

MATERIAL CONTRAVENTION STATEMENT

In respect of

**PROPOSED MIXED USE RESIDENTIAL DEVELOPMENT AT A COMBINED
SITE LOCATED AT THE JUNCTION OF BELGARD SQUARE NORTH AND
BELGARD ROAD, TALLAGHT, DUBLIN 24**

Prepared on behalf of

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1.0 INTRODUCTION

1.1 Legislative Context

Tom Phillips + Associates¹ have been instructed by Atlas GP Ltd.², to prepare this *Material Contravention Statement* to accompany this application for planning permission in respect of a proposed Strategic Housing Development (SHD) at the junction of Belgard Road and Belgard Square North, Tallaght, Dublin 24.

This Statement provides a justification for the material contravention of the *South Dublin County Council Development Plan 2016 – 2022* (hereinafter *Development Plan*) in relation to height parameters as a result of the following objective:

“H9 Objective 4:

To direct tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centres, Mixed Use Zones and Strategic Development Zones and subject to an approved Local Area Plan or Planning Scheme³”.

The proposed mixed used residential scheme which is the subject of this planning application proposes heights of up to ten storeys within a Mixed Use Zone (Regeneration), however the relevant Local Area Plan (*Tallaght Town Centre Local Area Plan, 2006, extended 2011*) has now expired and, therefore, the subject proposal does not fully meet *Development Plan* criteria for tall buildings.

The Planning and Development (Housing) and Residential Tenancies Act, 2016 states the way in which, An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan, other than in relation to the zoning of land. It is stated,

(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.

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³ *South Dublin County Development Plan 2016 – 2022*, p. 35

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

“(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

(ii) 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.”

It is submitted that recent National Policy provides justification for the proposed building heights within the subject scheme due to the strong encouragement of higher densities on appropriately zoned and serviced lands adjacent to town centres, employment hubs and high quality public transport. It is, therefore, considered that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development notwithstanding the material contravention of the *Development Plan*.

It should be noted that, notwithstanding the adoption of *Urban Development and Building Heights – Guidelines for Planning Authorities* in December 2018, it has been confirmed by both An Bord Pleanála and the Department of Housing, Planning and Local Government that these *Guidelines* do not supersede policies within statutory *Development Plans*, and therefore, until such time as a *Development Plan* is varied to align with the requirements of the *Guidelines*, a material contravention is still considered to have occurred.

2.0 SOUTH DUBLIN COUNTY DEVELOPMENT PLAN 2016 - 2022

The *Development Plan* discusses the concept of Residential Building Height within Section 2.2.3 where it is stated that *“Varied building heights are supported across residential and mixed use areas in South Dublin County to promote compact urban form, a sense of place, urban legibility and visual diversity⁴”*.

⁴ *South Dublin County Development Plan, 2016 – 2022*, p. 35

A number of Objectives are listed with regard to acceptable building heights within the County as shown below:

HOUSING (H) Policy 9 Residential Building Heights	
It is the policy of the Council to support varied building heights across residential and mixed use areas in South Dublin County.	
H9 Objective 1:	To encourage varied building heights in new residential developments to support compact urban form, sense of place, urban legibility and visual diversity.
H9 Objective 2:	To ensure that higher buildings in established areas respect the surrounding context.
H9 Objective 3:	To ensure that new residential developments immediately adjoining existing one and two storey housing incorporate a gradual change in building heights with no significant marked increase in building height in close proximity to existing housing (see also Section 11.2.7 Building Height).
H9 Objective 4:	To direct tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centres, Mixed Use zones and Strategic Development Zones and subject to an approved Local Area Plan or Planning Scheme.
H9 Objective 5:	To restrict general building heights on 'RES-N' zoned lands south of the N7 to no more than 12 metres where not covered by a current statutory Local Area Plan.

Fig. 1: Residential Building Height Objectives (Source: SDCC Development Plan, 2016, p.35)

As noted by H9 Objective 4, there is a two stage test to confirm the acceptability of tall buildings (five storeys or above) whereby they must, first, be located in strategic or landmark locations in Town Centres, Mixed Use zones and Strategic Development zones, and secondly, be subject to an approved Local Area Plan or Planning Scheme.

With regard to the former criterion, the subject site is located proximate to Tallaght Town Centre (c. 200m from The Square Shopping Centre) and is zoned Regeneration with the objective '*To facilitate enterprise and/or residential led regeneration*' which permits a wide range of uses and activities. It is, therefore, considered to satisfy this requirement.

With regard to the latter, it is acknowledged that there is currently no *Local Area Plan* (hereinafter LAP) in place for Tallaght with the former Tallaght LAP having expired in October 2016. The expired LAP provided for heights of four to five storeys on the subject site with provision for an additional 2 no. storeys at 'Gateway' locations and a landmark building (of up to twice the height threshold) at the indicated landmark location (ten storeys).

The proposed development is generally four to ten storeys in height with the ten storey element located at the entrance to the scheme and a nine storey element located at the junction of Belgard Road and Belgard Square North.

Therefore, it is evident that there is no existing policy in place which would allow for the proposed heights of greater than five storeys within the current statutory *Development Plan* Context (due to the absence of a live LAP).



Fig. 2: LAP Framework Strategy with Landmark locations indicated in red and Gateways indicated in orange (Source: www.sdcc.ie)

3.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION

3.1 Conflicting *Development Plan* Policies

The Development Plan provides a number of policies and objectives which seek to provide for higher residential densities and ensure the efficient use of zoned lands. It is submitted that these policies are contrary to the height limitations imposed by H9 Objective 4 of the Development Plan as discussed in Section 2.0 above. These Policies include the following:

Policy 8 Residential Densities

H8 Objective 1:

To ensure that the density of residential development makes efficient use of zoned lands and maximises the value of existing and planned infrastructure and services, including public transport, physical and social infrastructure, in accordance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009)

H8 Objective 2:

To consider higher residential densities at appropriate locations that are close to Town, District and Local Centres and high capacity public transport corridors in accordance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009)⁵.

⁵ South Dublin Development Plan, 2016, p.34

It is submitted that that the above policies seek to increase densities within appropriate locations, and this cannot be fully achieved where there are co-existing limitations on height within the *Development Plan* as per H9 Objective 4.

3.2 National Planning Policy

A number of National Planning policy documents and Section 28 Guidelines have been published recently which seek to increase residential densities on zoned serviced lands adjacent to high quality public transport corridors. These include:

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

3.2.1 National Planning Framework 2040

The *National Planning Framework 2040* (hereinafter NPF) states that there is a serious need to avoid urban sprawl and the associated pressure that it puts on the environment and infrastructure demands through increasing residential densities in urban areas. The NPF identifies the need to consolidate development in existing urban areas in order to meet the housing needs of our growing population. In line with this, National Policy 13 and 35 state:

“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 protected⁶”.*

“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**⁷”.*

It is clear from the above that increasing densities of residential developments is a clear strategy of the NPF and that increased heights are seen as a primary mechanism in achieving this.

⁶ *National Planning Framework*, 2018, p. 67

⁷ *National Planning Framework*, 2018, p. 93

3.2.2 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018)

The *Design Standards for New Apartments Guidelines for Planning Authorities* (hereinafter *Apartment Guidelines*) build upon the provisions of the NPF in signalling a move away from blanket restrictions on heights in certain location in favour of an evidence based approach based on performance criteria.

The *Apartment Guidelines* do not go as far as to detail these performance criteria but note that this will be provided by forthcoming Section 28 Guidelines (as recently published in the *Urban Development and Building Heights, Guidelines for Planning Authorities, 2018*).

Notwithstanding this, the *Apartment Guidelines* provide clear guidance with regard to the types of location which are considered suitable for higher density developments that may wholly comprise apartments, referred to as Central and /or Accessible Locations. It is clear from the review below that the subject site meets all identified criteria for such developments.

Criterion	Response
Sites within 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.	The subject site is located within the required 15 minute walktime of a number of keys locations including, The Square Shopping Centre (4 minutes), Tallaght University Hospital (5 minutes) and Institute of Technology Tallaght (3 minutes)
Sites within reasonable walking distance (i.e. up to 10 minutes or 800 - 1,000m) to/from high capacity urban public transport stops (such as DART or Luas);	The site is located within a seven minute walktime of the Red Line Luas stop at Tallaght.
Sites 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.	The site is bounded by high frequency bus services which provide routes to Dublin City Centre and surrounds. Additional service provision will also be provided by the forthcoming BusConnects programme.

Table 1: Demonstration of compliance with Central / Accessible Area criteria

In consideration of the appropriateness of the site to accommodate higher density density, it is clear that the height limitation provided by the *Development Plan* is in direct conflict with the provisions set out by the *Apartment Guidelines*.

3.2.3 Urban Development and Building Heights, Guidelines for Planning Authorities (2018)

The *Urban Development and Building Heights, Guidelines for Planning Authorities 2018* (hereinafter *Height Guidelines*) were published in December 2018. The *Height Guidelines* were prepared in response to the publication of *Project Ireland 2040* and the *National Planning Framework*, which signalled the preparation of new Section 28 guidelines regarding building height.

The *Height Guidelines* note Local Authorities have set generic height limits within their functional areas and state the following:

“Such limits have resulted from local-level concerns, like maintaining the character of an existing built-up area, for example. However, such limits, if inflexibly or unreasonably applied, can undermine wider national policy objectives to provide more compact forms of urban development as outlined in the National Planning Framework and instead continue an unsustainable pattern of development whereby many of our cities and towns continue to grow outwards rather than consolidating and strengthening the existing built up area. Such blanket limitations can also hinder innovation in urban design and architecture leading to poor planning outcomes⁸”.

The *Guidelines* state that it is appropriate to support heights of at least six storeys at street level with scope for greater height subject to design parameters. This is contrary to the five storey height limitation provided by the *Development Plan*.

It is further stated that in some cases Development Plans have set out overly restrictive maximum heights limits which leads to development being displaced to less suitable locations resulting in a lost opportunity for key urban areas. Section 2.8 of the *Guidelines* identifies examples of locations with potential for comprehensive development which could accommodate a cluster of tall buildings with brownfield former industrial districts being cited as an example. This is wholly applicable to the subject site which represents a serious underutilisation of zoned and serviced land within a town centre environment.

The *Guidelines* include criteria against which proposals for taller buildings can be assessed for suitability. It is clear that the proposed development aligns with the identified criteria which include proximity to good public transport, positive contribution to placemaking and legibility, maximising access to daylight and avoidance / mitigation of micro-climatic effects. It is then stated that where the relevant authority considers that the criteria have been incorporated into development proposals, the following Strategic Planning Policy Requirement will apply:

“It is a specific planning policy requirement that where;

- 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, local area plan or planning scheme may indicate otherwise⁹”.

It is considered important to apply the contents of the *Height Guidelines* to the proposed development as they clearly reflect the intention of National Policy to move towards higher density developments in the interests of sustainable development.

⁸ *Urban Development and Building Heights: Guidelines for Planning Authorities* (December 2018), p.1

⁹ *Urban Development and Building Heights: Guidelines for Planning Authorities* (December 2018), p.15

3.2.4 *Eastern & Midland Regional Assembly Draft Regional Spatial & Economic Strategy (Consultation Draft, November 2018)*

The Draft *Regional Spatial & Economic Strategy* (hereinafter draft RSES) has been published by the Eastern and Midland Regional Assembly and covers nine counties including twelve Local Authorities. The purpose of the draft RSES is to provide a long term strategic planning and economic framework in order to support the implementation of Project Ireland 2040.

The draft RSES includes the Dublin Metropolitan Area Strategic Plan (MASP) which aims to unlock the development capacity of strategic areas within the metropolitan area.

With regard to housing and generation, Regional Policy Objective 5.4 states,

RPO 5.4: Future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and qualitative standards as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing; Design Standards for New Apartments' Guidelines, and 'Urban Development and Building Heights Guidelines for Planning Authorities'.

It is clear from the above referenced documents that the development of strategic residential sites, such as the subject site, should ensure that higher densities are delivered. Restrictions on allowable building heights, such as is provided by the *Development Plan*, are clearly in conflict with objectives for higher density development.

4.0 CONCLUSION

The proposed development of 438 no. apartments and a 403 bedspace student accommodation scheme, with ancillary childcare services, commercial units, public plaza and new streets and public realm provision represents an important opportunity to regenerate a disused brownfield site in a prime urban location. The proposal which provides of heights of 4 – 10 storeys and a density of c.146 units per hectare¹⁰ which is clearly in line with National Policy which has set out the need for increased density within development proposals in appropriate locations. The current limitation of building height as included in the *Development Plan* acts as a barrier against this as a higher density development cannot be achieved without the provision of taller buildings.

Given the importance of housing delivery in order to meet the ongoing serious underprovision of dwellings, it is critical that an allowance for the contravention of inappropriate height restrictions can be facilitated where it has been demonstrated that a scheme, such as the subject development, comprises a high quality proposal which will create an exemplary living environment for future residents.

It is evident that *Development Plan* policy which restricts building height is in direct conflict with the *National Planning Framework* and the objectives set out within.

¹⁰ Density calculated using a methodology whereby the house clusters in the student accommodation (65 no.) are classed as residential units which when added to the 438 no. apartments gives a total of 503 no. units. Applying this to the net site area (3.45 ha.) results in a density of 146 uph.

In consideration of the fact that the subject site meets many, if not all, criteria set out by National Policy in terms of suitability for a high density development incorporating taller buildings, it is submitted that there is ample justification for An Bord Pleanála to permit a material contravention of the Development Plan in terms of allowable heights having regard to Section 37(2)(b)(ii) and Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)*.