

## **Material Contravention Statement**

Strategic Housing  
Development at Trusky  
East, Trusky West,  
Freeport and Ahaglugger,  
Bearna, Co. Galway



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# 1. INTRODUCTION

This Statement of Material Contravention has been prepared by MKO on behalf of Burkeway Homes Limited, Third Floor, Queensgate, Dock Road, Galway in support of an application to An Bord Pleanála (“the Board”) for permission for a strategic housing development located at on lands located at Trusky East, Bearna, Co. Galway. The application is made pursuant to the provisions of the *Planning and Development (Housing) and Residential Tenancies Act 2016*.

The development will consist of:

- 1) Demolition of existing outbuildings
- 2) Construction of 121 no. residential units comprising
  - 52 no. houses (37 no. three-beds, 15 no. four-beds)
  - 4 no. duplex units in Duplex Block D1 (2 no. two-beds (ground floor units) and 2 no. 3 beds (2 storey units))
  - 8 no. duplex units in Duplex Block D2 (4 no. two-beds (ground floor units) and 4 no. 3 beds (2 storey units))
  - 6 no. duplex units in Duplex Block D3 (3 no. two-beds (ground floor units) and 3 no. 3 beds (2 storey units))
  - 14 no. duplex units in Duplex Block D4 (7 no. two-beds (ground floor units) and 7 no. 3 beds (2 storey units))
  - 4 no. duplex units in Terrace Block T5 (2 no. two-beds (ground floor units) and 2 no. 3 beds (2 storey units))
  - 14 no. Apartments in Apartment Block A1 (5 no. one-beds, 9 no. two-beds)
  - 13 no. Apartments in Apartment Block A2 (4 no. one-beds, 9 no. two-beds and a Multipurpose Room)
  - 2 no. Apartments in Apartment Block A3 (2 no. two-beds)
  - 4 no. Apartments in Apartment Block A4 (4 no. two-beds)
- 3) Development of a crèche facility (224.80 sqm) associated outdoor play areas and parking
- 4) Provision of a footpath connectivity link along the L1321
- 5) Provision of shared communal and private open space, car and bicycle parking, site landscaping and public lighting, decommissioning of the existing wastewater treatment plant and provision of all services, access from the L-1321 via the Cnoc Fraoigh development and all associated site development works
- 6) Provision of a public linear park along the Trusky Stream

This Statement of Material Contravention has been prepared in accordance with Section 8(1)(iv)(II) of the *Planning and Development (Housing) and Residential Tenancies Act 2016* in order to address 2 no. aspects of the proposed development.

Firstly, the proposed development which, as set out above, comprises a scheme for 121 no. residential units, when considered together with residential development already delivered in Bearna during the currency of the Galway County Development Plan 2015-2021 (GCDP) and extant permissions for residential development in Bearna, exceeds the population allocation of 420 persons or 130 units in the Core Strategy of the development plan (as varied by Variation No. 1) which is reflected in Section 1.3 of the “Bearna Plan”, which was adopted as Variation 2(a) of the development plan. Accordingly, it is considered that the proposed development materially contravenes the Core Strategy in this regard.

The second matter relates to height, specifically Objective UD2 of the Bearna Plan, which states:

*“Objective UD2 - New Buildings - Building heights, widths and material finishes shall be in keeping with the character and scale of existing development in the area and shall be appropriate to the locality, site context and building function. A maximum building height of*

*two and half storeys will generally apply but reduced building heights will be required in visually vulnerable locations e.g. coastal side of the road. Increased building heights may be considered in exceptional circumstances where they contribute positively to the village character and design, subject to a high standard of urban design and have no adverse impacts on amenity.”*

The proposed development includes 3-storey Apartment blocks and 3 storey Duplex Blocks, which is marginally higher than the generally applicable maximum height of two and half storeys. In line with the wording of Objective UD2, it is contended that the increased building height is provided in exceptional circumstances, contributes positively to the village character, is of a high standard urban design and has no adverse impacts on amenity and is therefore compliant. However, based on the fact that elements of the proposed development are in excess of two and half storeys, it is acknowledged that the proposal constitutes a material contravention of Objective UD2 in this regard.

The third matter relates to parking, specifically the requirements of DM Standard 22: Parking Standards of the GCDP with regard to car parking standards for childcare facilities. DM Standard 22 states the following;

*“DM Standard 22: Parking Standards - Car parking should be located to the rear of building lines where possible. Large areas of car parking should be accompanied by a landscaping plan to mitigate the visual impact of same. In assessing applications for change of use or for replacement buildings within towns and villages, an allowance will be given for former site use in calculating the car parking requirements generated by the new development. In relation to infill sites and sites adjacent to public transport corridors or civic parking facility, a flexible application of standards will be considered. In addition to car parking, sufficient space will be required within a development site for all service vehicles necessary for the operation of the business or building, including drop-off areas, loading/unloading areas etc. In relation to Car Parking Design Standard Dimensions refer to Section 16 of the DoEHLG/DoT/DTO Traffic Management Guidelines and to the Metric Handbook Planning and Design Data (3rd Edition).*

*The following parking requirements will be applied for different types of development:*

***a) Dual Use Parking and Mixed Use Developments***

*The Council will encourage the provision of dual use parking areas where peak times of users do not coincide. In mixed use developments it may therefore not be necessary to meet full parking standards where it can be shown that shared parking is viable.*

***b) School Parking***

*All applications for new schools and where possible extensions to schools will be required to prioritise access safety and will indicate safe access and egress to the school for pupils, parents and students. A Road Safety Audit which should cover the public-private interface will be required in some cases. Drop off facilities will be required in accordance with Department of Education & Skills Guidelines. Off road parking for teachers and bus/car collection will be indicated in all cases as well as secure bicycle parking facilities.*

***c) Parking in Residential Areas***

*In general, residential layouts should not be dominated by car parking along access roads. New residential development should take account of the following criteria:*

- Car parking for detached and semi-detached housing should be within the curtilage of the individual house site;*
- Car parking for apartments and terraced housing should be within the curtilage of the individual house site.*

***d) Car Parking Standards***

The Table 13.5 illustrates the car parking standards for different types of development: (It should be noted that a flexible approach to these standards may be applied where such a case is substantiated, there is no traffic safety issue, and it is clearly demonstrated to the Planning Authority in the interest of proper planning and development, that the standard should be adjusted to facilitate the site specific context).

Table 1: Relevant Extract of Table 13.5

<b>Development</b>	<b>Car Parking Standard</b>
<b>*Childcare Facilities</b>	1 car parking space per staff member + 1 car parking space per 4 children
<b>*A setdown area may be appropriate in certain circumstances.</b>	

**e) Disabled Parking Requirements**

Car parking provision shall be provided for the disabled and mobility impaired in all car-parking developments and should be located in the most convenient locations for ease of uses. The minimum criteria for such parking provisions are detailed in the National Disability Authority Guidelines Building for Everyone published in 2002 (including any updated/superseding document).

**f) Bicycle Parking Standards**

In compliance with Smarter Travel Policies, secure cycle parking facilities shall be provided in new office, residential, retail and employment generating development. Larger developments should provide a broad range of facilities for cyclists to encourage increased cycle usage, including cycle parking facilities, lockers, changing rooms and shower facilities. Bicycle parking shall be located in a prominent position within 30m of the facility served. A bicycle parking bay shall be 0.8m wide and 1.8m long. The bicycle park should have a shelter and be signposted. Provision must be made in the development for bicycle parking spaces in accordance with the standards outlined within The National Cycle Manual, by the National Transport Authority, in particular Section 5.5.7 which deals with the allocation of cycle parking for developments.”

It is considered that 14 no. spaces would be required for the childcare facility having regard to the standard set out in table 13.5 of the GCDP; 8 for children (1 parking space per every 4 children) and 6 for staff having regard to Schedule 6 and 7 of the Child Care Act 1991 (Early Year Services) Regulations 2016 (S.I No 221 of 2016). The proposed development provides for 8 no. spaces (4 for staff and 4 drop-off spaces). However, it is noted that the DM Standard 22 states that a set down area may be appropriate in certain circumstances for childcare facilities. It is also stated that “a flexible approach to these standards may be applied where such a case is substantiated, there is no traffic safety issue, and it is clearly demonstrated to the Planning Authority in the interest of proper planning and development, that the standard should be adjusted to facilitate the site specific context”. Part C of DM Standard 22 also notes that ‘residential layouts should not be dominated by car parking along access roads.’ It is contended that 8 no. parking spaces will adequately serve the childcare facility. There are no traffic safety issues associated with the proposal, and the reduced number of car spaces will avoid a car dominated environment and encourage sustainable transport. However, based on the fact that a set down area is provided as opposed to the required number of spaces, it is acknowledged that the proposal may constitutes a material contravention of DM Standard 22 in this regard.

This statement provides a supporting rationale for the Board to grant permission, pursuant to its statutory powers, notwithstanding the material contravention of these policies and objectives of the Galway County Development Plan 2015-2021.

2.

## LEGISLATIVE CONTEXT

This application for permission for a strategic housing development located at on lands located at Trusky East, Bearnna, Co. Galway is made pursuant to the provisions of the *Planning and Development (Housing) and Residential Tenancies Act 2016* (“the 2016 Act”).

Under Section 8(1)(iv)(II) of the 2016 Act , where a proposed strategic housing development materially contravenes the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the application must include a statement indicating why permission should, nonetheless, be granted, having regard to a considerations specified in section 37(2)(b) of the Planning and Development Act 2000 (“the 2000 Act”).

This statement on Material Contravention is submitted in accordance with Section of 8(1)(iv) of the *Planning and Development (Housing) and Residential Tenancies Act 2016*.

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 or local area plan, other than in relation to zoning:

*(6)(a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned.*

*(b) The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land.*

*(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.’*

Section 37(2)(b) of the 2000 Act (as amended) provides 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.*

### 3. PLANNING POLICY CONTEXT

#### 3.1 Galway County Development Plan 2015-2021

The overall development context of Bearna is set within the context of the County Development Plan and the site is governed by the policies and provisions contained in the Galway County Development Plan 2015-2021 (“the GCDP”). The GCDP was adopted by the members of Galway County Council on 26th January 2015 and has been effective from 23rd February 2015. The Galway County Development Plan 2015-2021, including Chapter 2 thereof, was varied by Variation No.1 adopted on 24 April 2017. In addition, on the 23rd July 2018, Variation No.2(a) to the Galway County Development Plan 2015-2021 was adopted by Galway County Council, which incorporated the Bearna Plan into the Galway County Development Plan 2015-2021.

The GCDP sets out an overall strategy for the proper planning and sustainable development of the functional area of Galway County Council. Chapter 2 of the GCDP (as varied by Variation No. 1) sets out the overarching Spatial Strategy of the County, references the development options considered for the growth and details the preferred development options chosen. It details the Core Strategy and sets out the application of regional population targets to the settlement hierarchy determined as part of the Spatial Strategy. The Core Strategy is an integral component of the Spatial Strategy. It transposes the population targets for Galway set out in the Regional Planning Guidelines and allocates them throughout the County, which in turn determines the Settlement Hierarchy and provides a rationale for the amount and location of land required to accommodate the anticipated growth. Bearna forms part of the Galway Metropolitan Area, which is on the first tier in the Settlement Hierarchy.

The “*Core Strategy Table: February 2015*” at page 25 of the GCDP (as varied by Variation No. 1) includes a list of all key towns and larger villages and provides a population growth allocation for each for the period 2015 to 2021. The Core Strategy Table also includes an assessment of the *quantum* of residentially-zoned land available to meet the population growth allocation. In the case of Bearna, the table indicates that, over the plan period 2015-2021, Bearna has been assigned a population growth target of 420 persons, a housing land requirement (including over zoning) of 12.12 hectares, and a housing units yield on residential land of 130 units. The Core Strategy Table also provides an *indicative* density specification of 16 units per hectare for Bearna. According to section 2.4.11, this is an “*indicative density assumption[s] for the purposes of calculating the development land requirements for the various settlements listed within the table*”.

#### 3.2 Variation No.2(a) to the Galway County Development Plan 2015-2021 (Bearna Plan)

On the 23rd July 2018, Variation No.2(a) to the Galway County Development Plan 2015-2021 was adopted by Galway County Council, which incorporated the Bearna Plan into the GCDP. Accordingly, the proposed site is governed by the policies and provisions contained in the Bearna Plan, which is part of the GCDP.

The Bearna Plan is underpinned by a common vision to guide the future growth, development and improvement of Bearna in a manner that is sustainable, achieves the overall objectives set for Bearna in the GCDP, including the Core Strategy, and reflects the existing landscape, environment, heritage, character and amenity of the village with the stated aim of improving the quality of life of the local community.

As set out in the Planning Report and Statement of Consistency accompanying this application, the subject site is comprised of lands that are zoned for Residential (Phase 1) development and for Open Space/Recreation and Amenity (“OS”) within the Bearna Plan. All of the lands zoned ‘OS’ within the subject site are also identified as being under Constrained Land Use. There are two areas within the



lands zoned 'R' where Objective CCF6 applies, however, all proposed buildings will be located on lands zoned Residential (Phase 1) that are not subject to Objective CCF6. The proposed footpath connectivity link along the L-1321 is proposed on lands zoned 'TI – Transport Infrastructure' and partially on lands zoned for the 'Proposed Bearna Inner Relief Road'. The entire site extends to 5.38ha and the portion of the site zoned Residential (Phase 1) extends to 3.47ha.

The Bearna Plan, at Section 1.3, expressly references the population allocation in the core strategy:

*“1.3 Settlement Hierarchy/Core Strategy*

*Bearna is located within the Galway Transportation and Planning Study (GTPS) area and is a key settlement in the Galway Metropolitan Area, which is on the first tier in the settlement hierarchy. A key component of the Bearna Plan is to ensure that it aligns with the Core Strategy/Settlement Strategy, as set out in the Galway County Development Plan. The Core Strategy indicates that Bearna has been assigned a population growth target of 420 persons by 2021 with a land allocation of 12.12 hectares provided to accommodate new residential development over the plan period.*

In relation to building height, Objective UD2 of the Bearna Plan states:

*“Objective UD2 - New Buildings - Building heights, widths and material finishes shall be in keeping with the character and scale of existing development in the area and shall be appropriate to the locality, site context and building function. A maximum building height of two and half storeys will generally apply but reduced building heights will be required in visually vulnerable locations e.g. coastal side of the road. Increased building heights may be considered in exceptional circumstances where they contribute positively to the village character and design, subject to a high standard of urban design and have no adverse impacts on amenity.”*



4.

## MATERIAL CONTRAVENTION

The following is a statement on Material Contravention in accordance with Section 8(1)(iv) of the *Planning and Development (Housing) and Residential Tenancies Act 2016*. It is considered that the proposed development materially contravenes the Galway County Development Plan 2015-2021, as varied, in relation to core strategy and height.

The test for determining whether a contravention of the development plan is material was set out in the High Court decision in *Roughan v. Clare County Council*<sup>1</sup> and has been recently approved by the High Court in *Byrnes v. Dublin City Council*<sup>2</sup> and *Heather Hill Management Company CLG Anor. v An Bord Pleanála*<sup>3</sup>:

*“What is material depends upon the grounds upon which the proposed development is being, or might reasonably be expected to be, opposed by local interests. If there are no real or substantial grounds in the context of planning law for opposing the development, then it is unlikely to be a material contravention.”*

4.1

### Core Strategy

As outlined above, the Core Strategy Table in Chapter 2 of the GCDP (as varied by Variation No. 1) and Section 1.3 of the Bearná Plan, indicates that the core strategy population allocation for Bearná is 420 persons, with a land allocation of 12.12 hectares provided to accommodate new residential development over the plan period and a housing units yield on residential land of 130 units. The Core Strategy Table also provides an indicative density specification of 16 units per hectare, however section 2.4.11 indicates that this figure is an indicative density assumption provided for the purposes of calculating the development land requirement.

It is noted the previous application for the proposed development site for the development of 197 no. units, which was granted by An Bord Pleanála (ABP-302216-18), was set aside by the High Court in Judicial Review proceedings entitled *Heather Hill Management Company CLG & Anor. v An Bord Pleanála & Anor.* (High Court Record No. 2019/20 J.R.), on the grounds including that the proposed development materially contravened the Development Plan in relation to population allocation. For the sake of completeness, it should be noted that the decision of the High Court is a final decision in circumstances where that decision is not under appeal. In the substantive judgment delivered on 21st June 2019<sup>4</sup>, the High Court (Simons J.) concluded (at paragraph 54):

*“... a decision to grant planning permission for 197 units at Bearná self-evidently represents a material contravention of the plan. The permitted development, in and of itself, breaches the allocated number of residential units (130) by 50 per cent. If one calculates the population equivalent using the average household size of 2.6 specified in the County Development Plan (§2.4.11), the figure is 512 persons, i.e. the allocated population target is exceeded by almost 25 per cent. A breach of the population allocation on this scale is likely to excite local opposition. (The proposed development would result in an increase of the population of Bearná from approximately 2,000 to 2,500 persons). The breach is even greater when one factors in that, separately, planning permission has been granted for a further 48 residential units at Forramoyle East. See paragraph 21 above.”*

In that context, the Court had stated at paragraph 21 of its Judgment that:

<sup>1</sup> Unreported, High Court, Barron J., December 18, 1996

<sup>2</sup> [2017] IEHC 19

<sup>3</sup> [2019] IEHC 450

<sup>4</sup> [2019] IEHC 450

*“Separately, planning permission has been granted for 48 residential units at Forramoyle East (Reg. Ref. 17/134; An Bord Pleanála Ref. PL 07.246315). A small number of the population allocation is also accounted for by extant planning permissions granted within the Bearna Plan area. See the board inspector’s report at page 32.”*

It is clear from the foregoing that, in considering whether there is a material contravention of the GDCP in relation to population allocation, it is appropriate to consider not only the number of units comprised in the proposed development but also the number of units that have been or may yet be delivered in Bearna under the GDCP. In other words, the proposed development should be considered in light of the current unused portion of Bearna’s allocation of 130 residential units.

The current proposal is for 121 no. residential units on land zoned for Residential (Phase 1), which equates to a residential density of 35 units per hectare based on the 3.46ha of lands zoned residential.

The current proposal for 121 no. residential units does not of itself exceed the population allocation of 420 or the housing units yield of 130 in the Core Strategy Table. However, as outlined above, it is appropriate to consider the proposed development in light of the current unused portion of Bearna’s allocation of 130 residential units. Therefore, it is necessary to have regard to the number of units that have already been delivered in Bearna under the GCDP and number of units which have been authorised under extant permissions for residential developments in Bearna which have not yet been delivered.

Planning permissions for residential developments in Bearna granted under the current GCDP 2015-2021, which have either already been delivered or may yet be delivered pursuant to an extant permission, are identified below in order to ascertain how much of Bearna’s population allocation under the GCDP 2015-2021 is already accounted for.

Each site with a Phase 1 residential designation in Bearna was assessed to identify the planning permissions that had been granted under the GDCP. This information is set out in Table 2 and Figure 1 below and discussed further below.

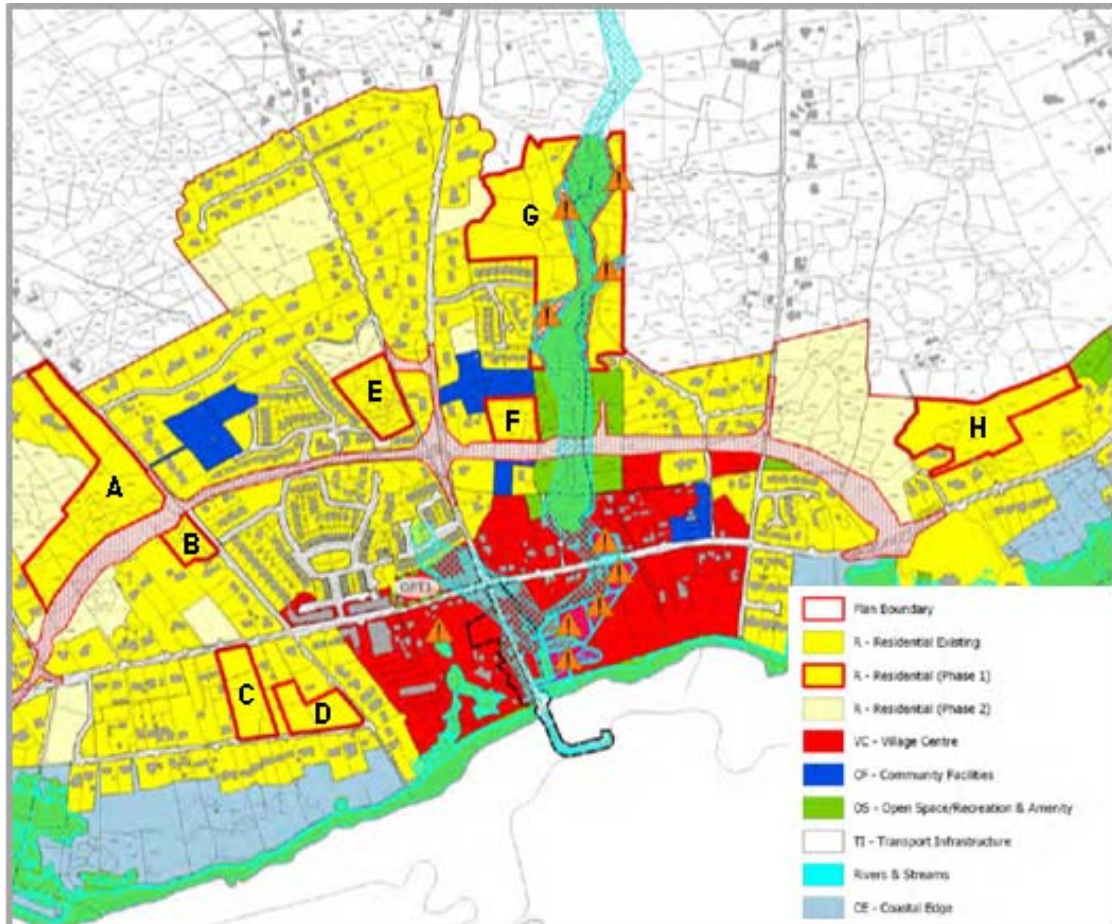


Figure 1: Current Bearna Residential Phase 1 Lands (Source: GCDP Variation 2(b) 2015-2021)

Table 2: Phase 1 Residential Lands in Bearna

Map Ref.	Committed to Dev.	Relevant Planning Ref No.'s.	No. of Units
A	Yes	Pl Ref 19/1749- for minor amendments to previously granted Pl Ref 18/1527 & 17/1314 (commencement notice submitted)	48 units
B	Yes	Pl Ref 19/1749- for minor amendments to previously granted Pl Ref 18/1527 & 17/1314	As above
C	No	N/A	N/A
D	Yes	N/A	N/A
E	No	N/A	N/A
F	No	N/A	N/A
G	No	Application Site	N/A

Map Ref.	Committed to Dev.	Relevant Planning Ref No.'s.	No. of Units
H	No	Pl. Ref 19/314	20 units

In addition to the lands zoned for Residential (Phase 1) development, it is noted that permission for the following developments has been granted on lands zoned 'Village Centre'

- > Pl Ref 16/147 – 15 no. units (commencement notice submitted)
- > Pl Ref 18/148 – 9 no. units
- > Pl Ref 17/1305 – 3 no. units
- > Pl Ref 18/1616 ABP 07.303685 – 1 no. units

Furthermore, a number of single dwellings houses have also been granted permission on lands zoned Existing Residential, Residential (Phase 2) development and on lands zoned as Coastal Edge:

- > Existing Residential
  - Pl Ref 20/135 – 1 no. units
  - Pl Ref 19/1437 (amendment to Pl Ref 18/1152 & 15/1204) - 1 no. units
  - Pl Ref 16/1448 – 1 no. units (commencement notice submitted)
  - Pl Ref 15/1367 (amendment to Pl Ref 15/684) – 1 no. units
  - Pl Ref 18/505 – 1 no. units
- > Residential (Phase 2)
  - Pl Ref 15/1460 – 1 no. units
  - Pl Ref 18/688 – 1 no. units (commencement notice submitted)
- > Coastal Edge
  - Pl Ref 17/1865 – 1 no. units (commencement notice submitted)

Aside from the proposed development, the number of residential units that have already been delivered or are in the process of being delivered (ie. a commencement notice has been submitted) in Bearna under the Development Plan is 70 units and the number of units for which there is extant permission is 34 units. When added to the 121 units in the proposed development, this provides a total of 225 units. This exceeds the housing units yield on residential land of 130 units in the Core Strategy Table by 95 units or by 73%.

Section 2.4.11 of the GCDP notes that the household sizes used in the calculations of the Core Strategy are 2.4 for Tuam and 2.6 for the remainder of the County. Using this average household size, the population figure for the number of residential units that have already been delivered or are in the process of being delivered in Bearna under the Development Plan is 182 people and the population figure for the number of units for which there is extant permission is 88 people. Using this average household size, the population figure for proposed development is 315 people. This would give a total population figure of 585 people which would exceed the core strategy figure of 420 people by 165 people or by 39%.

Finally, the density of the proposed development is 35 units per hectare based on the 3.46ha of the net site area which refers to the lands zoned for residential development. This exceeds the indicative density specification of 16 units per hectare for Bearna in the Core strategy Table. While section 2.4.11 indicates that this figure is a density assumption for the purposes of calculating the development land requirements for the various settlements listed within the table, the proposed development by itself could be considered to be in breach of the indicative density specification in the Core Strategy Table.

The current proposal seeks permission for 121 no. units, a 39% reduction on the number of units granted under ABP-302216-18. When considered in isolation the proposed development is below the core strategy allocation of 420 people/130 no. units. However, as outlined above when considered together with the number of residential units (66) that have already been delivered or are in the process of being delivered in Bearna under the Development Plan and the number of units for which there is extant permission (34) referred to above, the number of units in the Core Strategy Table is exceeded by 95 units or by 73% and the population allocation in the Core Strategy Table and in the Bearna Plan is exceeded by 165 people or 39%. Finally, the density of 35 units per hectare on lands zoned residential exceeds the indicative density specification of 16 units per hectare for Bearna in the Core Strategy Table. Accordingly, it is considered that having regard to the judgment of the High Court in *Heather Hill Management Company CLG Anor. v An Bord Pleanála*, the proposed development, when considered together with residential development already delivered and other extant permissions for residential development in Bearna, would materially contravene the development plan.

Notwithstanding this material contravention, An Bord Pleanála may, and in this instance should, nevertheless grant permission for the proposed development having regard to the considerations specified in Section 37(2)(b) of the 2000 Act, for the reasons set out in section 4.3 below.

## 4.2 Height

As previously noted, Objective UD2 of the Bearna Plan, adopted as *Variation 2(a)* to the GCDP, outlines the general maximum height for new Buildings in Bearna:

*“Objective UD2 - New Buildings - Building heights, widths and material finishes shall be in keeping with the character and scale of existing development in the area and shall be appropriate to the locality, site context and building function. A maximum building height of two and half storeys will generally apply but reduced building heights will be required in visually vulnerable locations e.g. coastal side of the road. Increased building heights may be considered in exceptional circumstances where they contribute positively to the village character and design, subject to a high standard of urban design and have no adverse impacts on amenity.”*

The proposed development includes 3-storey Apartment blocks and 3 storey Duplex Blocks, which is marginally higher than the generally accepted maximum height of two and half storeys. However, in line with Objective UD2, it is considered that the increased building height is provided in exceptional circumstances, contributes positively to the village character, is of a high standard urban design and has no adverse impacts on amenity.

It is submitted that the increased building height is provided in exceptional circumstances. The proposal will provide 121 no. units and constitutes a significant delivery of new residential development in line with the principles of the Rebuilding Ireland to accelerate housing supply. Given that Galway is currently acutely affected by the housing crisis there is a considerable divide to be bridged in order to bring housing provision from its current under-supply to the level required to accommodate the population growth forecasts. However, it is important that more sustainable urban development patterns are established in order to facilitate targeted services and infrastructure investment. The purpose of this type of approach would be to achieve more compact urban growth. The proposed development of 121 no. residential homes is in accordance with the aspirations described above.

Overall, the proposed development contributes to the village character, is of a high standard and complies with the Department of Environment, Housing and Local Government (“DoEHLG”) ‘Urban Design Manual: A Best Practice Guide (2009)’. The proposed design vision is set out in the enclosed Architectural Design Statement prepared by MDO Architects. In terms of design, the apartment buildings within the scheme are at a scale respectful to the local context. The two storey blocks reflect simple vernacular forms while the three storey buildings are provided with a mix of stone, render and



panel system to create a vertical emphasis, dividing the building into sections, reducing the legible scale to that of the context. The impacts on amenity have also been central to the design methodology. The provision of two-story houses at the West and Southwest of the site was the appropriate design response at this location. This would allow houses to back on to the existing houses with back gardens to back gardens in a traditional manner. The three storey blocks located to the east of the scheme are positioned away from existing residential developments and will overlook the linear park maximising passive surveillance. The three storey blocks along with all proposed residential units in the scheme are set out to ensure minimum separation distances are achieved. A minimum of 22m separation distance is ensured between first floor windows for all units in the development which back onto each other. This approach has remained consistent from an early stage in order to ensure a respectful approach to the existing context.

In light of the above considerations, it is considered that the proposed development is compliant with Objective UD2. It is considered that the increased building height will have no adverse impacts on amenity. However, in the event that the Board concludes that the proposed development constitutes a material contravention of Objective UD2 – on the basis that elements of the proposed development are in excess of two and half storeys – the Board may, and in this instance should, nevertheless grant permission for the proposed development having regard to the considerations specified in Section 37(2)(b) of the Act of 2000, for the reasons set out in section 4.3.

## 4.3 Parking

As previously noted, DM Standard 22 of the GCDP, outlines the following car parking standards:

***DM Standard 22: Parking Standards*** - Car parking should be located to the rear of building lines where possible. Large areas of car parking should be accompanied by a landscaping plan to mitigate the visual impact of same. In assessing applications for change of use or for replacement buildings within towns and villages, an allowance will be given for former site use in calculating the car parking requirements generated by the new development. In relation to infill sites and sites adjacent to public transport corridors or civic parking facility, a flexible application of standards will be considered. In addition to car parking, sufficient space will be required within a development site for all service vehicles necessary for the operation of the business or building, including drop-off areas, loading/unloading areas etc. In relation to Car Parking Design Standard Dimensions refer to Section 16 of the DoEHLG/DoT/DTO Traffic Management Guidelines and to the Metric Handbook Planning and Design Data (3rd Edition).

*The following parking requirements will be applied for different types of development:*

### ***a) Dual Use Parking and Mixed Use Developments***

*The Council will encourage the provision of dual use parking areas where peak times of users do not coincide. In mixed use developments it may therefore not be necessary to meet full parking standards where it can be shown that shared parking is viable.*

### ***b) School Parking***

*All applications for new schools and where possible extensions to schools will be required to prioritise access safety and will indicate safe access and egress to the school for pupils, parents and students. A Road Safety Audit which should cover the public-private interface will be required in some cases. Drop off facilities will be required in accordance with Department of Education & Skills Guidelines. Off road parking for teachers and bus/car collection will be indicated in all cases as well as secure bicycle parking facilities.*

### ***c) Parking in Residential Areas***

*In general, residential layouts should not be dominated by car parking along access roads. New residential development should take account of the following criteria:*

- Car parking for detached and semi-detached housing should be within the curtilage of the individual house site;
- Car parking for apartments and terraced housing should be within the curtilage of the individual house site.

**d) Car Parking Standards**

The Table 13.5 illustrates the car parking standards for different types of development: (It should be noted that a flexible approach to these standards may be applied where such a case is substantiated, there is no traffic safety issue, and it is clearly demonstrated to the Planning Authority in the interest of proper planning and development, that the standard should be adjusted to facilitate the site specific context).

Table 3: Relevant Extract of Table 13.5

<i>Development</i>	<i>Car Parking Standard</i>
<i>*Childcare Facilities</i>	<i>1 car parking space per staff member + 1 car parking space per 4 children</i>
<i>*A setdown area may be appropriate in certain circumstances.</i>	

**e) Disabled Parking Requirements**

Car parking provision shall be provided for the disabled and mobility impaired in all car-parking developments and should be located in the most convenient locations for ease of uses. The minimum criteria for such parking provisions are detailed in the National Disability Authority Guidelines Building for Everyone published in 2002 (including any updated/superseding document).

**f) Bicycle Parking Standards**

In compliance with Smarter Travel Policies, secure cycle parking facilities shall be provided in new office, residential, retail and employment generating development. Larger developments should provide a broad range of facilities for cyclists to encourage increased cycle usage, including cycle parking facilities, lockers, changing rooms and shower facilities. Bicycle parking shall be located in a prominent position within 30m of the facility served. A bicycle parking bay shall be 0.8m wide and 1.8m long. The bicycle park should have a shelter and be signposted. Provision must be made in the development for bicycle parking spaces in accordance with the standards outlined within The National Cycle Manual, by the National Transport Authority, in particular Section 5.5.7 which deals with the allocation of cycle parking for developments.”

It is considered that 14 no. spaces would be required for the childcare facility having regard to the standard set out in table 13.5 of the GCDP; 8 for children (1 parking space per every 4 children) and 6 for staff having regard to Schedules 6 and 7 of the Child Care Act 1991 (Early Year Services) Regulations 2016 (S.I No 221 of 2016). The proposed development provides for 8 no. spaces (4 for staff and 4 drop-off spaces), which is considered to adequately serve the childcare facility.

The current GCDP contains a degree of flexibility with regard to parking provision. DM Standard 22 states “a flexible approach to these standards may be applied where such a case is substantiated, there is no traffic safety issue, and it is clearly demonstrated to the Planning Authority in the interest of proper planning and development, that the standard should be adjusted to facilitate the site specific context”. In this regard a Stage 1 & 2 Road Safety audit has been undertaken for the proposed development and is submitted with the application. The Road Safety Audit has been carried out in accordance with the procedures and scope set out in TII publication number GE-STY-01024 – Road Safety Audit. The engineer’s response to the audit has been signed off and agreed with the RSA team. It is noted that DM Standard 22 states that a set down area may be appropriate in certain circumstances for childcare facilities. It is also stated that Part C of DM Standard 22 also notes that ‘residential layouts should not be dominated by car parking along access roads.’ The reduced number of car spaces will avoid a car dominated environment and encourage sustainable transport. It is considered that residents of the



proposed development will use the childcare facility and as such would not need to avail of the car parking/set down associated with the childcare facility. Similarly, the proposed development also provides for pedestrian connectivity to the village, which will also encourage residents of Bearna capable of reaching the childcare facility on foot to walk. It is also considered that the demand for parking spaces at the childcare facility will not endure throughout the course of the day. It is considered that patrons of the childcare facility travelling by car will only require a very brief slot for drop-off and pick-up and as such dedicated parking spaces are not required and a drop off area is considered acceptable.

Furthermore, Bearna is located within the Galway Transport Strategy (GTS) area and is subject to the development policies and controls that apply in this area under the Galway CDP. The proposed measures in the GTS were arrived at following transport modelling which included defining the existing transport problems, predicting future travel demands, access mode share and assessing their mutual impacts and interdependencies. The strategy includes traffic management, giving priority to walking cycling and bus movements, modifications to the traffic network, management of parking activities and heavy goods vehicles, improvements to the public realm and use of 'smarter mobility'. These measures are designed to both address the current significant problems and inefficiencies in the movement of people and goods within and around the city and to establish a long-term transport plan that will underpin the future sustainable growth of the city as supported by the Core Strategy. It is contended that proposed childcare facility parking is consistent with the Galway Transportation Strategy aspirations to restrict car parking and to lower the dependency on private car use and increase the use of sustainable travel methods.

However, based on the fact that a set down area is provided as opposed to the required number of spaces, it is acknowledged that the proposal may constitute a material contravention of DM Standard 22 in this regard.

In light of the above considerations, it is contended that the proposed development is compliant with DM Standard 22. It is considered that the setdown is appropriate in having regard to the limited time frame when parking is needed, the childcare facility's accessibility within the proposed scheme and within the wider bearna village and also having regard to the sites location within the GTS area and the associated requirement to lower the dependency on private car use. However, in the event that the Board concludes that the proposed development constitutes a material contravention of DM Standard 22 – on the basis that a car space is not provided for every staff member and every 4 children – the Board may, and in this instance should, nevertheless grant permission for the proposed development having regard to the considerations specified in Section 37(2)(b) of the Act of 2000, for the reasons set out in section 4.4.

4.4

## Justification for Grant of Permission in Material Contravention of the Development Plan

As outlined above in Section 2 above, section 9(6)(c) of the 2016 Act empowers the Board to grant permission for a proposed strategic housing 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 sets out 4 no. grounds on which the Board may grant permission for a development that materially contravene a development plan. In circumstances where there is no material contravention of any policy or objective of the Development Plan in relation to the zoning of land, it is considered that that permission for the proposed development may be granted on one or more of the following grounds:

4.4.1

## (i) The Proposed Development is of Strategic or National Importance

An Bord Pleanála *Overview Summary* document with respect to Strategic Housing Development (SHD) sets out the type and scale of development which are considered to constitute Strategic Housing Development. Planning applications for housing developments of more than 100 residential units and 200 plus student bed spaces can now be made directly to An Bord Pleanála. The Overview Summary goes onto state that:

*'This new type of application has been introduced as part of Rebuilding Ireland to speed up the planning application process and accelerate delivery of larger housing and student accommodation proposals.'*<sup>5</sup>

The strategic and national importance of the delivery of homes across the country is a fundamental principle of the *Rebuilding Ireland* programme. This programme sets out a range of measures to facilitate both the construction of new homes (including the SHD process) but also a range of schemes which facilitate social and affordable sale and lease models. A key concept of the *Rebuilding Ireland* programme state that it is:

*'Designed to accelerate housing supply in this country, Rebuilding Ireland is tackling our country's housing shortage. This action-driven plan will result in a dramatic increase in the delivery of homes nationwide.'*<sup>6</sup>

The strategic goals of the Government in relation to the delivery of new residential development, and their national importance, is reflected in the policies and objectives of the National Planning Framework and the Regional Economic and Spatial Strategies. A comprehensive assessment of the proposed development in respect of those publications is enclosed with this planning application submission. It is considered that the proposed development accords with the provisions of those documents.

The proposed development will deliver 121 no. residential units of which 12 no. units are ultimately intended to be social and affordable housing (as per Part V proposals outlined in the planning application submission). The proposed development will also deliver a childcare facility.

On the basis of the above it is considered reasonable to conclude that the proposed development which is the subject of this Strategic Housing Development application is of strategic importance and, therefore the Board may grant permission for the development notwithstanding that part of the proposed development materially contravenes the GCDP.

4.4.2

## (ii) Conflicting Objectives in the Development Plan

Bearna is located approximately 6km from Galway city, and is identified in the Galway County Development Plan 2015-2021 (as varied by Variation No. 1) (GCDP) as being located within Tier 1 - Galway Metropolitan Area (GMA), which is an identified gateway and vital economic driver for the entire West region. The GCDP states that significant employers include large public service and industrial organisations that draw employees for the network of satellite towns surrounding the City. Section 2.6.2 of the GCDP states, in relation to the GMA, that the future prosperity of towns and villages near the city and the quality of life of people living within the commuter band around Galway

<sup>5</sup> An Bord Pleanála. 2019. *Strategic Housing Development Planning Applications*. [ONLINE] Available at: <http://www.pleanala.ie/shd/general/overview/Strategic%20Housing%20Developments%20-%20Overview.pdf>. [Accessed 23 October 2019].

<sup>6</sup> *Rebuilding Ireland*. 2019. *Rebuilding Ireland - About the Plan*. [ONLINE] Available at: <https://rebuildingireland.ie/#About2>. [Accessed 23 October 2019].

city depend on the gateway and GMA retaining its dynamic growth trend. It continues by stating that given that the GMA attracts significant inward investment and is a provider of regional services and facilities, it is essential that the regional settlement strategy provides for the sustainable, dynamic development of the Galway Gateway and GMA to support the economic growth of the region.

It is considered that there are conflicting objectives in the development plan that relate to the proposed development. Specifically, Bearna's position in the GMA conflicts with the population allocation of 420 people, a housing yield of 130 units and an indicative density of 16 units in the Core Strategy Table on page 45 of the GCDP.

It is noted that Objective CS 2 and Objective CS 8 of the GCDP requires development to be consistent with the core strategy:

***“Objective CS 2 – Development Consistent with the Core Strategy - Galway County Council shall ensure that developments permitted within the County are consistent with the County population allocations set out in the Regional Planning Guidelines.”***

***“Objective CS 8 – Core Strategy and Demand for Development - Galway County Council is committed to ensuring that the overall population growth of the County complies with the level of growth set by the Regional Planning Guidelines and settlement hierarchy as outlined within the Core Strategy.”***

However, the requirement for development to be consistent with the core strategy (420 people/housing yield of 130 units/indicative density of 16 units) is in conflict with the following GCDP objectives:

***“Objective SS 1 – Galway Metropolitan Area - Galway County Council shall support the important role of Galway City and the Galway Metropolitan Area (which includes the City area and the Electoral Divisions of Oranmore, Bearna, Galway Rural and Ballintemple which are inextricably linked to and function as part of a greater Galway City), as key drivers of social and economic growth in the County and in the wider Western Region and will support the sustainable growth of the strategic settlements, including the future development of Ardaun and Garraun, within the Galway Metropolitan Area.”***

***“Objective UHO 10 – Sequential Development - Endeavour to promote the orderly and phased development of residential development in accordance with the principles of the sequential approach and as set out in the Sustainable Residential development in Urban Areas (Cities, Towns & Villages) Guidelines 2009 (or as updated). This shall include a positive presumption in favour of the sequential development of suitably serviced Residential (Phase 1) lands in zoned towns and villages. In un-zoned towns and villages, the presumption shall be in favour of sequential development emanating from the town/village core outwards, subject to compliance with the principles of proper planning and sustainable development and the County Development Plan. This objective will not refer to single house build. Regarding the phasing of undeveloped residential zoned land, development on Residential – Phase 2 lands will normally only be considered where 50% of the lands in Residential Phase 1 are committed to development.”***

***“Objective UHO 11 – Development Densities Galway County Council shall ensure that the density of new development is appropriate to the particular land use zone and/or site context, is in keeping with the existing development pattern of the area, does not unduly impact on the amenities of the area and results in a positive relationship between existing development and any adjoining public spaces. The development of higher density development shall be promoted in appropriate locations, such as suitable sites within the town/village centre and adjacent to public transport facilities, where such development is compatible with heritage and urban design objectives, infrastructure capacity and environmental considerations. New development shall also have regard to the ‘Sustainable Residential Development in Urban Areas’ Guidelines (or any updated/superseding document).”***

The core strategy allocation is in direct conflict with the policies outlined above. To support the function of the GMA, sustainable growth must be achieved. Objective UHO 10 and UHO 11 specify respectively that the development should be located on Residential (Phase 1 lands) and higher density development in appropriate locations should be promoted. UHO 11 also requires new development to have regard to the ‘Sustainable Residential Development in Urban Areas’ Guidelines. Section 5.11 of the guidelines state that densities in the general range of 35-50 dwellings per hectare should be encouraged on ‘Outer Suburban/Greenfield’ sites associated with cities and larger towns.

It is considered, that in order to provide for a development on Residential (Phase 1) zoned lands at an appropriate density (35-50 dwellings per ha), which supports the role of Bearna at the top of the settlement hierarchy, the core strategy allocations of 420 people and 130 units, and the indicative density specification of 16 units per hectare for Bearna in the Core strategy table must be exceeded.

Similarly, it is considered that Objective RD3 and DM Guidelines DM1 in the Bearna Plan conflict with the core strategy allocations. The objectives are outlined below:

**“Objective RD3 - Quality Housing Environments - Encourage the development of sustainable residential communities through the promotion of innovative, high quality building design and appropriate layouts, that prioritise walking, cycling and public transport options and provide for a high level of permeability, accessibility and connectivity to the existing built environment, services and facilities. In this regard, future residential development proposals will be in accordance with the principles set out in the DoEHLG document Sustainable Residential Development in Urban Areas 2009 and its companion document Urban Design Manual: A Best Practice Guide for Planning Authorities 2009, or any updated version of these documents published during the lifetime of this plan and shall also have regard to the design principles as set out in the Design Manual for Urban Roads and Streets (2013) (or as updated).”**

**“DM Guideline DM1 – Development Densities** The development of higher densities will need to be appropriate to the context and will be assessed based on the merits of the proposal and subject to good quality design, compliance with both qualitative and quantitative standards, location, capacity of the site and infrastructure to absorb development, existing character of the area, established densities on adjoining sites, protection of residential amenities, proximity to public transport, etc. The Planning Authority may use its discretion in varying these density standards. The development density guidance in the tables below indicate the range of densities generally considered appropriate in the various land use zones and in different residential locations within the plan area.”

Land Use Zone	Plot Area Ratio	Maximum Site Coverage	Minimum Public Open Space
Zone VC	1.00 to 1.25 PAR	80%	Site Specific
Zone R	0.10 to 0.50 PAR	50%	15%
Zone CF	Site Specific	Site Specific	15%
Zone OS	Site Specific	Site Specific	Site Specific
Zone CE	Site Specific	Site Specific	Site Specific
Zone PU	Site Specific	Site Specific	Site Specific
Zone TI	N/A	N/A	N/A

Land Use Zone	Dwelling Units/Ha	Dwelling Units/Acre	Possible Appropriate Locations
Medium to High	35-50	14-20	Village centre or immediately adjacent to public transport hubs.

Low to Medium	15-35	6-14	Neighbourhood centres (typically within 400m walking distance of centre point), inner urban suburbs
Low	5-15	2-6	Urban periphery, outlying lands, areas with capacity/environmental constraints.

Objective RD3 requires that future residential development proposals will be in accordance with the principles set out in the DoEHLG document Sustainable Residential Development in Urban Areas 2009. Section 5.11 of the guidelines state that densities in the general range of 35-50 dwellings per hectare should be encouraged on ‘Outer Suburban/Greenfield’ sites associated with cities and larger towns. DM Guideline DM1 Development Densities indicates that possible appropriate locations for densities of 35 - 50 units per hectare are “Village centre or immediately adjacent to public transport hubs” and possible appropriate locations for densities of 15 - 35 units per hectare are “Neighbourhood centres (typically within 400m walking distance of centre point), inner urban suburbs.” Both objectives are in conflict with the core strategy allocation which is based on an indicative density of 16 units, as set out in the Core Strategy Table on page 45 of GCDP.

While it is considered that the proposed development materially contravenes the Core Strategy, the proposed development is consistent with the objectives outlined above. The proposed development must be viewed in the context of its role in supporting the Galway City and the Galway Metropolitan Area in line with Objective SS1, and therefore the design team has sought to ensure that higher densities are achieved, while also ensuring that the open, residential character is maintained. The proposed residential development is located on lands zoned for Residential (Phase 1) development in accordance with Objective UHO 10, which provides for a positive presumption in favour of the sequential development of suitably serviced Residential (Phase 1) lands in zoned towns and villages. The proposal is also considered to comply with Objective UHO 11 and Objective RD3 which requires new development shall also have regard to the ‘Sustainable Residential Development in Urban Areas’ Guidelines. The subject site is classified as an ‘Outer Suburban/Greenfield’ site associated with cities and larger towns, with a density in the general range of 35-50 dwellings per hectare as per Section 5.11 of the guidelines. The proposed residential scheme provides 121 no. residential units on land zoned for residential development which extend to a net site area of 3.47ha resulting in residential density of 35 units per hectare which. A density of 35 units per ha is also considered acceptable having regard to ‘DM Guideline DM1 – Development Densities’.

Separately, in relation to parking it is also considered that Objective TI 9 and TI 11 conflict. The objectives are outlined below:

*“Objective TI 9 – Car Parking - Provide/improve parking facilities in towns and villages as development and traffic demand. The requirements for car parking shall be in accordance with the standards and guidelines as set out within Chapter 13 (Development Management Standards and Guidelines) of this plan under Guidelines for Transportation, Roads, Parking, Loading and Storage.”*

*“Objective TI 11 – Urban Street Network and the Design Manual for Urban Roads and Streets Support the treatment within the built areas of towns as urban streets that prioritise the needs of pedestrians, that facilitate cyclists wherever possible and that support public and private transport movements, stopping and parking, as appropriate. In this regard, the principles, approaches, and standards set out in the Design Manual for Urban Roads and Streets 2013 (including any updated/superseding document) shall be applied to new development as appropriate.”*

Objective TI 9 seeks to provide parking facilities in towns and villages as development and traffic demand, which suggests that parking should respond to and facilitate car dependency. In contrast Objective TI 11 requires the Design Manual for Urban Roads and Streets to be applied to new development. DMURS aims to end the practice of designing streets as traffic corridors, and instead focus on the needs of pedestrians, cyclists, and public transport users.

The primary objectives of DMURS are as follows:

- i. Prioritise pedestrians and cyclists in urban settings without unduly compromising vehicular movement.
- ii. Provide good pedestrian permeability and connectivity in urban environments in order to encourage walking.
- iii. Implement speed reduction measures to provide safe interaction between pedestrians, cyclists and motorists.
- iv. Create attractive streetscapes through the design of roads and footpaths with careful consideration given to landscaping and selection of surface finishes.

In this regard, it is considered that the the principles of DMURS are in direct conflict with the requirement to provide parking to respond to traffic demand as outlined in Objective TI 9.

Having regard to the conflicting objectives in the GCDP identified above in relation to the proposed development, it is submitted that the Board may, and should, grant permission for the proposed development, notwithstanding the material contravention of the Core Strategy as detailed above

#### 4.4.3 **(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**

##### 4.4.3.1 **National Planning Framework Project Ireland 2040 (February 2018)**

Under the provisions of the *National Planning Framework – Project Ireland 2040* (February 2018) (“NPF”) the Government has outlined the proposed long-term strategic planning framework to guide national, regional and local planning and investment decisions over the next 25 years. The NPF is a high-level document which provides a framework for future development and investment in Ireland, providing a long-term and place based aspect aiming to coordinate sectoral areas such as housing, jobs, transport, education, health, environment, energy and communications into an overall coherent strategy.

National Policy Objective (NPO) 35 specifically articulates the delivery of higher density residential developments across the county. NPO 35 is outlined as follows:

*“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**.”*(our emphasis added)

Taking the principles of compact urban development, it is considered that the density of new residential development within the existing Galway Metropolitan Area should be maximised. The proposed development represents an efficient use of land in the context of residential density and it is considered that it accords with the requirements to deliver new residential development in a sustainable manner within the existing urban footprint.

National Policy Objective 4 states:



*'Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.'*

It is considered that the proposed development represents an attractive, liveable, well designed and high-quality urban space. The proposed development and the developer's vision are set out in detail in the enclosed Architectural Design Statement prepared by MDO Architects.

National Policy Objective 13 states:

*'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.'* (Our emphasis added)

All relevant guidance as it relates to development management standards including height and car parking have been considered carefully in the design of the proposed development. In order to achieve targeted growth, design standards such as height must be considered based on performance criteria. The proposed provision of 3 storey buildings can be justified by the need for compact urban growth as outlined above. Similarly, the proposal to limit parking and provide a set down area at the childcare facility can be justified due to the accessibility of the site and the need to encourage the use of public transport, walking and cycling in line with national policy.

Similarly, the exceedance of the core strategy can be justified by the contribution of the development to the population growth targets outlined in the NPPF. There is a very significant population growth of an additional 180,000 people allocated to the Northern & Western Region in which Galway is the main urban centre. It is noted that the NPF seeks to promote a targeted pattern of development, which includes supporting the development of "Accessible Centres of Scale". In this regard Galway City and Suburbs are identified as accommodating up to 45,000 additional people which would equate in excess of 19,500 new dwellings with the GMA up to the year 2040.

The proposed development provides for 121 no. residential units and provides a significant response to Galway's housing needs in accordance with the population targets set out in the NPF.

It is submitted that permission for the proposed development should be granted, notwithstanding the material contravention of the Core Strategy (and, in the event that the Board so concludes, there is a material contravention of Objective UD2 in relation to height), having regard to the NPF on the grounds that the proposed development provides a significant response to Galway's housing needs in accordance the NPF.

#### 4.4.3.2 Regional Spatial and Economic Strategy (Northern & Western Regional Assembly) (January 2020)

The Northern & Western Regional Assembly (NWRA) adopted the *Regional Spatial and Economic Strategy* (RSES) on the 24<sup>th</sup> January 2020. As part of this RSES, a co-ordinated Metropolitan Area Strategic Plan (MASP) is prepared for Galway Metropolitan area. The RSES amplifies the provisions of the NPF and the MASP sets out the strategic direction the city will grow to achieve compact growth, as envisaged within the first national strategic outcome in the NPF.

As outlined in the MASP, in Section 3.6 of the RSES, the Galway Metropolitan Area has considerable land capacity that can significantly contribute to meeting the housing demands based on population targets set out in the NPF and RSES. The targets are as follows (*per* section 3.6.3.1 of the RSES):

1. *Population of Galway MASP to grow by 27,500 to 2026 and by a further 14,500 to 2031 with the population of the City and Suburbs accommodating 23,000 to 2026 and a further 12,000 to 2031.*



2. Deliver at least half (50%) of all new homes that are targeted within the MASP to be within the existing built-up footprint.

The Galway Metropolitan Area is the primary centre identified for growth in the north west region. Table 4 below outlines the MASP population targets as set out within Table 3 of the RSES:

Table 4: MASP Population targets (extracted from RESES)

Settlement	Population 2016 Census	% Increase to 2040 (min)	Uplift to 2040	Proposed 2026 uplift (min)	Proposed 2031 Uplift (min)	Transitional Target Population <sup>7</sup>
Galway City	79,900	50-55	42,000	23,000	12,000	115,000

The following Regional Policy Objectives also relates to the population targets:

*“RPO 3.2(a) Deliver at least 50% of all new city homes targeted in the Galway MASP, within the existing built-up footprint of Galway City and suburbs.(b) Deliver at least 40% of all new housing targeted in the Regional Growth Centres, within the existing built-up footprint.(c) Deliver at least 30% of all new homes that are targeted in settlements with a population of at least 1,500 (other than the Galway MASP and the Regional Growth Centres), within the existing built-up footprints<sup>8</sup>”*

A number of strategic locations have been identified that present the opportunity and capacity to deliver the necessary quantum of housing to facilitate targeted growth. These strategic locations are summarised on page 53 of the RSES (and set out below) and it is noted that Bearna is specifically referred to in this context:

*“> Consolidation of the existing neighbourhoods of Knocknacarra, Rahoon, Castlegar and Roscam.  
> Development of Regeneration Lands at Ceannt Station Quarter, Inner Harbour and Headford Road  
> Ardaun  
> Murrough  
> Baile Chláir, **Bearna**, Oranmore, Briarhill”* [Emphasis added]

These strategic locations are also shown on Figure 21 on page 53 of the RSES (extracted below) which identifies Bearna as having potential for residential sites.

<sup>7</sup> 2 Takes into account Transitional Regional and County Population projection to 2031 as set out in the implementation roadmap for the NPF published in 2018

<sup>8</sup> 3 built up footprint of settlement is that defined by the CSO

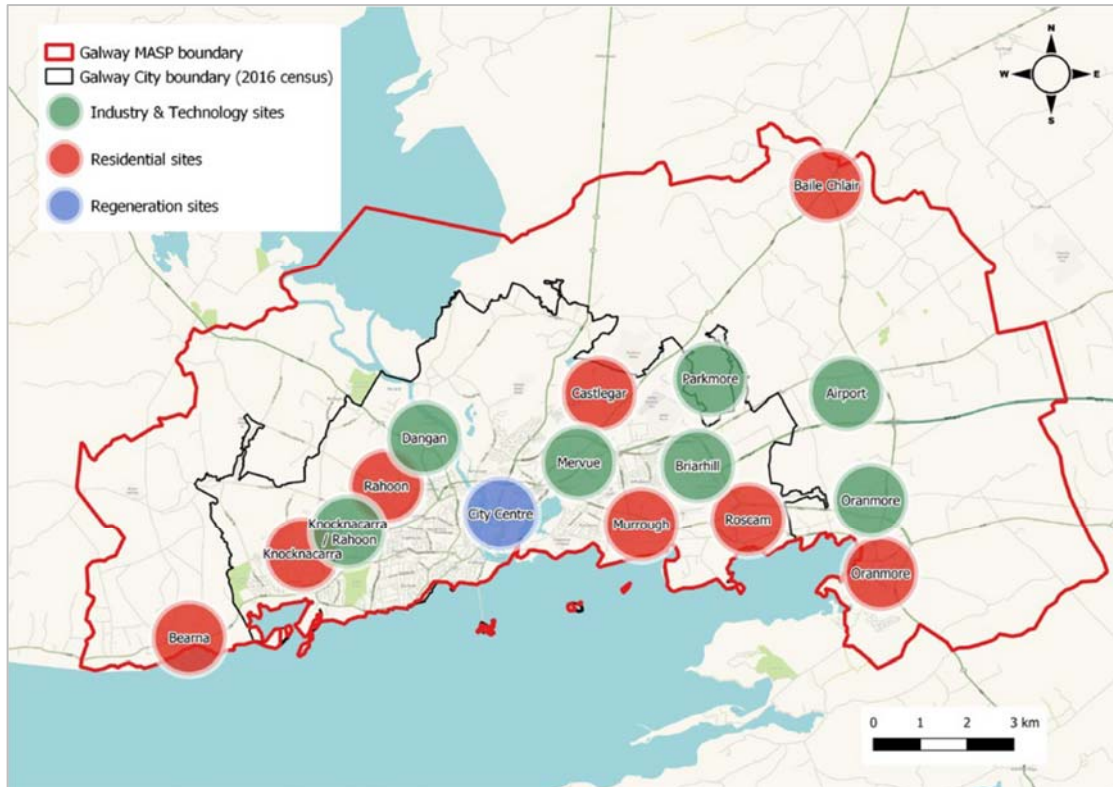


Figure 2: Figure 21 extracted from RSES

The table on page 54 of the RSES identifies that the approximate land area designated for “Land Capacity – Lands Available for Housing” in Bearna is 14 Ha.

Moreover, page 55 of the RSES states as follows in relation to Bearna:

*“Bearna is located to the west of the Metropolitan Area, at the gateway to the Gaeltacht na Gaillimhe (County Galway Gaeltacht). It has experienced significant growth in and surrounding the village and is serviced through the Mutton Island Wastewater Treatment Plant. Its location favours future growth that should have a focus that includes the consolidation of built-up areas of the village and the provision of supporting community infrastructure and services that are easily accessible by walking, cycling or public transport. The built, archaeological and cultural heritage of Bearna are important assets that should be conserved appropriately, including the Pier Road Architectural Conservation Area. While there is currently circa 14ha of residential phase 1 lands identified in the Bearna Local Area Plan that can accommodate growth in the short/medium term, there are additional lands available to facilitate further growth. The identification of such lands shall be a matter for the statutory plan-making process and shall have regard to environmental considerations, including flood risk and climate change.”*

It is submitted that permission for the proposed development should be granted, notwithstanding the material contravention of the Core Strategy having regard to the RSES, on the grounds that the proposed development provides for 121 no. residential units and provides a significant response to Galway’s housing needs in accordance with the population targets set out in the RSES.

#### 4.4.3.3 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (May 2009)

The *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* (May 2009) sets out the planning objectives for sustainable neighbourhoods under four main themes, namely, provision of community facilities, efficient use of resources, amenity or quality of life issues and

conservation of the built and natural environment. The Guidelines are accompanied by a non-statutory residential design manual ‘Urban Design Manual: A Best Practice Guide (2009)’ which is intended to be read in tandem with the guidelines, and which sets out twelve criteria for sustainable residential development.

The Guidelines advocate an urban design and quality-led approach to creating urban densities, where the focus will be on creating sustainable urban villages and neighbourhoods. A varied typology of residential units is promoted within neighbourhoods in order to encourage a diverse choice of housing options in terms of tenure, unit size, building design and to ensure demographic balance in residential communities.

The Guidelines focus on the provision of sustainable residential development, including the promotion of layouts that:

- Prioritise walking, cycling and public transport, and minimise the need to use cars;
- Are easy to access for all users and to find one’s way around;
- Promote the efficient use of land and of energy, and minimise greenhouse gas emissions;
- Provide a mix of land uses to minimise transport demand.

The subject site is classified as an ‘Outer Suburban/Greenfield’ site associated with cities and larger towns as per Section 5.11 of the guidelines. The Board’s Inspectors, on two previous SHD applications for development at this location (ABP-300009-17 and ABP-302216-18) considered this location to correspond to the definition of an ‘Outer Suburban / Greenfield site’ in the Guidelines.

The guidelines state that net residential densities in the general range of 35-50 dwellings per hectare, involving a variety of housing types where possible, should be encouraged generally at these sites. In addition, the guidelines generally discourage densities of less than 30 dwellings per hectare in the interests of land efficiency, particularly on sites in excess of 0.5 hectares.

The proposed development has a development net density of 35 units per hectare based on a net site area of the 3.46ha of lands zoned for residential development. A variety of dwellings types and unit size types are also proposed as outlined in the tables below. The proposed development therefore complies with the ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (May 2009).

Table 5: Mix of Dwelling Types

Type of Dwelling	No. of Units	Percentage
Apartment	33	27%
Duplex	36	20%
House	52	43%

Table 6: Mix of Units

Type of Unit	No. of Units	Percentage
One Bed Units	9	7.44%
Two Bed Units	42	34.71%
Three Bed Units	55	45.45%
Four Bed Units	15	12.40%

It is submitted that permission for the proposed development should be granted at this location, notwithstanding the material contravention of the Core Strategy, having regard to the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* which encourage a density of between 35 and 50 units per hectare at this location.

#### 4.4.3.4 Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)

The *Urban Development and Building Heights Guidelines for Planning Authorities* (December 2018) state that generic maximum height limits, if inflexibly or unreasonably applied, can undermine wider national policy objectives to provide more compact forms of urban development as outlined in the National Planning Framework, and instead continue an unsustainable pattern of development whereby cities and towns continue to grow outwards rather than consolidating and strengthening the existing built up area. Furthermore, the Guidelines provide that blanket limitations can also hinder innovation in urban design and architecture leading to poor planning outcomes.

On this basis the Guidelines set out wider and strategic policy considerations and a more performance criteria driven approach that planning authorities should apply alongside their statutory development plans in securing the strategic outcomes of the National Planning Framework and in particular compact growth of urban areas. The Guidelines identify a key objective of the NPF is to ‘*see that greatly increased levels of residential development in our urban centres and significant increases in the buildings heights and density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels.*’

Section 3.1 of the Guidelines provides that it is Government policy that building heights must be generally increased in appropriate urban locations and therefore there is a presumption in favour of buildings of increased height in our towns/city cores and other urban locations with good public transport accessibility. As a broad principle, the Guidelines provides that proposal for buildings taller than prevailing building heights will be considered where they positively assist in securing National Planning Framework objectives of focusing development in key urban centres and fulfilling targets relating to, inter alia, infill development supporting the National Strategic Objective to delivery compact growth in urban centres.

The proposed development must be viewed in the context of its role in supporting the Galway City and the Galway Metropolitan Area and therefore the design team has sought to ensure that higher densities are achieved through the inclusion of 3-storey Apartment blocks and 3 storey Duplex Blocks.

The 2018 guidelines outline a number of Specific Planning Policy Requirements. Specific Planning Policy Requirement (SPPR) 4 is outlined below:

*“SPPR 4 - It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure:*

- 1. the minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled “Residential Development in Urban Areas (2007)” or any amending or replacement Guidelines;*
- 2. a greater mix of building heights and typologies in planning for the future development of suburban locations; and*
- 3. avoid mono-type building typologies (e.g. two storey or own-door houses only), particularly, but not exclusively so in any one development of 100 units or more”*

The site of the proposed development is a greenfield site and, accordingly, the Board (as a “planning authority” for the purposes of the Guidelines”) must secure the three objectives identified in SPPR4. Firstly, under Section 5.11 of the guidelines on Sustainable Residential Development in Urban Areas (2009), the subject site is classified as an ‘Outer Suburban/Greenfield’ site associated with cities and larger towns. The 2009 guidelines encourage densities in the general range of 35-50 dwellings per hectare and discourage densities of less than 30 dwellings per hectare at these sites. Indeed, permission was refused by the Board for a previous iteration of the proposed development (reg. ref. no. ABP-300009-17) on the basis that the “*density of the proposed development was contrary to the provisions of*

*the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), which was not considered to be developed at a sufficiently high density to provide for an acceptable efficiency in serviceable land usage given the proximity of the site to the built-up area of Bearna and Galway City”.*

The proposed development has a development density of 35 units per hectare. This density can be justified due to the location of the site within the established settlement of Bearna, and also being within the Galway Metropolitan Area.

The proposed development, secondly, provides a mix of building heights, units and sizes and, thirdly, seeks to avoid mono-type building typologies as outlined below;

The scheme includes a mix of building heights from two storey dwelling units, three storey apartment blocks and 3 storey duplex units distributed across the site as outlined in the Architectural Design Statement that accompanies the application.

The scheme includes a range of units typologies:

- > Apartment (33) – 27%
- > Duplex (36) – 20%
- > House (52) – 43%

The scheme includes a range of house types and sizes:

- > One Bed Units (9) – 7.44%
- > Two Bed Units (42) – 34.71%
- > Three Bed Units (55) – 45.45%
- > Four Bed Units (15) – 12.40%

The scheme includes 121 No. Units broken down as follows:

- > 27 No. 1 and 2 Bed Apartments within 2 No. Buildings,
- > 24 No. 2 Bed, Own Door Apartments within 7 No. Buildings,
- > 18 No. 3 Bed, Own Door Duplex within 5 No. Buildings,
- > 8 No. 4 Bed Detached Houses,
- > 3 No. 4 Bed Semi-Detached Houses,
- > 4 No. 4 Bed End of Terrace Houses,
- > 17 No. 3 Bed Semi-Detached Houses,
- > 16 No. 3 Bed Terraced Houses.
- > 4 No. 3 Bed End of Terrace Houses

In light of the above, it is submitted that, should the Board consider that the proposed development materially contravenes Objective UD2 in relation to height, permission for the proposed development should nevertheless be granted having regard to the *Urban Development and Building Heights Guidelines*.

#### 4.4.3.5 Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (March 2018)

The *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (March 2018)* 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, the Government’s action programme on housing and homelessness *Rebuilding Ireland* and *Project Ireland 2040* and the *National Planning Framework*, published since the 2015 guidelines. Section 2.4 of the Guidelines identifies the types of location in cities and towns that may be suitable for apartment development. While the application site is not central in the context of Galway City Centre it is considered reasonable to describe it as a ‘Peripheral

and/or Less Accessible Urban Locations’. In relation to ‘Peripheral and/or Less Accessible Urban Locations’ the Guidelines state at section 2.4:

*‘Such locations are generally suitable for limited, very small-scale (will vary subject to location), higher density development that may wholly comprise apartments, or residential development of any scale that will include a minority of apartments at low-medium densities (will also vary, but broadly <45 dwellings per hectare net), including:*

- *Sites in suburban development areas that do not meet proximity or accessibility criteria;*
- *Sites in small towns or villages.*

*The range of locations outlined above is not exhaustive and will require local assessment that further considers these and other relevant planning factors.’*

The guidelines also state the following at section 2.5 with regard to apartment developments;

*“While the provision of apartments may not be required below the 45 dwellings per hectare net density threshold, they can allow for greater diversity and flexibility in a housing scheme, whilst also increasing overall density. Accordingly, apartments may be considered as part of a mix of housing types in a given housing development at any urban location, including suburbs, towns and villages.”*

The proposed residential scheme provides 121 no. residential units on an area of land zoned for residential development which extends to a nett site of 3.46ha which equates to a residential density of 35 units per hectare. In terms of density, the proposed scheme is considered to comply with the national policy objectives set out in Section 2.4 of the Guidelines which promotes low to medium density development on sites in suburban development areas that do not meet proximity or accessibility criteria. The proposed scheme is also considered to comply with Section 2.5 of the Guidelines which promotes the provision of apartments as they allow for greater diversity in the housing scheme, whilst also increasing overall density. The provision of apartments contributes to the mix of housing types proposed.

It is submitted that permission for the proposed development should be granted at this location, notwithstanding the material contravention of the Core Strategy, having regard to the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities*.



5.

## CONCLUSION

In summary, the proposed strategic housing development, comprising 121 no. residential units, when considered together with residential development already delivered in Bearna during the life time of the Plan and extant permissions for residential development in Bearna, exceeds the population allocation of 420 persons or 130 units in the Core Strategy of the *Galway County Development Plan 2015-2021* (as varied by Variation No. 1). The development of itself also exceeds the indicative density specification in the Core Strategy. Accordingly, the proposed development materially contravenes the Core Strategy in the *Galway County Development Plan 2015-2021*.

While it is contended that the increased building height is in compliance with Objective UD2 because it is provided in exceptional circumstances, contributes positively to the village character, is of a high standard urban design and has no adverse impacts on amenity in line with Objective UD2 of the Bearna Plan, it is acknowledged that the provision of 3 storey building is in excess of the general two and half storey maximum stated in Objective UD2. In these circumstances, it is possible that the Board may come to the conclusion that the proposed development materially contravenes Objective UD2.

It is also contended the the provision of a setdown is compliant with DM Standard 22. It is considered that the setdown is appropriate in having regard to the limited time frame when parking is needed, the childcare facility's accessibility within the proposed scheme and within the wider bearna village and also having regard to the sites location within the GTS area and the associated requirement to lower the dependency on private car use. DM standard 22 also notes that *"a flexible approach to parking standards may also be applied where such a case is substantiated, there is no traffic safety issue, and it is clearly demonstrated to the Planning Authority in the interest of proper planning and development"*. In this regard a Stage 1 & 2 Road Safety audit has been undertaken for the proposed development and is submitted with the application. Furthermore, it is considered that the reduced number of car spaces will avoid a car dominated environment and encourage sustainable transport. However, it is possible that the Board may come to the conclusion that the proposed development materially contravenes DM Standard 22 on the basis that a car space is not provided for every staff member and every 4 children.

It is submitted that, for the reasons outlined in this statement, An Bord Pleanála may grant permission for the proposed development notwithstanding the material contravention of the Core Strategy in the *Galway County Development Plan 2015-2021* as reflected in Section 1.3 of the *Bearna Plan* adopted as *Variation 2(a)* to the to the *Galway County Development Plan 2015-2021* and, should the Board find the proposed development to be a material contravention of Objective UD2 and DM Standard 22 of the *Bearna Plan*, notwithstanding such material contravention.

It is requested that An Bord Pleanála, having had regard to the justification set out within this statement, should grant permission for the proposed development pursuant to the provisions of Section 9(6)(c) of the 2016 Act and Section 37(2)(b) (i), (ii) and (iii) of the Planning and Development Act 2000 (as amended).