

Statement of Material Contravention

**Strategic Housing Development for
Build to Rent apartment development
for 334 units at the former Avid
Technology Site**

Prepared on behalf of Atlas GP Limited

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1 Material Contravention Statement

1.1 Introduction to Material Contravention Statement

This report has been drafted in response to the legislative requirement and Item 13 of the Strategic Housing Development (SHD) Application Form. The Planning and Development (Housing) and Residential Tenancies Act 2016 as amended provides in section 5(6)

“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 statement provided for the purposes of subsection (5)(b)(i) shall indicate why, in the prospective applicant’s opinion, permission should nonetheless be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.”

The description of the proposed development is presented in the following section.

1.2 Description of Development

Atlas GP Limited, intend to apply to An Bord Pleanála for planning permission for a strategic housing development at this site of c.0.99 ha at the ‘Former Avid Technology site’, at the junction of Blackthorn Road and Carmanhall Road Sandyford, Dublin 18.

The proposed development consists of **334** Build to Rent residential apartment units within 4 no. apartment blocks and as follows:

- 79 No. Studio
- 175 No. 1 bed
- 80 No. 2 bed

All residential units provided with private balconies/terraces to the north/south/east and west elevations

- Crèche 272 sq.m.
- Residential amenity spaces 893 sq. (including a unit of 146.5 sqm, open to the public, resident’s gym, business centre, multipurpose room, staff facilities, multimedia/cinema room, shared working space, concierge and games room)
- Height ranging from 5 to 16 storeys (over basement)
- Landscaped communal space in the central courtyard
- Provision of a new vehicular entrance from Ravens Rock Road and egress to Carmanhall Road
- Provision of pedestrian and cycle connections
- 127 No. Car Parking, 6 No. Motorcycle Parking and 447 cycle spaces at ground floor/undercroft and basement car park levels
- Plant and telecoms mitigation infrastructure at roof level

The development also includes 2 no. ESB substations, lighting, plant, storage, site drainage works, and all ancillary site development works above and below ground.

1.3 Legislative Provisions

Section 9(6)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, states that the Board may decide to grant a permission for a proposed strategic housing development in respect of an application where the development materially contravenes the development plan relating to the area concerned.

Section 9(6)(b) provides that planning permission may not be granted if the material contravention relates to zoning.

Section 9(6)(c) provides that planning permission may only be given by the Board where the Board considers that that if section 37(2)(b) of the Planning and Development Act 2000, as amended were to apply, it would grant planning permission for the proposed development.

Section 37(2)(b) of the Planning and Development Act 2000, as amended, effectively allows the Board to grant permission, when it considers that:

- (i) “the proposed development 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 Governments, or
- (iv) permission for the proposed development should be granted having **regards to the pattern of development, any permissions granted, in the area since the making of the development plan.**” [bold our emphasis]*

With regard to Section 9(6)(b), we note that in this case the contravention relates to height and density, balance of units, parking and tree preservation and not to the zoning of the land and therefore the Board can adjudicate on a material contravention.

The applicants are of the view that s.37(2) (i), (ii), (iii) and (iv) above are applicable to the proposed development.

1.4 Summary of Items for Material Contravention

This statement is designed to address relevant policy requirements of the Dún Laoghaire Rathdown County Development Plan 2022-2028. Of particular relevance are the policies set out under Appendix 17, the Sandyford Urban Framework Plan (UFP) 2022-2028.

Having regard to the above description of development, there are several policies of relevance to this statement:

1. Building height: the proposed SHD is up to 16 storeys.

2. Density – a density of 457 units per ha is proposed.
3. Car parking: it is proposed to provide car parking at a rate below that prescribed in the Development Plan.
4. Dual aspect
5. Public open space provision
6. Private open space provision

Notwithstanding the National Planning Framework (NPF), the Guidelines for Planning Authorities on Sustainable Residential Development on Urban Areas (2009), the Design Standards for New Apartments Guidelines (2018) and the Urban Development and Building Heights – Guidelines for Planning Authorities (2018), the density, height, typology of units and public realm measures of the proposed development may be considered inconsistent with and to materially contravene the Dún Laoghaire Rathdown County Development Plan 2022-2028 and the Sandyford Urban Framework Plan which forms part of the CDP.

It is a matter for An Bord Pleanála to determine as to whether the proposed development represents a material contravention.

This report seeks to address the potential material contravention of the height and density of the Sandyford UFP. The height and density issues are interrelated in that a greater height on an available small footprint, inevitably increased density.

Car parking is provided at a rate consistent with permitted developments in the area.

There are conflicting provisions and a lack of clarity in the plans in respect of the assessment of public open space. The Council also applied a blanket classification to the county in relation to dual aspect. These are also addressed in this report.

Finally, private open space requirements should be considered having regard to the Apartment Design Guidelines.

2 Relevant Policies

2.1 Building Height

Policy SUFP 3 of the Sandyford Urban Framework Plan 2022 states:

3.2.1 Policy SUFP 3 Building Height in Sandyford Business District

‘It is Council Policy that building height in Sandyford Business District accords with the height limits indicated on Building Height Map 3, subject to policy objectives BHS1 and BHS2 of the Dun Laoghaire Rathdown County Development Plan 2022-2028. (Consistent with NPO 35 of the NPF, SPPR 3 of the ‘Urban Development and Building Height; Guidelines for Planning Authorities’ (2018)).’

This is qualified by the following statements

BH1 SUFP

‘It is an objective of the Council to ensure that Sandyford Business District is developed in accordance with height limits set out in Map 3 Building Height subject to the building making a positive contribution to the built form as set out above.’

BH5 SUFP

‘Additional height may be permitted where it can be demonstrated that additional height over the height limits identified on Map 3 accords with policy objective BHS1 and BHS2, of the Dun Laoghaire Rathdown County Development Plan 2022-2028, Appendix 5 subject to complying with the safeguards outlined in these policies as set out in Table 5.1 of the BH Strategy and any other development limits/phasing set out in the SUFP. Any application for increased height or taller buildings over and above the parameters set out in Map 3 shall be subject to assessment under policy objective BHS1 and BHS2 of the CDP.’

Appendix 5 of the County Development Plan includes BHS 1 and BHS 2 as follows:

Policy Objective BHS 1 - Increased Height

‘It is a policy objective of to support the consideration of increased heights and also to consider taller buildings where appropriate in the major town centres of Dún Laoghaire and Dundrum, the district centres of Nutgrove, Stillorgan Blackrock and Cornelscourt, within the Sandyford UFP area, UCD and in suitable areas well served by public transport links (i.e. within 1000 metre/ 10 minute walk band of LUAS stop, DART stations or core /quality bus corridor, 500 metre / 5 minute walk band of bus priority route) provided that proposals ensure a balance between the reasonable protection of existing amenities and environmental sensitivities, protection of residential amenity and the established character of the area (NPO 35, SPPR 1 &3).

Having regard to the Building Height Guidelines and more specifically in order to apply SPPR 3 there may be instances where an argument can be made for increased height and/or taller buildings in the areas mentioned above. In those instances, any such proposals must be

assessed in accordance with the performance criteria set out in table 5.1 which is contained in Section 5. The onus will be on the applicant to demonstrate compliance with the criteria.'

Policy Objective BHS 2 -building height in areas covered by an approved Local Area Plan or Urban Framework Plan (UFP must form part of the County Plan).

'It is a policy objective to promote and support proposed heights as set out in any approved statutory Local Area Plan and as set out for certain areas in this draft county development plan (Sandyford Urban Framework Plan, Dundrum Urban Framework Plan Area and Dun Laoghaire Framework Plan area).

Having regard to the Building Height Guidelines and more specifically in order to apply SPPR3 there may be instances where an argument can be made for increased height and or taller buildings in the areas mentioned above on the basis of placemaking in those instances any such proposals must be assessed in accordance with the performance-based criteria set out in table 5.1 which is contained in Section 5. the onus will be on the applicant to demonstrate compliance with the criteria.

Within the built-up area of the County increased height can be defined as buildings taller than prevailing building height in the surrounding area. taller buildings are defined as those that are significantly taller (more than 2 storeys taller) than the prevailing height for the area.'

Table 5.1 which is contained in Section 5 of Appendix 5 of the County Plan is included in Appendix A of this report for the Board's convenience.

Map 3 of the Sandyford Urban Framework Plan 2022 sets out blanket heights for individual parcels of land within the Sandyford Business District including the subject site which has been designated as having a permitted/developed height limit of 6-9 storeys (Figure 3).



Figure 1: Map 1 – Land Use Zoning of the Sandyford Urban Framework Plan 2022-2028

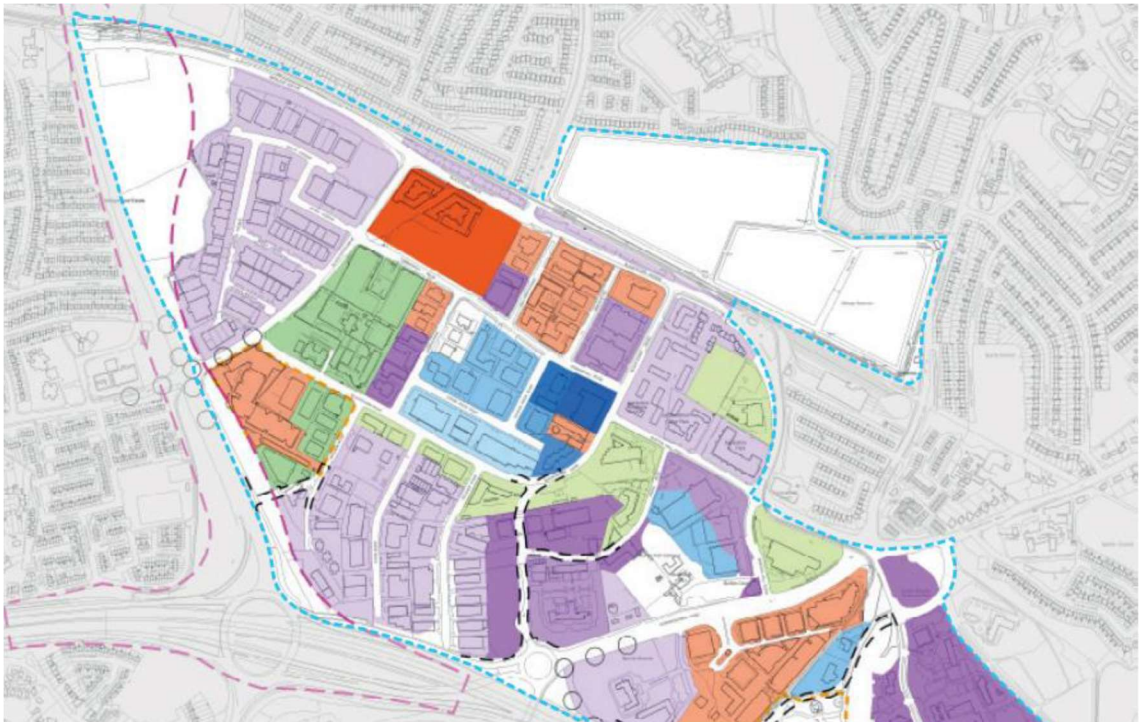


Figure 2: Map 2 - Plot Ratios & Residential Densities of the Sandyford Urban Framework Plan 2022-2028

2.2 Density and Scale

The SUFP includes a number of policies of relevance as follows:

‘2.5.1 Policy SUFP 2 Density and Scale It is Council policy to ensure that Sandyford Business District develops in an orderly manner in accordance with the increase in uses set out in the objectives of this Plan and the Density and plot ratio set out in Map 2.’

In relation to the Objective A2 Residential Zone 5, the plan also states under A2 1 that:

‘It is an objective of the Council to ensure the residential neighbourhoods are developed at a density that is in accordance with the density provision set out in Map 2.’

Map 2 provides for a density of 150 units per ha. for the subject site.

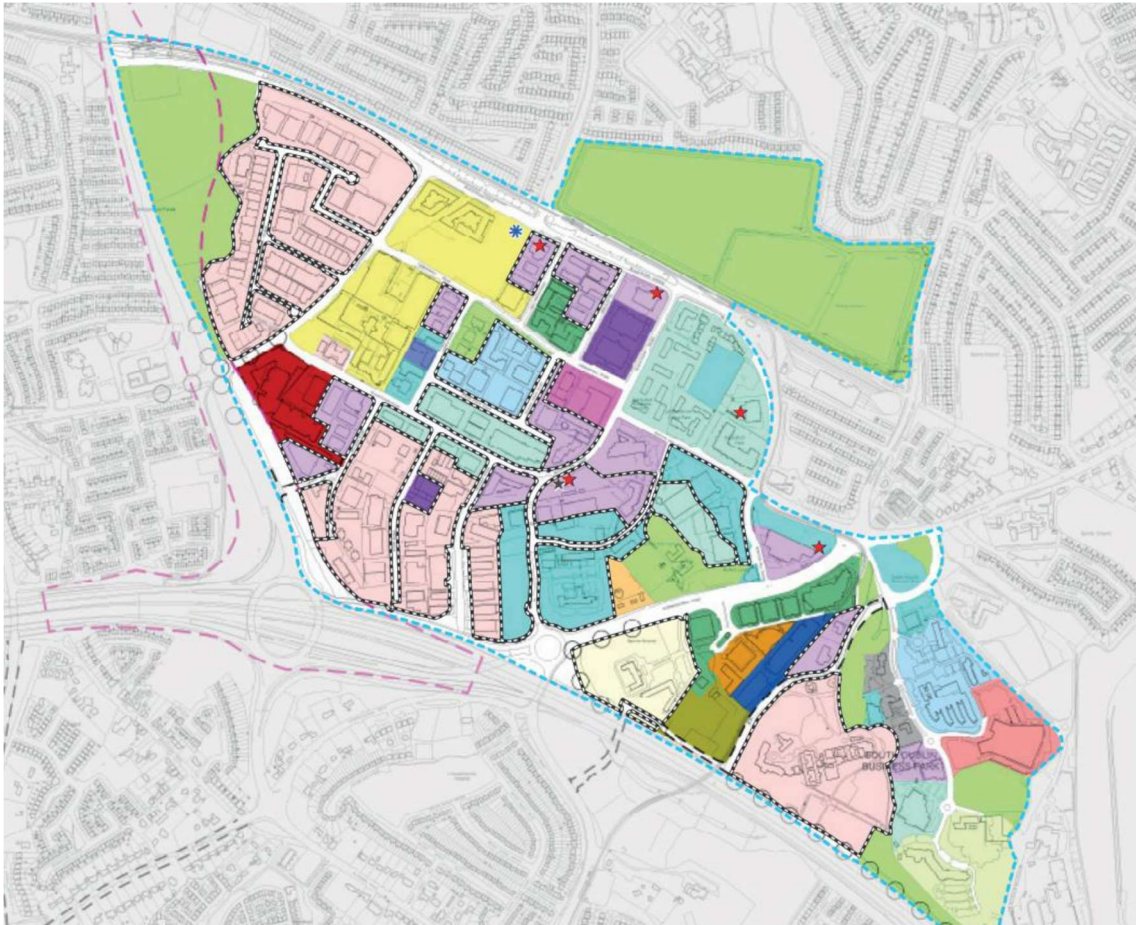


Figure 3: Map 3 – Building Heights of the Sandyford Urban Framework Plan 2022-2028

2.3 Car Parking

2.3.1 Dún Laoghaire Rathdown CDP 2022-2028

The CDP divides the county is four zones in relation to car parking and standards. Lands forming part of the Sandyford Urban Framework Plan are the subject of Table 12.6. This table identifies the following standards for development:

Unit Size	Car Parking Spaces per Unit
1 bed	0.6
2 beds	0.8
3 or more bed	1
All Units	Minimum of 0.02 car share spaces

In relation to childcare, applicants should refer themselves to table 12.5 requires that 1 space per 60 sqm be provided.

Under section 12.4.5.2, the CDP sets out assessment criteria from car parking standards. These include:

- *Proximity to public transport services and level of service and interchange available.*
- *Walking and cycling accessibility/permeability and any improvement to same.*
- *The need to safeguard investment in sustainable transport and encourage a modal shift.*
- *Availability of car sharing and bike / e-bike sharing facilities.*
- *Existing availability of parking and its potential for dual use.*
- *Particular nature, scale and characteristics of the proposed development (as noted above deviations may be more appropriate for smaller infill proposals).*
- *The range of services available within the area.*
- *Impact on traffic safety and the amenities of the area.*
- *Capacity of the surrounding road network.*
- *Urban design, regeneration and civic benefits including street vibrancy*
- *Robustness of Mobility Management Plan to support the development.*
- *The availability of on street parking controls in the immediate vicinity.*
- *Any specific sustainability measures being implemented including but not limited to:*
 - *The provision of bespoke public transport services.*
 - *The provision of bespoke mobility interventions.'*

2.3.2 SUFP 2022

The SUFP includes the following parking objective:

'TAM10 *It is an objective of the Council to manage the provision and use of car parking and cycle parking/ cycle facilities through Travel Plans. This shall include for the provision of car parking spaces for electric vehicles and for car sharing schemes. Cycle parking and cycle facilities (including the provision of showers and lockers as appropriate) shall be in accordance with Council's 'Standards for Cycling Parking and Associated Facilities for New Development' (2018).'*

2.4 Dual Aspect

The Dún Laoghaire Rathdown CDP 2022-2028 plan states under section 12.3.5.1:

*‘The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (2018), provides guidance with respect to the minimum number of dual aspect apartments that may be provided in any single apartment schemes. In accordance with this guidance, **DLR as a County is classified as a suburban or intermediate location** and therefore:*

‘There shall generally be a minimum of 50% dual aspect apartments in a single scheme.’ (Our emphasis)

As the development complies with the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DHLGH, 2020)*, it may be viewed as inconsistent with the CDP.

2.5 Public Open Space

Section 12.8.2 on open space categories for residential development defines three categories in table 12.7.

Section 12.3.2.2 (ii) of the CDP includes table 12.8 which sets out the requirement for public open space. Residential developments in existing built-up areas should include 15% of the site area.

This section also recognises that *‘It is acknowledged that in certain instances it may not be possible to provide the above standards of public open space. High density urban schemes and/or smaller urban infill schemes for example may provide adequate communal open space but no actual public open space. In these instances where the required percentage of public open space is not provided the Council will seek a development contribution under Section 48 of the Planning and Development Act 2000, as amended. The contribution in lieu to be paid for any shortfall in the quantum of public open space to be provided will be used for the provision of improved community and civic infrastructure and/or parks and open spaces, in the vicinity of the proposed development for use of the intended occupiers of same.’*

As the development is a high-density urban scheme which provides 17% of communal open space but no public open space, it may be viewed as inconsistent with the CDP.

2.6 Private Open Space

Section 12.8.3.3 on private open space includes table 12.11 which sets out the standards of relevance to apartment units. It is presented below:

Table 1: Private Open Space Standards

Types / No. of apartments	Minimum square metres
Studio	4 sqm
One	5 sqm
Two (3 persons)	6 sqm
Two (4 persons)	7 sqm
Three	9 sqm
Four +	12 sqm

3 Justification of Material Contravention

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. Reference is also made to conflicting policies in the plan and to the pattern of development in the area.

The policy is provided in Planning Report and Planning Consistency Statement, and it is not intended to repeat save to summarise the key policies that apply to the material contravention statement.

3.1 Material Contravention Justification – Height and Density

3.1.1 *Justification of Material Contravention s37(2)(b)(i) – Proposed Development is of Strategic or National Importance*

National Planning Framework

The NPF provides a range of National Strategic Outcomes.

The first outcome is stated as “Compact Growth”. *“Activating these strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development, is a top priority”*

Of particular relevance to the proposed development are National Strategic Outcome 1 – Compact Growth and National Policy Objectives (NPO) set out by the National Planning Framework 2040, in particular:

- NPO 3(a) – deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.

- NPO 4 – create attractive, liveable and well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- NPO 5 - develop cities and towns of sufficient scale and quality.
- NPO 6 – regenerate and rejuvenate cities and towns so that they can accommodate increased residential population.
- NPO 11 - presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages.
- NPO 13 - introduced the concept of higher buildings and lowered parking standards where 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.
- NPO 35 - Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

Having regard to the relevant objectives above, the proposed development is consistent with the NPF and in particular with its principles of compact growth and the reinforcement of the country's existing urban structure at all levels. Where housing policy is concerned, the proposed development accords with the NPF's core principles for housing delivery and in particular the location of the proposed new housing is prioritised within the existing settlements. The proposed development will provide a continuous built form adjacent to the existing built-up area.

With regard to Objective 13, the inclusion of apartments is in response to the NPF which recognises that *“currently, 7 out of 10 households in the State consist of three people or less, with an average household size of 2.75 people. This is expected to decline to around 2.5 people per household by 2040. Yet, the stock of housing in Ireland is largely comprised of detached and semi-detached houses with three to four bedrooms.”* The proposed development of build to rent apartments will result in a variety of apartment sizes to accommodate a mix of household types, suitable for a variety of household sizes in order to ensure a social mix and balance is achieved.

With regard to Objective 35, the NPF explicitly supports the increase residential density in settlements, through a range of measures including increased building heights.

The NPF states *“In particular, general restriction on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance-based criteria appropriate to general locations e.g. city/ town centre, public transport.”*

The proposed development has due regard to the above NPOs as demonstrated in other parts of this report and in the Statement of Consistency. In addition, it is Government policy to provide

more housing as set out in Rebuilding Ireland Action Plan for Housing and Homelessness 2016 and Housing for All – Ireland’s new Plan for Housing.

The development includes a significant number of residential units in a range of typologies. It contributes to the strategic provision of large-scale housing in the County and Region. On this basis, it is submitted that the proposed development is both, of strategic and national importance and the needs for housing has been clearly identified by the Government.

Section 37(2)(b)(i) of the Planning and Development Act 2000, as amended, effectively allows the Board to grant permission, when it considers that the proposed development is of **strategic or national importance**. The specific objectives outlined above are achieved by allowing a higher density development on the subject site. Section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended also allows the Board to grant permission, when it considers that permission for the proposed development should be granted having regard to any **relevant policy of the Government, the Minister**. The National Planning Framework is the relevant national policy.

3.1.2 Justification of Material Contravention s.37(2)(b)(ii) – Conflicting Objectives

We refer the Board to PHP18 - Residential density of the County Development Plan 2022-2028 which seeks to *'increase housing (houses and apartments) supply and promote compact urban growth through the consolidation and re-intensification of infill/brownfield sites having regard to proximity and accessibility considerations, and development management criteria set out in Chapter 12.'*¹

We also refer the Board to Appendix 16 of the Plan which comprises the SUFP specifically. Through Map 2, the SUFP sets out residential densities applicable on a site-by site basis, which the application site allocated a density of 150 uph.

Under PHP18, infill/brownfield sites, such as the application site, will be used to promote compact urban growth subject to proximity and accessibility. PHP18 specifically seeks greater densities yet it does not apply a cap. The site is highly accessible by public transport, including high-capacity light rail. It is also located at the heart of the Sandyford Business District where numerous large employers are located. In this regard, the capping of density at 150 uph in the SUFP should be viewed as being in direct conflict with PHP18 of the CDP.

On this basis, it is respectfully requested that the proposed development should be considered having regard to PHP18 and not as a material contravention of the density set out in Map 2.

3.1.3 Justification of Material Contravention s. 37(2)(b)(iii) – Regard to s. 28 Guidelines and any relevant Government policy

Sustainable Urban Housing: Design Standards for New Apartments 2018

Section 37(2)(b) of the Planning and Development Act 2000, as amended, allows the Board to grant permission, when it considers that:

*“(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;”*

The Design Standards for New Apartments Guidelines for Planning Authorities build upon the provisions of the NPF in signalling a move away from blanket restrictions on heights in certain location in favour of an evidence-based approach based on performance criteria. The Apartment Guidelines do not detail performance criteria but note it is recognised that there is a need for greater flexibility in order to achieve significantly increased apartment development in Ireland’s cities.

Further information can be found on what performance criteria are considered on p67 of the NPF as follows:

‘Infill and brownfield development is more challenging to deliver than greenfield development for a variety of reasons, including land management but also the challenge of integrating with existing communities, who may have a preference for the status quo to be retained, even if that might reduce opportunities for rejuvenation and drive urban expansion outwards.

*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.*

In particular, general restrictions on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance-based criteria appropriate to general location, e.g., city/town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc.

*A more dynamic performance-based approach appropriate to **urban location type** will also enable the level of public transport service to improve as more development occurs and vice-versa. There should also generally be no car parking requirement for new development in or near the centres of the five cities, and a significantly reduced requirement in the inner suburbs of all five.’ (Bold, our emphasis)*

In addition, the Apartment Guidelines provide guidance with regard to the types of location which are considered suitable for higher density developments that may wholly comprise apartments, referred to as *Central and /or Accessible Locations*. The subject site meets all identified criteria for such developments.

Criterion 1

Sites within walking distance (i.e., up to 15 minutes or 1,000- 1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions.

The subject site is located within 15-minute walk of a number of key locations including, the Beacon Hospital (10 minutes) and several places of employment all within 1 to 15 minutes' walk. Sandyford is the home of 1,000 companies which employ 26,000 persons. The site is also located 1.5 km away from the Stillorgan Industrial Park and the South County Business Park. Number of large employers have a base in Sandyford, these include ESB Networks, Accenture, AIB, Facebook, Google, Microsoft, Leopardstown Racecourse, Microsoft, SSE Renewable, etc.

Criterion 2

Sites within reasonable walking distance (i.e., up to 10 minutes or 800 - 1,000m) to/from high capacity urban public transport stops (such as DART or Luas). The site is located within a 5-minute walk of Sandyford Luas stop.

Criterion 3

Sites within easy walking distance (i.e., up to 5 minutes or 400-500m) to/ from high frequency (i.e. min 10 minute peak hour frequency) urban bus services.

The site is bounded by high frequency bus services that provide routes to Dublin City Centre and surrounds (Routes 11, 75A, 114, 116, 700).

Accordingly, it is clear that the height limitations provided by the Sandyford Urban Framework Plan are in conflict with the provisions set out by the Apartment Guidelines.

It may also be noted that the Urban Framework Plan states -

“It is considered that the overall quantum of residential use already constructed in the Mixed Use Core Areas is sufficient to provide vitality to these areas. Future residential development should therefore, primarily be focused within the residential zoned land (Map 1, Zone 5)”.

However, the majority of the permitted SHD development has occurred on the mixed-use lands at western end of Carmanhall Road.

It is further noted that the above criteria allow the scheme to be considered under **BHS 1 and BHS 2 of the County Development Plan** (quoted above) and as such may not constitute a Material Contravention of the Development Plan.

Urban Development and Building Heights Guidelines for Planning Authorities 2018

Justification background

Section 37(2)(b) of the Planning and Development Act 2000, as amended, allows the Board to grant permission, when it considers that:

*(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, **guidelines under section 28...***

The Urban Development and Building Heights, made in response to the publication of Project Ireland 2040 and the NPF note Local Authorities have set generic height limits and state the following:

*“Such limits have resulted from local-level concerns, like maintaining the character of an existing built-up area, for example. However, such 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 many of our cities and towns continue to grow outwards rather than consolidating and strengthening the existing built-up area. Such blanket limitations can also **hinder innovation in urban design and architecture** leading to poor planning outcomes”. (Bold our emphasis)*

The Guidelines state that it is appropriate to support heights of at least six storeys at street level with scope for greater height subject to design parameters.

An Bord Pleanála and Planning Authorities must have regard to these Guidelines, and we note with particular reference to the Specific Planning Policy Requirements (SPPRs) set out in the Building Height Guidelines, these elements are mandatory. 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 the 6 to 16 No. storey height restriction at the subject site would be contrary to SPPR 1.

Development Management Provisions and Applicability

The Development Management provisions are detailed in the Planning Report and Statement of Consistency.

In particular the stated policy in SPPR 3 applies, which in summary states that, where an applicant sets out how a development proposal complies with the criteria and 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.** (Bold our emphasis)

In relation to the assessment, *“it is Government policy that building heights must be generally increased in appropriate urban locations”*. There *“is therefore a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility.”*

In accordance with Section 3.1 of the Urban Development and Building Heights Guidelines, Planning authorities must apply the following broad principles in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines:

Questions	Responses
<p>Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?</p>	<p>The proposed development delivers compact growth beside public transport on a brownfield site. Imposing a height restriction at the subject site through the SUFP is contrary to SPPR 1 of the Height Guidelines, 2018 which notes that blanket numerical limitations on building height shall not be provided for through statutory plans.</p>
<p>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?</p>	<p>Yes, the proposed development is on zoned residential lands, included set back, appropriate use, own door etc. and contributes to delivering compact growth in urban centres. The scheme is therefore fully in accordance with the preferred approach of the National Planning Framework and of the relevant statutory plan. Indeed, the provision of increased height and density may be held to be in accordance with BHS 1 and BHS 2 of Appendix 5 of the Development Plan.</p>
<p>Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?</p>	<p>SPPR 1 sets out that blanket numerical restrictions on building heights shall not be provided, in order to support building height and density in locations with good public transport accessibility. While the SUFP was adopted this year, it still specifically set out a numerical limitation on height, and density. Sandyford is a highly accessible settlement located in the Metropolitan Area. The surrounding area of the application site is urban in nature and the site is an infill development on a brownfield site. The application as it stands contribute to the NSO 1 on Compact Growth.</p> <p>Part of the site includes a 16-storey element which provides architectural interest across the site, responds to the differing characteristics and contexts of the location and is appropriate in order to accord with Government policy to increase building heights in sustainable locations. The proposed design is of high architectural quality and incorporates well-</p>

Questions	Responses
	designed spaces which will help enhance an important corner in the Sandyford Industrial Estate.

Set out in the table below, it has been demonstrated that the proposed development satisfies the development management criteria listed in section 3.2 of the Urban Development and Building Heights Guidelines..

At the scale of the relevant city/town

Criteria	Responses
The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.	The site is 5-minute walk from a Luas stop and adjacent to several bus routes as detailed before.
Development proposals incorporating increased building height, including proposals within architecturally sensitive areas , should successfully integrate into/enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.	<p>The site is not located in an architecturally sensitive area. The applicant has included verified views and photomontages as part of the application. These demonstrate the close and distant views for the information of the Board in the CGI views prepared by Digital Dimensions (also see Architects Design Statement).</p> <p>The 16-storey element, owing to its position at the corner of the site, will become a landmark building and signal the entrance to Carmanhall Road, the central spine of the Carmanhall Road Neighbourhood. This spine is centrally located within the Sandyford Business District.</p> <p>It is important to note that the CDP itself in the SUFP envisages that Carmanhall would be <i>'contained by tall buildings at either ends'</i>. In this regard, the proposed development would achieve this design objective. Furthermore, it would not in any way compromise what the council considers to be the <i>'inner 'soft centre' of the residential neighbourhood'</i>.</p>
On larger urban redevelopment sites, proposed developments should make a	This criterion is listed under the scale of the relevant city/town but also applies to the

Criteria	Responses
<p>positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.</p>	<p>district/neighbourhood/ street and therefore there is a degree of overlap in the justification. Sandyford Industrial Estate was opened in 1977 on 200 acres of land where the majority of the site was allocated for industrial purposes and the rest as roads. The Industrial estate vehicular layout has remained and sets the overall context of the current and proposed urban layout. The new developments are confined to the original industrial estate roads layout and the overall area was never re-master planned for a new urban area. Sandyford Business District consists of the wider area comprising four areas described as business parks – Central Park, Sandyford Business Park, South County Business Park and Stillorgan Business Park which has c 26,000 employees in approximately 1,000 companies and c 5,000 residents. Please refer to figure 6 below.</p> <p>Sandyford Industrial Estate has emerged into an office park with various headquarters of international companies such as Microsoft and Vodafone with the addition of a private hospital and a Children’s science destination. The area also houses large scale retail and motoring sales spaces. Please refer to figures 6, 7 and 8 below.</p> <p>While the site is not located on a larger urban redevelopment site as it is c 0.99 ha., the Planning Authority has previously permitted a high-density development¹ on the adjacent site. The Board has also permitted development on the application site².</p> <p>The applicant has now developed a Masterplan with Sandyford Environmental Ltd in respect of the adjoining ‘Tack’ site to ensure that an integrated approach be adopted in respect of</p>

¹ D05A/0566 (5/11/2005)

² TA06D.303467 (20/02/2019)

Criteria	Responses
	<p>the two sites and ensure daylight and sunlight impacts are mitigated. The proposed design, which was an iterative process, has been developed with regard to the potential to integrate with the adjoining Tack site, the Board’s Opinion on that site and consultations with the planning authority in respect of both sites. The proposed development will make a positive contribution to the Sandyford area by incorporating a new street between the subject and adjacent site which will introduce a street break between the sites and open the blocks at a pedestrian scale.</p> <p>The height elements of the design have been varied, using massing and highly articulated elevational presence to achieve the required higher density keeping to 8 storeys along Blackthorn Road and 10 storeys on Carmanhall Road. The taller 16-storey element creates a focal point and landmark to the junction area of Carmanhall Road and Blackthorn Road, creating a strong corner, effectively bookending Carmanhall Road as envisaged in the SUFP. The proposed design with the variety in scale and form responds positively to the streetscape and creates a strong visual interest in the streetscape.</p> <p>The application site is an appropriate place for a higher building at the intersection of two roads designed as an industrial estate and acts as an urban marker from different directions, reinforcing and contributing to a new urban residential quarter at this end of Carmanhall Road.</p>

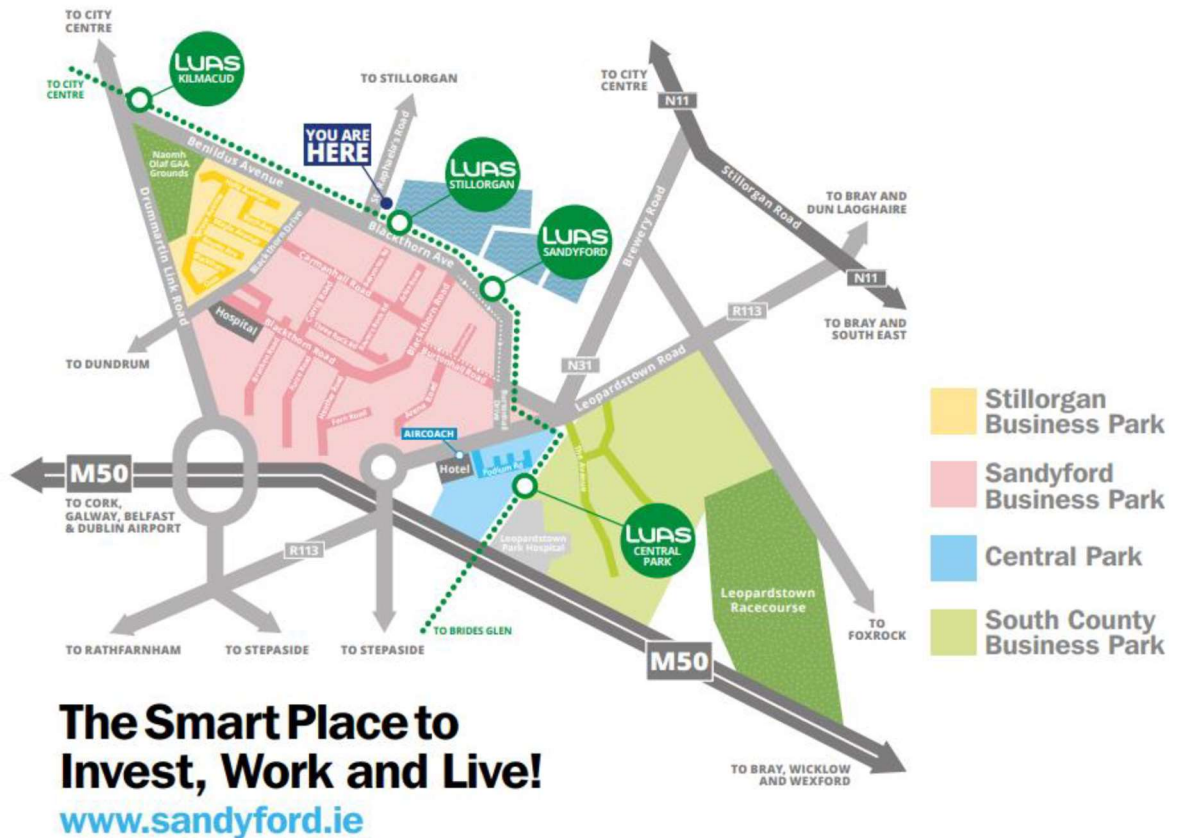


Figure 4: Extract from the Sandyford Business District Review 2020



Figure 5: Road layout (source: OpenMaps)



Figure 6: Road layout (source: Google Earth)

At the scale of district / neighbourhood / street

Criteria	Responses
The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape	The scale of the district/ neighbourhood/ street is illustrated in the MDO Architects Design Statement and overlaps with the criteria above. On this section of district/ neighbourhood/

Criteria	Responses
	<p>street, the major new developments which inform the streetscape are opposite the application site in the form of large office blocks located on Carmanhall Road. Opposite the application site is Arkle Road with two major office developments on either side. To the front of the Nova Aria buildings is a local shop with take away food and is a focus for office staff from the offices.</p> <p>To the east, on Blackthorn Road is a number of companies located in buildings ranging in heights of 2 to 6 storeys. All these are well removed from the public road. Many of these buildings are over 15 years old.</p> <p>To the west on Ravensrock Road is the Irish Village Market building HQ. The forecourt area served as a street food market serving take away food mostly to office staff in the vicinity. That market, pre-Covid 19, alternated between Ravensrock Road and the Luas stop and was a very popular and busy commercial operation.</p> <p>The proposed development fronting Carmanhall on this street will significantly improve the streetscape with the provision of an active ground floor design and linear greenway. Importantly, the site is currently hoarded since demolition of the Avid technology facilities took place. The site occupies a strategic corner in the neighbourhood, yet it is currently bounded on its most prominent sides by hoarding, which seriously undermines the visual quality of this important corner.</p> <p>Under ABP Ref. TA06D.313209 Ravensbrook Limited lodged an application on 4th April 2022 at IVM House, 31 Ravens Rock Road and 31a Ravens Rock Road for the Demolition of an existing building and construction of 101 no.</p>

Criteria	Responses
	<p>Build to Rent apartments within a part 5, part 6 to part 11 no. storeys building over partial basement. c. 514sqm of public open space provided fronting Carmanhall Road and resident support facilities/ services and amenities space are provided at ground and first floor levels.</p> <p>The SUFP prohibits any commercial ground floor activity such as cafes or local shops and the design has incorporated a community facility in accordance with SLO 52, resident activity uses and creche to animate the street. Further, own door units will be provided on Blackthorn Road, creating 24/7 natural surveillance. The development will provide residential uses in accordance with the Council residential zoning objective.</p> <p>The scheme will provide active surveillance of all open spaces throughout the development and include a creche, resident and community facilities at ground floor level to provide animated daytime uses. Own-door units located at ground floor will provide surveillance throughout the course of the day and the night, creating a sense of safety for pedestrians.</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 proposed development has considered the layout and has been designed around three blocks of varying heights in order to avoid a monolithic block. The Design statement includes a section on the proposed materials which sets out the fabric and materials. It also sets out the proposed elevational treatment. The response to this criterion is interrelated with the criteria of making a positive contribution to the urban neighbourhood and streetscape.</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</p>	<p>The applicant will facilitate a greenway in front of their site. The site also incorporates two green streets, one splitting the Avid site from the Tack site and the other from the site and buildings to the south. As well as creating an active frontage</p>

Criteria	Responses
<p>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>on Carmanhall Road and Blackthorn Road, it will a strong corner in the form of a landmark building providing wayfinding to the area and signaling the entrance to the more central part of the Sandyford Business Park.</p> <p>Block G and F, respectively located along the southern boundary and along the Blackthorn Road are aligned with the SUFP and provide scale and enclosure. Height has been appropriately stepped down from neighbouring sites including the Tack site, to avoid impacting on the existing and future amenities of these plots.</p> <p>We also refer the Board to the Flood Risk Assessment, and Engineering Assessment Report prepared by Waterman Moylan submitted as part of this application (which includes Surface Water measures and SUDS proposals).</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 situated and integrates in a cohesive manner.</p>	<p>The site is c 0.99 ha and addresses both Blackthorn Rock Road and Carmanhall Road. Additionally, the site creates a new street to the along the Tack site. It is intended to develop the two sites subject to coherent and coordinated Masterplan (submitted as part of this SHD application).</p> <p>The site will add much needed permeability to the neighbourhood. This area of the Sandyford is qualified by large plots, making pedestrian permeability somewhat unachievable. Together with the development of the Tack site, the subject SHD will allow for the creation of new pedestrian links across plots significantly improving permeability. Effectively two new axes are created. A north-south one, which split Avid from Tack but consists of a unified green street and an east-west one linking Ravens Rock and Blackthorn Road.</p>

Criteria	Responses
	<p>The proposal also incorporates the CDP requirement for the green route along the Carmanhall frontage.</p>
<p>The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.</p>	<p>The proposed development is for residential, creche, community space and resident facilities. This is a positive contribution in an area that has c 26,000 employees and is the main employment area of Dún Laoghaire Rathdown Council area. The Apartment Guidelines do not provide for any required mix of units in Build to Rent schemes.</p> <p>The main corner of the site, the north east corner along with its northern elevation will accommodate a mix of active uses and create animation on the street. In addition, it should be noted that all residential units at ground floor are all own-door, adding for natural surveillance at all times, particularly when the more public uses of the sites are closed for the night.</p>

At the scale of the site / building

Criteria	Responses
<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>The form massing and height is modulated in several ways. The layout form is that of four blocks, essentially in a two L-shape around an internal courtyard. The blocks also have a staggered roof profile with various setbacks on each block providing an attractive designed roof scape visible from distances. At the pedestrian level, own door access is provided at ground floor level to residential apartments as well as the service units, to encourage street level activity and counter the potential for dead frontage.</p> <p>The proposed layout allows access to natural daylight and ventilation for all the proposed apartments. The internal courtyard faces south</p>

Criteria	Responses
	<p>and under the current situation would enjoy excellent daylight.</p> <p>There are a few units across the development where private open space has been replaced by a Juliet Balcony and compensatory measures provided to achieve and now exceed daylight requirements.</p> <p>Please refer to figures below.</p>
<p><i>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’.</i></p>	<p>The scheme has been modified from the initial design and layout in order to improve the daylight and sunlight for the proposed development. A comprehensive daylight and sunlight assessment accompanies the application prepared by IN2 Consultants.</p>
<p><i>Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.</i></p>	<p>The daylight and sunlight report that accompanies the application by IN2 highlights provides considerable comfort regarding the positive performance of the proposed buildings.</p> <p>Section 5.0 details the results of sunlighting and shading to external amenity spaces within proposed developments. 58% of proposed communal open space at ground floor is predicted to receive at least 2 hours of direct sunlight on the 21st of March. In addition, 75% of communal open space at roof level will match this requirement. Overall, 50% of all amenity space will receive two hours of more of sunlight on the 21st of March. Therefore, amenity spaces were found to be compliant with the guidelines.</p> <p>The impact of the proposed development on neighbouring buildings is assessed in Section 6.0. The proposed development is sited in the Sandyford Business District. The IN2 report notes that <i>the BRE Guide recommends that the</i></p>

Criteria	Responses
	<p><i>guidelines outlined in the introduction and Section 5.1 should be applied to residential dwellings. However, all existing buildings surrounding the proposed development are commercial buildings, which have no expectation or requirement for sunlight or daylight. There are no existing residential dwellings within the zone of analysis.</i></p> <p>The internal daylight analysis, as detailed in section 7.0, has been undertaken for all units across the development. The analysis determined that 96% of rooms achieved prescribed Spatial Daylight Autonomy targets. This extent of compliance was achieved through design development, with increased glazing/ reduced balcony depths / balcony locations etc. applied to ensure the residences can benefit from maximised daylight availability.</p>



Figure 7: Solar Path Diagram (source: MDO – Architect Design Statement)

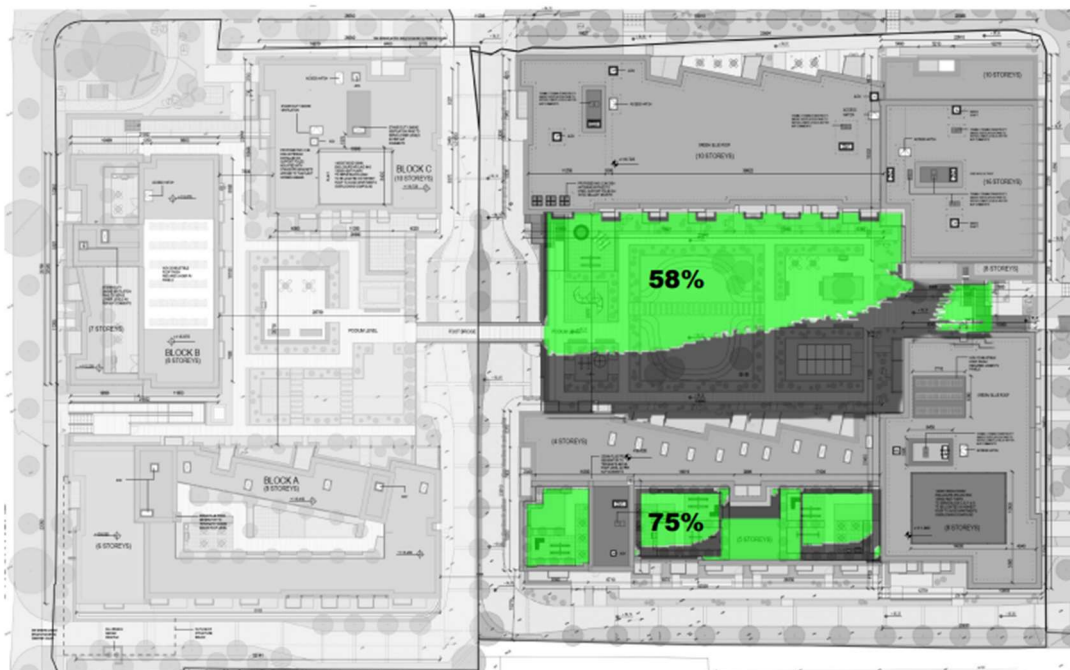


Figure 8: Sunlight availability to amenity spaces for the proposed development (source: IN2 – Daylight and Sunlight Analysis)

Specific Assessment

To support proposals at some or all of the scales, specific assessments may be required, and these may include:

Assessment	Response
Impact assessment of the micro-climatic effects such as downdraft.	A Microclimate assessment is included in Chapter 12 of the EIAR. This comprehensive assessment shows that this will be acceptable owing to the layout and variation of heights.
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.	The site is located in an urban area and is several kilometres from any protected areas. The surrounding habitats have low suitability for birds and bats, and the site is not on a flight line between any important areas for birds or bats. The site and its surroundings are not considered to be sensitive areas for birds or bats, and the risk of collision is considered to be negligible.
An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.	An assessment is included in the EIAR.
An assessment that the proposal maintains safe air navigation.	The subject site and proposed development are not within a flight path or within the vicinity of an aerodrome. Therefore, the proposal is not expected to impact on safe air navigation.
An urban design statement including, as appropriate, impact on the historic built environment	An architect design statement is enclosed. There is no historic environment. The statement shows how the design adapts to and complements the existing streetscape and built fabric of the area.
Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.	An AA screening and full EIAR report accompany this SHD planning application.

Where the relevant planning authority or An Bord Pleanála considers that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply

Strategic Planning Policy Requirement 3 under Section 28 (1C) of the Planning and Development Act 2000 (as amended)

Overall, the Board may consider that a Material Contravention does not apply in respect of height as policy BH5 SUFP (which qualifies SUFP 3) allows that additional height may be permitted where it can be demonstrated that additional height over the height limits identified on Map 3 accords with policy objective BHS1 and BHS2, of the Dun Laoghaire Rathdown County Development Plan 2022-2028, Appendix 5.

The safeguards outlined in these policies as set out in Table 5.1 are included in Appendix A of this submission. The criteria set out in Table 5.1 are fully addressed in this SHD application package in;

- The Design Statement
- Landscape Design Statement
- Building Life Cycle Report
- DMURS report
- Flood Risk Assessment
- Landscape and Visual Assessment (included in the EIAR)

3.2 Material Contravention Justification – Car Parking - Residential

3.2.1 Justification of Material Contravention s.37(2)(b)(iii) – Regard to s. 28 Guidelines and any relevant Government Policy

At the outset, it is important to note that the development would qualify as ‘Central and/or Accessible Urban Location’. Although the applicants note that the Council applied a de facto blanket designation as ‘Intermediate Urban Location’ to the whole of Dún Laoghaire Rathdown, the applicants are of the view they have provided sufficient information as to why the site qualifies as a ‘Central and Urban Location’ (see section 3.1.3 of this report). Under s.4.19 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DHLGH, 2020), *‘the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances.’*

We also refer to SPPR 8(iii) which states: *‘There shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures.’*

This supersedes the standards included in the development standards of the CDP as they apply to built-to-rent apartments.

3.2.2 Justification of Material Contravention s. 37(2)(b)(iv) – Pattern of Development and Permissions Granted

This SHD Planning application includes a comprehensive Traffic & Transport Assessment (T&TA) prepared by Waterman Moylan Consulting Engineers Ltd. Section 12 of the Report provides a detailed analysis of car parking policy and provision.

The proposed provision of car parking on the subject site will be 125 spaces calculated at the rate of 0.375 space per unit per unit for 334 units.

The provision of 125 spaces will include 5 spaces for disabled drivers (4%), 25 spaces with charging facilities for electric vehicles (10%) and 7 spaces for car sharing (GoCar).

A total of 45 spaces will be located at Lower Ground Level as shown in Figure 8 with a total of 80 spaces at Basement Level as shown in Figures 8 and 9 of the report.

The proposed development includes 447 cycle spaces comprising 64 spaces Short Stay (Visitor) and 383 Long Stay (Residents) spaces. Provision for future additional demand for cycle parking of +10% has been incorporated into the cycle provision for this development.

Table 11 in Section 12 of the Traffic & Transport Assessment highlights that in a number of recent decisions, An Bord Pleanála has approved a much-reduced provision of car parking when compared with the maximum standards set out in the various Development Plans. The contents of Table 12 are in broad agreement with the experience of existing BTR schemes where the demand for car parking is approximately 0.375 spaces per unit.

3.3 Material Contravention – Dual Aspect

3.3.1 *Justification of Material Contravention s.37(2)(iii) – Regards to s.28 Guidelines and any relevant Government Policy*

Under s.12.3.5.1 of the County Development Plan, the entirety of the County has been designated as ‘suburban or intermediate location’ as set out under the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018, amended 2020). It states:

‘There shall generally be minimum of 50% dual aspect apartments in a single apartment scheme.’

Section 2.4 of the Design Standards for New Apartments sets out three categories suitable for apartment development. The applicants have demonstrated in other parts of this report, specifically under section 3.1.3 in response to criteria 1,2 and 3 of the Design Standards for New Apartments, why they consider the site should be viewed as a ‘central and/or accessible urban location’.

Furthermore, we refer the Board to SPPR8 (i) of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018, amended 2020) clearly states: *‘No restrictions on dwelling mix and **all other requirements** of these Guidelines shall apply, unless specified otherwise,’* in respect of Build to Rent developments.

On this basis, we contend that the proposed development, being a Built-to-Rent scheme complies with the guidelines.

3.4 Material Contravention – Public Open Space

3.4.1 Justification of Material Contravention – s.37(2)(b)(ii) – Conflicting Objectives

Table 12.8 of section 12.8.3.1 of the CDP sets out the public open space requirements for residential developments dependent of their location. The SHD site would qualify as a ‘Residential Development in the existing built-up area’ and therefore would require that 15% of the site area be allocated to public open space.

It is further stated that ‘*all residential schemes **must** provide a minimum of provision of public open space in accordance with the table above [table 12.8], which has regard to the content of the Section 28 Guidelines ‘Sustainable Residential Development in Urban Areas’ (2009).*’

It further states:

*‘It is acknowledged that in certain instances **it may not be possible to provide the above standards of public open space.** High density urban schemes and/or smaller urban infill schemes for example may provide adequate communal open space but no actual public open space. In these instances where the required percentage of public open space is not provided the Council will seek a development contribution under Section 48 of the Planning and Development Act 2000, as amended. The contribution in lieu to be paid for any shortfall in the quantum of public open space to be provided will be used for the provision of improved community and civic infrastructure and/or parks and open spaces, in the vicinity of the proposed development for use of the intended occupiers of same.’*

Table 12.9 in section 12.8.3.2 of the CDP sets out the communal open space requirements as follows:

Table 2: Extract from Communal Open Space Standards

Unit Type	Minimum Area per Unit
Studio	4 sqm
One bed	5 sqm
Two bedroom (4 persons)	7 sqm

The table below sets out what the development’s communal open space requirements are:

Table 3: Development’s communal open space requirement

Unit Type	Minimum Area per Unit	No. of Units Proposed	Total Communal Open Space Required
Studio	4 sqm	79	316
One bed	5 sqm	175	875

Unit Type	Minimum Area per Unit	No. of Proposed Units	Total Communal Open Space Required
Two bedroom (4 persons)	7 sqm	80	560
Total	n/a	334	1751

The proposed development incorporates 1,716.1 sqm of communal open space so is marginally below the stated requirements. The proposed development includes 0.17 ha of communal open space (17% of the site area) and 38.5 sqm of public open space. Together these yield 1,754.6 sqm.

It may be considered that these numbers are not in compliance with the standards set out by the CDP. The development plan requires several categories of open space be provided: public open space, communal open space and private open space. It also sets out quantum of provision for each of these categories. It requires that new residential developments provide for 15% of public open space. This would equate to 1,485 sqm of public open space to be provided at the application site.

We refer the Board to the section of the CDP which also acknowledges that *‘that in certain instances it **may not be possible to provide the above standards of public open space**’*. The instances where this would apply include high density developments of the likes of the subject SHD. It should be noted that the communal open space provision is adequate and of very high quality. We refer the Board to the Landscape Report by NMP and associated drawings which set out detailed landscape proposals.

We also refer to Policy A2 3 of the SUFP which states:

*‘It is an objective of the Council to require all residential development within Zone 5 to benefit from public open space in accordance with the requirements set down in the Dún Laoghaire-Rathdown County Development Plan. The applicant shall set out clearly in any proposed development how this requirement is being addressed. Where the Planning Authority agrees that it is not possible to provide meaningful and useable public open space or **where a specific local objective requires, the applicant shall provide indoor community facilities** (e.g., community rooms, indoor active recreational uses for residents), or a financial contribution in lieu of open space, the nature of which should be agreed with the Planning Authority at pre-planning stage.’ (Bold our emphasis)*

The proposed development incorporates community facilities in accordance with SLO 52. On this basis, the development complies and is not in contravention of the public open space requirements.

Taken literally, the development may appear as contravening the public open space 15% provision requirement set out in the CDP. However, other policies are in conflict with this absolute requirement. First the planning authority recognises such provision may not be possible on certain sites. Secondly, and importantly, the SUFP clearly allows the developments

to proceed without public open space when these provide indoor community space. The proposed development complies with SLO 52 and therefore the applicants are of the view that the development complies with the requirements of the CDP.

3.5 Material Contravention – Private Open Space

3.5.1 Justification of Material Contravention – s.37(2)(b)(ii) – Conflicting Objectives

Table 12.11 of the CDP sets out the standards in relation to the provision of private open space for apartment units. Section 12.8.3.3 further states that ‘private amenity space for apartments shall accord with the requirements set out under table 12.11’. An extract of Table 12.11 is presented below.

Table 4: Extract of Table 12.11 Private Open Space Standards

Type / No. of Bedrooms	Minimum Square Metres
Studio	4 sqm
One	5 sqm
Two (4 persons)	7 sqm

It further states that ‘where a Built to Rent scheme avails of lower private amenity space based on the nature of the use, a condition should be attached to any grant of permission to state that planning permission shall be sought for a change of tenure to another tenure model following the period specified in the covenant’.

At the outset, the applicants wish to note that they are not underproviding private open space to any units. They are however cognisant of comments made in the Chief Executive’s Report on the adjacent Tack SHD (ABP.Ref.313338) which erroneously stated that a number of units did not avail of private open space (CE Report, p22, ‘Private Open Space’). Private open space is in two forms: either that of a ‘traditional’ balcony or that of a Juliet Balcony.

Different parts of section 12.8.3.3 suggest that ‘private amenity shall accord with the requirements set out in Table 12.11’ but also that deviations are permissible, specifically referring to Built-to -Rent as follows:

‘Where a Built to Rent scheme avails of lower private amenity space based on the nature of the use a condition should be attached to any grant of permission to state that planning permission shall be sought for a change of tenure to another tenure model following the period specified in the covenant.’

These statements are conflicting with each other. On this basis, the applicants are of the view that they comply.

3.5.2 *Justification of Material Contravention – s.37(2)(b)(iii) – Regard to s.28 Guidelines and any Relevant Government Policy*

Where there may be doubt as to whether private open space has been provided owing to its format (balcony or Juliet balcony) and whether it complies with the development management standards set out under chapter 12 of the CDP, we refer the Board to SPPR8(ii) of the Apartment Design Guidelines which states:

‘8(ii) Flexibility shall apply in relation to the provision of a proportion of the storage and private amenity space associated with individual units as set out in Appendix 1 and in relation to the provision of all of the communal amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development. This shall be at the discretion of the planning authority. In all cases the obligation will be on the project proposer to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity;’

The proposed development includes high quality landscaped communal open space at podium and roof levels. In addition, in accordance with SLO52, the proposed development includes community facilities, as well as include communal facilities. These communal facilities include a gym, business centre, multi-purpose room, etc.

The total provision of residential amenity space is 893 sqm across blocks D and E or the equivalent of 2.6 sqm per unit provided in the development.

For the avoidance of doubt, the applicants wish to reiterate that they have provided sufficient amount of private amenity space for all of the units proposed across the site. Some of these units are catered for with Juliet balconies, which should not be interpreted as no open space. The Board will also note that these units have greater floorspace. Where possible, additional private amenity space was provided for off the bedroom.

4 Conclusion

Pursuant to Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, An Bord Pleanála may grant permission for a Strategic Housing Development where national policy takes precedence over the objectives of the Development Plan as prescribed in Section 37 (2)(b) of the Planning and Development Act (as amended).

As provided in this Material Contravention Statement, the *Sandyford Urban Framework Plan 2022-28* (included as Appendix 16 to the Dún Laoghaire - Rathdown Development Plan 2022 – 2028) includes Policy ‘SUPF 3’ which states that *‘it is Council policy that building height in Sandyford Business District accords with the height limits indicated on Building Height Map 3’*.

The proposed scheme may represent a material contravention to the Sandyford Urban Framework Plan 2022, with regard to height and density however it is considered that increased height and associated density represents the principles of proper planning and sustainable development and is fully in accordance with National Policy which seeks to increase height and density in appropriate core urban areas.

SPPR 1 of the Building Height Guidelines notes that blanket numerical limitations on building height shall not be provided through statutory plans therefore the imposition of the height restriction at the subject site would be contrary to SPPR 1. The subject site is suitably located to accommodate additional height in line with National Policy due to its central and accessible location (as set out in the Apartment Guidelines, 2018) in close proximity to numerous substantial employers located within easy walking and cycling distance from the site and within reasonable walking distance of the Luas of high-capacity urban public transport stops.

It may also be considered that having regard to certain development management standards as set out under the Dún Laoghaire Rathdown Development Plan 2022-2028 are being contravened. In this case, we refer the Board to the Apartment Design Guidelines which requirements supersede development standards, particularly having regard to SPPR 8.

Having regard to the reasons set out in this Material Contravention Statement for increased height it is our respectful opinion that An Bord Pleanála should be favourably disposed to the subject scheme in accordance with Section 37 (2)(b) of the Planning and Development Act, 2000 (as amended).

