distance of DART; commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.***



The site is directly served by an existing bus route just outside the proposed development site. It is approximately a 150m walk (c. 1-minute walk) from the proposed site entrance to the bus stop travelling both directions. Both bus stops are currently on Glenamuck Road North. The subject bus stops service one bus route, the 63 route. This bus route connects from Kilternan to Dun Laoghaire and crosses different bus routes.

A total of 103 no. car parking spaces are proposed to cater to the residential element of the proposed development. A total of 68 spaces are proposed at basement level and 35 spaces are proposed at surface level. Given the accessible nature of the site and proximity to key public transport, a car parking ratio of .87 (103 spaces for 118 units) is considered appropriate for the site. The proposal provides a reduced overall car parking standard when compared to Development Plan Standards, which in the context of the 2018 Apartment Guidelines is considered to be justified by the proximity of the proposed residential development to high quality Transport.

With regard to the City and/or Accessible Urban Location of the proposed site, the default policy for car parking provisions be minimized. With a car parking ratio of 1:0.87, this is considered an exceptional provision. We also note that the Development Plan makes provision for a reduced level of parking in cases where the site is located in proximity to public transport.

3.2.3 Urban Development and Building Height Guidelines (2018)

The 'Urban Development and Building Heights, Guidelines for Planning Authorities (2018)' which were issued in December 2018 under Section 28 of the 2000 Act set out national planning policy guidelines on building heights in relation to urban areas. These guidelines post-date the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022.

We note that Section 1.14 of the Guidelines published, reflecting the statutory position of conflicting Development Plans, states:

*"Accordingly, where SPPRs are stated in this document, **they take precedence over any conflicting, policies and objectives of development plans**, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans/ schemes need to be amended by the relevant planning authority to reflect the content and requirements of these guidelines and properly inform the public of the relevant SPPR requirements."*

Under section 3.1 of the Guidelines, three following broad principles or criteria must be applied in considering development proposals for buildings taller than prevailing building heights, as per the information set out above, is located in an urban/inner suburban area:

- ***Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?***

As set out in accompanying documentation, the proposal secures the relevant objectives of the National Planning Framework. The location of the proposed development is on a suburban infill green site and is considered a unique opportunity for the delivery of strategic housing and the delivery of compact growth in accordance with national strategic planning policy.

- ***Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?***

This document sets out how the current proposal complies with the provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022. Whilst the Development Plan is currently the subject of a review process, the plan has not yet been formally adopted or amended with a view to implementing the requirements of Chapter 2 of the Building Height Guidelines.

A Statement of Consistency Addendum also accompanies this application, detailing how the proposed development complies with the Draft Dun Laoghaire Rathdown Development Plan 2022-2028.





- **Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?**

With regard to existing policies and objectives of the Dún Laoghaire Rathdown County Development Plan 2016-2022, there is a clear misalignment with the National Planning Framework in relation to height. Specifically, we note that the National Planning Framework provides for an increased residential density in settlements through a range of measures, including increased building heights. National Policy Objective 35 refers. Development Plan policy and objectives on height, by comparison, being restrictive in that there are particular locations earmarked for building height and blanket limits are set for all other areas unless a set of exceptional circumstances in the form of upward and downward modifiers are met, there is a blanket limit to additional height of 1-2 storeys over and above the baseline height limit of 3-4 storeys

Notwithstanding the above, SPPRs (as stated in the Building Heights Guidelines) take precedence over policies and objectives of development plans and local areas plans. Where such conflicts arise, Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan or Local Area Plans, the provisions of SPPRs must be applied instead. Section 9(3) provides:

“(3)(a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.

(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.

(c) In this subsection “specific planning policy requirements” means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.”

Section 1.14 of the document sets out the following:

*“Accordingly, where SPPRs are stated in this document, **they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes.** Where such conflicts arise, such plans/schemes need to be amended by the relevant planning authority to reflect the content and requirements of these guidelines and properly inform the public of the relevant SPPR requirements.*

3.2.4 Specific Planning Policy Requirements

The following Specific Planning Policy Requirements are considered to be of particular relevance to the current site context, and the compliance of the scheme with these SPPRs is set out below.

SPPR 3A of the Urban Development and Building Heights Guidelines 2018 requires applicants for planning permission to set out how the proposal complies with the “*criteria above*”. This refers to the Development Management criteria at Section 3.2 of the Guidelines, which are discussed below.

If the Board is satisfied that the criteria under section 3.2 have been met, it “*may approve such a development, even where specific objectives of the relevant development plan or local area plan may*





indicate otherwise”. The paragraph introducing SPPR 3 itself is set out below for ease of reference, following which each of the criteria (denoted by italics) are considered in turn:

‘Where the relevant planning authority or the Board considers that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply the following Strategic Planning Policy Requirement under Section 28 (1C) of the Planning and Development Act 2000 (as amended)’.

SPPR 3 (A)

“It is a specific planning policy requirement that where;

(A) 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.”

Applicant Response to SPPR 3A

The performance of the proposal vis-à-vis the building height criteria is further assessed below in sub-section ‘Development Management Criteria’. The consistency of the proposal with the National Planning Framework has been considered above.

3.2.5 Development Management Criteria

The Guidelines clearly set out that in the event of making a planning application, the applicant shall demonstrate to the satisfaction of the Planning Authority/the Board, that the proposed development satisfies a number of criteria. The relevant criteria, followed by an applicant response, is set out below to clearly set out for the Board that the current proposal qualifies as a site that can accommodate additional building height:

At the scale of the relevant city/town:

- ***“The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.***

As stated previously, the site is well served by public transport, with the site located 150m from the Carrickmines Green Line Luas stop which provides a direct connection north to Dublin City Centre and beyond, and south to Brides Glen (last stop). The site is also well serviced by the M50 motorway, with the nearest junction located 400m to the southwest, and by cycle lanes/bus services on North Glenamuck Road. Specifically, we note that the bus stop is located 150m from the site with a service from Kilternan to Dun Laoghaire.

- ***Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/ enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.***

The scale of the proposed development is considered to integrate appropriately with its surroundings, whilst introducing an element of increased height, along the perimeter with adjoining roads to define a strong urban edge to the M50 and the other adjoining streets at this important location.



The proposal is not located within an architecturally sensitive area, nor is there a requirement to protect views across this site. Public open space has been carefully positioned and designed to a high level of quality design and implementation to enhance the public realm. Space which forms the public realm has been located so that they are overlooked by apartments, thus ensuring the security of the public realm and the users of same.

The proposal will provide for a strong sense of place and a public realm which will be more comfortable and inviting for pedestrians due to improved enclosure, and permeability around and through the scheme. also note that the benefits offered by the proposal to the public realm have been identified, such as new pedestrian connections, a communal area (Block B), a new play area and significantly improved frontage along Glenamuck Road.

- **On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.”**

Careful consideration has been given to the proposal in regard to how it addresses the existing surrounding development and local topography. The high quality design submitted provides an appropriate transition between the neighbouring sites, through the delivery of 4 storey height with a transition to 6 and 7 storeys at set back higher levels. The Daylight & Sunlight Assessments prepared by Digital Dimensions, confirms that there are acceptable levels of access to natural daylight and sunlight. Similarly, the detailed Wind and Microclimate Study also confirms that the proposal does not impact or give rise to negative or critical wind speed profiles at the nearby adjacent roads, or nearby building.

It is considered that the proposed development would make a positive contribution in terms of place-making – again through the provision of new pedestrian connections, a communal area (Block B), a new play area and significantly improved frontage along Glenamuck Road. The main open space, by virtue of its sense of enclosure and orientation, creates a strong sense of place, security and privacy for all residents of the development. This provides an open vista to the south across the proposed pen space with the result of enhancing its prospect and enjoyment of the proposed landscaped open space.

The proposed scheme presents in a series of new residential blocks which are focused on placemaking and a central area of open space. There is sufficient variety in scale and form of the Blocks through the use of a variety of building layouts, sizes and heights. Care has been given at height sensitive areas (along boundaries with Tullybeg, Chigwell, Stafford Lodge) to ensure there is no undue impact on established levels of residential amenity adjoining the site. The development creates visual interest at the site through a high quality design which responds to the surrounding pattern of development.

In this respect, the proposals are considered to be of an appropriate scale, height and massing to complement the existing urban form whilst successfully introducing a high quality element of architecture to the site, making optimal use of the strategic, prominent location.

At the scale of district/ neighbourhood/ street:

- **The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.**

The proposed development along the M50, Glenamuck Road North, will positively contribute to its surrounding neighbourhood and streetscape by virtue of its context sensitive and carefully considered design. It will provide for high quality contemporary design at an appropriate location and make a significant positive contribution to the existing urban neighbourhood and streetscape at this location.

It is considered that the proposal introduces a high-quality development at an underutilised site within a setting which is swiftly developing, and which is destined for significant planned further growth. The proposed development responds appropriately to the surrounding urban pattern and scale, with higher built elements situated along the M50 and Glenamuck Road North.

The proposal constitutes the sustainable development of these underutilised lands and will enhance the appearance of the site, providing integration with the existing context and enhancing the urban public realm at this location. This will add positively to the quality and aesthetic appearance of the area, allowing for vibrancy within the public realm, and building heights that avoid any sense of monotony or monolithic design.

- **The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.**

Careful consideration has been given to ensure that a monolithic appearance is avoided. The design of the buildings and the materials used serve to express the architectural intent of the scheme. This is apparent from the design rationale submitted by McGrane & Partners Architects, which clearly sets out that a number of options were considered in design. The choice of materials would be of high quality, with stone cladding and brick combined with plaster finish – as indicated on drawings. Balcony features will be plastered and will include glass screens. Windows will be aluminium or Alucad to provide a sustainable and high-quality finish and appearance. Entrance doors and screens will be of aluminium construction. Glazing will be double or triple-glazed to meet insulation standards. The cladding to the top floor of all blocks will be zinc finished metal cladding.

The layout and siting of the development has been sensitively chosen to create an attractive new streetscape along surrounding routes, giving the area a more urban feel, and imbuing it with a greater sense of place. The buildings have been complemented by a high quality hard and soft landscaping scheme which further enhances the visual appeal of the proposal, as well as attracting public use and animation along the street frontages and within the internal open spaces.



Figure 1 -- CGI of Open Space Area



Figure 2 - CGI of Open Space Area

- **The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of “The Planning System and Flood Risk Management – Guidelines for Planning Authorities” (2009).**

The proposed development will significantly enhance the existing M50, which is a key thoroughfare in the area and for the city at large. It will provide for a high-quality contemporary development at an appropriate location and make a significant contribution to the existing streetscape.

The proposal introduces a development which is compatible with its land use zoning and adjacent residential development. The additional height proposed makes optimal use of an underutilised area of land which benefits from a strategic location. The layout of the residential blocks contributes to a sense of place and benefits from passive surveillance from the residential buildings.

As set out above, the proposal offers significant enhancement to the local public realm by way of new pedestrian connections, a communal area (Block B), a new play area and significantly improved frontage along Glenamuck Road. There is no inland waterway or marine frontage within the current proposal. We refer to the material from Waterman Moylan, included herewith, which provides for comment on flood risk.

- **The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.**

Legibility through the site is delivered by way of a comprehensive landscape plan and specifically a series of permeable connections through the site and quality areas of open space. Open space is provided by one major centrally located open space between Blocks A & B and enclosed to the south glass rail hence, creating a sense of place and enclosure still allowing the space to benefit from the southerly aspect sunlight.

The central open space will be landscaped to the highest quality to provide a location semi-enclosed of natural beauty and tranquillity while the central open space is accessible to all residents. Two



further formal open spaces are provided adjoining Blocks B & C. Pedestrian paths are also provided around Block A to integrate the lesser spaces surrounding this block with the central open space.

- **The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.**

An appropriate mix of unit types and sizes are incorporated into the development proposal. Notably, A residential mix – 34 x 1-bed units (29%), 76 x 2-bed units (64%) and 8 x 3-bed units (7%) – is proposed to provide an opportunity of an infusion of new residents from varying economic levels into the area and will add to the choice of residential type available. The proposed development will counterbalance the current preponderance of large houses on large sites resulting in greater efficiency in land use and infrastructural facilities

In addition, we note that the proposal offers a significant residential amenity offering by way of a new residential amenity building within the centre of the site.

At the scale of the site/building:

- **The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.**

The proposed scale, massing and height of the development has been informed by the emerging built environment in the surrounding area. The development introduces a higher built environment which seeks to optimise the sites' location and position on a key thoroughfare. The scale and height of the proposed residential blocks take cognisance of the surrounding urban form, tapering in at the 6th and 7th floor. This is seen to integrate successfully with the urban environment whilst introducing an element of height which effectively responds to the sites prominent location.

The Daylight & Sunlight Assessments prepared by Digital Dimensions, enclosed herewith, confirms that there are acceptable levels of access to natural daylight and sunlight.

Further detail on daylight / sunlight is detailed as followed:

Daylight to Adjoining Properties

"There will be a minor reduction to some of the windows to the adjacent existing houses, but all retain a VSC in excess of 27% or are not reduced below 80% of their former value and there will be no perceived reduction in available daylight. The proposed development meets the requirements of the BRE Guidelines, and any impact will be negligible." (Page 13)

Daylight to Permitted Development at Carricáil

"The proposed apartment is within the same ownership of the proposed development, has not been constructed yet and will not experience any reduction in daylight. All the rooms assessed considerably exceed the minimum recommendations for the Average Daylight Factor and will be well daylit. The proposed development meets the recommendations of the BRE Guidelines and BS8206 Part 2:2008 Lighting for Buildings, Code of Practice for Daylighting." (Page 15)

Sunlight in Adjoining Residential Living Areas

"All windows assessed exceed the target values set out for sunlight. The proposed development meets the recommendations of the BRE guidelines." (Page 16)

Sunlight to Adjoining Gardens

"All the amenity space to the neighbouring properties will retain 2 hours sunlight in excess of 50% of the amenity space. The proposed development will not reduce the existing availability of sunlight below 80% of the current levels." (Page 18)





Daylight to Proposed Development

“100% of the rooms assessed exceed the minimum recommendations for the Average Daylight Factor and will be well daylight. The proposed development meets the recommendations of the BRE Guidelines and BS8206 Part 2:2008 Lighting for Buildings, Code of Practice for Daylighting’.” (Page 19)

Sunlight to Proposed Areas of Open Space

“The site has a variety of public and communal amenity spaces into the scheme. The BRE recommends that 50% of the area receive more than 2 hours of sunlight on the 21st of March and all three areas meet these criteria.” (Page 21)

Overall, it can be concluded that the scheme design is supported in terms of access to daylight and sunlight, with no significant impacts within the development or to adjoining dwellings.

- **Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment’s ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings - Part 2: Code of Practice for Daylighting’.**

The proposed development meets the recommendations of the BS 8206-2 2008 and BRE guidance document (2011) Site layout planning for daylight and sunlight. The proposed apartments were also assessed for daylight provision in accordance with EN17037:2018 and all the units exceed the minimum target levels.

The Daylight and Sunlight Analysis confirms that there are acceptable levels of access to natural sunlight available to surrounding properties and that overshadowing is minimised. The Vertical Sky Component or VSC percentage is protected as much as possible with some impacts to be expected with the requirements in relation to high density infill development types that are required for sites such as this.

- **Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.”**

All the units within the proposed development exceed the recommendations of the BRE guidelines for quality of Daylight. The bedroom and living space layouts have been optimised for daylight and sunlight. All the living spaces with a kitchen exceed the target ADF value of 2% and all the bedrooms exceed the target ADF value of 1%. The proposed amenity spaces will be bright and achieve sunlight levels that exceed 2 hours sunlight over 50% of the amenity space on the 21st March. This meets the recommendations of the BRE guidelines.

Specific Assessments

The guidelines set out that in order to support proposals at some or all of these scales, specific assessments may be required, and these may include:

Specific impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measures to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.

A preliminary report has been prepared by BFluid and the following conclusions are identified:

- “The wind profile around the existing development environment was built using the annual average meteorology data collected at Dublin Airport Weather Station. In particular, the local wind





climate was determined from historical meteorological data recorded 10 m above ground level at Dublin Airport.

- The prevailing wind directions for the site are identified as West, South-East and West-South-West, with magnitude of approximately 6m/s.
- We retain that mitigation measures such as the use of landscaping on ground floor will be sufficient to ensure that the proposed Strategic Housing Development will be designed to produce a high-quality environment that is attractive and comfortable for pedestrians of all categories.
- Southwest corners of block A, B and C potentially experience high wind speeds. This wind speeds are not critical and can be further mitigated by the use of landscaping trees.
- High speeds are observed in the spaces between block B and C. These high speeds are due to funnelling and recirculation effects and can be mitigated with the use of landscaping in these areas.
- Given the position of the development blocks, and the recommended landscape, critical wind speeds are not expected on footpaths of the proposed development blocks.
- The proposed development does not impact or give rise to negative or critical wind speed profiles at the nearby adjacent roads, or nearby buildings (page 59)."

In development locations in proximity to sensitive bird and / or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and / or collision.

This SHD application is accompanied by an AA Screening Report prepared by Enviroguide, which demonstrates that the proposed building height does not have any potential to adversely impact on the biodiversity of the area. As outlined in the AA Screening, the development is not located within any European Site and therefore there will be no loss or alteration of habitat as a result of the proposed development.

An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.

Given the height and scale of the development proposed, it is not anticipated that the proposal will interfere with important telecommunications channels such as microwave links. The applicant endeavours to engage a specialist to advise on this matter should permission be granted for the proposed development.

An assessment that the proposal maintains safe air navigation.

In preparation of this planning application, the applicant has entered into discussions with the IAA who had no significant comment to make on the proposal. As identified in the appendix to the rear of this report, the IAA in their review dated 18th January 2022 concluded that:

"It is the observation of the Safety Regulation Division Aerodromes that based on the information provided, the proposed development appears to be located approximately 18.9km Southeast of Casement Aerodrome and 19km South East of the Threshold of Runway 34 at Dublin Airport. It is likely that only general observations would be issued during the planning process relating to the construction process and the notification of proposed crane operations with at least 30 days notification to the Authority."

An urban design statement including, as appropriate, impact on the historic built environment.

A comprehensive Design Statement has been prepared by McGrane & Partners, enclosed herewith. This statement addresses the site context and proposed design in urban design terms and sets out in clear detail the design rationale for the current proposal submitted.



Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.

We confirm that an Environmental Impact Assessment Screening Statement/Report and an Appropriate Assessment Screening Report have been prepared by Enviroguide and are enclosed in the within application.

On the basis of the initial foregoing analysis, it is in consideration of the above that the current proposal can be positively considered by the competent authority. The site is well placed to absorb a high-density development which is appropriately scaled and designed in the context of its urban surroundings, whilst introducing an element of building height on the M50 corridor, responding to the scale and width of the adjacent roadway and providing for an appropriate sense of enclosure along adjacent routes.

The proposals make optimum use of this underutilised area of land which is zoned for residential development, under which residential development and other associated uses are permitted in principle and open for consideration, the proposals are therefore considered compatible with adjacent existing land use. The scheme integrates appropriately with the urban environment and enhances public open space provision and pedestrian permeability without compromising the amenity of existing adjacent properties.

Specifically, the proposal has addressed the specific development criteria requirements of the Guidelines and is in compliance with the key SPPRs. Most notably, the site's location is considered to address the very spirit and intent of the Guidelines in that it is a location in proximity to a public transport corridor with high frequency services. The current site is therefore appropriate for increased building height and residential densities.



4 Conclusion

In Section 9(6) of the 2016 of the Planning and Development (Housing) and Residential Tenancies Act, 2016, as amended gives the board the power to grant planning permission in Material Contravention of the Development Plan provided the requirements of 37(2)(b) of the 2000 Act are met

It is set out under the Section 9(3)(a) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, as amended, that the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under Section 28 of the Act of 2000.

Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan, the provisions of SPPRs must be applied instead.

In the context of increased **height**, the most relevant of these requirements is SPPR 3A of the Building Height Guidelines. It is submitted that the Development Management criteria under Section 3.2 of the Guidelines have been satisfied in this regard by the development as proposed and that, accordingly, the Board can grant permission for the proposed development even if it considers that it would be a material contravention of building height policy and standards under the Development Plan, having regard to the terms of the relevant national policy discussed above and SPPR 3A of the Building Height Guidelines, in particular.

In the context of **residential mix**, SPPR 1 of the 2020 Apartment Guidelines applies and the proposal is considered to comply with this Specific Policy requirement. We note specifically that no more than 50% of the proposed units are one-bedroom or studio type units.

In relation to **residential density**, the proposal clearly supports the key policies of the National Planning Framework to deliver appropriate residential densities and brownfield and infill sites.

In relation to **car parking**, there is clear provision made within the Apartment Guidelines 2020 to provide for a reduced standard of car parking for intermediate urban locations, such as the subject site and a reduced car parking provision is therefore accepted.

It is therefore considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the Dun Laoghaire-Rathdown County Development Plan 2016-2022.

In the event that the Board were to grant permission, the Board's "reasons and considerations" should reference the matters under Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the Development Plan. It is apparent from section 10(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself.

Section 10(3) provides as follows:

"(3) A decision of the Board to grant a permission under section 9(4) shall state-

....

(b) where the Board grants a permission in accordance with section 9(6)(a), the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be."

Having regard to the justification set out within this statement, it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with national planning policy and statutory guidelines.