



THORNTON O'CONNOR
TOWN PLANNING

Material Contravention Statement

Planning Application

In respect of a Residential and Commercial Development at
Lands located at Scholarstown Road, Dublin 16

Submitted on Behalf of
Ardstone Homes Limited

November 2019



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1.0 INTRODUCTION

1.1 Purpose of this Report

The purpose of this Material Contravention Statement is to set out the justification for increased height proposed at the subject site, which is located north of Scholarstown Road incorporating dwellings known as 'Beechpark' and 'Maryfield', Scholarstown Road, Dublin 16, D16 X3X8 and D16 N6V6 (5.35 hectares). Works are also proposed to Scholarstown Road and Woodfield junction including new traffic signals, the elimination of the left-turn slip-lane into Woodfield off Scholarstown Road, upgraded public lighting and upgraded cycle and pedestrian facilities on an area measuring 0.7 hectares, providing a total application site area of 6.05 hectares.

The development will principally consist of: the demolition of all existing structures on site which include a single story dwelling known as 'Beechpark' (172 sq m), a 2 No. storey dwelling known as 'Maryfield' (182 sq m), with associated garage/shed (33.5 sq m) and associated outbuildings (47.1 sq m); and the construction of 590 No. residential units (480 No. Build-to-Rent apartment units and 110 No. Build-to Sell duplex units and apartments), ancillary residential support facilities and commercial floorspace. The total gross floor space of the development is 51,252 sq m over a partial basement of 5,888 sq m (which principally provides car and bicycle parking, plant and bin stores).

The 480 No. 'Build-to-Rent' units will be provided in 8 No. blocks as follows: 7 No. blocks ranging in height from part 5 to part 6 No. storeys (Blocks B1 – B5, C1 and C3) and 1 No. block ranging in height from part 4 to part 6 No. storeys (Block C2) and will comprise 246 No. one bed units and 234 No. two bed units. The 110 No. 'Build-to-Sell' units will be provided in 9 No. duplex blocks which will be 3 No. storeys in height (Blocks A1 – A9) and will comprise 55 No. two bed units and 55 No. three bed units.

The development will also consist of the provision of a part 1 to part 2 No. storey ancillary amenity block (Block D1) (414 sq m) within the central open space which comprises a gymnasium, lobby, kitchenette and lounge at ground floor level and lounge at first floor level in addition to a roof terrace (facing north, south and west) to serve the Build-to-Rent residents; a 2 No. storey retail/café/restaurant building (Block D2) (657 sq m) comprising 2 No. retail units at ground floor level (328.5 sq m) and a café/restaurant unit at first floor level (328.5 sq m); a creche (438 sq m) within Block C2 at ground floor level; and a management suite (261 sq m) and café/restaurant (288 sq m) within Block C3 at ground floor level.

The development provides a vehicular access off Scholarstown Road between Blocks C1 and C3 towards the south-east corner of the site; a separate pedestrian access and emergency vehicular access off Scholarstown Road between Blocks A9 and C2 towards the south-west corner of the site; the facilitation of a pedestrian connection from the north-east corner of the subject site to the public open space in Dargle Park; 459 No. car parking spaces (178 No. at basement level and 281 No. at surface level); bicycle parking; bin storage; boundary treatments; private balconies and terraces; hard and soft landscaping; plant; services; sedum roofs; PV panels; substations; lighting; and all other associated site works above and below ground.

1.2 Background to the Preparation of this Material Contravention Statement

The relevant local planning policies are located within the *South Dublin Development Plan 2016 – 2022*. The Development Plan does not set out specific maximum building heights for the subject location however does include the following Policy (Housing Policy 9) in relation to Residential Building Height:

'it is the policy of the Council to support varied building heights across residential and mixed use areas in South Dublin County' with a specific objective 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.'

In addition, Housing Policy 8 stipulates that:

'it is the policy of the Council to promote higher residential densities at appropriate locations and to ensure that the density of new residential development is appropriate to its location and surrounding context'. An objective of H8 is to '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).' [Our Emphasis]

It is our professional planning opinion that the implementation of Housing Policy 9 inhibits Housing Policy 8 from being achieved and in order to comply with Housing Policy 8 (promoting higher densities at appropriate location), strict adherence to Housing Policy 9 cannot be achieved.

1.3 The Proposed Scheme Marginally Exceeds the 5 No. Storey Limit Set out in Housing Policy 9

There is significant potential for the subject site to provide increased heights subject to appropriate safeguards and quality design as demonstrated within the supporting planning documentation. The scheme provides 7 No. blocks ranging in height from part 5 to part 6 No. storeys and 1 No. block ranging in height from part 4 to part 6 No. storeys which are positioned at the least sensitive positions within the site (i.e. towards the centre of the site and fronting part of the Scholarstown Road). In addition, 3 No. storey duplex and apartment blocks and a 2 No. storey ancillary retail/café/restaurant block are located around the boundaries of the site, which provides a sensitive transition to the neighbouring residential dwellings. Therefore, it is our professional planning opinion that an appropriate design response has been presented for the subject development which provides sensitive transitions from the neighbouring 2 No. story dwellings in line with Objective 3 of Housing Policy 9 which states that:

'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.'

Although we consider that the policies are conflicting in the Development Plan, in the interest of completeness, we have prepared this Material Contravention Statement to ensure that a robust assessment of the subject scheme is carried out. The conflicting policy objectives are discussed at Section 3.0 of this report.

We note that the policies dictating height provided within the Development Plan were set prior to the introduction of the *Urban Development and Building Heights – Guidelines for Planning Authorities (December 2018)*, which were introduced under Section 28 of the *Planning and Development Act, 2000 (as amended)*. An Bord Pleanála and the Planning Authority must have regard to these Guidelines, as such particular reference to the Specific Planning Policy Requirements (SPPRs) set out in the *Building Height Guidelines* is mandatory.

2.0 PLANNING AND DEVELOPMENT (HOUSING) AND RESIDENTIAL TENANCIES ACT, 2016 (AS AMENDED)

Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended)* sets out the following in relation to developments which materially contravene the policies and objectives of a Development Plan:

- (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]

TOC Comment: The site is zoned Objective 'RES' in the *South Dublin Development Plan 2016 – 2022* where residential use is 'permitted in principle' and café/restaurant, creche and shop-local are 'open for consideration'. As the subject scheme proposes a Residential Development with ancillary residential support facilities, creche, retail units and café/restaurant units, the proposed development fully complies with the zoning objective of the site. Therefore, the subject of this Material Contravention Statement relates to building height. We consider that the design of the proposed development is appropriate at this location and justifiable for the subject lands having regard to recently adopted National Policy as detailed throughout this report.

3.0 PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

As noted above, the *Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended)* sets out in summary that *'where the proposed strategic housing development would materially contravene the development plan...then the Board may only grant permission 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.'*

Section 37(2) of the *Planning and Development Act 2000 (as amended)* states the following in relation to material contravention:

- (a) *'Subject to paragraph (b), the Board may in determining an appeal under this section decide 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.*
- (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 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, 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.'***
[Our Emphasis]

TOC Comment:

The *South Dublin Development Plan 2016 -2022* states under Housing Policy 9 that:

'it is the policy of the Council to support varied building heights across residential and mixed use areas in South Dublin County.'

Housing Policy 9 (Objective 4) stipulates that:

'to direct tall buildings that exceed five storeys in height top 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'.

However, having regard to Section 37(2)(b) of the Act as set out above, we respectfully request that An Bord Pleanála consider that the heights proposed in the current development are appropriate having regard to the advancement of National Policy since

the adoption of the *South Dublin Development Plan 2016–2022*. We note that the *Urban Development and Building Heights Guidelines for Planning Authorities, 2018* set out that a key objective of the National Planning Framework is to see that greatly increased levels of residential development in our urban centres are provided and seek that significant increases in building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes [para 1.20].

The aforementioned policy directly conflicts with Housing Policy 8 of the Development Plan, which states that:

'It is the policy of the Council to promote higher residential densities at appropriate locations and to ensure that the density of new residential development is appropriate to its location and surrounding context.'

We also note that Objective 3 under Housing Policy 9 states that it is a policy:

'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.'

It is our professional planning opinion that Policy H8 Objective 4 and Policy H9 Objective 4 directly conflict and cannot be achieved in congruence with each other as result of the limitations on height.

We re-iterate that the maximum height of the blocks only marginally exceeds the 5 No storey restriction as the scheme provides 7 No. blocks ranging in height from **part 5 to part 6 No. storeys** and 1 No. block ranging in height from **part 4 to part 6 No. storeys**, all of which are positioned at the least sensitive positions within the site (i.e. towards the centre of the site and fronting part of the Scholarstown Road). In addition, 3 No. storey duplex and apartment blocks and a 2 No. storey ancillary retail/café/restaurant block are located around the boundaries of the site, which provides a sensitive transition to the neighbouring residential dwellings in line with Objective 3 of Housing Policy 9.

The Landscape and Visual Impact Assessment (Chapter 8 of the EIAR) and Daylight/Sunlight Assessment enclosed as a separate document both demonstrate that no material impacts will occur as a result of the proposed development. The layout of the development has been thoroughly considered and greater heights are provided towards the centre of the site and along Scholarstown Road to the front of the site, away from nearby residential dwellings.

In our opinion the heights provided in the subject development are appropriate having regard to the expressed requirement in National level policy to achieve compact growth. The eminently suitable location of the subject location for high density development having regard to its location in close proximity to public transport, employment locations and services and facilities.

4.0 JUSTIFICATION FOR THE MATERIAL CONTRAVENTION

4.1 *Project Ireland 2040: National Planning Framework*

Project Ireland 2040: National Planning Framework (NPF) is the Government’s high-level overarching strategic plan that aims to shape the future growth and development of the country. The NPF is a long-term Framework that sets out how Ireland can move away from the current ‘business as usual’ pattern of development.

A number of key national policy objectives are identified throughout the NPF such as the following (in summary):

- **National Policy Objective 2a** sets a target of 50% of future population and employment growth to be focused in the existing five cities and their suburbs.
- **National Policy Objective 3a and National Policy Objective 3b** aim to deliver at least 40% of all new homes nationally, within the build-up of existing settlements and to deliver at least 50% of all new homes that are targeted in the five Cities within their existing built-up footprints.
- **National Policy Objective 4** aims to provide diverse and integrated communities ensuring the creation of attractive, livable, well designed, high quality urban places.
- **National Policy Objective 13** outlines that in urban areas, building height and car parking standards will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth.
- **National Policy Objective 32** notes a target of 550,000 No. additional homes to 2040.
- **National Policy Objective 33** prioritises the provision of residential development at appropriate scales within sustainable locations.
- **National Policy Objective 35** notes the aim to increase residential density in settlements through a range of measures including (amongst others) in-fill development schemes and increased building heights.

The NPF sets out that:

*‘to effectively address the challenge of meeting the housing needs of a growing population in our key urban areas, **it is clear that we need to build inwards and upwards rather than outwards.**’ [Our Emphasis]*

TOC Comment: The proposed scheme involves the development of an existing underutilised brownfield site in a sustainable location which will contribute towards compact growth in Dublin in line with the objectives of the NPF. We note that the NPF recognises that building inwards and upwards is important to effectively address the housing crisis. Therefore, we consider that as there is a significant importance placed in the NPF to develop high quality accommodation by increasing building heights in existing urban areas, the proposed development which ranges in height from 2 No. storeys to part 6 No. storeys is appropriate given the site’s location on residentially zoned lands and its

specific designation as a Housing Capacity Site within the Development Plan. The subject site is located in close proximity to public transport, employment locations, services and facilities.

4.2 **Urban Development and Building Heights – Guidelines for Planning Authorities (December 2018)**

The *Urban Development and Building Heights Guidelines for Planning Authorities* were adopted in December 2018. The Guidelines set out that a key objective of the NPF is to significantly increase the building heights and overall density of developments.

The Minister's foreword to the *Heights Guidelines, 2018* acknowledges that Ireland's classic development models for city and town cores has tended to be dominated by employment and retail uses, surrounded by extensive and constantly expanding low-rise suburban residential areas which is an unsustainable model. There is an opportunity for our cities and towns to be developed differently. Urban centres could have much better use of land, facilitating well located and taller buildings, meeting the highest architectural and planning standards. The Guidelines are intended to set a new and more responsive policy and regulatory framework for planning the growth and development of cities and towns upwards rather than outwards.

The *Height Guidelines, 2018* denote that the:

*'Government considers 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.**'* [Our Emphasis]

The Guidelines also note that increasing prevailing building heights has a critical role to play in addressing the delivery of more compact growth in our urban areas, particularly our cities and large towns through enhancing both the scale and density of development and it notes that the planning process must actively address how this objective will be secured.

Chapter 2 of the Guidelines sets out the following Specific Planning Policy Requirement:

Specific Planning Policy Requirement 1

*'In accordance with Government policy to support increased building height and density **in locations with good public transport accessibility**, particularly town/ city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and **shall not provide for blanket numerical limitations on building height.**'* [Our Emphasis]

TOC Comment: It is our professional planning opinion that the limitation to 5 No. storeys unless located at landmark locations as indicated in the Development Plan is contrary to Specific Planning Policy Requirement 1 which notes that blanket numerical limitations on building height shall not be provided for through statutory plans.

We note that for the reasons re-iterated throughout this document it is our opinion that the site has the capacity and capability to accommodate increased height that is actively sought in national policy guidance.

It is considered that the scheme design strikes a balance between respecting the surrounding environment of the scheme and ensuring the development potential of a significantly scaled, strategically positioned and underutilised plot is maximised.

Chapter 3 of the *Height Guidelines, 2018* expressly seeks increased building heights in urban locations:

*'In relation to the assessment of individual planning applications and appeals, it is Government policy that **building heights must be generally increased in appropriate urban locations**. There is therefore a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility.'* [Our Emphasis]

The Guidelines further note that *'Planning Authorities must apply the following broad principles in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines:*

- 1. 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?***

TOC Response: As noted in Section 4.1, the proposed scheme involves the redevelopment and infilling of an existing underutilised sustainable site on residentially zoned lands which is specifically designated as a Housing Capacity Site within the Development Plan. The subject development will contribute to delivering compact growth in our urban centres. The scheme is therefore fully in accordance with the preferred approach of the National Planning Framework.

- 2. 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?***

TOC Response: SPPR 1 within Chapter 2 of the Guidelines sets out that blanket numerical restrictions on building heights shall not be provided for in plans, in order to support building height and density in locations with good public transport accessibility and particularly in town/ city cores.

As previously noted, the *South Dublin Development Plan* specifically sets a numerical limitation on height in certain locations, by virtue of Housing Policy 9 Objective 4 which stipulates that development should:

'direct tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centres, Regeneration and Strategic development Zones, and subject to an approved Local Area Plan or Planning Scheme.'

We re-iterate that it is our professional planning opinion that imposing height restrictions at the subject site through the Development Plan is contrary to Specific Planning Policy Requirement 1 of the *Height Guidelines, 2018* which notes that blanket numerical limitations on building height shall not be provided for through statutory plans. We consider that the heights proposed ranging from 2 No. storeys to part 6 No. storeys are suitable at the subject lands having regard to the positioning of the highest forms at the least sensitive locations throughout the site (centre of the site and along Scholarstown Road). The heights proposed provides architectural interest across the site and are appropriate in this location in order to accord with Government policy to increase building heights in sustainable locations.

3. ***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?***

TOC Response: This material contravention statement has clearly demonstrated that the height policies of the *South Dublin Development Plan* restrict development at the subject site to 5 No. storeys in height and is outdated in terms of the progression of National Policy. Implementing such objectives as prescribed in the current local planning policies would be contrary to SPPR₁ of the *Height Guidelines, 2018* as discussed above. It is our opinion that the subject site has the potential for greater heights than 5 No. storeys to sustainability densify this strategic site (albeit only marginally above the 5 No. storey limit as part 6 No. storeys are proposed), having regard to the high quality architectural composition of the scheme and the receiving context. We note that an LVIA and Daylight/Sunlight Analysis have been carried out in conjunction with the design of the subject development and demonstrate that the proposed development will not have an undue negative impact on its receiving environment.

Specific Planning Policy Requirement 3

SPPR₃ of the Building Height Guidelines sets out that:

'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 [below]; 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.' [Our Emphasis]

We have demonstrated how the proposed development satisfies the specified criteria set out in SPPR₃ of the Height Guidelines as follows:

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.

The accessibility of the subject site via public transport has been extensively detailed in the Statement of Consistency report and Planning Report prepared by Thornton O'Connor Town Planning submitted with this planning application. In summary, the site is well served by public transport (No. 15, No. 15b and No. 175 bus routes particularly) with many bus stops located within walking distance of the site, providing opportunities for residents of the scheme to travel to places of work, including Dublin City Centre. We highlight that the site is located in close proximity to the Sandyford Business District which contains several large-scale employers such as Microsoft, Vodafone Ireland and SSE Airtricity in addition to Tallaght which provides significant employment opportunities e.g. Tallaght Hospital, an academic teaching hospital which employs c. 3,000 No. people.

The site will benefit from improved bus services as part of the Bus Connects program, a national program of investment in the Greater Dublin Area bus network. The program aims to make more of the city accessible to passengers within a reasonable time span, through simple connections and transfers between public transport services.

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.

It has been detailed in the Architect's Design Statement and Thornton O'Connor Town Planning documents how the development will be assimilated into its surrounding context. We note that the subject site is not located within an architecturally sensitive area and is not generally surrounded by any unique locational characteristics, having regard to its position fronting Scholarstown Road and adjacent to typical low density housing.

However, we do note that a Protected Structure is located adjacent to the site to the north-west. A key priority during the detailed design stage was to provide sufficient setbacks from the structure by providing an area of green open space at this boundary in addition to 3 No. storey duplexes/apartments which subsequently transition to part 5 to part 6 No. storey apartment structures and 1 No. part 4 to part 5 No. storey structure towards the centre of the site and fronting part of Scholarstown Road. We highlight that the Protected Structure is subject to extensive screening by mature trees which will be retained and reinforced by further landscaping.

Whilst the general context has no particular unique features, the subject site is unique in nature as it facilitates a significant planning gain through the provision of a pedestrian connection through the north-east of the site to the public open space in Dargle Park. The provision of this connection will encourage permeability through the site benefiting the wider public while also assisting with the integration of the proposed scheme into the surrounding area.

From the outset, the Design Team has sought create a scheme that complies with daylight requirements with respect to neighbouring properties, the public open spaces and the apartments themselves (tallest elements to the centre of the site away from surrounding dwellings). The enclosed Daylight/Sunlight Assessment prepared by Integrated Environmental Solutions Limited concludes that the proposed development performs in line with BRE recommendations. A Landscape and Visual Impact Assessment prepared by Mitchell and Associates Landscape Architects has been carried out and submitted as part of this planning application (Chapter 8 of the EIAR) and notes that the proposed scheme is of high-quality design, is elegant, contemporary and stylish; and where relevant it makes an appropriate positive contribution to the existing skyline.

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.

The proposed scheme is presented in various forms and heights across the site, transitioning from the highest forms at the centre of the site and fronting Scholarstown Road with lower heights positioned towards the boundaries of existing residential dwellings. The proposed design and strategic layout provide visual relief through the blocks and concentrates on providing high quality open spaces throughout the scheme, therefore creating play opportunities and functional public space for the future residents to utilise.

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 high-quality design and strategic layout of the proposed development provides an appropriate transition with surrounding residential dwellings having regard to clear guidance provided in national planning policy which seeks the densification of residentially zoned sites in close proximity to public transport such as the subject site. We submit that no material impacts on surrounding residential dwellings will occur as a result of the proposed development, having regard to the positive results of the Daylight/Sunlight assessment and the LVIA and express design intent to provide 2 and 3 No. storeys at the boundaries adjacent to existing residential dwellings.

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

The scheme has been designed to ensure interesting and relieved facades which reduce the perceived mass and scale of the blocks. It is noted that the retail/café/restaurant units and creche provide an active frontage and commercial presence to the street. Furthermore, the high quality open spaces provide visual relief throughout the scheme.

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 provision of pedestrian/bicycle routes throughout the site and fronting Scholarstown Road represent key planning gains for the wider neighbourhood in addition to provision of the connection through the north-east of the site and the proposed upgrading works to Scholarstown Road. The development has been subject to a sensitive detailed design process creating significant central open space positioned at the heart of the scheme. The design concept behind the landscape is to create a functional yet calm, tranquil, lush 'green' environment for the residents to enjoy.

The Specific Site Flood Risk Assessment prepared by DBFL Consulting Engineers identifies the site to be located within Flood Zone C and concludes that:

'the proposed mixed use development is appropriate for the site's flood zone category'.

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.

The high quality design of the scheme will ensure the development will be a legible and attractive addition to this area of South Dublin. As previously noted, the provision of a pedestrian/bicycle connection to the public open space in Dargle Park will positively contribute to the surrounding area as it will enhance permeability and wider connectivity for the wider area. The assumed route will be assimilated into the environment through shrewd landscaping of wildflower meadow and reinforced through the provision of natural play opportunities.

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

As set out in the Thornton O'Connor Planning Report, the *South Dublin County Development Plan 2016-2022* recognises the need to provide appropriately sized households. Policy H10 stipulates that a wide variety of adaptable housing types, sizes and tenures must be provided stating that:

'It is the policy of the Council to ensure that a wide variety of adaptable housing types, sizes and tenures are provided in the County in accordance with the provisions of the Interim South Dublin County Council Housing Strategy 2016-2022.'

Furthermore, the NPF states that:

'the 2016 Census indicates that if the number of 1-2-person dwellings is compared to the number of 1-2-person households, there is a deficit of approximately 150%, i.e. there are approximately two and half times as many 1-2- person households as there are 1-2- person homes.'

Therefore, it is clear that the mix of primarily 1 and 2 No. bed units proposed are urgently required in order to provide an appropriate mix of dwelling typologies in Scholarstown and in the wider area, as is recognised in the *South Dublin County Development Plan 2016 – 2022*.

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 results of the enclosed Daylight/Sunlight Assessment demonstrate that the proposed development performs in line with BRE recommendations in the BRE 'Site Layout Planning for Daylight and Sunlight' guide.

The inclusion of large open plan floorplates and large external open spaces will ensure high quality residential amenity is provided for the future tenants.

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'. 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.

The Daylight/Sunlight Assessment enclosed concludes the following:

- All residential dwellings considered on Dargle Wood and Scholarstown Park are compliant with BRE recommendations in relation to vertical sky component.
- As the proposed development sits to the south of the existing residential dwellings on Dargle Wood and west of those on Scholarstown Park, a minimal degree of overshadowing is visible to the rear gardens at some periods throughout the year, in particular the winter months.
- On the 21st of March all of the existing amenity garden spaces, would continue to receive at least 2 hours of sunlight in line with the BRE recommendations.
- All of the proposed public/communal amenity areas exceed the BRE recommendations of at least receiving at least 2 hours of sunlight on the 21st of March.
- All but one of the rear garden/terraces of the duplexes achieve the recommended 2 hours of sunlight over at least half of the area provided on the 21st of March. Out of 53 front terrace amenity areas at ground level, the majority of them achieve the recommended 2 hours of sunlight on the 21st of March, 48 in total. Out of 53 balcony spaces, the majority of them achieve the recommended 2 hours of sunlight on the 21st of March, 48 in total. Overall, taking into consideration the occupants of the duplexes that have access to further private amenity spaces (as outlined on Page 68-69 of the Daylight Report), 97% of the properties have access to amenity spaces that exceed the BRE recommendations.
- The results highlight 81% of the balconies (in the Build-to-Rent apartments) would receive at least 2 hours of sunlight on the 21st of March

exceeding the BRE recommendations, 250 No. in total. The majority of these spaces are almost measuring 100% of the area exceeding the BRE recommendation. The remaining balconies (19%) that do not achieve this target are north facing amenity spaces and are performing as expected due to the orientation of the buildings within the development. The majority of these balconies are overlooking a large open space and as such, they would continue to provide a positive outlook and quality private outdoor amenity space for the occupants. Further to this, the additional images from section 6.4 highlight that these balcony spaces perform well in the warmer months when occupants of the dwellings will more frequently use these spaces.

- All tested rooms in the scheme are projected to have an Average Daylight Factor (ADF) above recommended ADF in line with BRE Guidelines.
- Overall, the results demonstrate that the proposed development performs in line with BRE recommendations in the BRE 'Site Layout Planning for Daylight and Sunlight' guide.

Specific Assessments

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.

In our professional planning opinion, the proposed buildings heights are not considered to be a height requiring such an assessment.

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.

The AA Screening Report prepared by Openfield Ecological Services has found that significant effects are not likely to arise, either alone or in combination with other plans or projects that will result in significant effects to the integrity of the Natura 2000 network.

A Bat Assessment has been prepared by Brian Keeley and is enclosed as a separate document which concludes that none of the buildings on site have been shown to be a bat roost. Some 12 No. bat boxes are proposed to provide bat roost opportunities in line with the recommendations of the Bat Assessment Report (6 No. on trees and 6 No. on buildings). All the mature trees within the site shall be examined for the presence of bats prior to felling by a bat specialist. Should bats be noted in any tree, it is a protected structure and a derogation must be sought.

The Bat Assessment Report notes that *'it is predicted that this development will have no direct impact upon the conservation status of bats.'*

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

N/A

An assessment that the proposal maintains safe air navigation.

It is considered that there is sufficient distance from the subject site to Tallaght Hospital helipad, Baldonnel Aerodrome, Weston Airport and Dublin Airport and as such the development is not anticipated to have a resultant impact on air safety.

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

The site comprises 2 No. residential buildings which are not of architectural merit. We note that the 'Architectural Heritage' Chapter of the EIAR (Chapter 6) carried out by Molloy & Associates states that:

'The demolition of both dwellings is proposed to facilitate the redevelopment of their combined lands.

Notwithstanding the tenuous social connection of 'Beechpark', the structure's demolition is justifiable given that it does not possess architectural merit, is positioned central to the subject lands and inevitable development of same lands.

Potential impact of proposed demolitions

The proposed demolition of two mid-20th century dwellings, neither of which possess architectural character of significance, will not arise in an adverse impact.

Potential impacts for Ros Mor

Notwithstanding measures taken to mitigate impacts, the proposed scheme will alter the current character of lands and consequentially, outward vistas from upper rooms of Ros Mor. In response, the landscaping design concentrates on supplementing existing vegetative buffers between the protected structure and the subject lands. It has also benefitted from the naturally lower topography of the site, further reducing visual impacts.

Principal reception rooms are likely to be positioned at garden level. Present vistas are therefore likely to be culminated by the vegetative buffer along the proposed site boundary. It is assumed that existing tall trees along this buffer were planted to inhibit a clear view of the presently uncultivated subject site, and instead direct a vista towards cultivated formal gardens in the foreground. The setting of Ros Mor is therefore defined by the character of its own, introverted gardens, the character of which will remain unchanged by the proposed development.

Potential impacts associated with the proposed development are therefore inherently reduced by existing screening measures.

Potential impacts associated with the construction phase of the development will be considered by way of introducing a range of mitigating measures to protect boundaries and

a Gate Lodge attached to Ros Mor, such as boundary screening, monitoring and provision of security.

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

A comprehensive EIAR has been submitted separately as part of this planning application. An Appropriate Assessment Screening Report and Biodiversity EIAR Chapter (Chapter 7) prepared by Openfield Ecological Services have been submitted in conjunction with the application.

TOC Comment: Having regard to the response to each element of the Development Management Criteria outlined above, it is clear that the proposed development is in accordance with the policies and objectives of the *Building Height Guidelines*. The application proposes a development comprising 7 No. blocks ranging in height from part 5 to part 6 No. storeys, 1 No. block ranging in height from part 4 to part 6 No. storeys, 9 No. duplex blocks which will be 3 No. storeys in height, a part 1 to part 2 No. storey ancillary amenity block and a 2 No. storey retail/café/restaurant block. The height is considered to be appropriate within the surrounding context having regard to the residential zoning and the Housing Capacity designation pertaining to the subject site. we reiterate the the site is located in proximity to public transport, employment locations, services and facilities.

It is our professional planning opinion that the subject site is capable of achieving additional height and density having regard to the introduction of the *National Planning Framework* and the *Height Guidelines* which encourages increased height and density on appropriate sites. It is considered that the design response ensures that the development potential of a strategically positioned underutilised plot is maximised without impacting the amenity of adjacent buildings and surrounding area having regard to the position of the highest forms at the least sensitive locations at the subject site.

4.3 ***Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2018***

The *Department of Housing, Planning and Local Government* published the updated *Sustainable Urban Housing: Design Standards for New Apartments* in March 2018.

These Guidelines update previous guidance in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply and projected need for additional housing supply out to 2020, the Government’s *Rebuilding Ireland – Action Plan for Homelessness, 2016* and the *National Planning Framework – Ireland 2040*, published since the 2015 Guidelines. We note that the Apartment Guidelines take precedence over any conflicting policies and objectives of development plans, local area plans and strategic development zone planning schemes.

The subject site is considered to be located in a intermediate urban location as set out in the Apartment Guidelines, which states the following:

'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 between 10-15 minutes or 1,000-1,500m of high capacity urban public transport stops (such as Dart, commuter rail or Luas) or within reasonable walking distance (i.e 5-10 minutes or up to 1,000 m) of high frequency (i.e 10 minute peak hour frequency) urban bus services or where such services can be provided;***
- ***Sites within easy walking distance (i.e up to 5 minutes or 400-500m) of reasonably frequent (min 15 peak hour frequency) urban bus service.***

TOC Comment: The subject site fronts Scholarstown Road and is served by the No. 15 bus route which is located c. 300 m to the west. As detailed in Section 3.4.1 of the Statement of Consistency, the No.15 bus route is a high frequency bus route with peak frequency services of 8 – 12 No. minutes. The No. 15b bus route has a peak frequency of 15 No. minutes.

Furthermore, we re-iterate that the subject site will benefit from planned national bus network investments i.e. bus connects as detailed at Section 3.4.2 of this report.

4.4 ***Regional Spatial and Economic Strategy for the Eastern and Midlands Region***

The Regional Spatial and Economic Strategy (or RSES) for the East and Midland Regional Assembly was adopted on 28th June 2019. From this document a number of core Regional Policy Objectives have emerged to work in concert with the National Planning Framework (NPF), and to guide all Local Authority future plans, projects and activities requiring consent of the Regional Assembly.

Under **RPO 4.3** 'Consolidation and Re-intensification' the following objective is stated:

'Support the consolidation and reintensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin city and suburbs and ensure that the development of future development areas is coordinated with the delivery of key water infrastructure and public transport projects.'

[Our Emphasis]

TOC Comment: The subject scheme will consist of 590 No. unit residential development comprising 480 No. Build-to-Rent apartment units and 110 No. Build-to Sell duplex units and apartments. The 480 No. 'Build-to-Rent' units will be provided in 7 No. part 5 to part 6 No. storey blocks and 1 No. part 4 to part 6 No. storey block and will comprise 234 No. one bed units and 289 No. two bed units with a resultant density of 110 No. units per hectare in the overall scheme. Therefore, the proposed development will result in the intensification of a underutilised site in an established residential area and the proposed development will result in the reintensification of an infill site in a built up area in accordance with the RSES.

4.5 South Dublin County Development Plan 2016 - 2022

As noted in Section 1.3 of this Report, Housing Policy 9 of the Development Plan outlines that:

'it is the policy of the Council to support varied building heights across residential and mixed use areas in South Dublin County' and the stipulation that the development should 'direct tall building that exceed five storeys in height to strategic and landmark locations'.

In addition, Housing Policy 8 stipulates that:

'it is the policy of the Council to promote higher residential densities at appropriate locations and to ensure that the density of new residential development is appropriate to its location and surrounding context'. An objective of H8 is to '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).'

We reiterate that it is our professional planning opinion that in order to comply with Housing Policy 8 (promoting higher densities at appropriate locations), strict adherence to Housing Policy 9 cannot be achieved. Therefore, the policies of the Development Plan are conflicting in this regard.

TOC Comment: Having regard to the above policies and objectives of the Development Plan, the proposed scheme which involves the development of an existing underutilised, strategically located site is fully in accordance with Housing Policy 8. It is our professional opinion that the subject site can comfortably accommodate 2 and 3 No. storey blocks adjacent to the north, east and west boundaries adjacent to residential properties with the higher part 4 to part 6 No. storey blocks positioned at the least sensitive locations throughout the site (i.e. towards the centre of the site and along Scholarstown Road). The high quality scheme represents the proper planning and sustainable development of the area. We also note that an LVIA (Chapter 8 of the EIAR) and Daylight/Sunlight Analysis have been carried out and are submitted with this application.

We further reiterate that objective 3 of Housing Policy 3 stipulates that is a policy:

'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.'

It is our professional planning opinion that an appropriate design response has been presented for the subject development and provides sensitive transitions from the neighbouring 2 No. story dwellings in line with Objective 3 of Housing Policy 9.

Therefore, although we consider that the policies are conflicting in the Development Plan, in the interest of completeness, we have prepared this Material Contravention Statement to ensure that a robust assessment of the subject scheme is carried out in relation to Housing Policy 9.

5.0 CONCLUSION

According to Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, An Bord Pleanála may grant permission for a Strategic Housing Development where national policy takes precedence over the objectives of the Development Plan as prescribed in Section 37 (2)(b) of the *Planning and Development Act (as amended)*.

As noted throughout this Material Contravention Statement, the *South Dublin Development Plan 2016 – 2022* outlines that buildings that exceed 5 No. storeys in height should be located at strategic and landmark locations. We note that this policy objective was adopted prior to the introduction of the *Building Height Guidelines 2018*. An Bord Pleanála and Planning Authorities must have regard to these Guidelines, and we note with particular reference to the Specific Planning Policy Requirements (SPPRs) set out in the *Building Height Guidelines*, these elements are mandatory. SPPR 1 of the Guidelines notes that blanket numerical limitations on building height shall not be provided for through statutory plans therefore the imposition of the height restriction at the subject site would be contrary to SPPR 1.

However, we also note that the Development Plan outlines that it must be ensured that the density of residential development needs to make efficient use of zoned lands and maximise the value of existing and planned infrastructure and services, including public transport, physical and social infrastructure. Therefore, as set out in this Report, it is our opinion that the policy objectives are conflicting.

It is our opinion that the site has the capacity to accommodate increased height as set out within this Material Contravention Statement.

It is our professional planning opinion that as the *South Dublin Development Plan 2016 -2022* was prepared prior to the adoption and progression of national policy, the subsequent NPF, the Building Height Guidelines and Apartment Guidelines take precedence over local level objectives relating to 5 No. storey height limit.

The proposed scheme is considered to represent a material contravention of the Development Plan with regard to height however it is our professional planning opinion that the increased height and associated density proposed as part of the subject scheme represents the principles of proper planning and sustainable development and is fully in accordance with National Policy which seeks to increase height and density in appropriate core urban areas.

The subject site is suitably located to accommodate additional height in line with National Policy due to its sustainable location (as set out in the *Apartment Guidelines, 2018*) in close proximity to public transport, employment locations, services and facilities.

Having regard to the reasons set out in this Material Contravention Statement for increased height it is our professional planning opinion that An Bord Pleanála should be favourably disposed to granting permission for the subject scheme in accordance with Section 37 (2)(b) of the *Planning and Development Act, 2000 (as amended)*.

