

**STRATEGIC HOUSING DEVELOPMENT
PLANNING APPLICATION**
MATERIAL CONTRAVENTION STATEMENT
FOR SITE AT CASTLEFORBES BUSINESS PARK,
SHERIFF STREET UPPER & EAST ROAD, DUBLIN 1

BSM

Est.
1968

**Brady Shipman
Martin**

**Built.
Environment.**

Place
Making
**Built
Environment**

CLIENT
Glenveagh Living Ltd.

DATE
2nd December 2020

Brady Shipman Martin

DUBLIN

Canal House
Canal Road
Dublin 6

+353 1 208 1900

CORK

Penrose Wharf Business Centre
Penrose Wharf
Cork

+353 21 242 5620

LIMERICK

11 The Crescent
Limerick

+353 61 315 127

mail@bradyshipmanmartin.com

www.bradyshipmanmartin.com

TABLE OF CONTENTS

1	INTRODUCTION	4
2	PLANNING AND DEVELOPMENT (HOUSING) AND RESIDENTIAL TENANCIES ACT, 2016 (AS AMENDED).....	4
3	PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)	5
4	SITE CONTEXT.....	7
5	JUSTIFICATION FOR MATERIAL CONTRAVENTIONS	9
5.1	Proposed Material Contraventions.....	9
5.1.1	Height.....	9
5.1.2	Floor Areas & Unit Mix	11
5.2	Context for Proposed Material Contraventions	12
5.2.1	National Planning Framework	12
5.2.2	Urban Development & Building Height Guidelines.....	14
5.2.3	Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018).....	21
5.2.4	Dublin City Development Plan 2016-2022	22
6	STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN	23

1 INTRODUCTION

This document seeks to address the issue of material contravention of the Development Plan as required under Section 8 of the Planning and Development (Housing) and Residential Tenancies Act 2016. This Statement provides a justification for the material contravention in relation to height and in relation to Section 16.10.1 of the Dublin City Council Development Plan 2016 – 2022 (Development Plan).

Section 9 (6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 confirms that An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan, other than in relation to the zoning of land.

In respect of height Section 16.7 of the Dublin City Development Plan identifies building heights for the city and identifies a building height cap of 24m for residential development in this city centre location at Castleforbes Business Park, Dublin 1. However it is submitted that the rationale for increased height at this location goes beyond the specific height limits set out in the Development Plan and should be considered in the context of the wider height policies of the Development Plan and the site context. The Urban Development and Building Heights – Guidelines for Planning Authorities in December 2018 establish the principle for the re-examination of height limits and should be considered over the Development Plan height limits on a site specific contextual basis.

In respect of Section 16.10.1 of the Development Plan, which refers to unit mix and floor areas, it is considered that the Development Plan predated the introduction of SPPRs in the ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (2018) but nevertheless does make reference to ‘build to let apartment schemes’ and as such is considered in terms of a Material Contravention.

It is considered, as put forward in this report and the supporting planning application documentation, that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development notwithstanding the proposed material contravention of the Development Plan.

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

Under Section 8(1)(iv) of the Planning and Development (Housing) and Residential Tenancies Act 2016, where a proposed development is considered to materially contravene 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:

- “(I) setting out how the proposal will be consistent with the objectives of the relevant development plan or local area plan, and
- (II) where the proposed development materially contravenes the said plan other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000”

Section 9 (6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 confirms that An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan, other than in relation to the zoning of land as follows:

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

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

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

The proposed material contravention relates only to building height and residential standards as the Z14 zoning of the site permits ‘mixed use, of which residential and “Z6” would be the predominant uses’.

3 PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

As outlined in Section 2 above, the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended) sets out in that ‘where the proposed strategic housing development would materially contravene the development plan...then the Board may only grant permission where it considers that, if section 37(2)(b) of the Act of 2000 were to apply’.

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

(a) ‘Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

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

- i. the proposed development is of strategic or national importance,*
- ii. there are conflicting objectives in the Development Plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- iii. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- iv. permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.’ [Our Emphasis]*

It follows from the foregoing that it must be established that the proposed development is of “strategic” or “national importance” and that one of the other criteria under (ii), (iii) or (iv) are met. By its very definition, “strategic housing development” is of “strategic... importance”. The application of the other criteria will be addressed further in the report.

The Urban Development and Building Heights Guidelines for Planning Authorities (December 2018) take precedence over the Development Plan. In particular, SPPR 1 of the Guidelines notes that blanket numerical limitations on building height shall not be provided for through statutory plans therefore the imposition of a restriction at the subject site would be contrary to SPPR 1.

As set out in the following sections of this Statement the proposed site is considered in light of the Urban Development and Building Heights Guidelines and is considered to comply with the requirements of both the Guidelines and Section 37 (2) of the Planning and Development Act 2000, and as such An Bord Pleanála should grant permission even though a material contravention has occurred.

4 SITE CONTEXT

The subject site is located on Sheriff Street Upper and East Rd, Dublin 1, and is known as Castleforbes Business Park. The application site has an area of approximately 2.44 ha (and a development area of 2.02ha) and is bound by East Road to the West, the railway sidings to the North, and Sheriff Street to the South.

The site is currently in use as warehousing /light industrial use and has a number of existing industrial sheds and buildings.

The site sits directly north of the Docklands SDZ boundary with numerous developments completed, permitted and others in progress nearby. It is a significant site to further continue and expand growth and development in this important part of the city. The site is accessed from Sheriff Street Upper.



Fig 1: Scheme Development Boundary (in red) and Adjacencies

The site sits within the 'Docklands Area' as designated as Strategic Development and Regeneration Area (SDRA) 16 in the City Development Plan.

This underutilised brownfield site is located adjacent a current bus route (and a future upgraded Bus Connect route) and less than 400m walking distance of the Spencer Dock Luas Stop (and future Dart Underground stop), the Docklands Rail Station to the west of the site, and the Point Luas Stop to the east of the site.

Fig 2: Existing & Permitted Adjacent Development

Fig 3: Proposed Development and Existing & Permitted Adjacent Development

As outlined in Fig 2 & 3 above both the site context and the wider site is subject to an already permitted increased density of development. The wider site has established, through permitted Section 34 applications, the massing and frontage onto Sheriff St and East Rd which range from 5-10 storeys. The proposed

development therefore responds to these heights as it meets Sheriff St Upper and steps up to the north to meet the permitted East Rd development with heights up to 15storeys.

5 JUSTIFICATION FOR MATERIAL CONTRAVENTIONS

The development as proposed is considered to materially contravene the Dublin City Development Plan 2016-2022 in the following instances:

1. Section 16.7- in respect of height
2. Section 16.10.1- in respect of unit mix and floor areas

In respect of the proposed height of the development which exceeds the 24m height limitations in the City Development Plan, Section 37(2)(b)(iii) of the Act of 2000 is relevant. As this Statement demonstrates the proposed development at Castleforbes Business Park is consistent with the relevant national planning policies, regional spatial and economic strategy and section 28 guidelines, including the National Planning Framework and the Urban Development & Building Height Guidelines.

In respect of Section 16.10.1 it is considered that that *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'* (March 2018) contains "Specific Planning Policy Requirement" (SPPR) in relation to dwelling mix requirements (SPPR 1) and (SPPR 8), which takes precedence over any conflicting policies and objectives of Development Plans.

As this Statement demonstrates the proposed development at this location is consistent with the relevant national planning policies, regional spatial and economic strategy and section 28 guidelines, including the National Planning Framework and the Urban Development & Building Height Guidelines.

5.1 Proposed Material Contraventions

5.1.1 Height

As outlined above, the Development Plan Height Strategy identifies a building height cap of 24m for residential development in this location. However it is submitted that the rationale for increased height at this location goes beyond the specific height limits set out in the Development Plan and should be considered in the context of the wider height policies of the Development Plan and the site context. The *Urban Development & Building Height Guidelines* (2018) establish the principle for the re-examination of height limits and should now be considered over the Development Plan height limits on a site specific contextual basis.

The Height Guidelines state that the *'Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by*

CASTLEFORBES SHD

Material Contravention Statement

building up and consolidating the development of our existing urban areas’ and ‘A key objective of the NPF is therefore to see that greatly increased levels of residential development in our urban centres and significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels’.

To implement these objectives the Guidelines include a number of Specific Planning Policy Requirements (SPPRs). SPPR1 is of particular relevance stating:

*SPPR1: In accordance with Government policy to support increased building height and density in locations with good public transport accessibility, particularly town/ city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and **shall not provide for blanket numerical limitations on building height.** [Our Emphasis].*

The below table outlines a breakdown of the proposed building heights within the proposed development by block:

Block	Storeys	Proposed Max. Building Height* (m)	Above CDP Height Limits
A1	1-9	30.3	✓
A2	1-9	30.4	✓
B3	7-8	28.35	✓
B4	7-8	28.35	✓
C1	6-12	39.4	✓
C2	1-18	60.7	✓
C3	15	49.7	✓
C4	13	43.4	✓
Cultural Building	6	25.2	✓

** For clarity Building Heights indicated are the actual building heights which relates to the building height from ground level (which varies across the site).*

While most buildings proposed in the scheme have a range of heights and are stepped to ensure residential amenity and to address existing adjacent heights on Sheriff Street Upper and East Road, the maximum heights on each block exceed the 24m limit for residential development as set out in the Dublin City Development Plan.

It is therefore considered that numerical heights, such as those set out in the Development Plan, should not apply and the site should be considered on a site specific basis.

5.1.2 Floor Areas & Unit Mix

Unit Mix

Section 16.10.1 of the Dublin City Council Development Plan 2016 – 2022 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:

- Studios 14.39 %
- 1 beds 57.98%
- 2 beds 25.50%
- 3 beds 2.14%

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 (i), which takes precedence over any conflicting policies and objectives of Development Plans.

SPPR 1 of the Apartment Guidelines (2018), states as follows:

‘Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s);

and

SPPR 8 (i), in respect of proposals that qualify as specific Build to Rent development in accordance with SPPR 7, states:

‘No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise’.

As such, given the proposed development is identified as a Built To Rent development no restrictions on dwelling mix apply and the scheme is compliant with the Section 28 Guidelines as required taking precedence over the Development Plan.

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.

The *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'* (March 2018), in SPPR 3, sets the minimum floor area for studio apartments at 37sq m.

It is considered that the Dublin City Development Plan standards with regards to unit mix and floorspace is at variance with the Guidelines and it is considered that as the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'* (March 2018) takes precedence over any conflicting policies and objectives of Development Plans, this gives An Bord Pleanála the ability to consider the Material Contravention.

A detailed Housing Quality Assessment has been prepared by OMP Architects, demonstrating compliance with the required residential design standards for Build-To-Rent apartments.

5.2 Context for Proposed Material Contraventions

5.2.1 National Planning Framework

The National Planning Framework (NPF) identifies that by 2040 it is expected that an additional one million people will live in Ireland, and an additional two-thirds of a million people will work here. These are huge increases: more people will be travelling to work, school and universities, more buildings will be needed to accommodate them, clean water will be needed for homes, farms and industry, more and better care facilities will be required for the elderly.

One of the key objectives of the NPF relates to compact growth. The plan seeks to carefully manage the sustainable growth of compact cities, towns and villages and to add value and create more attractive places in which people can live and work. The NPF identifies that activating *'strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development'* as a top priority.

With regards to Dublin the NPF identifies that the city needs to *'accommodate a greater proportion of the growth it generates within its metropolitan boundaries and to offer improved housing choice'*.

National Policy Objective 4 in this regards 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.

National Policy Objective 11 in this regards states:

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

National Policy Objective 13 in this regards 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.

The NPF requires homes to be located in places that can support sustainable development. This includes places that are accessible to a range of local services, can encourage the use of public transport, walking and cycling, and help tackle climate change. The proposed development is also responding to the existing strong demand in the area and in a location that is highly accessible to both existing local facilities and public transport routes within the built up area of Dublin City.

Further the NPF 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'.

It is considered that compliance with the Section 28 Sustainable Urban Housing Guidelines is in line with that NPF in ensuring that 'well-designed development

proposals that can achieve urban infill and brownfield development objectives in settlements of all sizes’.

5.2.2 Urban Development & Building Height Guidelines (2018)

The *Urban Development & Building Height Guidelines* identify that as reflected in ‘the National Planning Framework ... that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas’ and that ‘securing compact and sustainable urban growth means focusing on reusing previously developed ‘brownfield’ land, building up infill sites (which may not have been built on before) and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities’.

The Guidelines reference NPO 13 (from the NPF) which states that ‘in urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected’.

It recognises that in meeting the challenge set out above, new approaches to urban planning and development are required and that securing an effective mix of uses within urban centres is critical. To bring about this increased density and increased residential development in urban centres, the Guidelines state that ‘significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels’.

The consideration of increased density for residential development can be seen within other DCC SDRA areas, e.g. SDRA 12 St. Teresa’s Gardens, where increased heights at specific locations within the site area are promoted in the Framework Plan approved by Council. Increased residential density and height was approved at this location as it is recognised as a key residential location within the city. This is true for the SDZ Planning Scheme where significant sites have increased heights attributable. The Castleforbes site, subject of this application, shares the rationale for increased residential density and height due to its excellent accessibility and proximity to the City’s major business district, in addition to excellent public transport links, and to the specific location and boundary opportunities presented by the site. This approach was considered on the adjacent site at 1-4 East Road (Planning Reg. Ref PL29N.304710), and An Bord Pleanála concurred that increased heights were appropriate in this part of the city.

As such the proposed scheme, as set out in this SHD Application to ABP, has set out to achieve greater height above current Development Plan permitted levels. The site's suitability for this approach is further set out below, as considered against the Guidelines and in its design approach as set out in the OMP Architecture Design Statement that accompanies this application.

SPPR3 of the Building Height Guidelines sets out that:

'It is a specific planning policy requirement that where;

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

This is considered with regards to the specific site below.

Site Location

The Guidelines identify that *'locations with the potential for comprehensive urban development or redevelopment (e.g. brownfield former industrial districts, dockland locations, etc) should be identified where, for example, a cluster of higher buildings can be accommodated as a new neighbourhood or urban district or precinct. Such areas, particularly those in excess of 2 ha (approx. 5 acres) in area...'*

The subject site, at a size of 2.44 ha (development area of c.2ha), is a brownfield docklands location, which given its scale, can accommodate elements of increased height. The approach to the site has been to provide a height strategy which responds to the existing and emerging context, and using height as a way of both meeting existing scale considerations, and as a landmark to the central point of the scheme and the wider North Lotts area.

The location for increased height buildings on the site, immediately adjacent to the rail yards, and at its northern-most extent, responds to site context conditions, and within the overall site is modest in its extent, with the majority of the proposed development ranging from 1-9 storeys. The buildings rise on the northern edge as their shadow is cast over the rail edge. Buildings drop along southern edge to allow south light into open space, and create a more human scale street datum. The central building within the main square drops in height to address this important public space.

The Guidelines reference *'a cluster of higher buildings can be accommodated as a new neighbourhood or urban district'* and the Castleforbes Site can be considered in this regard, with the permitted East Rd development to the north.

CASTLEFORBES SHD

Material Contravention Statement

As outlined in the OMP Architecture Design Statement the backdrop and curtain to this new cluster of buildings and the consolidation of the North Docks is a strong architectural composition formed through a clustering of a series of taller elements of varying height and tonal shifts in material. The geometry and overall disposition of buildings along this edge form a strong visual relationship with the permitted East Rd development on the northern side of the tracks. Together they frame the railway corridor.

Additionally, the Guidelines identify that areas that should be considered include:

- *Proximity to high quality public transport connectivity, particularly key public transport interchanges or nodes;*
- *The potential contribution of locations to the development of new homes, economic growth and regeneration in line with the compact urban growth principles as set out in the National Planning Framework and Project Ireland- 2040;*
- *The resilience of locations from a public access and egress perspective in the event of major weather or emergency or other incidents;*
- *The ecological and environmental sensitivities of the receiving environment; and*
- *The visual, functional, environmental and cumulative impacts of increased building height.*

The subject site is in a highly accessible location, with the centre of the site at under 400m walking distance from the Spencer Dock Luas Stop and the Docklands Rail Station, and the Point Luas Terminus and Point Square. The Spencer Dock Luas Stop is also the future proposed location of the Docklands DART Underground Station. This public transport infrastructure connects to the city centre and to the wider Dublin area employment and education locations.

The site is within walking and cycling distance of the North and South Docklands employment hubs, the IFSC and the City Centre.

Section 3.0 of the *Urban Development & Building Height Guidelines* provide guidance for Planning Authorities/An Bord Pleanala in considering development proposals for buildings taller than prevailing building heights in pursuit of the Guidelines. These are considered, in relation to Castleforbes, as follows:

	Castleforbes Proposed Scheme
Principles	
Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic	Yes, the scheme provides for a residential and wider mixed use development on an existing underutilised brownfield site proximate to Dublin’s Docklands. This application delivers 702 residential units and c.4,448 sq.m which in tandem with the permitted two hotels and commercial

Objective to deliver compact growth in our urban centres?	office building contribute to the regeneration of the wider community and provides for compact growth of both residential and employment development in Dublin's Docklands.
Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?	While the scheme exceeds the maximum heights set out in the current Development Plan, this Plan was prepared prior to the publication of these Guidelines.
Where the relevant development plan, local area plan or planning scheme pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework	Yes, the current Development Plan, for the most part sets numerical height caps now removed by these Guidelines. However the subject site is located within an SDRA, as designated by the Development Plan, which is an area identified for intensification and growth but is restricted currently in relation to height.
Criteria	
City/Town Scale	
The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport	The subject site is in a highly accessible location, at less than 400m walking distance from the Spencer Dock Luas Stop, the Docklands Rail Station and the Point Luas Terminus and Point Square. The Spencer Dock Luas Stop is also the future proposed location of the Docklands DART Underground Station. This public transport infrastructure connects to the city centre and to the wider Dublin area employment and education locations.
Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, and protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.	The approach to height on this scheme has been to both step down and integrate with existing context where appropriate but also to maximise the opportunity presented by the scale of the site and adjacency of the railway yards. Photomontages and an LVIA is considered as part of the EIAR accompanying this Application.
On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making,	As outlined above the approach to height both responds to the existing context and

<p>incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.</p>	<p>provides for a new context in appropriate areas of the site. This approach is achievable on this site due to the scale of this site which is not typical for a Docklands/Inner City site. It integrates with both existing lower and medium height contexts and acts as a reference point to the central public open space.</p>
<p>District/ Neighbourhood/ Street Scale</p>	
<p>The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape</p>	<p>Yes, it is considered that this proposed scheme contributes in both placemaking and to the wider neighbourhood of Sheriff Street Upper. The scheme remakes the northern side of the street and the key corner with East Rd provides for an interim landscaped pocket park with future active frontages at this key section of the road. In addition the type of other uses proposed including, cultural space and retail/cafes which will contribute to the locality.</p>
<p>The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.</p>	<p>The scheme as proposed provides for 9 blocks over two part basements, around a central open space. This approach provides for varying heights throughout the site ensuring a visual connection to adjacent streets and neighbourhoods. The materials for the taller elements are varied ensuring an attractive collective of taller elements in a diverse palette.</p>
<p>The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of “The Planning System and Flood Risk Management – Guidelines for Planning Authorities” (2009).</p>	<p>It is considered that this proposed scheme contributes in both placemaking and to the wider neighbourhood of Sheriff Street and East Wall. The additional height is appropriately located at the centre of the site to provide a focus for the public open space and community/cultural building. At this location it is buffered by lower development across the site. The proposed development provides for permeability through this currently impenetrable site, and for future connectivity to the north with potential future development.</p>
<p>The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is</p>	<p>The potential for permeability and connectivity through the site is a key driver of the design of the proposed development. The proposed scheme will facilitate the development of a public</p>

<p>situated and integrates in a cohesive manner.</p>	<p>route from East Rd through the site and out onto various points along Sheriff Street and onto the North Lotts particularly into City Block 3 and onto the river. Additionally the scheme has set itself up in a way that it provides for future connectivity to the north at the existing pumping station and the existing railway site (if it were developed) and also for a future connection to the permitted East Rd development.</p>
<p>The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.</p>	<p>In keeping with the zoning intent for the site it is proposed to provide for a meaningful mixed use scheme given the site’s location. The scheme provides for both a mix of unit types and a mix of uses ensuring a truly mixed-use environment. The proposed Strategic Housing Development scheme provides for a primarily residential development with a significant cultural building, a crèche and retail/café units. The wider scheme, including two permitted hotels and permitted commercial office building will ensure a truly mixed use environment.</p>
<p>Site/Building Scale</p>	
<p>The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.</p>	<p>As outlined previously the buildings range in height from 1 to 18 storeys in order to both provide for increased density and height and landmark features at a more local scale but also to meet existing context and to ensure minimal impact on daylight or sunlight quality of adjoining properties. The edges of the site step down to match existing residential heights along Sheriff Street and the corner of East Rd.</p>
<p>Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment’s ‘Site Layout Planning for Daylight and Sunlight (2nd Edition or BS 8206-2:2008 – ‘Lighting for Buildings- Part 2: Code of Practice for Daylighting’.</p>	<p>A Daylight and Sunlight Report, prepared by ARC, is included in this Planning Application to ABP.</p>
<p>Specific Assessments</p>	
<p>Specific impact assessment of the micro-climatic effects such as downdraft. Such</p>	<p>A Wind Impact Assessment, prepared by Arup, is included in this Planning</p>

CASTLEFORBES SHD

Material Contravention Statement

assessments shall include measures to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.	Application to ABP. It has been prepared as an iterative process throughout the design process identifying where any problem areas exist and what mitigation is required to address them. Much of this mitigation has been incorporated into the architectural and landscape design as submitted.
In development locations in proximity to sensitive bird and / or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and / or collision.	As part of the Biodiversity assessment for the EIAR the sensitivity of the site for protected species including bats and birds was appraised. No relevant species were identified on or connected to the site.
An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.	It is not considered that the proposed scheme will impact any telecommunication channels.
An assessment that the proposal maintains safe air navigation.	As the site is not located within any flight paths, it is considered that safe air navigation is maintained. However as per the Opinion from An Bord Pleanála the IAA will be issued with a copy of the application as a Prescribed Body.
An urban design statement including, as appropriate, impact on the historic built environment	This is considered in both the EIAR in respect of the historic built environment but also in the OMP Design Statement in regards to proposed build form and materials taking account of the historic fabric.
Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.	As the site contains over 500+ units an EIAR is included with this SHD Planning Application. Additionally an AA Screening Report is included.

The Guidelines in relation to these state that:

Where the relevant planning authority or An Bord Pleanála considers that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply the following Strategic Planning Policy Requirement under Section 28 (1C) of the Planning and Development Act 2000 (as amended).

SPPR 3 in this regard states:

It is a specific planning policy requirement that where;

- 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and*

2. *the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise.*

As is outlined in this report and the other documentation accompanying this Planning Application, the subject site, is a prime example of the type of site anticipated in the Guidelines that can achieve increased building height and resulting increased density, while critically not being a singular use on the site but rather an integrated mixed use environment where people will live and work.

5.2.3 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018)

The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities were published in 2018 and sought to build on the content of the 2015 apartment guidance, much of which remained valid, particularly with regard to design quality safeguards such as internal space standards for 1-,2- and 3-bedroom apartments, internal storage and amenity space.

The key updates to the 2015 Guidelines sought to:

- Enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas;
- Make better provision for building refurbishment and small-scale urban infill schemes;
- Address the emerging ‘build to rent’ and ‘shared accommodation’ sectors; and
- Remove requirements for car-parking in certain circumstances where there are better mobility solutions and to reduce costs.

As stated in Section 1.11 of the Introduction *‘these Guidelines apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease. They also apply to housing developments that include apartments that are built specifically for rental purposes’.*

Further Section 1.21 states *‘accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans should be amended by the*

CASTLEFORBES SHD

Material Contravention Statement

relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements’.

The City Development Plan was adopted before the publication of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* (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 Specific Planning Policy Requirements of Ministerial Guidelines relevant to the proposed development at this site are implemented.

5.2.4 Dublin City Development Plan 2016-2022

The Dublin City Development Plan states that the:

‘clustering of taller buildings of the type needed to promote significant densities of commercial and residential space are likely to be achieved in a limited number of areas only. Taller buildings (over 50m) are acceptable at locations such as at major public transport hubs, and some SDRAs. For example, the North Lotts and Grand Canal Dock SDZ planning scheme provides for a limited number of tall buildings at Boland’s Mills, the Point, Spencer Dock Square and Britain Quay.’

*‘There are also a few areas where there are good transport links and sites of sufficient size to create their own character, such that a limited number of mid-rise (up to 50m) buildings will help provide a new urban identity. These areas of the city are the subject of a local area plan, strategic development zone or **within a designated SDRA**’ [our emphasis].*

The Core Strategy of the Development Plan promotes the intensification and consolidation of Dublin City, and the Docklands is identified as **Strategic Development Regeneration Area 6** (SDRA) [our emphasis]. In respect of SDRA 6 the City Development Plan identifies that *‘the designation of the Docklands, including the Docklands SDZ, as a strategic development and regeneration area (SDRA) provides for the continued physical and social regeneration of this part of the city, consolidating the area as a vibrant economic, cultural and amenity quarter of the city, whilst also nurturing sustainable neighbourhoods and communities’.*

The SDRA for the Dublin Docklands covers three areas, 1. Docklands Area (which includes the subject site), 2. Strategic Development Zone, and 3. Poolbeg West.

The SDRA objectives for the 'Docklands' as a whole include:

- *To achieve successful interaction between the SDZ scheme and surrounding streets and public realm to retain and foster a strong sense of neighbourhood within communities.*
- *To ensure that residential developments optimise the unique Docklands character in terms of visual context, maritime location, heritage assets and community identity.*
- *To safeguard residential amenity and to ensure appropriate transition in scale, the design of new development shall have regard to the context, setting and amenity of existing housing within the*
- *SDZ and wider Docklands area*
- *The Government's designation of the SDZ reflects a keen awareness of the strategic importance of this area. However, it is acknowledged that to facilitate the continued socio-economic regeneration of the wider Docklands area, there is a need to address areas beyond the SDZ Boundary*

As set out above the proposed site represents a strategic opportunity site in the City, with extensive non-residential uses already permitted on the wider site area, and the now proposed Strategic Housing Development for the residential element at the centre of the site proposed. This opportunity is reflected in the planning policy, both national and local, outlined above and as such is considered to be capable of accommodating additional development height.

6 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN

In this case, regarding height, while the majority of the proposed development is just above 24m height limit, at 25-30m, the scheme contains 4 taller elements which range from 39.4m to c. 60.7m in height, which is in excess of the blanket restriction of 24m for residential development applied by DCC in the current Development Plan pertaining to this area. In this regard, it is set out in this application that the subject site is capable of readily accommodating the additional height proposed here without giving rise to any significant adverse planning impacts in terms of impact on residential amenity, daylight, sunlight, overlooking or visual impact as set out in Section 5 above.

In respect of residential development standards as set out in the report the Development Plan standards were set out prior to the publication of the national standards for apartment development and as such take precedence over the Development Plan. The scheme as designed is fully compliant with the standards for Build To Rent apartment developments, as set out in the Section 28 *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*, in terms of all aspects ensuring residential quality.

CASTLEFORBES SHD

Material Contravention Statement

Notwithstanding this, it is noted that the exceedance of the Development Plan height parameters constitutes a material contravention of the current Development Plan. As required in legislation, it is submitted that this can, for this specific site, be justified by An Bord Pleanála under Section 37(2) (b) (i), (iii) or (iv) of the Planning and Development Act 2000 (as amended) where the Board may determine under this section, to grant a permission even if the proposed development contravenes materially the Development Plan relating to the area of the planning authority to whose decision the appeal relates.

This section states that the Board may only grant permission in accordance with paragraph (a) where it considers that;

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

The subject site is considered of strategic importance due to:

- Designated as a Strategic Development & Regeneration Area under the Dublin City Council Development Plan and as such is a key location for achieving residential delivery in the City.
- Is identified as Strategic Housing Development
- Contributes to the objectives of the National Planning Framework by providing much needed housing development in urban areas.

As such the subject site is considered a strategic site for redevelopment and Section 37(2) (b) (i) is open to An Bord Pleanála to grant the material contraventions on this basis.

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

As set out in Section 5.2.2 the scheme is a prime example of the type of site anticipated in the Guidelines that can achieve increased building height and resulting increased density, as set out in the Section 28 *Urban Development & Building Height Guidelines*. Additionally as demonstrated in the OMP Design Statement and accompanying Housing Quality Assessment the scheme is compliant with the Section 28 *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* with regards to residential standards.

As such Section 37(2) (b) (iii) is open to An Bord Pleanála to grant the material contraventions on this basis.

- (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.*

As set out in the Tall Building Statement and the OMP Architectural Design Statement the existing, permitted and proposed pattern of development is urban and dense. The site benefits from its direct adjacency to the North Lotts and its permitted scale of development but is not subject to the restrictions of the SDZ Planning Scheme. As such the site can, with the development scale proposed, sit comfortably between the permitted and under construction developments in the SDZ and the permitted development of East Rd to the north while critically maximising the potentials of a consolidated site of its size and differentiating itself from the adjacent developments.

As such the subject site is considered a strategic site for redevelopment and Section 37(2) (b) (iv) is open to An Bord Pleanala to grant the material contraventions for height on this basis.

Having regard to sections 37(2)(b)(i),(iii) and (iv) of the Planning and Development Act 2000 (as amended) and the following objectives with County, Regional and National guidance:

- *The objectives of Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016,*
- *The National Planning Framework,*
- *Guidelines for Sustainable Residential Developments in Urban Areas issued in 2009*
- *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018*
- *Guidelines for Planning Authorities on Urban Development and Building Height issued in December 2018,*
- *The Regional Social and Economic Strategy for the Eastern and Midlands Region 2019-2031, and*

The proposed development is in line with the *National Planning Framework*, the *Sustainable Urban Housing: Design Standards for New Apartments*, *Guidelines for Planning Authorities* and the *Urban Development & Building Height Guidelines*. The realisation of the objectives of this national guidance necessitates facilitating residential development to a height greater than 24m in appropriate locations and residential development with standards compliant with *Sustainable Urban Housing: Design Standards for New Apartments* in respect of Build to Rent. On the basis of the above provisions, we submit that the Board can grant permission for the subject development as proposed.