

Material Contravention Statement

For Development at Coolcarron (townland), Fermoy,
Co. Cork

on behalf of Cumnor Construction Ltd.

March 2022



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Document Control Sheet

Client	Cumnor Construction Ltd.	
Project Title	Fermoy SHD	
Document Title	Material Contravention Statement	
Document Comprises	Volumes	1
	Pages (Including Cover)	19
	Appendices	N/A
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Checked by	Sue Cullen	
Office of Issue	Cork	
Document Information	Revision	A
	Status	Final
	Issue Date	March 2022

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1. Introduction

1.1 Purpose of Material Contravention Statement

This Material Contravention Statement accompanies a Strategic Housing Development (SHD) application by Cumnor Construction Ltd. for 336 no. residential units and a creche at Coolcarron (Townlands), Fermoy, Co. Cork.

The Planning and Development (Housing) and Residential Tenancies Act, 2016 makes the provision for An Bord Pleanála to grant permission for a development which materially contravenes a Development Plan/Local Area Plan, other than in relation to the zoning of the lands, under Section 9(6) which states that:

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.

The proposed development lies within the development boundary of Fermoy and therefore the provisions of the 2014 Cork County Development Plan, and the 2017 Fermoy Municipal District Local Area Plan are relevant to the consideration of the proposed development and therefore any potential material contraventions of these plans is considered in this report.

The report will address where national guidelines and the regional spatial and economic strategy for the area supersede the standards within the 2014 Cork County Development Plan and the 2017 Fermoy Municipal District Local Area Plan and, together with the supporting planning application documentation, will provide sufficient justification for An Bord Pleanála to grant permission for the proposed development.

1.2 Proposed Development

The proposed development is for a strategic housing development at Coolcarron, Fermoy, Co. Cork. Permission is sought for the following development:

- The construction of 336 no. residential units comprising 242 dwellings houses (comprising a mix of 5, 4, 3 and 2 bed detached, semi-detached and townhouse/terraced units) and 94 no. duplex/simplex units (comprising a mix of 1 and 2 bed units);
- A 587m² creche/childcare facility;
- The provision of landscaping and amenity areas to include 4 no. flexible open space areas with natural play features, a linear green route with a 3m wide shared surface path running along the western boundary and a number of informal grassed areas;
- Public Realm upgrades along the R639, including a shared footpath and cycleway, a 4m toucan crossing with tactile paving;
- The proposed alteration to the Barrymore-Coolcarron 38kv line. The proposed alteration will involve the undergrounding of a section of the above mentioned overhead 38kV line to facilitate the housing development and the realignment of approximately 13.6 metres of 38kv overhead line. The proposed alterations will comprise of one (1) 12 metre Type "F" lattice steel end terminate mast structure and one (1) 38kV cable sealing ends. The proposed retirement of 282 metres of overhead conductors and one (1) type "F" Lattice steel mast structure , one (1) Type "C" light angle strain structure and one (1) Type "B" portal suspension structure; and

- All associated ancillary development including vehicular access on to the R639 road, 2 no. access gates to the existing weighbridge and associated ancillary development, lighting, drainage, boundary treatments, bicycle & car parking and bin storage.



Fig 1: Proposed Site Plan.

2. Site Context

The proposed development is located in the townland of Coolcarron within the town of Fermoy which is identified as a main town in the Fermoy Municipal District Local Area Plan 2017. The subject site is situated approximately 1m to the south of the main street and 26km from Cork City Centre. The site is 1km from the M8 – Cork Dublin Motorway which is situated to the east of the site.

The total site area comprises 11.75 hectares and slopes gently downwards from west to east. There is a net developable area of 11.23 hectares. There is an existing open drainage channel along the eastern boundary of the site with a wooded area beyond. Permission for the development of these lands was originally granted under Cork County Council Ref. 05/4806.



Fig 2: Site Location – site outlined in red.

The site is within easy walking distance of a number of commercial and community facilities including local shops, churches and schools. The site is bounded to the west with a number of private residential dwellings, an ESB facility and a number of commercial properties. The St Colman's sports ground lies to the north of the site with agricultural land to the south.

The native hedgerows which define the existing field boundaries and are part of the local green infrastructure network will be retained where possible. The site will be accessed via the R639 which runs to the west of the site. An existing lay-by and weigh station is situated adjacent to the proposed entrance to the site

3. Legislative Context

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 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, confers power on An Bord Pleanála to grant permission for a development which is considered to materially contravene a Development Plan or Local Area 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. and demonstrate that the Board should support this SHD application, as the proposal addresses the matters specified in Section 37(2)(b)(iii) and (iv) of the Planning and Development Act 2000 ('the Act').

In this regard, Section 37(2) of the Planning and Development Act 2000 (as amended) provides for the Board to grant permission where the proposed development materially contravenes the development plan, subject to paragraph (b) where it considers:

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

On determining that point (i) is applicable, it must be determined that one of the sub-sections set out below is relevant:

(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.

4. Policy Context

4.1 National Planning Framework

Project Ireland 2040 was published by the Government of Ireland in February 2018 with the objective to provide details for the new national planning and capital expenditure plans. These plans aim to achieve balanced regional development by outlining a clear hierarchy for the urban centres outside the greater Dublin area. National Policy Objective (NPO) 11 supports development that can encourage more people and activity within existing cities, towns and villages:

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

The National Planning Framework (NPF) makes provision for population growth of an additional 340,000 - 380,000 people in the Southern Region. The majority of the region’s growth has been allocated to Cork City and County which equates to an additional 226,620 people or 60% of the Region’s growth.

The NPF places a focus on achieving compact growth and sustainable mobility and targets a greater proportion (40%) of future housing development to be within and close to the existing ‘footprint’ of built-up areas.

The promotion of development that supports sustainable mobility including public transport, walking and cycling is a key objective of the NPF and identified as a core requirement to address urban population and responding to climate change policies.

The NPF notes that opportunities exist to create the conditions to support residential development in rural towns, whether through parking and streetscape improvements, traffic diversions, the provision of small-scale urban amenities such as open spaces or playgrounds, the acquisition of key sites and/or the opening up or amalgamation of ‘backlands’ for residential development and the provision of services such as waste-water treatment. This is reinforced in National Policy Objective 18a which states that it is an objective to

“support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services”.

The proposed SHD application is accompanied by a Planning and Design Statement, Statement of Consistency, Traffic & Transport Assessment and Mobility Management Plan which demonstrate that the proposed development is consistent with the approach endorsed by the NPF.

4.2 Regional Spatial and Economic Strategy for the Southern Region (RSES)

The Regional Spatial and Economic Strategy for the Southern Region 2020 (RSES) transcribes the NPF objectives to the regional level. The RSES is a strategic document, which identifies high-level requirements and policies for the Southern Region, setting out the high-level statutory framework to empower each local authority to develop County Development Plans (CDPs) and Local Area Plans (LAPs) that are coordinated with regional and national objectives.

It is a principle of the RSES to inform the integration of land use and transport planning by *“ensuring that future developments are planned and designed to maximise their accessibility by public transport, walking and cycling”*.

Regional Policy Objective RPO 10 sets out that the RSES seeks to achieve compact growth by prioritising housing and employment development in locations within and contiguous to existing city footprints where it can be served by public transport, walking and cycling.

Section 3.4 of the RSES states that sustainable regeneration and growth (particularly compact growth) will be achieved through effective sustainable transport and spatial land use planning.

4.3 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (SRDUA, May 2009)

The SRDUA guidelines set out key planning principles for the local planning policy framework and for the assessment of residential development and state that net densities of less than 30 dwellings per hectare should generally be discouraged in the interest of land efficiency.

states that for ‘Outer Suburban / ‘Greenfield’ sites’ (defined as open lands on the periphery of cities or larger towns whose development will require the provision of new infrastructure, roads, sewers and ancillary social and commercial facilities, schools, shops, employment and community facilities), the greatest efficiency in land usage will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally and that net densities less than 30 dwellings per hectare should generally be discouraged.

The Department of Housing, Local Government and Heritage also issued a Circular (Letter NRUP 02/2021) in 21st April 2021 to provide clarity in relation to the interpretation and application of current statutory guidelines that

address sustainable residential development in urban areas, including the SRDUA Guidelines.

In relation to development at the edge of larger towns, the Circular states the following:

While the Sustainable Residential Development Guidelines clearly encourage net densities in the 35-50 dwellings per hectare range within cities and larger towns, net densities of 30-35 dwellings per hectare may be regarded as acceptable in certain large town contexts and net densities of less than 30 dwellings per hectare, although generally discouraged, are not precluded in large town locations.

These 'outer suburban' provisions apply to cities and larger towns, and the Sustainable Residential Development Guidelines define larger towns as having a population in excess of 5,000 people. Large towns therefore range from 5,000 people up to the accepted city scale of 50,000 people. Given the very broad extent of this range and variety of urban situations in Ireland, it is necessary for An Bord Pleanála and Planning Authorities to exercise discretion in the application and assessment of residential density at the periphery of large towns, particularly at the edges of towns in a rural context. The Circular also emphasises that the NPF acknowledges that there is a need for more proportionate and tailored approaches to residential density. This means that it is necessary to adapt the scale, design and layout of housing in towns and villages, to ensure that suburban or high-density urban approaches are not applied uniformly and that development responds appropriately to the character, scale and setting of the town or village.

The SRDUA also note that the 12 criteria set out in the companion Best Practice Urban Design Manual (UDM) should be used to guide the design/layout of residential development as opposed to the application of rigid development standards. These criteria are:

1. Context: How does the development respond to its surroundings.
2. Connections: How well connected is the new neighbourhood.
3. Inclusivity: How easily can people use and access the development.
4. Variety: How does the development promote a good mix of activities.
5. Efficiency: How does the development make appropriate use of resources, including land?
6. Distinctiveness: How does the proposal create a sense of place?
7. Layout: How does the proposal create people-friendly streets and spaces?
8. Public Realm: How safe, secure and enjoyable are the public areas?
9. Adaptability: How will the buildings cope with change?
10. Privacy and Amenity: How does the scheme provide a decent standard of amenity?
11. Parking: How will parking be secure and attractive?
12. Detail Design: How well thought through is the building and landscape design?

The accompanying Statement of Consistency and Planning and Design Statement provides an assessment of how the proposed development complies with the SRDUA Guidelines and the 12 criteria set out in the UDM.

4.4 Cork County Development Plan 2014

Against this national planning policy backdrop, the proposed development has been designed to create a high-quality, vibrant and attractive neighbourhood on this strategically located site. It is noted that the Cork County Development Plan 2014 was adopted prior to publication of the following:

- National Planning Framework (2018);
- Regional Spatial and Economic Strategy for the Southern Region (RSES) (2020); and
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines (2018).

The 2014 Cork County Development Plan (CDP) sets out Cork County Council's policies for the development of Cork County to 2022.

4.5 Fermoy Municipal District Local Area Plan 2017

The Local Area Plan states that the vision for Fermoy is to *“increase the population of the town in line with targets established in the Cork County Development Plan 2014; to optimise employment opportunities having regard to the location of the town adjacent to the M8; manage development in order to support the strengthening and rejuvenation of the retail function of the town; ensure all new development respects the significant built heritage of the town and its setting on the river Blackwater, and to deliver an enhanced environment and range of facilities to make the town a more attractive place to live.”*

The site is zoned 'Medium A Density Residential' in the Fermoy Municipal District Local Area Plan 2017 and is within the development boundary of the main town of Fermoy. Objective FY-R-08 of the Local Area Plan sets out the following objective for the site:

“Medium A density Residential Development. The scheme shall provide development of active open space to include playing pitches. A link to pedestrian walks through O-05 shall also be provided”

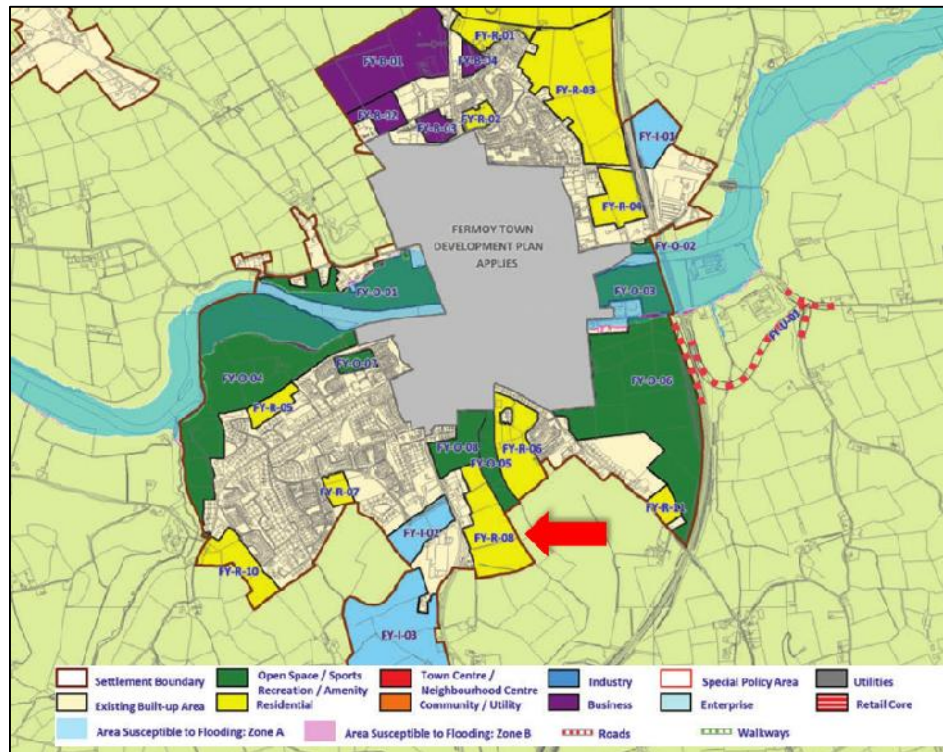


Fig 3: Extract from the Fermoy Municipal District Local Area Plan 2017 zoning map.

In terms of residential density, the CDP states that a Medium ‘A’ (i.e. 20-50 dwellings per hectare) will be applicable in “city suburbs, larger towns over 5,000 population and rail corridor locations.”

In accordance with the FY-R-08 objective, a density of 30 no. units per hectare is proposed, which is consistent with the Medium A density provision for the site. The FY-R-08 objective also seeks the development of active open space and a link to pedestrian walks through O-05 zoned lands – it is submitted that this has been provided for in the proposed scheme in the form of 4 no. flexible open space areas with natural play features, a linear green route with a 3m wide shared surface path running along the western boundary, a number of informal grassed areas and a number of possible future connection points to the O-05 zoned lands to the north and east.

The FY-R-08 objective also states that proposals should include “*playing pitches*”. While the development includes active open space areas, playing pitches are not provided for in the development. As a number of public playing pitches are situated to the immediate north of the subject site, The requirement for a playing pitch in the FY-R-08 is a legacy issue that has been applied to this site in the most recent LAP despite playing pitches being developed since the R-11 zoning objective in the 2003 Cork County Development Plan included this requirement. This is considered to negate the requirements of the FY-R-08 objective. However and for completeness,

compliance with FY-R-08 objective is also included in the assessment should the Board consider there to be a Material Contravention of the FY-R-08 objective.

5. Material Contravention Statement

This section provides a justification of the areas where it is considered that the development materially contravenes the relevant plans based on the following:

-) Details the objectives of the Fermoy Municipal District Local Area Plan 2017, which will/may be materially contravened by the proposed development.
-) Outlines the relevant proposals for the Fermoy SHD Development; and
-) Provides a justification for the proposed Material Contravention and demonstrates why the Board should support the proposal in the context of the matters specified in Section 37(2)(b)(iii) of the Act.

5.1 Fermoy Municipal District Local Area Plan 2017 – Zoning Objective (FY-R-08)

Details of how the development might materially contravene the Fermoy Municipal District Local Area Plan 2017 (LAP) in relation to the FY-R-08 Zoning Objective and the justification for same, is as follows:

Relevant Objective	<p>In the LAP, the site is zoned for residential development with the following (FY-R-08) specific objective:</p> <p><i>MW-R-09: Medium A density Residential Development. The scheme shall provide development of active open space to include playing pitches. A link to pedestrian walks through O-05 shall also be provided.</i></p>
Fermoy SHD Proposal	<p>In accordance with the FY-R-08 objective, a density of 30 no. units per hectare is proposed, which is consistent with the Medium A density provision for the site. The FY-R-08 objective also seeks the development of active open space and a link to pedestrian walks through O-05 zoned lands – it is submitted that this has been provided for in the proposed scheme in the form of 4 no. flexible open space areas with natural play features, a linear green route with a 3m wide shared surface path running along the western boundary, a number of informal grassed areas and a number of possible future connection points to the O-05 zoned lands to the north and east.</p>
Material Contravention	<p>The FY-R-08 objective also states that proposals should include “<i>playing pitches</i>”. While the development includes active open space areas, playing pitches are not provided for in the development.</p>

Justification for proposed Material Contravention	<p>A number of public playing pitches are situated to the immediate north of the subject site. This is considered to negate the requirements of the FY-R-08 objective. As the requirement for additional playing pitches has been considered and deemed unnecessary, it is submitted that this satisfies the requirements of the FY-R-08 objective.</p> <p>It is considered that Section 37(2)(ii) allows permission to be granted where the proposed development has regard to the regional spatial and economic strategy for the area, section 28 Guidelines and any other relevant policy of the Government. The proposed development is in adherence with the provisions of the NPF in prioritising housing, the forecasted growth in the RSES and Sustainable Residential Development in Urban Area Guidelines.</p>
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6. Conclusion

It is considered that the proposed development is a material contravention of the 2017 Fermoy Municipal District Local Area Plan in relation to the provision of playing pitches. In this regard, Section 37(2) of the Planning and Development Act 2000 (as amended) provides for the Board to grant permission where the proposed development materially contravenes the development plan, subject to paragraph (b) where it considers:

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

The proposal is for a significant residential development of 336 residential units within County Cork. The proposed development will help address the significant shortfall in housing output and help meet the projected demand within the County. On this basis it is of strategic importance.

The scheme's contribution to the achievement of the National Planning Framework (NPF) National Strategic Outcome No. 1 in respect of delivering sequential/compact growth and urban development involving the construction of a residential development within the Cork area and within close proximity of Fermoy town centre and in proximity of public transport, further confirms the strategic nature and importance of this development proposal.

The strategic/national importance of the proposal is also confirmed in the current Government's Action Plan for Housing and Homelessness - Rebuilding Ireland (2016) which seeks housing within the main cities including Cork.

The proposed development is being progressed through the Strategic Housing Development planning process which, in itself, confirms the strategic importance of the current application, in accordance with Section 37(2)(b)(i).

On determining that point (i) is applicable, it must be determined that **one** of the sub-sections set out below is relevant.

(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.

It is respectfully submitted that permission should be granted in accordance with sub-section (iii) as the proposed development is consistent with the relevant national and regional planning policies and Section 28 Ministerial Guidelines.