

**MATERIAL CONTRAVENTION
STATEMENT
STRATEGIC HOUSING DEVELOPMENT-
ST. PAUL'S COLLEGE,
SYBIL HILL RD, RAHENY, DUBLIN 5**

BSM

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**Brady Shipman
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Place
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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 in relation to height at the proposed site adjacent to St. Paul's College, Sybil Hill Road, Raheny, Dublin 5, subject of this application.

Section 16.7.2 of the current Development Plan identifies building heights for the city and identifies a building height cap of 16m for residential development for the majority of this site, with some of the site falling within the 24m height cap due to its proximity to Harmonstown Dart Station (within 500m). 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 specific nature and location of the site.

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 Development & Building Heights 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 in terms of height.

2 SITE CONTEXT

The application site is located on lands east of St. Paul's College, Sybil Hill Road, Raheny, Dublin 5. The site is located approximately 5km north east of Dublin City Centre and is centrally located in the mature residential suburb of Raheny.

The site is bound to the north, east and south by St. Anne's Park and to the west by residential development at The Meadows, Sybil Hill House (a Protected Structure) and St. Paul's College. Vehicular access to the site is from Sybil Hill Road.

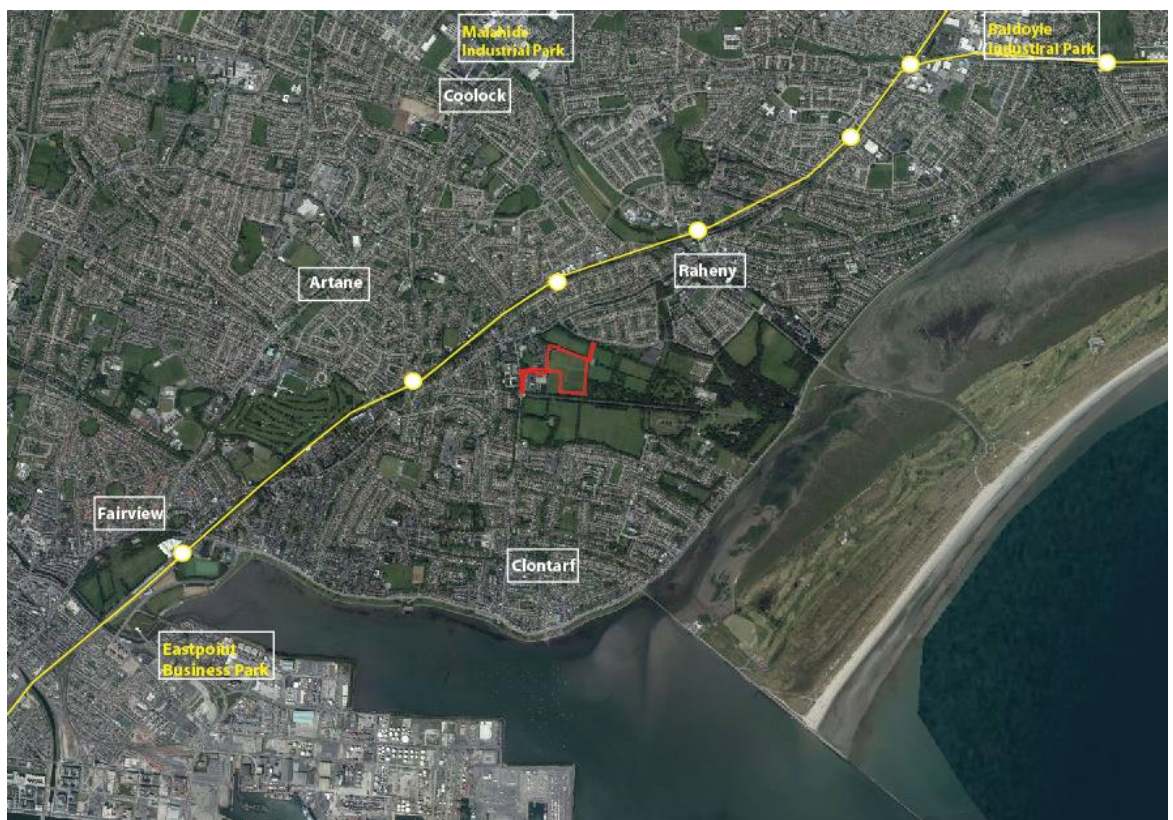


Fig. 1 Site Location Map

The application site is 6.7ha in size and includes lands within the ownership of Dublin City Council on Sybil Hill Road and within St. Anne's Park which are required for infrastructural works as part of the proposed development.

The development site is 6.4ha and incorporates the lands owned by the applicant, and lands required for access within St. Paul's College, within which the scheme is proposed to be developed.

3 JUSTIFICATION FOR MATERIAL CONTRAVENTION

As outlined above, the Development Plan Height Strategy identifies a building height cap of 16m/24m for 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 Development & Building Heights 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 *Urban Development & Building Heights 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 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 NPF) 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'*.

The NPF 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'*.

As such the proposed scheme, as set out in this SHD planning application, has set out to achieve greater height and density above current Development Plan permitted levels. The site's suitability for this approach is further set out below, as considered against the Guidelines and in its design approach as set out in the OMP Architect Design Statement that accompanies this planning application. As is outlined in this Material Contravention Statement and the other documentation accompanying this SHD application, the subject site, is an

example of the type of site anticipated in the *Urban Development & Building Heights Guidelines* that can achieve increased building height and resulting increased density, due to its scale and context.

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 Such areas, particularly those in excess of 2 ha (approx. 5 acres) in area*'.

The subject site, given its scale and setting is considered to be able to accommodate increased heights and subsequent densities than those prescribed under the Development Plan. The site has a development area of 6.4ha, which is significant from a residential delivery perspective, in a centrally located and well-connected suburb of Dublin. The heights for the most part range from 5-7 storeys and equivalent 17-21m, with a number of taller blocks of 8-9 storeys centrally located within the site.

Additionally the Guidelines identify that areas that should be considered for increased height 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 is located in proximity to high quality public transport and existing local infrastructure facilitating compact development in line with the NPF. The extent of the site allows for height to be sensitively located to minimise any impacts on adjacent sensitive receptors such as existing residential or St Anne's Park. An NIS and EIAR accompanies this application for development

As set out above the Guidelines provide for this exact type of site which is not a typical site but due to scale, receiving environment and accessibility can be considered for increased height.

As is outlined in this Material Contravention Statement and the other documentation accompanying this SHD application, the subject site is an example of the type of site anticipated in the *Urban Development & Building Heights*

Guidelines that can achieve increased building height and resulting increased density in a manner appropriate for the scale of the site and the proposed scheme design.

4 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN

In this case, regarding height the proposed development includes for buildings that range from 16.63m to 27.95m, which is in excess of the blanket restriction of 16m/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 in this application 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 application 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 Development & Building Heights Guidelines*. The realisation of the objectives of this national guidance necessitates facilitating residential development to a density and height greater than previously permitted 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.