

Material Contravention Statement

Proposed SHD

**Lands at Cornelscourt Village,
Old Bray Road, Cornelscourt,
Dublin 18**

On behalf of

Cornel Living Limited

December 2019



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1 INTRODUCTION

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin are instructed to prepare this Material Contravention Statement on behalf our client **Cornel Living Limited, Riverside One, Sir John Rogerson's Quay, Dublin 2.**

The development proposal subject of this statement provides for of **468 Built to Rent residential units, a café / restaurant, office space (for tenants) and residential tenant amenity space, all located on a site of c. 2.14 ha on lands at Cornelscourt Village, Old Bray Road, Dublin 18.**

The development proposed in this case provides for heights of 1 to 12 storeys and this statement details the basis for consideration of a material contravention of the County Development Plan in relation to building height specifically.

It is acknowledged that it is ultimately the decision of An Bord Pleanala as to whether the proposed development represents a material contravention of the Dun Laoghaire Rathdown County Development Plan 2016-2022 and if minded to do so, can grant permission for the proposed development by reference to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).

1.1 Legislative Context

This Statement has been prepared in compliance with **section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act, 2016** and **section 37 (2)(b) of the Planning and Development Act, 2000 (as amended)**. The relevant provisions from each of these documents is set out below:

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

“Section (8)(1) Before an applicant makes an application under Section 4(1) for permission, he or she shall –

(a) Have caused to be published, in one or more newspapers circulating in the area or areas in which it is proposed to carry out the strategy housing development, a notice – ...

(iv) stating that the application contains a statement – ...

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

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

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

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

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

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

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

This material contravention statement is submitted on the basis that (a) the proposal currently before An Bord Pleanala is of strategic importance; (b) there are conflicting objectives in the relevant Development Plan; and (c) the proposal can be positively considered on the basis of Section 28

guidance published post the adoption of the relevant Development Plan for the area, namely, the Dun Laoghaire Rathdown County Development Plan 2016-2022.

In the first instance, the proposed development is considered to be of strategic importance, that being, the proposal qualifies as a Strategic Housing Development by virtue of the nature of the definition identified under the Planning and Development (Housing) and Residential Tenancies Act, 2016.

In the second instance, the objectives in the Building Height Strategy (Appendix 9 of the Dun Laoghaire Rathdown County Development Plan) as they relate to the subject site are conflicting, as the suburban limiters applicable using the 'upward modifiers' would permit a development of max 6 storeys in height. However, the Strategy also explicitly encourages greater building height and density along the N11 corridor, with no numerical limit applied.

In the third instance, is submitted that the proposed development aligns with the national policy mandate and Section 28 ministerial guidelines issued on the matter of height, which were published post the adoption of the Dun Laoghaire Rathdown County Council Development Plan. Furthermore, there are conflicting objectives in the County Development Plan as they relate to height for the subject site.

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

2 COMPLIANCE WITH NATIONAL POLICY AND MINISTERIAL GUIDELINES

The proposal has been designed with full complement to the direction set out in National Planning Policy and Ministerial Guidelines. There is a clear mandate for higher density development and increased building height on appropriately located sites and it is our considered view that the subject site is one such location.

The various policies and objectives of relevance are set out below followed by a response from the applicant in terms of compliance.

2.1 National Planning Framework (2040)

The 'National Planning Framework 2040' sets out the following Objectives:

National Policy Objective 11:

“In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.”

- ⇒ The site is of strategic importance both within the settlement of Cornelscourt and within the County area. The lands in question are significantly underutilised; are greenfield in nature; and have the benefit of adjacency to the N11 corridor and Cornelscourt village. The site is also significant in size at 2.14 ha and is appropriately zoned to deliver residential development.
- ⇒ The proposal offers a range of benefits and wider planning gain including an exceptional public realm proposal; quality residential amenity facilities and significant connections to the N11, adjoining development; and Cornelscourt Village.
- ⇒ The development has the potential to add a significant population to the local area (c. 1,337 persons) and has direct access to a high quality public transport corridor along the N11. New residents will support the vibrancy and vitality of Cornelscourt village and have easy access to local employment centres via the N11 corridor.

National Policy Objective 13:

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

- ⇒ The subject proposal has been designed as an exemplar architectural model by award winning architects, Henry J Lyons.
- ⇒ The development meets and exceeds all relevant performance criteria, as set out in this Report.

National Policy Objective 33:

“Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.”

- ⇒ The site is critically underutilised serviced land, adjoining a quality bus transport corridor. It is eminently suitable for increased building height and residential density.

- ⇒ The development responds to its context and provides a successful transition in scale from the village setting to the N11 corridor. There is a clear urban design rationale for the transition in height, which is carefully modulated to respond to the context.
- ⇒ The scheme has fully considered existing levels of residential amenities at adjoining residential developments. We note in particular that developments at Willow Grove and Cornelscourt village were a primary focus of the design evolution of the scheme. The development has been carefully designed to ensure there are no significant/adverse impacts arising by way of overlooking, overbearing or overshadowing of existing units by way of this proposal.
- ⇒ As set out in accompanying documentation, there are a number of similar developments along the N11, which set precedent for tall buildings along this key public transport corridor.

National Policy Objective 35:

“Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site based regeneration and increased building heights”.

- ⇒ The current proposal for 468 residential units in a development of 1-12 storeys in height is a well designed, high quality scheme and one that delivers an appropriate residential density (c. 229 units per ha), which is mandated by national planning policy.
- ⇒ The existing residential areas surrounding the site are inherently low density, as evident in mature established estates such as Willow Grove, Kerrymount and St Brigid’s Park. These areas feature large dwellings on substantial plots, which is an inefficient use of valuable land. The subject proposal aims to rebalance residential density in the area and provide a variety of contemporary typologies that will appeal to a range of household formats.

Based on the above, it is respectfully submitted that the development accords with the key principles of the National Planning Framework.

2.2 Apartment Guidelines (2018)

The ‘Sustainable Urban Housing: Design Standards for New Apartments (2018)’ are also relevant for consideration in this report given the Section 28 Ministerial nature of this guidance document. This guidance was published after the publication of the Dun Laoghaire Rathdown County Development Plan 2016-2022.

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

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

As set out above, the 2018 Apartment Guidelines explicitly direct that the scale and extent of apartment development should increase on sites that are proximate to urban centres and public transport. The subject site is located adjacent to a high frequency public transport corridor and is

located within an existing village settlement, with easy access to shops and amenities. The scale of development proposed in this case is therefore supported by the Apartment Guidelines.

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

2.3 Urban Development and Building Heights (2018)

The publication of the **‘Urban Development and Building Heights, Guidelines for Planning Authorities (2018)’** Section 28 Ministerial Guidelines is intended to set out national planning policy guidelines on building heights in relation to urban areas. These guidelines are the most recent form of guidance from the Minister on the matter of building height and were formally adopted in December of 2018. The publication of these Guidelines is critical in that they take precedence over any conflicting policies and objectives contained within statutory plans. Specifically, we note that these guidelines were published by the Minister in 2018, which is post the adoption of the Dun Laoghaire Rathdown County Development Plan 2016-2022.

The height guidelines contain Specific Planning Policy Requirements (SPPRs). We acknowledge at this time that Section 9 (3) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016, provides in effect **that the requirements of an SPPR will take precedence over any conflicting provisions of the Development Plan:**

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

We note also that section 1.14 of the Guidelines published sets out the following:

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

With the above in mind, it is evident that the SPPRs take precedence over any guidance issued by the relevant Development Plan and it with this in mind that we set out below the relevant planning context for the proposed height in line with the Building Height Guidelines.

Policy Context

We note that the Guidelines states that *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. 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:***

- *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?*
- *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?*
- *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?

As a response to the above criteria, we note the following:

- As set out in the accompanying planning report and in Section 2.1 of this document, the proposal secures the relevant objectives of the National Planning Framework.
- The provisions of the Council's Building Height Strategy do not align with more recently policy and objectives contained within the National Planning Framework, The Apartment Guidelines and the recently adopted Building Height Guidelines. Section 3 sets out the details of this conflict.

Specific Planning Policy Requirements

The following SPPRs are considered particularly relevant to the current site context and compliance of the current scheme with same should be considered in assessment of building heights proposed.

SPPR1

“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.”

Applicant Response to SPPR1

The subject site is considered a suitable site for increased height on the basis that:

- It has significant site frontage onto the N11 transport corridor. The size of the site at 2.14ha and the greenfield nature of the site is particularly notable in this case.
- The site is considered a key suburban infill site and one of the last remaining sites for development along the N11. The site is also proximate to Cornelscourt Village and the application site offers a suite of new pedestrian/cyclist linkages to Cornelscourt village; the N11 and to adjoining developments.
- The site has excellent accessibility to public transport nodes. Most notably, the site is located adjacent to an existing Bus Priority Route along the N11 and ancillary bus routes along Old Bray Road. The site is also located in proximity to the Green Luas Line (1.8km) and the DART service (4.5km). The site is therefore well placed in terms of exceptional public transport accessibility.
- The current proposal is a BTR scheme and increased densities and heights are a fundamental requirement for this model.

SPPR 3 (A)

“It is a specific planning policy requirement that where;

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

Applicant Response to SPPR 3A

The performance of the proposal vis a vis the building height criteria is further assessed below in sub-section 'Development Management Criteria'. The consistency of the proposal with the National

Planning Framework has been clearly set out in the Planning Report enclosed and section 2.1 of this report.

Development Management Criteria

We refer An Bord Pleanála to the enclosed Height Report prepared by Henry J Lyons Architects, which addresses in detail the matter of height vis a vis the development management criteria below. For the purpose of this statement of consistency, a detailed compliance response is set out below to demonstrate the performance of the scheme with the relevant criteria.

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.***
- ***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.***
- ***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.”***

Applicant Response:

- The site is situated immediately adjacent to an existing bus priority route/quality bus corridor at the N11 with bus services to the city centre running every 6 minutes on average. The N11 route also features dedicated cycle tracks connecting to the wider cycle network throughout the county. The mobility management plan enclosed from DBFL sets out that the site is a highly accessible location for both existing public transport nodes and future improvements for proposals. We also note that the current proposal delivers direct access to the N11 by way of a new cycle link, which is a significant planning gain in terms of the accessibility of the site to bus services at the N11.
- Careful consideration has been given to the successful integration of the scheme into the existing character and topography of the site and area. We note specifically that additional height is only proposed at locations where topography and existing site characteristics are favourable and in keeping within the surrounding development of the area i.e. along the N11. Building Height is intentionally sensitive at locations adjacent to the existing Willow Grove and the cottages at Cornelscourt Village to ensure an appropriate and sympathetic transition in scale.

The heights of the proposed blocks are in keeping with both the prevailing heights of existing development along the N11 and the nature of the topography of the site. We note specifically the following developments:

- Thornwood (8 storeys)
- Booterstown Wood (8 storeys)
- Merrion Hall Apartments (7 storeys)
- Beechwood Court (7-8 storeys)
- The Grange Apartments (9-10 storeys)
- Blakes Development (5-9 storeys)

These developments are outlined below:

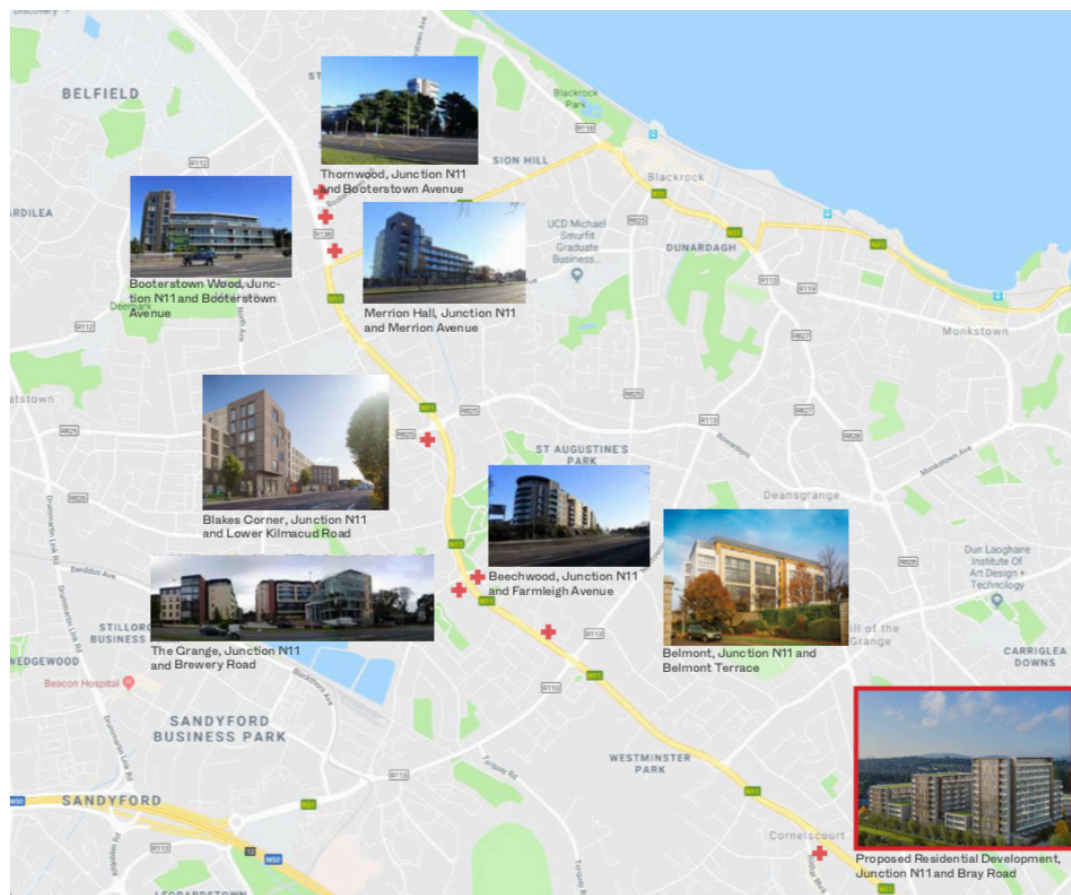


Figure 1 - Height Context along the N11

A recent application for Stillorgan Leisureplex has also granted heights of 2-8 storeys.

A Landscape and Visual Impact Assessment (LVIA) has been prepared by Mitchell & Associates in compliance with the above criteria and is enclosed as Chapter 12 of the EIAR submitted herewith. Visually, a total of 33 views are considered within the LVIA and we refer An Bord Pleanála to the detailed assessment of the views enclosed herewith for further detail on the visual impact of the proposal.

In summary however, we note the following comments in terms of the effects of the proposal on the landscape character of the area:

“The proposed development is well-researched and will provide a substantial volume of living accommodation within a relatively small space, complete with a range of associated recreational and social facilities and communal landscaped external spaces - a living environment of high quality which is both sustainable and durable. The scheme itself is designed in a manner which is respectful of its broader urban context and of the design details and fabric that sustain it. Whilst the higher rise elements of the scheme clearly contrast with its surrounding built context, it forms one of a series of higher rise elements already built, permitted or planned along the Stillorgan Road, signalling through its landmark scale, the location of Cornelscourt village on this main route into Dublin city. The development provides for public permeability into and through the site. The proposed development includes proposals to provide a significant quantum of new specimen trees throughout the scheme, to assist in the early integration of the new development into its existing context. In terms of its effects on landscape character and social and cultural amenity, it will provide moderate positive effects, which will be long term.”

- With regard to the contribution of the proposal to placemaking, we note that the proposal offers the potential to complete street frontage along Old Bray Road. The addition of a

café/element at this location will deliver activity at street level and will encourage permeability to the new development and to Cornelscourt village from the proposal and beyond.

The landscape masterplan proposed will deliver a superior public realm. A series of character areas and the additional of active and passive open space areas delivers a sense of place to the development. The proposal offers up a significant quantum of public open space at 7,511 sq m and is considered exceptional in terms of provision.

Massing and height has been given significant attention within the proposal. Careful placement of additional height along the N11 boundary has ensure that additional height can be accommodated within the site without compromising on the character of the local area. Specifically, a more sympathetic transition in scale is offered along existing boundaries with Old Bray Road and Willow Grove. This ensures the delivery of an integrated scheme in terms of maintaining existing heights along these boundaries. Similarly, the café element and overhead offices along the entrance to the site maintain the character of Cornelscourt village.

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 proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.***
- ***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 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 proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.”***

Applicant Response:

- The proposal responds to the natural and built environment for the reasons set out under the response to ‘at the scale of the relevant city/town’ above.
- Appropriate use of materials and fenestrations details and a coherent site height strategy are proposed by Henry J Lyons Architects to deliver appropriate massing and scale . We refer An Bord Pleanala to the Henry J Lyons drawings and design statement enclosed herewith for further details. Long, uninterrupted walls are avoided and appropriate fenestration is delivered on elevations.
- There is no inland waterway or marine frontage within the current proposal. We can confirm that a Flood Risk Assessment prepared by DBFL Consulting Engineers has been prepared as appropriate and we defer An Bord Pleanala to this document for further detail on the matter of flooding as it relates to the site. This document concludes that the proposal is appropriate for the site’s flood zone category C.
- The development utilises a strategic site along the N11, improving the streetscape and sense of place of the area. Internally, the site facilitates pedestrian/cyclist connectivity to both the surrounding area (new cycle connection delivered to the N11; a new pedestrian connection to Willow Grove, the N11 and Cornelscourt Village). These linkages will significantly improve the permeability of the site and immediate area and will also include the connectivity of the site and Cornelscourt Village to the N11 an beyond.

- An appropriate mix of units types and sizes are incorporated into the development proposal. The following mix is delivered in this regard.

468 units are proposed with Dwelling Mix as follows:

- 41 x studio apartment units (8.7%)
- 257 x 1 bed apartment units (55%)
- 136 x 2 bed apartment units (29%)
- 18 x 3 bed apartment units (3.9%)
- 10 no. 3 bed house units (2.1%)
- 6 no. 1 bed house units (1.3%)

Importantly, a mix of studio, 1, 2 and 3 bed apartments together with bungalow and semi – detached houses are delivered. As set out previously in this document, the applicant has undertaken significant research into the local demographic profile and the mix delivered is a direct reflective of current and future forecast market demands.

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.***
- ***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.”***

Applicant Response:

- The current proposal is accompanied by a Daylight and Sunlight Analysis, which confirms that there are acceptable levels of access to natural daylight and that there is no significant impact in terms of overshadowing. The design of the scheme has ensured that there is no significant overshadowing to adjoining properties or internally within the scheme. We note the following key point in this regard:
 - We note that Chapter 17 of the EIAR enclosed herewith sets out that on the 21st March, the existing amenity rear gardens of properties at Willow Grove and Bray Road currently receiving 2 hours of sunlight for over half their area, will continue to do so with the proposed development operational.
 - With regard to proposed amenity spaces, the analysis confirms that over half of the amenity spaces would receive at least 2 hours sunlight in line with BRE recommendations on 21st March.
 - With regard to daylight factors, 95% of the rooms in the new development are achieving Average Daylight Factor above BRE guidelines.

It is evident therefore from the above that there are no issues with overshadowing associated with the proposal.

- Due regard has been given to 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' and we refer further to Chapter 17 of the enclosed EIAR for further details on this issue.
- There is no requirement for compensatory design solutions.

Specific Assessments

The guidelines set out that 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 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.***
- ***An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.***
- ***An assessment that the proposal maintains safe air navigation.***
- ***An urban design statement including, as appropriate, impact on the historic built environment.***
- ***Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.”***

Applicant Response:

- We confirm that a full Environmental impact Assessment Report (EIAR) is submitted with this application. This is a comprehensive approach to the assessment of the impact of the development and specifically the building height on the surrounding context.
- Given the heights proposed within the development, impact assessment of the micro-climate effects is considered required in this case. A full and comprehensive microclimate assessment is included in the EIAR. The following conclusions are notable from Chapter 11 of the EIAR:

Standing Criterion

“The standing criteria applies to locations where leisure standing can occur for a long duration of time. Major locations for such criteria are balconies and public amenity spaces. Activities that would fall under standing would be waiting while walking the dog and conversations between residents.

Most of the locations – balconies and public amenity spaces show good compliance.

Marginal compliance was observed in the space between blocks A and F, and between block H and the semi-detached houses. These locations experience slight acceleration of wind due to the reduction in width of the passage as air travels through. However, it is below 10% of the year, so the locations remain usable for a major proportion of the year.”

Sitting Criterion

“The sitting criterion applies to locations where prolonged seating will occur. Such locations include public gardens, cafes and roof terraces. Sitting activities also are likely to occur in warmer conditions like spring to autumn rather than winter. Further popular times for sitting activities are the afternoon and evenings rather than early mornings or late night.

As such we have looked at these most optimum sitting times for the analysis.

The balconies of all blocks show excellent compliance with the requirements of the sitting criterion. Most of the courtyard also shows good compliance with the sitting criterion. The only

locations where the criterion is exceeded is the space between blocks A and F, and between block H and the semi-detached houses.

As seen with the standing criterion results, these locations experience slight acceleration of wind due to the reduction in width of the passage as air travels through. However, both locations may be classed more as locations of people movement rather than static locations. So marginal compliance would not be a concern.”

- The appointed ecologists, Openfield have confirmed that the matter of collision for bird or bat species is not a significant phenomenon known in Ireland.
- O'Connor Sutton Cronin has advised that microwave links used by the telecoms companies use direct “line-of-sight” to connect from one point to another, so if a tall building is placed along that line it could block the signal path. In this case, this matter is not considered to pose a risk.

O'Connor Sutton Cronin further advised that there are two types of links, the main trunk routes which typically use tall masts and high sites to avoid obstructions, and the smaller mini-links that connect from one mobile phone site to another and are at lower levels.

It is more likely that buildings would interfere with a mini-link, but this wouldn't be regarded as an “important telecommunication channel” as it can be re-directed and an alternative route found.

The most likely interference with a main microwave link would be in the city where there are a smaller number of tall masts operating.

It is in consideration of the above, we are satisfied that the proposal allows for the retention of telecommunications channels.

- The applicant has contacted the Irish Aviation Authority (IAA) and the Dublin Airport Authority (DAA) to ensure that the current proposal maintains safe air navigation.

The following advice was issued from the IAA in respect of the proposed development:

“I can confirm that from an Air Traffic Management(ATM) perspective, the proposed project at Cornelscourt does not have an impact on air navigation.”

The following advice was issued from the DAA in respect of the proposed development:

“I can confirm that the proposed development does not give rise to any concerns for DAA in relation to Dublin Airport.”

Correspondence is appended to the rear of the Statement of Consistency enclosed with this application, which confirms the above engagement.

- A Design Statement has been prepared and submitted by Henry J Lyons Architects. It is worth highlighting the there is no sensitivities associated with the site in terms of built heritage.
- An Appropriate Assessment Screening Report has been prepared and submitted by Openfield.

The following conclusions are notable as set out in Chapter 6 of the EIAR:

“After mitigation, no significant residual effects are likely to arise to biodiversity arising from this project during the operation phase.”

It is in consideration of the above that the current proposal for 1-12 storeys is submitted as fully complying with the provisions of the building height guidelines. The planning documentation, supporting material and the EIAR submitted herewith support the proposed development as lodged.

We are confident that the proposed development has addressed the specific development criteria requirements of the Guidelines and is in compliance with the key SPPRs and development criteria requirements. Most notably the site's location is considered to address the very spirit and intent of the Guidelines that being one proximate to a public transport corridor with high frequency services. The current site is therefore appropriate for increased building height and residential densities.

3 CONFLICT IN DEVELOPMENT PLAN POLICY

As set out earlier in this report, the Council's Development Plan pre-dates a number of key Section 28 Ministerial Guidance documents that should take precedence in this case.

It is submitted that the Council's Development Plan presents conflicting policies in relation to building height relative to the subject site. Appendix 9 of the Dun Laoghaire Rathdown County Development Plan 2016-2022 contains the Building Height Strategy, which predates the publication of the national Building Height Guidelines and SPPRs contained therein.

Again, we wish to set out that Section 9 (3) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016) of the 2000 Act, provides in effect **that the requirements of an SPPR will take precedence over any conflicting provisions of the Development Plan:**

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

This is a key point for consideration in this case.

The subject site is located in Cornelscourt village and is directly bounded by the N11 public transport corridor. In this regard, the site may be considered to fit into two of the categories listed in the Building Height Strategy:

- **Public Transport Corridors**
- **Residual Suburban Areas not included within Cumulative Areas of Control**

In relation to 'Public Transport Corridors' the text states:

“The N11, owing to its width, strategic importance, and public transport facilities, has the potential to become an attractive urban corridor enclosed by taller buildings of high quality, at locations which are also proximate to social and community infrastructure.

*The N11 corridor has seen a pattern of taller apartment schemes constructed at key corner sites along its route through the County. As such schemes are restricted from taking access directly from the N11, corner sites at junctions between the N11 and the larger side roads have been the most common location for intensification of development. These developments have tended to range from 3 to 7 storeys. **The width of the corridor, at over 40 metres, provides an opportunity for taller buildings to enclose this space.** (BMC Emphasis added)*

The site is also located within a 'residual suburban area not included within Cumulative Areas of Control' ie. there is no Local Area Plan or Masterplan to provide guidance on appropriate height. As noted in the Building Height Strategy, these areas include “Kilmacud, Mount Merrion, Booterstown, Ballinteer, Foxrock and so on”. In such areas the strategy states:

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

The height strategy refers to certain Exceptional Circumstances, where a case may be made for additional height at certain locations, having regard to upward and downward modifiers.

The Building Height Strategy envisages a potential max height of 6 storeys for the subject site being located in a “Residual Suburban Areas not included within Cumulative Areas of Control”.

However, as set out above, the Building Height Strategy also acknowledges that the N11 corridor has potential to accommodate buildings taller buildings, with established building heights of c.9 storeys evident along the route.

It is also noted that Chapter 5 (General principles) of the Building Height Strategy states that “Higher densities and mixed use development should be promoted along strategic public transport corridors in order to support sustainable development patterns. Increased building height at key locations, particularly junctions along major transport corridors, helps the legibility of the County”.

The subject site is located along the N11 which is the main public transport route within the County. The scale of the N11 and the critical mass it serves enables it to be an appropriate location to encourage higher densities, and increased heights in accordance with sustainable development patterns.

It is therefore respectfully submitted that the objectives in the Building Height Strategy as they relate to the subject site are conflicting, as the suburban limiters applicable using the 'upward modifiers' would permit a development of max 6 storeys in height. However, the Strategy also explicitly encourages greater building height and density along the N11 corridor, with no numerical limit applied.

We therefore invite An Bord Pleanala acknowledge the conflict in Development Plan policy and make a determination based on the merits of the scheme and having regard to appropriate national planning policy.

4 CONCLUSION

As set out in Section 37(2)(b) of the Planning and Development Act as amended, An Bord Pleanála may materially contravene a development plan where national planning policy objectives take precedence.

In particular, under Section 9(3)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan or Local Area Plans, the provisions of SPPRs must be applied instead. In the present context the most relevant of these requirements SPPR 3A of the Building Height Guidelines which applies to the assessment of this application to the Board. It is submitted that the performance criteria under Section 3.1 and 3.2 have been satisfied in this regard by the development as proposed.

In light of the foregoing, it is respectfully requested that An Bord Pleanála now have regard to the justification set out within this statement and determine that a Material Contravention can be permitted under the provisions of the Act.

This approach can be taken on the basis of the provisions of section 37(2)(b) (i) and (iii) of the Planning and Development Act, 2000 (as amended) and notably on the basis that:

- The proposed development is of strategic importance, that being that the proposal qualifies as a Strategic Housing Development by virtue of the nature of the definition identified under the Planning and Development (Housing) and Residential Tenancies Act, 2016.
- Permission can be granted for the proposal given the clear compliance of the proposed development with national policy and Section 28 guidance on the matter of height and specifically the recent publication of the following documents:
 - **‘Urban Development and Building Height - Guidelines for Planning Authorities (2018)’**
 - **‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018)’**; and
 - **‘Project Ireland: National Planning Framework 2040’.**
- There are conflicting objectives within the Dun Laoghaire Rathdown County Development Plan 2016-2022 - Building Height Strategy (Appendix 9).