

SHD Planning  
Application to  
An Bord  
Pleanála

Material  
Contravention  
Statement

Proposed Strategic  
Housing Mixed Use  
Development

A Proposed Mixed Use  
Development at 42A  
Parkgate Street,  
Dublin 8

For Ruirside  
Developments Limited

**JANUARY 2020**

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## 1 INTRODUCTION

This document has been prepared by Stephen Little & Associates, Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2, to address matters that may be considered to materially contravene the Development Plan, in accordance with Section 8 (1)(iv)(II) of the Planning & Development (Housing) and Residential Tenancies Act 2016.

Under Section 8(1)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016, where a proposed development is considered to materially contravene the objectives of the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the SHD application must include a statement indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2) (b) of the Act of 2000.

In considering whether there would be a departure from a fundamental provision of the statutory development plan, the relevant objective(s) must be identified and a determination made by the competent authority as to whether the proposed development, alone or cumulatively, would seriously prejudice the objective of the plan. An Bord Pleanála has discretion to grant permission for development that materially contravenes the development plan, other than in relation to land use zoning, subject to specific considerations. These considerations are identified in Section 2 below.

This statement, prepared by Stephen Little & Associates, seeks to address the possibility that the proposed development could be deemed by Dublin County Council or An Bord Pleanála to represent a material contravention of the following objectives of Dublin City Council as expressed Section 16.10.1 'Residential Quality Standards – Apartments', in its City Development Plan 2016-2022, specifically relating to:

- Dwelling Mix
- Apartment Floor Area

We acknowledge that it lies with An Bord Pleanála to determine whether the proposed development materially contravenes the Development Plan.

## 2 DISCRETION OF AN BORD PLEANÁLA TO GRANT PERMISSION FOR DEVELOPMENT THAT MATERIALLY CONTRAVENES THE DEVELOPMENT PLAN

In accordance with Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016 the Board may grant permission for a proposed strategic housing development that materially contravenes the development plan (and/or a local area plan), other than in relation to zoning. Section 9(6)(a) states:

*“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.”*

Section 9(6)(c) of the 2016 Act, states that the Board may only grant permission for a development that materially contravenes a development plan (other than in relation to the zoning of the land) 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)(b) of the Act of 2000 (as amended) states that where a proposed development materially contravenes the development plan, the Board may grant permission only 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.”*

### 3 PROPOSED DEVELOPMENT

The proposed development is described in detail in the plans and particulars that accompany the SHD planning application and in the planning application report prepared by this office.

Briefly the development comprises 481 no. Build to Rent residential units (66no. studio apartment units, 298no. 1-bed apartment units and 117no. 2-bed apartment units), commercial office (c. 3,698 sq. m), retail (c. 214 sq. m) and café/ restaurant (c. 444 sq. m) floorspace, public open space, private communal open space, car and bicycle parking, resident’s amenities and facilities and management space. The development is spread over six separate blocks, ranging in height from 8 storeys to 29 storeys. incorporating a partial basement level.

The application site encompasses the former Hickey’s factory site lying between Parkgate Street and the River Liffey. The site is generally bounded by Parkgate Street to the north, the River Liffey to the south, the junction of Sean Heuston Bridge and Parkgate Street to the east, and the Parkgate Place office and residential development to the west. The application site is located c. 200m north from Heuston Railway Station and Heuston Luas stop. The nearest bus stop(s) (Bus Stop No. 7078 and No. 1474) is located directly to the front of the application site at Parkgate Street.

### 4 LAND USE ZONING

Under the Dublin City Development Plan 2016-2022, the majority of the SHD application site is subject to the zoning objective, “Z5 – City Centre”, as are most of the lands in the immediate vicinity of the site. The strip of land along the southern part of the site which bounds the River Liffey is zoned ‘Z9 – Amenity/Open Space Lands/ Green Network’ and a small parcel of land to the north eastern boundary is zoned ‘Z6 – Employment/Enterprise’.

The land-use objective for the Z5 zoning seeks:

*“To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”*

The Development Plan indicates that a wide range of accommodation is to be provided in this zoning area which is sustainable and within easy reach of services, open space, facilities and public transport. The proposed uses are all acceptable in principle under the Z5 land use zoning objective.

The Z9 portion of the site along its southern boundary has the objective:

*“To preserve, provide and improve recreational amenity and open space and green networks.”*

Within the Z9 zoned land, the proposed development delivers a publicly accessibly riverside walkway in addition to the conservation of the existing riverside wall, turret and square tower, which are protected structures, and other buildings / structures of heritage interest (but not listed for protection) which for clarity, already exist within the Z9 land.

The application site (red line boundary) takes in the public footpath where a small area of Z6 zoning applies in the north eastern corner of the site. The Z6 objective seeks:

*“To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.”*

The footprint of the proposed new buildings do not encroach the Z6 zone. Some public realm enhancements works are proposed within this area.

It may be noted that a recently published report of the Assistant Chief Executive (Report No. 311/2019) states that it is proposed to re-zone this small parcel of Z6 zoned land to 'Z5 – City Centre' as part of a proposed variation of the Dublin City Development Plan 2016-2022.

Material contravention of the land use zoning does not arise in the case of the proposed development.

## 5 POTENTIAL MATERIAL CONTRAVENTION ISSUES – DEVELOPMENT PLAN STANDARDS

### 5.1 Dwelling Mix

Section 16.10.1 of the Dublin City Council Development Plan 2016 – 2022 (hereafter: Development Plan) sets out the requirements in relation the mix of dwellings provided as part of new apartment developments, which are as follows: -

- “A maximum of 25-30% one-bedroom units”
- “A minimum of 15% three- or more bedroom units”

The unit mix proposed as part of this development is as follows: -

Unit Type	No. of Units	Percentage of Total
Studio Apartment	66	14%
1 Bed Apartment	298	62%
2 Bed Apartment	117	24%
<b>Total</b>	<b>481</b>	<b>100%</b>

We note however that ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (March 2018) contains a “Specific Planning Policy Requirement” in relation to dwelling mix requirements (SPPR 1) and (SPPR 8), which takes precedence over any conflicting policies and objectives of Development Plans.

See Section 6.2.1 below for justification for proposed unit mix based on SPPR8 of the Apartment Guidelines.

### 5.2 Floor Areas

The Development Plan sets out minimum floorspace standards for apartments. In the case of studio apartments, the Development Plan specifies a minimum floor area of 40sq m.

‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (March 2018) set the minimum floor area for studio apartments at 37sq m. There is a corresponding difference then also to minimum room width standards.

See Section 6.2.2 below for justification of studio apartment floor area standards based on SPPR8 of the Apartment Guidelines.

## 6 JUSTIFICATION FOR MATERIAL CONTRAVENTION

As noted in Section 2 above, Section 37(2)(b) of the Planning Act, 2000, states that where a proposed development materially contravenes the Development Plan, the Board may grant permission 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.”*

We set out below our interpretation of how the Section 37(2)(b) considerations relate to the proposed development, from a planning perspective: -

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

The proposed development was deemed on foot of a pre-application request and subsequent tri-partite meeting with An Bord Pleanála and Dublin City Council, to meet the legislative definition of strategic housing development. It may therefore be deemed of strategic importance with respect to the timely delivery of urban housing and implementation of the current Government’s Action Plan for Housing and Homelessness – Rebuilding Ireland.

The significant shortfall in housing output to address current and projected demand is a national problem, with lack of housing in Metropolitan Dublin and elsewhere having social and economic ramifications for sustainable national growth. We would therefore submit that the proposed development is of strategic and national importance.

The proposed development is considered to be in accordance with Objective 3a of the National Planning Framework. The proposed development represents the achievement of more sustainable higher density residential development, in line with existing and emerging transportation facilities within the vicinity of the application site.

Furthermore NPO 36 seeks to put in place Section 28 Ministerial Guidelines to improve the evidence base, effectiveness and consistency of the planning process for housing provision to meet varying housing needs at regional, metropolitan and local authority levels. For example, in reconciling future housing requirements effectively it is identified that in Dublin city, while one, two and three person households comprise 80% of all households, the housing stock is largely comprised of 3 and 4-bedroom houses and that this needs to be rebalanced in the interests of meeting the needs of a range of household types.

Further justification of the national strategic importance of promoting higher density at this brownfield urban site on the edge of Dublin City, so as to implement the regional and ministerial policy recommendations for sustainable growth to meet population projections, deliver housing and support employment opportunities, is set out in the next justification criterion below.

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

The City Development Plan was adopted before the publication of the National Planning Framework (NPF), the Regional Economic and Spatial Strategies for the Eastern & Midlands (RSES) and Dublin Metropolitan Area Strategic Plan (DMASP), and the ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (March 2018).

Therefore, the principal justification for the Board in contravening the Development Plan standards relating to dwelling mix and minimum studio apartment floor area, where this is considered a material contravention, would be to ensure that strategic level planning policy and the Special Planning Policy

Recommendations of Ministerial Guidelines relevant to the proposed development at this site are implemented.

### 6.2.1 Residential Dwelling Mix

The National Planning Framework 2040 states in respect of 'Performance-Based Design Standards' that:

*"To enable brownfield development, planning policies and standards need to be flexible, focusing on design led and performance-based outcomes, rather than specifying absolute requirements in all cases. Although sometimes necessary to safeguard against poor quality design, planning standards should be flexibly applied in response to well-designed development proposals that can achieve urban infill and brownfield development objectives in settlements of all sizes. This is in recognition of the fact that many current urban planning standards were devised for application to greenfield development sites and cannot account for the evolved layers of complexity in existing built-up areas."*

The NPF notes that "7 out of 10 households in the state consist of three people or less" and also that "Household sizes in urban areas tend to be smaller than in the suburbs or rural parts of the country". In respect of Dublin, the NPF notes in addition that "In Dublin city, one, two and three person households comprise 80% of all households."

In this regard, it is an NPF objective in respect of 'Housing Demand' that: -

*"Between 2018 and 2040, an average output of at least 25,000 new homes will need to be provided in Ireland every year to meet people's needs for well-located and affordable housing, with increasing demand to cater for one- and two-person households. Within this figure, there is a wide range of differing housing needs that will be required to be met."*

National Policy Objective 36 of the NPF seeks to put in place Section 28 Ministerial Guidelines to improve the evidence base, effectiveness and consistency of the planning process for housing provision to meet varying housing needs at regional, metropolitan and local authority levels. For example, in reconciling future housing requirements effectively it is identified that in Dublin city, while one, two and three person households comprise 80% of all households, the housing stock is largely comprised of 3 and 4-bedroom houses, and that this needs to be rebalanced in the interests of meeting the needs of a range of household types.

The census 2016 indicates that 1-2 person households now comprise a majority of households and this trend is set to continue. Ongoing demographic and societal changes mean the expanding categories of household that may wish to be accommodated in apartments include young professional and workers generally and co-habiting couples without children.

The application site at Parkgate Street is located in the Phoenix Park DED. According to the results contained on the CSO web site (<http://census.cso.ie/P1map21/>) the immediate area around the site (Phoenix Park ED/Arran Quay D/Ushers A/Arran Quay C/Ushers B) had an average household size of 2.14 persons in 2016. This compares to a City wide average household size of 2.49 persons in 2016. This highlights the need for greater numbers of studios, 1 and 2 bedroom units to cater for household sizes between 1 – 3 people in this particular area.

**Specific Planning Policy Requirement (SPPR) No.8** of the Apartment Guidelines (2018) states that no restrictions on dwelling mix shall apply to declared 'Build to Rent' residential development .

### 6.2.2 Apartment Floor Area

Section 16.10.1 of the Dublin City Development Plan 2016-2022 specifies a minimum floor area for studio apartments at 40sq m. The Apartment Guidelines however set the minimum at 37sq m. There is a corresponding difference between minimum room width standards.

Studio apartments were introduced as a unit type in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' (2015), but limited to specific circumstances such as 'built to let' managed accommodation. The Guidelines published in March 2018 have been updated *inter alia* to reflect the potential that studio apartments can contribute to both meeting the housing need and to the viability of apartment schemes.



Under **SPPR3** of the Guidelines the minimum size of studio apartments is adjusted slightly, to min. 37 sq m, to enable modular developments and a 'mix and match' approach between studios and the minimum size of two bedroom apartments.

The proposed development is compliant with SPPR1 in respect of declared Built to Rent apartment scheme, delivering the following range of apartment sizes:

- Overall, the proposed apartment units range in size between 37 – 78 sq m floor area.
- 14% of the proposed units are studio apartments, meeting a minimum floor area standard of 37.1 sq m. Suitable for 1 person.
- 64% of the units are one bedroom units, ranging in size from 45.3 – 78 sq m floor area. Suitable for 2 to 4 persons
- 24% of the units are two bedroom units, ranging in size from 51.9 – 77 sq m floor area. Suitable for 2 to 4 persons.
- All individual rooms, floor areas and room widths comply or exceed the design guideline requirement.

The proposed development delivers a variety of residential accommodation capable of catering for a range of household sizes.

The minimum studio apartment floor area standard is approximately half that of the minimum two-bedroom apartment floor area standard. The minimum one-bedroom apartment standard is half that of the minimum three bedroom apartment standard. This facilitates future adaptability to respond to changes in demographic profile and housing demand over time.

It may be further noted that **SPPR 8** of the Apartment Guidelines (2018) states that the requirement that the majority of all apartments in a proposed scheme exceed the minimum floor areas standards by a minimum of 10% shall not apply to BTR schemes, due to the requirement to provide compensatory communal facilities and amenities for use by residents.

The proposed development provides c. 1,839 sq. m of internal communal amenity space and a further c. 2,727 sq. m quality communal open space in the form of attractive high quality landscaped south facing communal courtyard between the rear finger blocks (C and B) and a number of high quality, convenient and easily accessible roof terraces. Within the internal communal amenity spaces are shared work spaces, multi-functional space, lounge/TV rooms, child play room, café, games rooms, gym, quiet areas and concierge for use by residents.

Storage requirements are provided entirely within the apartments and additional storage for bulky items is located to adjacent upper floor stair cores which may be used as shared storage for residents or landlord use. In addition, the ground floor of the development will have a dedicated storage room for post and parcel delivery adjacent to the reception areas.

A detailed Housing Quality Assessment has been prepared by Reddy Architecture and Urbanism, demonstrating compliance with the required residential design standards for apartments.

Further detail on residential amenity design, apartment layout and amenity open space is provided in the Architectural Design Statement, prepared by Reddy Architecture and Urbanism, and in the Landscape Design Report, prepared by Mitchell & Associates, that accompany the planning application.

## 7 CONCLUSION

We respectfully submit that, should the Board consider the proposed development a material contravention of the residential design standards of the Dublin City Development Plan, relating to dwelling mix and apartment size, appropriate justification is set out above, having regard to the relevant Section 37(2)(B) criteria of the Planning Act.