

**MATERIAL CONTRAVENTION
STATEMENT
STRATEGIC HOUSING DEVELOPMENT-
1-4 EAST ROAD, DUBLIN 3**

BSM

Est.
1968

**Brady Shipman
Martin**

**Built.
Environment.**

Place
Making
**Built
Environment**

CLIENT
Glenveagh Living Ltd.

DATE
26th April 2019

1-4 EAST RD

Material Contravention Statement

Brady Shipman Martin

DUBLIN

Canal House
Canal Road
Dublin 6

+353 1 208 1900

CORK

Penrose Wharf Business Centre
Penrose Wharf
Cork

+353 21 242 5620

LIMERICK

11 The Crescent
Limerick

+353 61 315 127

mail@bradyshipmanmartin.com

www.bradyshipmanmartin.com

TABLE OF CONTENTS

1	INTRODUCTION	4
2	SITE CONTEXT	5
3	JUSTIFICATION FOR MATERIAL CONTRAVENTION	5
4	STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN	10

1 INTRODUCTION

This document seeks to address the issue of material contravention of the Development Plan as required under SHD legislation. This Statement provides a justification for the material contravention of the Dublin City Council Development Plan 2016 – 2022 (Development Plan) in relation to height.

Section 16.7.2 of the current Development Plan identifies building heights for the city and identifies a building height cap of 24m for residential development in this location. However it is submitted that the rationale for increased height at this location goes beyond the specific height limits set out in the Development Plan and should be considered in the context of the wider height policies of the Development Plan and the site context.

It should be noted that, the adoption of *Urban Development and Building Heights – Guidelines for Planning Authorities* in December 2018, has resulted in lack of clarity as to whether the guidelines supersede policies within statutory *Development Plans*, and therefore, until such a time as clarity is forthcoming or a Development Plan is varied to align with the requirements of the *Guidelines*, a material contravention is considered to have occurred.

The Urban Building Height Guidelines establish the principle for the re-examination of height limits and should be considered over the Development Plan height limits on a site specific contextual basis.

The *Planning and Development (Housing) and Residential Tenancies Act, 2016* confirms that An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan, other than in relation to the zoning of land, as follows:

(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.

It is considered therefore, that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development notwithstanding the material contravention of the Development Plan.

2 SITE CONTEXT

The subject site is located on East Rd, Dublin 3. The application site has an area of approximately 2.3 ha and is bound by East Road to the West, the railway sidings to the South, Merchant's Square to the East and Teeling Way and Island Key Apartments to the North.

The site is currently in use as a warehousing/logistics/light industrial use and has a number of existing industrial sheds. The site also includes an existing redbrick building at No. 4 East Road, which is currently occupied by the East Wall Men's Shed.

The site sits north of the North Lotts and Grand Canal Dock Strategic Development Zone (SDZ) area and with numerous developments completed, permitted and others in progress nearby, is a transition between existing higher density residential to the north of this site on East Rd and East Wall Road, and the Docklands to the south. The site is accessed from East Road.

The site sits just north of the North Lotts and Grand Canal Dock SDZ and within the 'Docklands Area', designated as Strategic Development and Regeneration Area (SDRA) 6 in the City Development Plan.

This underutilised brownfield site is located on a current bus route (and a future upgraded Bus Connect route) and within 600m walking distance of the Spencer Dock Luas Stop (and future Dart Underground stop) and the Docklands Rail Station.

3 JUSTIFICATION FOR MATERIAL CONTRAVENTION

As outlined above, the Development Plan Height Strategy identifies a building height cap of 24m for residential development in this location. However it is submitted that the rationale for increased height at this location goes beyond the specific height limits set out in the Development Plan and should be considered in the context of the wider height policies of the Development Plan and the site context. The *Urban Building Height Guidelines* establish the principle for the re-examination of height limits and should now be considered over the Development Plan height limits on a site specific contextual basis.

The Development Plan states that the:

1-4 EAST RD

Material Contravention Statement

‘clustering of taller buildings of the type needed to promote significant densities of commercial and residential space are likely to be achieved in a limited number of areas only. Taller buildings (over 50m) are acceptable at locations such as at major public transport hubs, and some SDRAs. For example, the North Lotts and Grand Canal Dock SDZ planning scheme provides for a limited number of tall buildings at Boland’s Mills, the Point, Spencer Dock Square and Britain Quay.’

*‘There are also a few areas where there are good transport links and sites of sufficient size to create their own character, such that a limited number of mid-rise (up to 50m) buildings will help provide a new urban identity. These areas of the city are the subject of a local area plan, strategic development zone or **within a designated SDRAs**’ [our emphasis].*

The Core Strategy of the Development Plan promotes the intensification and consolidation of Dublin City, and the Docklands is identified as Strategic Development Regeneration Area 6 (SDRA). In respect of SDRA 6 the City Development Plan identifies that *‘the designation of the Docklands, including the Docklands SDZ, as a strategic development and regeneration area (SDRA) provides for the continued physical and social regeneration of this part of the city, consolidating the area as a vibrant economic, cultural and amenity quarter of the city, whilst also nurturing sustainable neighbourhoods and communities’.*

The SDRA for the Dublin Docklands covers three areas, 1. Docklands Area (which includes the subject site), 2. Strategic Development Zone, and 3. Poolbeg West.

The SDRA objectives for the ‘Docklands’ as a whole include:

- *To achieve successful interaction between the SDZ scheme and surrounding streets and public realm to retain and foster a strong sense of neighbourhood within communities.*
- *To ensure that residential developments optimise the unique Docklands character in terms of visual context, maritime location, heritage assets and community identity.*
- *To safeguard residential amenity and to ensure appropriate transition in scale, the design of new development shall have regard to the context, setting and amenity of existing housing within the*
- *SDZ and wider Docklands area*
- *The Government’s designation of the SDZ reflects a keen awareness of the strategic importance of this area. However, it is acknowledged that to facilitate the continued socio-economic regeneration of the wider Docklands area, there is a need to address areas beyond the SDZ Boundary*

The East Rd site sits at a transition point between the 'SDZ' and the wider 'Docklands Area' as identified in the Development Plan, and adjacent an existing 12 storey building permitted prior to, but outside of, the former Dublin Docklands Development Authority area/SDZ area.

Site Context

Consideration of height is attributable to the entirety of the SDRA and is to be considered at suitable locations within the SDRA.

In this regard, the East Road site is a key brownfield site within the city centre (approx. 2 kms from O'Connell Bridge) and Docklands. To date, it has been in industrial use, and the opportunity now arises to regenerate the site as a key residential and employment location.

It is located at an important transition point in the Docklands, from East Wall Road to the North Lotts, adjacent to the Dublin Port railyards, and less than 200m from Sherriff Street junction with New Wapping Street. East Road represents a key entry point to the Docklands and the wider city area, as a connector back to East Wall Road principal artery. It affords a more attractive pedestrian and cycle route into the City than East Wall Road currently provides.

East Wall, while an established residential enclave in the former largely industrial docklands area of the city, has seen significant regeneration interventions over recent years, whether through transformation of industrial brownfield lands to residential or commercial uses, or redevelopment of sites to deliver more modern and attractive urban scale facilities.

The redevelopment of this site, immediately adjacent to the East Road bridge, at the edge of the traditional residential community of East Wall, represents a significant opportunity to transition the Docklands SDZ area and associated form of development (increased density and height), through to East Wall Road. It presents the opportunity to cohesively link the urban grain on both sides of the bridge and to extend the city grain of the Docklands northwards beyond Sherriff Street, connecting into newer recent development at East Road and East Wall Road. Additionally, it extends the major employment location of the Docklands along East Road, by the provision of *enterprise space* which is complementary to the commercial office space being provided on the larger SDZ development blocks. This accords with DCC and Docklands policy in relation to supporting the major employment centre of the Docklands with complementary smaller scale opportunity employment hubs with a diversity of offer.

The Urban Building Height Guidelines identify that as reflected in *'the National Planning Framework that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas'* and that *'securing compact and sustainable urban*

1-4 EAST RD

Material Contravention Statement

growth means focusing on reusing previously developed 'brownfield' land, building up infill sites (which may not have been built on before) and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities'.

The Guidelines reference NPO 13 (from the National Planning Framework) which states that *'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'.*

It recognises that in meeting the challenge set out above, new approaches to urban planning and development are required and that securing an effective mix of uses within urban centres is critical. To bring about this increased density and increased residential development in urban centres, the Guidelines state that *'significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels'.*

The consideration of increased density for residential development can be seen within other DCC SDRA areas, e.g. SDRA 12 St. Teresa's Gardens, where heights to 15 storeys at specific locations within the site area are promoted in the Framework Plan approved by Council. Increased residential density and height was approved at this location as it is recognised as a key residential location within the city. The East Road site, subject of this SHD application, shares the rationale for increased residential density and height due to its excellent accessibility and proximity to the City's major business district and to the specific location and boundary opportunities presented by the site.

As such the proposed scheme, as set out in this SHD application, has set out to achieve greater height and density above current Development Plan permitted levels.

Site Location

The Guidelines identify that *'locations with the potential for comprehensive urban development or redevelopment (e.g. brownfield former industrial districts, dockland locations, etc) should be identified where, for example, a cluster of higher buildings can be accommodated as a new neighbourhood or urban district or precinct. Such areas, particularly those in excess of 2 ha (approx. 5 acres) in area...'*

The subject site, at a size of 2.1ha (development area), is a brownfield dockland location, which given its scale, can accommodate elements of increased height.

The approach to the site has been to provide a height strategy which responds to the existing and emerging context, and using height as a way of both meeting existing scale considerations, and as a landmark to the scheme and the wider East Wall area as approached from the North Lotts.

The increased height of 15 storeys is appropriately located on the site at the juncture of the East Road Bridge and the site itself, where it is perceived as a locator on the East Road. At this location it is buffered by residential accommodation in the wider environs. The location for increased height of 15 and 10 storeys on the site, immediately adjacent to the rail yards, and at its southern-most extent, responds to site context conditions, and within the overall site is modest in its extent, with the majority of the proposed development ranging from 3-8 storeys.

Additionally the Guidelines identify that areas that should be considered include:

- *Proximity to high quality public transport connectivity, particularly key public transport interchanges or nodes;*
- *The potential contribution of locations to the development of new homes, economic growth and regeneration in line with the compact urban growth principles as set out in the National Planning Framework and Project Ireland- 2040;*
- *The resilience of locations from a public access and egress perspective in the event of major weather or emergency or other incidents;*
- *The ecological and environmental sensitivities of the receiving environment; and*
- *The visual, functional, environmental and cumulative impacts of increased building height.*

The site at East Road is in a highly accessible location, at just 600m walking distance from both the Spencer Dock Luas Stop and the Docklands Rail Station. The Spencer Dock Luas Stop is also the future proposed location of the Docklands DART Underground Station. In addition there is an existing bus stop directly in front of the site which is to have its frequency increased under the proposed Bus Connects. This public transport infrastructure connects to the city centre and to the wider Dublin area employment and education locations.

The site is within walking and cycling distance of the North and South Docklands employment hubs, the IFSC and the City Centre. In addition, as outlined by the Guidelines, a greater approach to mixed use developments should be adopted and the proposed employment capacity of approximately 250 people on site will provide significant opportunities to residents (and locals) to work on site.

As is outlined in this material contravention statement and the other documentation accompanying this SHD application, the subject site, is a prime example of the type of site anticipated in the Urban Building Height Guidelines

1-4 EAST RD

Material Contravention Statement

that can achieve increased building height and resulting increased density, while critically not being a singular use on the site but rather an integrated mixed use environment where people will live and work.

4 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN

In this case, regarding height, while the majority of the proposed development is within the range of the 24m height limit, at its highest point c. 51m, which is in excess of the blanket restriction of 24m applied by DCC in its current Development Plan pertaining to this area. In this regard, it is set out in this application that the subject site is capable of readily accommodating the additional height proposed here without giving rise to any significant adverse planning impacts in terms of daylight, sunlight, overlooking or visual impact.

Notwithstanding this, it is noted that the exceedance of the Development Plan height parameters constitutes a material contravention of the current Development Plan. As required in legislation, it is submitted that this can be justified under Section 37(2)(b)(ii) and (iii) of the Planning and Development Act 2000 (as amended) where the Board may determine under this section, to grant a permission even if the proposed development contravenes materially the Development Plan relating to the area of the planning authority to whose decision the appeal relates.

This section states that the Board may only grant permission in accordance with paragraph (a) where it considers that;

“(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 planning guidelines 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.”

This is in line with the NPF and the recently adopted *Urban Building Height Guidelines*. The realisation of the objectives of this national guidance necessitates facilitating residential development to a height greater than 24m in appropriate locations. On the basis of the above provisions, we submit that the Board can grant permission for the subject development at the heights proposed.