

# **Material Contravention Statement**

## **Proposed SHD**

**Lands at St. Joseph's House,  
and adjacent properties at  
Brewery Road and  
Leopardstown Road, Dublin 18.**

**On behalf of  
Homeland Silverpines Limited**



**September 2021**



Planning & Development Consultants

63 York Road

Dun Laoghaire

Co. Dublin

[www.brockmcclure.ie](http://www.brockmcclure.ie)

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## 1 INTRODUCTION

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin, have prepared this Material Contravention Statement on behalf of **Homeland Silverpines Limited, Sandford Road, Ranelagh, Dublin 6** for a Strategic Housing Development proposal on lands at St. Joseph's House and adjoining properties at Brewery Road and Leopardstown Road, Dublin 18.

The proposed development will provide for (a) the demolition of 10 no. properties and associated outbuildings; (b) the refurbishment, separation and material change of use of Saint Joseph's House (a Protected Structure) from residential care facility to residential use and a childcare facility; and (c) the construction of a new build element to provide for residential units, residential amenity space and a café. An overall total of 463 no. residential units will be provided for within the proposed development.

A full description of the development is included in accompanying documentation.

In total, the application red line site boundary extends to an overall site area of c.2.74 ha. The main development site comprises an area of c. 2.58 ha. There are additional lands (of approx. 0.16 ha) included within the red line boundary for the site, which provide for service connections and access proposals along Leopardstown Road.

This statement has been prepared to set out the basis for consideration of a material contravention of the Dún Laoghaire Rathdown County Development Plan 2016-2022 in relation to the following matters:

- **Building Height**
- **Residential Mix**
- **Residential Density**
- **Trees**
- **Car Parking**
- **Transitional Zone**

For the purposes of this statement, we can confirm that the proposed development provides for:

- **Building Heights of 2 to 10 storeys**
- **Residential Unit Mix of:**
  - 85 no. studio units (18.4%)
  - 117 no. 1 bed units (25.2%)
  - 248 no. 2 bed units (53.5%)
  - 13 no. 3 bed units (2.8%)
- **Residential Density of 179.4 units per ha**  
(463 units based on a development net development site area of 2.58 ha).
- **A total of 142 no. trees are proposed for removal on this site.**
- **A total of 259 no. car parking spaces are proposed, to include (232 no. at basement level and 27 no. at surface level). At basement level, a total of 30 no. electric vehicles and 202 no. standard parking spaces are delivered.**
- **The site is located in a transitional zone – the site is zoned 'Objective A' and is located adjacent to a large area of lands zoned 'Objective F'.**

It is acknowledged that it is ultimately the decision of An Bord Pleanála as to whether the proposed development represents a material contravention of the County Development Plan. If it so concludes, the Board has power to grant permission for the proposed development by reference to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).

## 1.1 Legislative Context

This Statement has been prepared in compliance with **Sections 9(6) and 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act, 2016** and **section 37 (2)(b) of the Planning and Development Act, 2000 (as amended)**. The relevant provisions from this legislation are set out below:

**Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 states:**

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

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

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

**Section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act, 2016:**

*“Section (8)(1) Before an applicant makes an application under Section 4(1) for permission, he or she shall –*

*(a) Have caused to be published, in one or more newspapers circulating in the area or areas in which it is proposed to carry out the strategy housing development, a notice – ...*

*(iv) stating that the application contains a statement – ...*

*(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 37 (2)(b) of the Planning and Development Act, 2000 (as amended):**

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

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

*(ii) there are **conflicting objectives in the development plan or the objectives are not clearly stated**, insofar as the proposed development is concerned, or*

*(iii) **permission for the proposed development should be granted having regard to regional 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.”*

In considering material contravention issues, it is also necessary to consider the requirements of Specific Planning Policy Requirements (SPPRs) under relevant ministerial guidelines issued pursuant to section 28 of the Act of 2000. Such guidelines include:



- The 'Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)'
- The 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020)'

Section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 refers to SPPRs and provides:

(3) (a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.

**(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.**

(c) In this subsection "specific planning policy requirements" means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.

This material contravention statement is submitted on the basis that:

- i. The proposal is of **national importance**;
- ii. There are **conflicting objectives in the Development Plan**; and
- iii. The proposal can be positively considered having regard to **Section 28 Ministerial Guidelines** published post the adoption of the relevant Development Plan for the area, namely, the Dún Laoghaire Rathdown County Development Plan 2016-2022; and

We now invite An Bord Pleanála to consider the justification set out in this report, which supports this position.

## 2 STATUTORY PLANNING POLICY

The relevant provisions of the **Dún Laoghaire Rathdown County Development Plan 2016-2022** as they relate to matters of **Building Height, Residential Mix, Residential Density, Trees, Car Parking and Transitional Zones** are outlined in detail below. How the proposal responds to these provisions is also identified.

### 2.1 Building Height

As a summary, we note the following proposals for height across the scheme submitted to An Bord Pleanála:

Block	Heights Proposed
Block A	5 Storeys
Block B	4 - 7 storeys
Block C	5 - 7 Storeys
Block D	5 - 10 Storeys
Block E	2 Storey refurbishment of Existing St. Joseph's House (Protected Structure)
Block F	3 - 6 Storeys

*Table 1 - Proposed Building Heights*

These proposals for height may be considered by An Bord Pleanála to materially contravene the Dún Laoghaire Rathdown County Development Plan 2016-2022 and the Building Height Strategy (Appendix 9) as they are in excess of the general 3-4 storey recommendations for height as set out in the Building Height Strategy within the County.

For the purpose of this material contravention statement, the following sections set out the key policy and provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022 as they relate to height and the subject site.

#### **Policy UD6**

Policy UD6 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 states that “it is the Council’s objective to adhere to the recommendations and guidance set out within the Building Height Strategy for the County”.

#### **Building Height Strategy**

Appendix 9 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 contains the ‘Building Height Strategy’, which is the document referred to by the Planning Authority in consideration of proposal for height within the county. We wish to acknowledge however that the national guidance for height has significantly changed since the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022 (which includes the ‘Building Height Strategy’) with the publication of the ‘Urban Development and Building Height - Guidelines for Planning Authorities December (2018)’.

In terms of context and how the site is defined under the ‘Building Height Strategy’, we note that the site is situated between Brewery Road and Leopardstown Road, Dublin 18 in a largely residential suburban area and is located in close proximity to high quality public transport, that being, 600m from the Central Park Luas Stop and 700m from the Sandyford Luas stop. In this regard, the subject site may be considered to fit into the category of ‘Residual Suburban Areas not included within

Cumulative Areas of Control' under the Height Strategy, i.e. there is no Local Area Plan or Masterplan to provide guidance on appropriate height governing this site.

In such areas the 'Building Height Strategy' states:

*"Apartment or town-house type developments or commercial developments in the established commercial core of these areas to a maximum of 3-4 storeys may be permitted in appropriate locations - for example on prominent corner sites, on large redevelopment sites or adjacent to key public transport nodes - providing they have no detrimental effect on existing character and residential amenity."*

The Height Strategy goes on to state that *"this maximum height (3-4 storeys) for certain developments clearly cannot apply in every circumstance. There will be situations where a minor modification up or down in height could be considered. The factors that may allow for this are known as 'Upward or Downward Modifiers' "*.

In addition, the Height Strategy sets out that where these modifiers apply, heights shall be increased or decreased by 1 or possibly 2 floors of development. It is stated that a proposal must meet more than 1 Upward Modifier in order to qualify as a suitable location for this additional building height. Our review of these modifiers finds that the proposed development meets the criteria of Upward Modifiers b, d, e and f as set out below:

- **b. The development would provide major planning gain, such as:**
  - **Significant improvements to the public realm,**
  - **The provision or significant enhancement of a public transport interchange,**
  - **The provision of new or improved transport infrastructure.**

The proposal delivers a significant improvement to the public realm by way of:

- A new active street frontage along Leopardstown Road including the delivery of a new café unit and residential amenity space at ground level within Block D;
  - The deliver of a new interface along Leopardstown Road that delivers a permeable development with new pedestrian connections from Leopardstown Road to the adjacent Leopardstown Park and Brewery Road;
  - The opening up of the site to allow for views to and from the protected structure, St. Joseph's House;
  - The delivery of a network of new open space areas including courtyards and play areas etc.
  - The amalgamation of a number of existing vehicular access points along Leopardstown Road to provide for one central vehicle access point to the overall site.
- **d. The built environment or topography would permit higher development without damaging the appearance or character of the area, for example: - In an area where the location or scale of existing buildings would allow the recommended height to be exceeded with little or no demonstrable impact on its surroundings, - In a dip or hollow, behind a rise, or near a large tree screen, where the impact of a higher building would have little or no additional impact on its surroundings**

The context of the subject site is unique in that it is bounded on its western and southern boundaries by residential development at Silverpines, Arkle Square Architectural Conservation Area (ACA), and the Anne Sullivan Centre. The site also has the benefit of an adjoining public park (Leopardstown Park) along the northern boundary and significant site frontage along the full extent of Leopardstown Road to the immediate east of the site. The site also contains a protected structure, St. Joseph's House, which has been considered from the outset of the design as a sensitive receptor. This built environment together with the topography of the site have been considered in detail during the design process to ensure proposals for height are appropriate.

The site is also considered to be of a sufficient size (net 2.58ha) that it can set or propose its own proposed context for height at locations within the site that are located away from any sensitive boundaries or receptors. The approach taken is one where the higher elements of the scheme are focused towards the site frontage along Leopardstown Road and towards the centre of the site. Notably Blocks B and C are 7 storeys in height and Blocks D rises to 10 storeys at the centre of the site.

Lastly, the Tree Impact Plan submitted by The Tree File with this application outlines that 141 no. trees of a total tree population of 277 no. trees are proposed for removal. All trees proposed for removal are fair, poor or unsustainable trees (Category B, C and U trees). There are no good quality trees lost. The important point of note in this context is that the majority of trees along the more sensitive boundaries are retained.

- ***e. A development would contribute to the promotion of higher densities in areas with exceptional public transport accessibility, whilst retaining and enhancing high quality residential environments.***

The site is located within approx. 600 m of the Central Park Luas Stop and 700m of the Sandyford Luas stop, both of which serve the green Luas line - a high frequency transport node. In addition, there are a number of regular bus services on the R113 Leopardstown Road, N31 Brewery Road and N11 Stillorgan Road. The N11 is a primary arterial route connecting the suburbs of south Dublin with the city centre. The closest bus stop on the N11 is approximately 16 minute walk away from the centre of the subject site, and is served by the 46A, 70, 75, 84X and 145 bus routes with services between the city centre at 10 minute intervals at peak periods.

The site is therefore well placed in terms of exceptional public transport accessibility. The current density proposal provides for 179.4 units per ha (based on 463 units on a net site of 2.58ha) and is considered an appropriate residential density for a suburban site proximate to public transport infrastructure. It is our view that the proposal contributes to the promotion of higher densities in areas with exceptional transport accessibility.

- ***f. The size of a site, e.g. 0.5ha or more, could set its own context for development and may have potential for greater building height away from boundaries with existing residential development.***

The net development site area is c.2.58ha and is considered to be of a size sufficient to provide an independent height strategy.

Specifically, care has been given along the boundary with Silverpines and Arkle Square ACA to limit heights to 2 and 3 storeys by way of proposals for the refurbishment of St Joseph's House (2 storeys) and Block F (limited to 3 storeys in height at the more sensitive locations within the site and rising to 6 storeys along Leopardstown Road). Furthermore, Block A has been limited to heights of 5 storeys and is significantly removed from the Protected Structure (separation distances of 25.1-32.2m).

The above considered, we are of the view that upward modifiers b, d, e and f apply to the site and as such additional heights of 1 and 2 floors above the 3-4 storey maximum can be considered for this site. Notwithstanding this, the current proposal provides for heights of up to 10 storeys, which is an increase above that envisioned by the 'Building Height Strategy' in the Dun Laoghaire Rathdown County Development Plan 2016-2022.

Should the Board be of the opinion that the proposed height materially contravenes the key provisions of the Development Plan as they relate to height, it is our view that there is adequate support at national level (by way of ministerial guidelines) to justify the height as currently proposed and a material contravention may be permitted.

Whilst the Board may reach this conclusion, it is considered that a grant of permission is appropriate in circumstances where Section 9 (3) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016) of the 2000 Act, provides **that the requirements of a specific planning policy requirement (SPPR) take precedence over any conflicting provisions of a Development Plan:**

*“(b) where specific planning policy requirements of Guidelines referred to in sub-section 2(aa) differ from the provisions of the Development Plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the Development Plan.”*

Specifically, it is our opinion that a grant of permission for increased building height is justified by reference to SPPR 3A of the ‘Urban Development and Building Heights, Guidelines for Planning Authorities (2018)’, as detailed in Section 3 of this report.

## 2.2 Residential Mix

Section 8.2.3.3 (iii) of the County Development Plan sets out the requirements in relation to the mix of units provided as part of new apartment development as follows:

*“Apartment developments should provide a mix of units to cater for different size households, such that larger schemes over **30 units should generally comprise of no more than 20% 1-bed units and a minimum of 20% of units over 80 sq.m.....**”*

The following statement contained on the cover page of Chapter 8 of the Development Plan appears to exclude **Section 8.2.3.3.(iii)** as referred to above.

*“ADVISORY NOTE - Sustainable Urban Housing – Design Standards for New Apartments’ DoECLG(2015) - Users of this Dún Laoghaire-Rathdown County Development Plan 2016-2022 are advised that the standards and specifications in respect of Apartment Development- as set out in **Section 8.2.3.3. (i), (ii), (v), (vii) and (viii)** of the Development Plan Written Statement –have been superseded by Ministerial Guidelines ‘Sustainable Urban Housing – Design Standards for New Apartments’ published by the Department of Environment, Community and Local Government (DoECLG) on 21st December 2015.”*

In consideration of this matter, we note that the proposed development provides for the following mix of units:

- 85 no. studio units (18.4%)
- 117 no. one bed units (25.2%)
- 248 no. two bed units (53.5%)
- 13 no. three bed units (2.8%)

In addition, the percentage of units with a floor area over 80 sq m is 27.2 % or 126 no. of 463 no. units proposed.

Should the Board be of the opinion that the proposed residential mix materially contravenes the key provisions of the Development Plan as they relate to mix, it is our view that there is adequate support at national level (by way of ministerial guidelines) to justify the mix as currently proposed and a material contravention may be permitted.

Whilst the Board may reach this conclusion, it is considered that a grant of permission is appropriate in circumstances where Section 9 (3) (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016) of the 2000 Act, provides **that the requirements of a specific planning policy requirement (SPPR) take precedence over any conflicting provisions of a Development Plan:**

*“(b) where specific planning policy requirements of Guidelines referred to in sub-section 2(aa) differ from the provisions of the Development Plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the Development Plan.”*

Specifically, it is our opinion that a grant of permission for increased residential mix is justified by reference to SPPR 1 of Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’2020’, as detailed in Section 3 of this report.

## 2.3 Residential Density

Policy RES3 of the County Development Plan refers to Residential Density:

*"It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development..."*

*Where a site is located within circa 1 kilometre pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and/or 500 metres of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged."*

We also note Section 8.2.3.2 states:

*"In general, the number of dwellings to be provided on a site should be determined with reference to the Government Guidelines document: 'Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities' (2009). As a general principle, and on the grounds of sustainability, the objective is to optimise the density of development in response to type of site, location and accessibility to public transport. However, the overriding concern should be the quality of the proposed residential environment to be created and higher densities will only be acceptable if the criteria which contribute to this environment are satisfied. Higher residential density will not be appropriate in every circumstance and qualitative built form can sometimes be a more important determinant. Higher densities should have regard to surrounding dwellings and should be achieved tandem with the protection of the amenity of the future residents of the proposed development (Refer also to Policy RES3 in Section 2.1.3.3)."*

It is clear that Policy RES5 provides that for this particular development site, densities should be in the region of 35-50 units per ha and that higher densities will be allowed where it is demonstrated that the site is located within circa a 1km pedestrian catchment of a Luas Line and where there is (a) quality proposal set out and (b) regard given to surrounding dwellings and future occupants of the proposed development.

A density of 179.4 units per ha is proposed at a rate of 463 units on a net site area of approx. 2.58 ha. This is considered appropriate and achievable at this location given the quality of the scheme proposed; the proximity to public transport (600m to Central Park and 700m to Sandyford Luas stops); and the protection of existing levels of residential amenity for the sites surroundings. We note that particular care and attention has been given to matters of separation and set back distances along shared boundaries and the proposals has been the subject of rigorous testing in terms of daylight and sunlight both within the scheme and to adjoining properties. The open character and residential amenity of the site is retained through a high quality, open landscape design that reflects the existing character.

Notwithstanding this, the Board may consider that the proposed development gives rise to a Material Contravention of the Development Plan in respect of residential density. In this case, it is our view that the proposal is of national importance and the current proposals for density are fundamentally supported by the National Planning Framework and specifically National Policy Objective 35. On this basis, permission can be granted for the proposal.

We therefore set out a full justification of this matter in Section 3 of this report.

## 2.4 Trees

Under the Dun Laoghaire Rathdown Development Plan 2016-2022, there is an objective identified on the relevant zoning map along the north eastern boundary of the site **"To protect and preserve Trees and Woodlands"**. The level of protection is as denoted by the tree symbols on the map below:



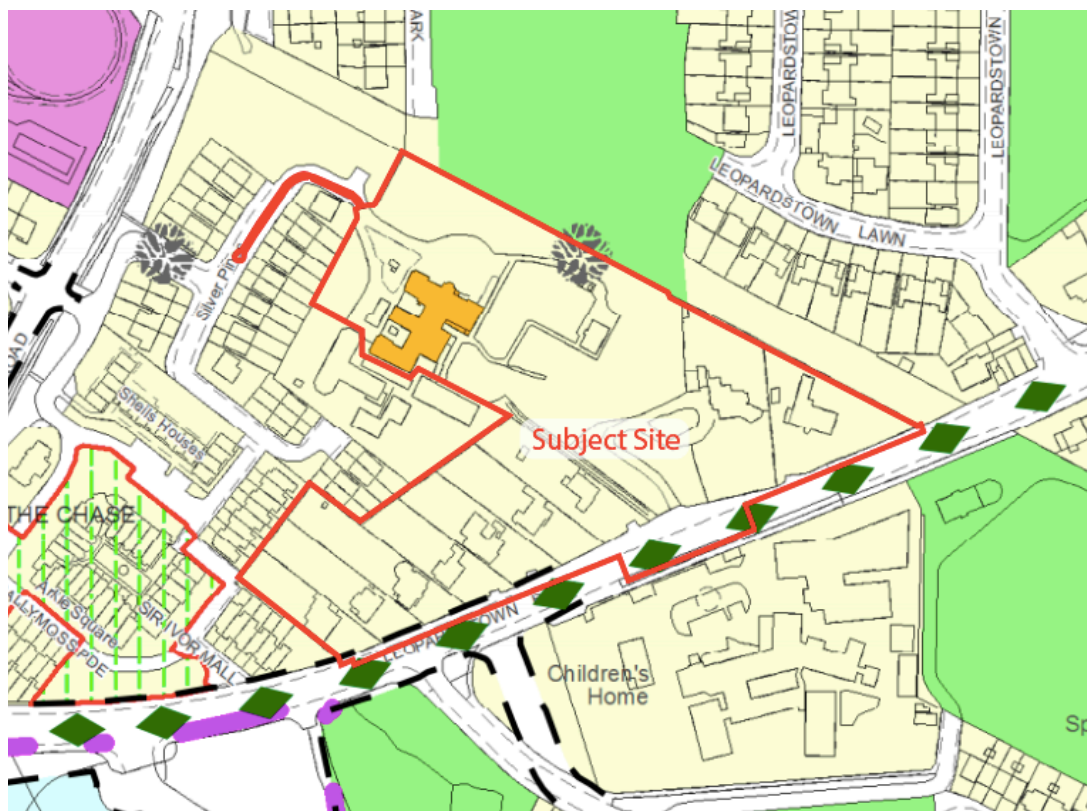


Figure 1 - DLR Development Plan Zoning Map showing tree symbol designation

Section 8.2.8.6 of the Development Plan outlines that “New developments shall be designed to incorporate, **as far as practicable**, the amenities offered by existing trees and hedgerow and new developments shall have **regard to objectives to protect and preserve trees and woodlands as identified on the County Development Plan Maps.**”

In this case, the tree protection and preservation symbol is identified along the north eastern boundary of the site, the full extent of which provides for significant mature tree cover. It is unclear if this symbol relates to the full extent of the boundary/site, or if it can be assumed that it is specific to the immediate surrounds of its location.

Regardless, it should be highlighted that at this location, there are 3 no. Category U trees (no.s 279, 280 and 281 categorised as dead or dying); 3 Category C trees (no.s 264, 270 and 275 categorised as Mediocre to Poor Trees); and 2 Category B Trees (no.s 268 and 274 categorised as Good Trees) identified in the area proximate to the tree objective symbol proposed for removal as part of the current development proposal. Importantly, there are no Category A trees (excellent trees) either identified for this site or proposed for removal. It is also clear from material submitted that the majority of trees at this location are proposed for retention. The proposal for this is set out below with trees (identified by pink hatch) removed:

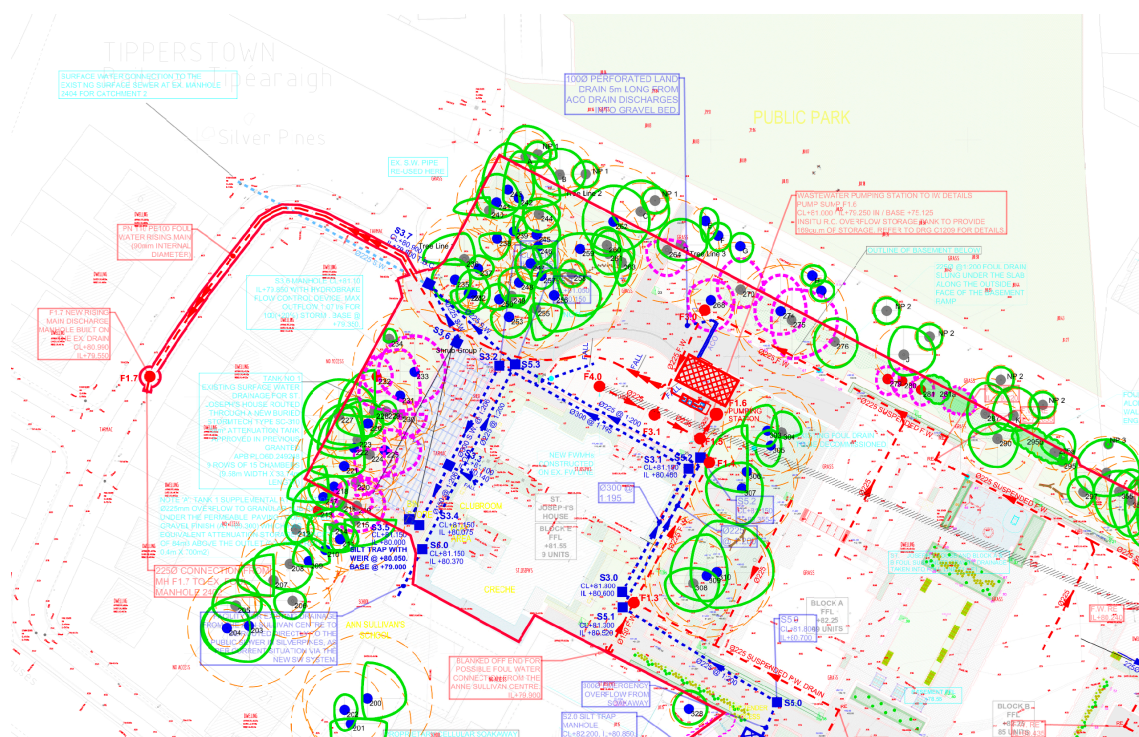


Figure 2 - Extract from the Tree Impact Plan

The objective **“To protect and preserve Trees and Woodlands”**, must also be considered in the context of the other provisions of the Development Plan, which do not require all trees to be retained. Section 8.2.8.6 provides:

*“New developments shall be designed to incorporate, as far as practicable, the amenities offered by existing trees and hedgerow and new developments shall have regard to objectives to protect and preserve trees and woodlands as identified on the County Development Plan Maps.”*

The Plan further states in Section 8.2.8.6 that:

*“Where it proves necessary to remove trees to facilitate development, the Council will require the commensurate planting or replacement trees and other plant material. This will be implemented by way of condition”.*

The proposal in this case has been the subject of significant arboricultural input and design revision to ensure the retention of as many trees as possible from the outset of the design. The Design Team has sought to maximise opportunities for tree retention as part of the subject scheme to aid in the assimilation of the scheme into its context, whilst also accepting that a number of trees must be removed to facilitate the current strategic housing development.

At this point, it is important to set out that under a separate permission for a smaller portion of the current site (Reg Ref D17A/0337 and ABP Ref. PL06D.249248), there was provision made for the removal of a number of trees to accommodate the development permitted under that application. We confirm that initial tree clearance works were carried out under that permission and these works related solely to trees permitted for removal under that permission. The current application and proposals have incorporated these works into the current arboricultural survey to ensure that the current arboricultural information is reflective of the present on-site condition for trees.

Overall, 141 no. trees are required to be removed to accommodate the proposed development across the entire site and thus a planting plan, which involves the planting of approx. 200 No. trees is proposed, resulting in a net gain of 59 no. trees upon completion of the proposed development. This accords with the requirements of the Development Plan in that commensurate planting and replacement trees are delivered within the proposal.

It is also worth highlighting that of the 141 trees proposed for removal across the entire site, 55 are Category B Trees (Good Trees) and 66 are Category C Trees (Mediocre to Poor Trees) and 21 are



Category U trees (dead, dying or otherwise compromised trees that are unsustainable). There are no Category A trees (excellent trees) located on this site or proposed for removal, which is a key factor for consideration.

All considered, it is evident that the requirements of the Development Plan are met, where the retention of trees, as far as practicable, has been provided for. As set out above, it should be highlighted that there are 3 no. Category U trees (no.s 279, 280 and 281 categorised as dead or dying); 3 Category C trees (no.s 264, 270 and 275 categorised as Mediocre to Poor Trees); and 2 Category B Trees (no.s 268 and 274 categorised as Good Trees) identified in the area proximate to the tree objective symbol proposed for removal as part of the current development proposal. However, it is clear from material submitted that the majority of trees at this location are proposed for retention. In addition, where it is necessary to remove trees to facilitate development, a commensurate programme for replacement planting has been delivered.

It is worthwhile to draw the attention of An Bord Pleanála to the enclosed Arboricultural Input from The Tree File, which provides for a comprehensive review and assessment of the matter of trees at this site.

Notwithstanding this, it is a matter for the Board to consider whether there would be a Material Contravention in respect of the objective above relating to tree protection and preservation. If so, the applicant relies on sub-paragraph (ii) of Section 37 (2)(b) of the Planning and Development Act, 2000 (as amended) where there are conflicting objectives within the Development Plan with regard to the removal of trees.

## 2.5 Car Parking

Section 8.2.4.5 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 prescribes minimum standards for the quantum of car-parking spaces that are to be provided in new developments. Those quantum's depend on the land-use proposed within a given development.

Table 8.2.3 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 sets out the standards for residential land-use and takes account of both resident and visitor requirements. For apartments, the standards are based on the size of the unit in question. 1 No. car parking space is required for each 1-bedroom unit; 1.5 No. car parking spaces are required for each 2-bedroom unit; and 2 No. car parking spaces are required for each 3-bedroom unit. When those standards are applied to the proposed development, a total 600 No. spaces are required for the residential proposal alone. Additional requirements are identified for both the creche facility and café proposed at 12 spaces (1 space per staff member of which there are 6 staff members + 3 for drop off; and 1 space per 15 sq m for the café of 49 sq m).

The proposed development provides for 259 no. car parking spaces to cater for the residential and commercial element of the proposed development, which it is acknowledged does not meet the standards set out in the Dun Laoghaire Rathdown Development Plan 2016-2022, requiring c. 609 spaces in total. It is set out that the current proposal provides for 211 car parking spaces for residents (or a ratio of 0.46 per apartment); 9 spaces will be assigned for the creche; and 3 spaces will be allocated to the café. Overall, 4% of spaces will be allocated for car sharing clubs (10 spaces) and 4% will be dedicated to the mobility impaired.

Notwithstanding this, we note that there is provision within the Development Plan, within Section 8.2.4.5., which states that reduced car parking standards for any development (residential and non-residential) may be acceptable dependant on a number of factors, which include:

- *The location of the proposed development and specifically its proximity to Town Centres and District Centres and high density commercial/business areas.*
- *The proximity of the proposed development to public transport.*

The site is located immediately adjacent to South County Business Park and Sandyford Business Park to the south and west of the site. In addition, the site is located 600m and 700m walking distance from Central Park and Sandyford Luas stops and in close proximity to the N11 public transport corridor, which is a quality bus corridor/bus priority route. Distances to the nearest bus stops are

900m or 11 minutes walking time. Travel time to St. Stephen's Green is 25 mins. This considered, it is our view that reduced car parking standards can be applied to the site within the context of the Development Plan.

Notwithstanding this, the Board may consider that the proposed development gives rise to a Material Contravention of the Development Plan in respect of car parking. We therefore set out a full justification of this matter in Section 3 of this report and specifically how the proposal complies with the Ministerial Guidelines for Apartments 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2020)'

## 2.6 Transitional Zone

The subject site (zoned Objective A) is located proximate to an area of zoned open space (Zoning Objective F) to the north known as Leopardstown Park. It may be considered that the site is therefore situated in a Transitional Zone.

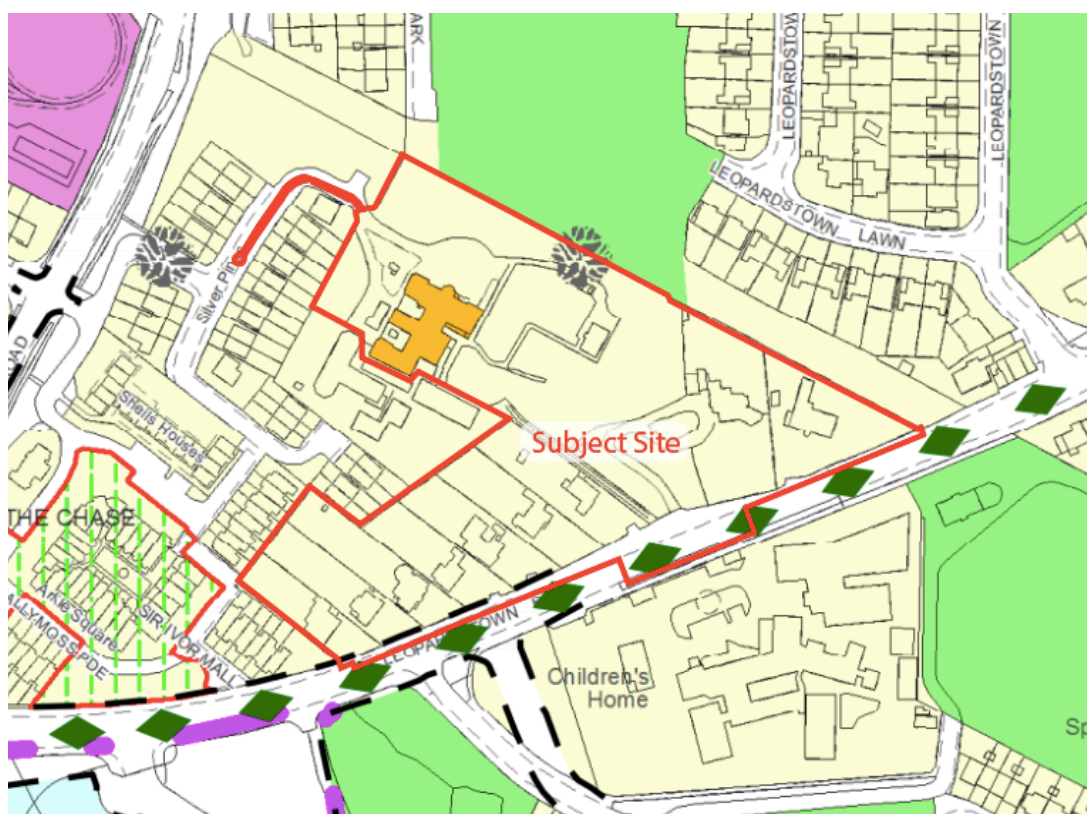


Figure 3 - DLR Development Plan Zoning Map showing area of open space to the north west of the site

The following provisions of the Development Plan as they relate to the site are set out below:

### 1. Dun Laoghaire Rathdown County Development Plan 2016-2022

Section 8.3.2 of the Development Plan sets out that:

*"The maps of the County Development Plan show the boundaries between zones. While the zoning objectives and development management standards indicate the different uses and densities, etc. permitted in each zone, it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones. In dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones*

*abutting 'residential areas' or abutting residential development within mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties."*

In consideration of the above provision, we are of the view that the current proposal for residential development along the shared boundary is an appropriate land use with no perceived negative impact on the area of open space to the south. We note specifically that any new block form associated with the new strategic development proposal is sufficiently removed from this shared boundary with Leopardstown Park. Furthermore, the existing boundary treatment is for the most part retained, which ensures there is no undue visual impact associated with the proposal at this location. We note the following comment from Modelworks in terms of View 9 (from Leopardstown Park to the site)

*"Blocks A, B and C would protrude above the tree line along the greenway at the edge of the park – an appropriate change in the urban context, with the development marking the line of transition between the low density suburban area to the north, and the new urban district to the south. The articulated facades and variations in height would add visual interest to the composition. There would be no sense of excessive enclosure, and no valued feature of the view would be compromised. A development of appreciable design and material quality would be introduced to the view."*

The magnitude of change is identified as medium and the significance of effects is identified as 'moderate positive. All considered, the current proposal is considered a positive contribution to this particular transitional zone.

Notwithstanding this, it is our opinion that it could be interpreted that a Material Contravention in respect of a transitional zoning is occurring in this instance and this is a matter for An Bord Pleanála to ultimately adjudicate on. It is our view that the proposal is of national importance and can be delivered in line with the provisions of the National Planning Framework.

We therefore set out a full justification of this matter in Section 3 of this report.

### 3 MATERIAL CONTRAVENTION JUSTIFICATION

In the event that the Board considers that the proposed development constitutes a material contravention of the 2016-2022 Dún Laoghaire-Rathdown County Development Plan by virtue of the proposed height, residential mix, density, tree preservation and car parking, the justification for deciding to grant permission in circumstances of such a material contravention is set out below, as required under the relevant criteria under Section 37(2)(b) of the 2000 Act, as amended.

It is our considered view that An Bord Pleanála can grant permission for the proposal on the following basis:

- i. The proposal is of **national importance**;
- ii. There are **conflicting objectives in the Development Plan**; and
- iii. The proposal can be positively considered having regard to **Section 28 Ministerial Guidelines** published post the adoption of the relevant Development Plan for the area, namely, the Dún Laoghaire Rathdown County Development Plan 2016-2022.

The justification for this view is now set out below.

#### 3.1 National Importance

It is acknowledged, that the Rebuilding Ireland Action Plan and the Planning and Development (Housing) and Residential Tenancies Act 2016 recognise the importance of larger residential developments (including those over 100 units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.

The significant shortfall in housing output to address current and projected demand is a national problem, with lack of housing having social and economic ramifications for sustainable national growth. The pressing need for housing development is clearly recognised in the National Planning Framework (e.g. National Policy Objective 32: To target the delivery of 550,000 additional households to 2040; National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location; and National Policy Objective 35: Increase residential density in settlements).

It is our view that the proposal submitted contributes positively to the current national shortfall in housing supply providing for a total of 463 residential units on zoned, serviced and highly accessible lands at a key suburban site at Brewery Road and Leopardstown Road in Dublin 18.

Having regard to this legislative and policy context and the nature of the proposal submitted, it is considered that this proposed Strategic Housing Development is of national importance for the purposes of section 37(2)(b)(i) of the 2000 Act as amended. Specifically, we note that the proposed development is deemed to positively contribute to meeting the deficient or national shortfall in housing supply.

Should the proposal be determined to be a material contravention of any of the policies set out above, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b)(ii) of the Planning and Development Act 2000, as amended.

#### 3.2 Conflict in Development Plan Policy

It has been identified that there are conflicting objectives and provisions within the Development Plan with regard to the preservation and protection of trees. Whilst there is an objective to protect and preserve trees and woodlands along the northern boundary of the site, as identified on the relevant Development Plan zoning map, there is also a Development Plan provision to provide for the removal of trees “where necessary to facilitate development” (Section 8.2.8.6). Section 2.4 of this report sets out the relevant objectives of the Development Plan of note.

Therefore, should the proposal for removal of trees across the site be determined to be a material contravention of the tree protection/preservation objective, the Board is empowered to, and should, decide to grant permission for the proposed development pursuant to the provisions of section 37(2)(b) of the Planning and Development Act 2000, as amended and specifically in relation to section 37(2)(b)(ii) which refers to conflict in Development Plan policy.

### 3.3 Compliance with National Policy and Section 28 Ministerial Guidelines

The following section demonstrates how the proposed building heights, residential mix, residential density and car parking are justified in the context of recent National Planning Policy and Section 28 Ministerial Guidelines, which seek to increase residential densities and height, reduce car parking and provide for flexible residential mix options on zoned serviced lands adjacent to public transport corridors. It is again highlighted that the ministerial guidelines referenced below were published post the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022, which is a key consideration for this site and proposal.

The national policy and ministerial guidance documents include:

- **Project Ireland: National Planning Framework 2040.**
- **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guidelines 2020).**
- **Urban Development and Building Heights, Guidelines for Planning Authorities (2018).**

#### 3.3.1 National Planning Framework – Project Ireland 2040

The National Planning Framework (NPF) is the Government's plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland and the half a million extra homes needed in Ireland by 2040. As a strategic development framework, 'Project Ireland 2040' sets the long-term context for our country's physical development and associated progress in economic, social and environmental terms and in an island, European and global context.

The 'National Planning Framework 2040' sets out the following key objectives in bold. A response from the applicant on how these objectives are met is set out thereafter:

**National Policy Objective 2a: "A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs."**

The current proposal provides for 463 residential units at a suburban location, close to highly accessible public transport nodes (600m and 700m to Central Park and Sandyford Luas lines) in the southern Greater Dublin Area. In addition, the site is located in close proximity to the N11 public transport corridor, which is a quality bus corridor/bus priority route. Distances to the nearest bus stops are 900m or 11 minutes walking time. Travel time to St. Stephen's Green is 25 mins. The proposal provides for a residential density of 179.4 units per ha and is therefore supportive of the objective to accommodate population growth in the Dublin region.

**National Policy Objective 4: "Ensure the creation of attractive, liveable well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being"**

The current proposal for 463 residential units in a development of 2-10 storeys over basement level is a well-designed and high quality scheme and one that has carefully considered existing levels of residential amenities at adjoining residential developments.

Specifically, existing developments at Leopardstown Lawn, The Chase and Silverpines were considered in detail at a very early stage in the design evolution of the current proposal. We note that the current proposal provides for appropriate separation distances (22.0-22.6m to



Minstrel Court; 22m to Sir Ivors Mall; and 40.7-47.3m to Leopardstown Lawn). Additional height is only proposed at appropriate locations within the development i.e., along Leopardstown Road and to the centre of the site. Height sensitive areas (at adjoining boundaries and adjacent to the Protected Structure) are respected by either 2-3 storey elements or significant setback distances. Rigorous daylight and sunlight analysis has also been progressed to ensure that the development performs well in terms of daylight and sunlight access both within the scheme and within adjacent neighbouring sites.

***National Policy Objective 11: “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 subject site is a significantly underutilised suburban brownfield site, which is no longer fulfilling its purpose. We note that a number of the buildings are currently vacant including ‘St. Joseph’s House’ (formerly a residential care facility and vacant since 2021), ‘Madona House’, ‘Dalwhinnie’ and ‘Alhambra’ (all residential properties). The remaining properties are large, detached houses on sizeable plots yielding a low density for a highly accessible site.

The site is located within an existing suburban area and is opportunely located to a public transport corridor, that of the Green Luas Line (600m and 700m from Central Park and Sandyford Luas stops) and is proximate to a number of key employment zones including South County Business Park, Sandyford Business Park and Central Park. The site is therefore opportunely located adjacent to key employment areas.



Figure 4 - Site Context

The site is of a size (approx. 2.58 ha net) that allows for a quality design and layout and the site is appropriately zoned for residential use under the statutory Development Plan governing the site.

The proposal will offer a range of wider planning gains including an exceptional public realm proposal in the form of new public open spaces, new children’s play area and new

pedestrian connections (throughout the site and from Leopardston Road to the adjoining Leopardstown Park). The proposal will deliver a new childcare facility of 282 sq m and a café of 49 sq m, elements that are considered to significantly improve activity across the site.

***National Policy Objective 13: “In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.”***

The proposed development has been designed as an exemplar architectural model by award winning architects, O'Mahony Pike Architects.

The development will meet or exceed all relevant performance criteria, as set out in this report, in particular the criteria set out under section 3.2 of the Building Height Guidelines.

***National Policy Objective 32: “To target the delivery of 550,000 additional houses by 2040”.***

The current proposal will deliver 463 residential units, which will go a significant way towards addressing the delivery of 550,000 houses by 2040.

***National Policy Objective 33: “Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.”***

As detailed above, the subject site is currently underutilised; no longer fulfils its residential care and existing residential use functions; is zoned for residential development and is opportunely located proximate to public transport, all of which support a sustainable approach to development.

The proposal responds to the surrounding context in the form of an appropriate transition in scale away from where the boundaries either adjoin or are adjacent to existing residential development. The proposed buildings will respond (in their setback from the boundaries, their height and steps in the massing) to the particular conditions and degree of sensitivity of the adjacent lands.

***National Policy Objective 35: “Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site based regeneration and increased building heights”.***

The proposed development will provide for an appropriate increase in residential density (179.4 units per ha based on a net site area of 2.58 ha and a proposal for 463 units) on a suburban infill site within an existing urban area.

The existing area is inherently low density with predominantly large dwellings on substantial plots or semi - detached housing, duplex style housing. The subject proposal aims to rebalance residential density in the area and provides a variety of studio, 1, 2 and 3 bed unit typologies to cater for the current lack of supply of this type in the area.

Proposals for heights of 2-10 storeys are well considered and cognisant of established levels of residential amenity in the area. It is on this basis that the proposed residential density is considered to align with National Policy Objective 35.

Based on the foregoing, it is considered that the development accords with the key principles of the National Planning Framework.

### 3.3.2 Design Standards for New Apartments (2020)

The ‘Sustainable Urban Housing: Design Standards for New Apartments (2020)’ hereafter referred to as the ‘Apartment Guidelines 2020’ are ministerial guidelines issued under Section 28 of the 2000 Act. The Specific Planning Policy Requirements (SPPR) contained within this take precedence over policies and objectives of development plans and local areas plans. Section 9(3)(b) of the 2016 Act,

as amended, provides that to the extent that the SPPR's differ from the provisions of the Development Plan or Local Area Plans, the provisions of SPPRs must be instead applied.

The Apartment Guidelines (2020) were published post the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022 and this is a key point for consideration in addressing the appropriateness of the proposal under Section 28 Guidelines.

### **Residential Mix - SPPR 1**

With regard to residential mix, SPPR 1 of the Apartment Guidelines 2020 states:

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

The proposed development mix is as follows:

- 85 no. studio units (18.4%)
- 117 no. 1 bed units (25.2%)
- 248 no. 2 bed units (53.5%)
- 13 no. 3 bed units (2.8%)

As per above 25.2% one bed units are proposed which is less than the 50% provided for in SPPR1. In addition, 18.4% of the overall development is made up of studio units which is again less than the 20-25% provided for in SPPR1. We submit the proposal is in compliance with the above SPPR and as the proposed development complies with the Apartment Guidelines, and in particular SPPR1, the Board can grant permission by virtue of section 37(2)(b)(iii) of the 2000 Act.

### **Car Parking**

The Apartment Guidelines 2020 generally encourage reduced standards of car parking in accessible locations. The document defines accessible locations as falling into 3 categories:

1. Central and/or Accessible Urban Locations
2. **Intermediate Urban Locations**
3. Peripheral and/or Less Accessible Urban Locations

Our review of these 3 categories has identified that the site can be categorised as a **‘Intermediate Urban Location’**. This categorisation is made on the basis that the site falls under the following definition of Intermediate Urban Locations as set out on page 6 of the Guidelines:

***“Such locations are generally suitable for smaller-scale (will vary subject to location), higher density development that may wholly comprise apartments, or alternatively, medium-high density residential development of any scale that includes apartments to some extent (will also vary, but broadly >45 dwellings per hectare net), including:***

1. ***Sites within or close to i.e. within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m), of principal town or suburban centres or employment locations, that may include hospitals and third level institutions;***
2. ***Sites within walking distance (i.e. between 10-15 minutes or 1,000-1,500m) of high capacity urban public transport stops (such as DART, commuter rail or Luas) or within reasonable walking distance (i.e. between 5-10 minutes or up to 1,000m) of high frequency (i.e. min 10 minute peak hour frequency) urban bus services or where such services can be provided;***



3. Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) of reasonably frequent (min 15 minute peak hour frequency) urban bus services.

The subject site is located 600m and 700m from Central Park and Sandyford Green Line Luas Stops, which are high capacity urban public transport stops and is proximate to a number of key employment zones including South County Business Park, Sandyford Business Park and Central Park. The site is therefore opportunely located adjacent to key employment areas. The site therefore meets the definition set out under point 2 above and can therefore be categorised as an 'Intermediate Urban Location'.

In relation to car parking standards for Intermediate Urban Locations, page 24 of the Apartment Guidelines 2020 states that a reduced overall car parking standard must be considered.

It is on this basis that we submit that current proposals for reduced car parking, at a rate of 211 spaces for 463 units (0.46 per ha) or 259 spaces overall for all uses proposed can be positively considered. This is particularly the case given the proximity of the site to high-capacity urban public transport stops at the Luas green line (600m and 700m from Central Park and Sandyford).

As the level of car parking complies with the Apartment Guidelines 2020 the Board can grant permission for the proposal by virtue of section 37(2)(b)(iii) of the 2000 Act.

### 3.3.3 Urban Development and Building Height Guidelines (2018)

The 'Urban Development and Building Heights, Guidelines for Planning Authorities (2018)' hereafter referred to as 'Building Height Guidelines' were issued in December 2018 under Section 28 of the 2000 Act set out national planning policy guidelines on building heights in relation to urban areas. These guidelines post-date the adoption of the Dún Laoghaire Rathdown County Development Plan 2016-2022.

Section 1.14 of the Building Height Guidelines states the statutory position of conflicting Development Plans, as follows:

*"Accordingly, where SPPRs are stated in this document, **they take precedence over any conflicting, policies and objectives of development plans**, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans/ schemes need to be amended by the relevant planning authority to reflect the content and requirements of these guidelines and properly inform the public of the relevant SPPR requirements."*

Under section 3.1 of the Building Height Guidelines, three broad principles or criteria must be applied in considering development proposals for buildings taller than prevailing building heights in urban areas, as follows:

- **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?**

As set out in Section 3.2.1 above, the proposal secures the relevant objectives of the National Planning Framework. The location of the proposed development is a brownfield infill site and is considered a unique opportunity for the delivery of strategic housing and the delivery of compact growth in accordance with national strategic planning policy.

- **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?**

The Statement of Consistency enclosed herewith has also set out how the current proposal complies with the provisions of the Dún Laoghaire Rathdown County Development Plan 2016-2022. We again acknowledge that the Dún Laoghaire Rathdown County Development Plan 2016-2022 was prepared and adopted before the 2018 Building Height Guidelines came into effect. Whilst, the Development Plan is currently the subject of a review process, the plan has not yet been formally adopted or amended with a view to implementing the requirements of Chapter 2 of the Building Height Guidelines.

- **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?**

With regard to existing policies and objectives of the Dún Laoghaire Rathdown County Development Plan 2016-2022, there is a clear misalignment with the National Planning Framework with regards to height. We note specifically that the National Planning Framework provides for an increased residential density in settlements through a range of measures including increased building heights. National Policy Objective 35 refers. Development Plan policy and objectives on height by comparison are restrictive in that there are particular locations earmarked for building height and blanket limits are set for all other areas unless a set of exceptional circumstances in the form of upward and downward modifiers are met. Even in a case where upward modifiers are met, there is a blanket limit to additional height of 1-2 storeys over and above the baseline height limit of 3-4 storeys.

### **Specific Planning Policy Requirements**

SPPR 3A of the Building Height Guidelines requires applicants for planning permission to set out how the proposal complies with the “*criteria above*”. The ‘criteria above’ refers to the Development Management criteria at Section 3.2 of the Guidelines, which are discussed below.

If the Board is satisfied that the criteria under section 3.2 have been met, it “*may approve such a development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise*”. The paragraph introducing SPPR 3 itself is set out below for ease of reference, following which, each of the criteria (denoted by italics) are considered in turn:

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

### **SPPR 3 (A)**

***“It is a specific planning policy requirement that where;***

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

The performance of the proposal vis a vis the building height criteria is further assessed below in subsection ‘Development Management Criteria’. The consistency of the proposal with the National Planning Framework has been considered above.

### **Development Management Criteria**

**At the scale of the relevant city/town:**

- ***The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.***

As stated previously, the site is well served by public transport with the site located 600m and 700m from the Central Park and Sandyford Luas stops, which in turn provide a direct connection north to Dublin City Centre and beyond. This stop is on the Green Luas line and journey time to St. Stephen's Green is 26 minutes with services running every 3-5 minutes during peak times (7-10am and 4-7pm Monday – Friday; 11am – 8pm Saturday, Sunday and

Bank Holiday Mondays) and 10-15 minutes at off peak times (operating hours other than peak times set out). With covid restrictions in place (at the time of writing), the Luas is currently operating at 50% capacity.

In addition, the site is located in close proximity to the N11 public transport corridor, which is a quality bus corridor/bus priority route. Travel time to St. Stephen's Green is 25 mins. There are a number of regular bus services on the R113 Leopardstown Road, N31 Brewery Road and N11 Stillorgan Road.

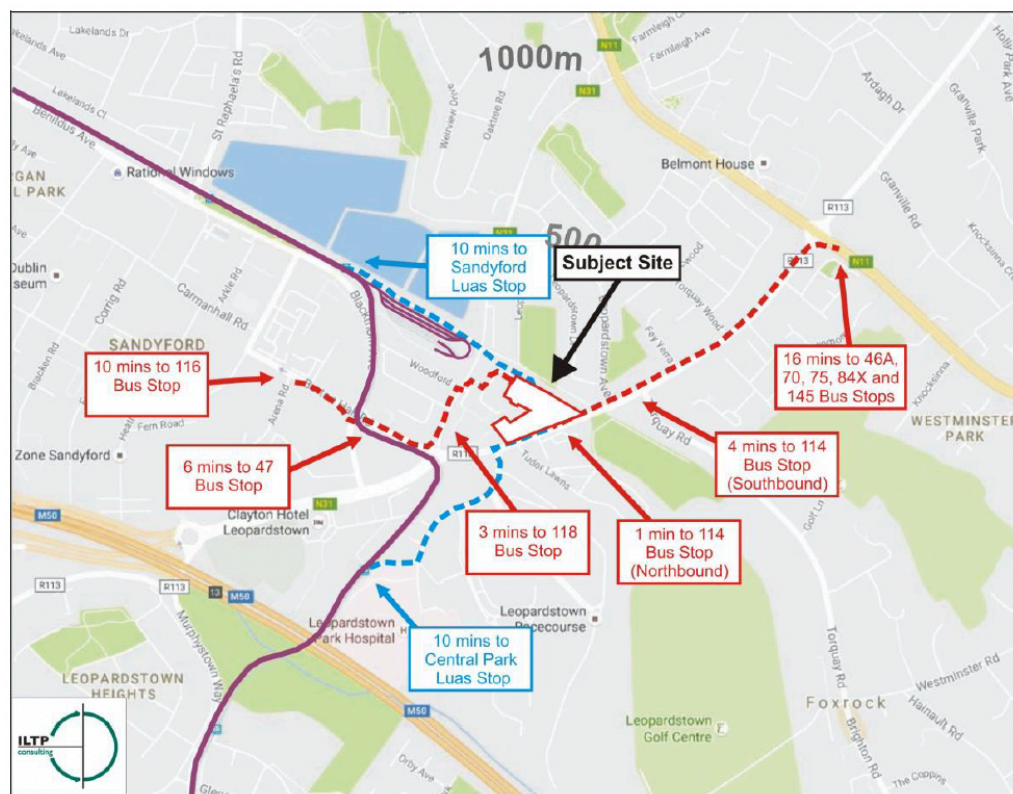


Figure 5 - Bus Stops

The closest bus stop is located on Leopardstown Road immediately adjacent to the proposed entrance to the development, which is on the 114 routes connecting Ticknock and Blackrock Rail Station. The bus stop to the immediate northwest of the site on Brewery Road, which is approximately 3 minutes' walk, is served by the 118 bus route travelling between Kiltiernan and D'Olier St.

The N11 is a primary arterial route connecting the suburbs of south Dublin with the city center. The closest bus stop on the N11 is approximately 16 minute walk away from the centre of the subject site, and is served by the 46A, 70, 75, 84X and 145 bus routes with services between the city centre at 10 minute intervals at peak periods.

- **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.**

An understanding of the existing site and its constraints has steered the design of this proposal. The presence of the Protected Structure (St. Joseph's), and its proximal location to Arkle Square which is an Architectural Conservation Area (ACA) south west of the subject site has been a key consideration for the layout of the proposal and appropriate setbacks and heights around this building are applied.

We note that the benefits offered by the proposal to the public realm have been identified as follows:

- A new active street frontage along Leopardstown Road including the delivery of a new café unit and residential amenity facilities at ground level within Block D;
- New pedestrian connections from Leopardstown Road to the adjacent Leopardstown Park and Brewery Road;
- The opening up of the site to allow for views to and from the protected structure, St. Joseph's House;
- The delivery of a network of new open space areas including courtyards and play areas etc.
- The amalgamation of a number of existing vehicular access points along Leopardstown Road to provide for one central vehicle access point to the overall site.

Careful consideration has been given to the successful integration of the scheme into the existing character and topography of the site and area. We note the following excerpt from the Townscape and Visual Impact Analysis prepared by Modelworks in review of the proposal which looks at the topography and cultural context elements of the above request:

*"Of the 18 no. viewpoints assessed, it was found that visual amenity would be improved at eight locations. These include (a) the views along Leopardstown Road approaching and passing by the site from both directions, and (b) the view from the Leopardstown Park open space to the north of the site across the greenway. In these views the development would create enclosure to the street and open space, introducing buildings and landscaping of appreciably high design and material quality, their character appropriate to the location. A positive visual effect was also predicted for the close-up views of St Joseph's House, in which the improvements to the building and its immediate setting would be visible.*

*Importantly, it was found that none of the Key Views identified in the Arkle Square ACA Character Appraisal and Policy Framework would be affected by the development. Neither would any views of the ACA from the wider public realm be affected; Arkle Square is effectively hidden from the surrounding roads by vegetation which the ACA designation also specifically protects.*

*The potential visual effects on only one representative view were found to be negative. This is the view representing the six houses on Sir Ivor Mall, which back onto the site's south west boundary. In these views Block F would be a prominent addition, increasing visual enclosure substantially. The visual effects on the other viewpoints representing the residential neighbourhood to the west and south west of the site, including the Silver Pines estate and the Chase, were found to be of moderate significance at most, and neutral. The protrusion of the development into these views would not be substantial, and such change is not inappropriate in the context."*

Some visual effects can be expected through the implementation of compact growth policies in proximity to public transport and well serviced urban centres to maximise the use of available infill land. The proposal results in a high level of planning gain through the improvement of the public realm at Leopardstown Road, pedestrian and cycle connections through the site and critical mass of population to support existing and future public transport services including bus connects and Metrolink.

- ***On larger urban redevelopment sites, proposed developments should make a 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."***



The proposed development is considered to make a positive contribution in terms of place-making through the provision of new public open spaces including play areas and the opening up of the site to Leopardstown Road and with it, increasing the visibility of St. Joseph's House - a Protected Structure. The delivery of a new café element along Leopardstown Road will provide increased activity at street level and will ensure an enhanced public realm and streetscape is delivered at this location.

Sufficient variety in scale, height, massing and form of the Blocks has been incorporated into the design. Care has been given at height sensitive areas to ensure that there is no undue impact on the existing built form in the surrounding area including existing properties surrounding the site. Heights are reduced along adjoining boundaries as appropriate to ensure that there is a clear transition from lower 3 storey development at the boundary of the site with 'The Chase' to higher development at the centre of the site and along Leopardstown Road. The design of the scheme has ensured that there is appropriate scale and massing alongside adjacent residential development while also maximising the use of this zoned land.

There is an array of greenway networks, public and community open spaces that run north, south, east and west of the site. Consideration has been given to permeability within the surrounding context and the protection of existing levels of residential amenities. The proposal will provide for a key connection to the adjoining green network to the north (Leopardstown Park).

**At the scale of district/ neighbourhood/ street:**

- ***"The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape."***

The proposal responds to the natural and built environment for the reasons set out under the response to 'at the scale of the relevant city/town' above. Careful consideration has been given to the proposal in regard to how it addresses the existing surrounding development and local topography. The high-quality design submitted provides an appropriate transition between the neighbouring sites, whilst delivering on appropriate street frontage along Leopardstown Road and Brewery Road.

The proposal will be 2 - 10 storeys in height overall, which is considered appropriate and in line with the requirements of "Urban Development and Building Heights" December 2018. The current scheme responds with sensitivity to the existing built fabric of the surrounding area including the ACA to the west. The design approach has been to maximise the use of the site around a central open space with pedestrian/cycle shared path that connects the surrounding green network enhancements to the public realm.

It is worth noting that within the context of the subject site there are a number of buildings in the surrounding area that vary in height from 4-7 storeys and 8-12 storeys. To the south and south west of the subject site there are a series of commercial and apartment buildings that rise from 6 to 12 storeys, for example the headquarters for Vodafone Ireland (7 storey), Clayton Hotel (8 Storey) and Bank Of America(7 storey), also Microsoft Ireland (6storey) and Central Park Apartment Complex ( 8-12 storeys).

Also to the north of the subject site, an example would be the Grange Apartments (7-10 Storey) and to the west, South Central Apartments (8-10 storeys).

The design of the scheme has ensured that there is appropriate scale and massing alongside adjacent residential development while also maximising the use of this land.

- ***"The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered."***

Careful consideration has been given to ensure that a monolithic appearance is avoided. Appropriate use of materials and fenestration details as proposed by OMP Architects has ensured that the building fabric is well considered. We refer An Bord Pleanála to the OMP drawings and sample materials provided in the Architectural Design Statement enclosed

herewith for further details. The concept of Blocks A and B have been maintained from the previous permission with additional Blocks provided to allow an increase in density.

In summary section 2 of the design statement prepared by OMP states:

- *“Historical mapping indicates the strong presence of an avenue approach from the Leopardstown Road with St. Joseph's House as the focal point at the end which is nestled within the sylvan wooded nature of the site. The approach to the site planning reinforces this connection and visual link and as such the proposed new buildings and approach frame a view to the historical St. Joseph's house in the background.*
- *St. Joseph's House, which is proposed to be converted into residential units is given suitable importance within the overall hierarchy of buildings. Its formal setting is re-established through the reconstruction of a large formal forecourt and green and its curtilage is protected through the retention of existing mature pine trees and landscape features including the introduction of private formal gardens around the house.*
- *Both the existing house and the proposed new apartments enjoy a secluded site which benefits from tall mature Pine trees and dense screening along the site boundary. The buildings height and disposition on the site are such that the resident's will feel that they are living within a large parkland setting whereby levels of privacy and open green amenity value are highly respected.*
- *It is this projects vision to retain the sylvan characteristics of the site while introducing new resident's courtyards and green open spaces to further enhance its landscape and amenity value. It is planned to have a 'Tree walk' and jogging route around the perimeter of the site set amongst the mature trees while the new buildings are set back from the boundary to respect this 'Green' edge. The development will also further enhance pedestrian movement by creating pedestrian linkages between the resident's courtyard spaces and the large public park and playing field to the North.”*

The proposed development responds particularly to:

- St Joseph's House and its setting, making the protected structure a signature element of the new neighbourhood;
- The site's strategic location within the Sandyford-Leopardstown urban district, at a gateway to the district where Leopardstown Road crosses the former railway line approaching a key junction/node in the area;
- The opportunity provided by the 270m frontage to Leopardstown Road on the approach to the Leopardstown junction,
- The opportunity to retain as features of the new neighbourhood many of the mature trees that characterise the site.

In consideration of this policy and the site's long north east and south east boundaries (creating potential for 'long slab blocks'), the buildings are well separated, the elevations are folded, their height is stepped, and there are variations in façade treatment and materials. As a result the proposed buildings are not monolithic in appearance. The design achieves visual interest, identity and legibility while also establishing strong building lines around the boundaries.

The urban design/townscape character of Leopardstown Road would be transformed by the built enclosure and animation generated by the development. Please see attached photomontages prepared by Modelworks submitted with this application, and in particular Viewpoints 1-5, which show that the width of the road is such that the buildings can be comfortably accommodated without excessive enclosure.

- ***The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being***

***in line with the requirements of “The Planning System and Flood Risk Management – Guidelines for Planning Authorities” (2009).***

The subject proposal will enhance the streetscape at Leopardstown Road by providing a defined edge to this route and providing appropriate pedestrian/cycle linkages through the site. The current proposal responds with sensitivity to the existing built fabric of the surrounding area including the ACA to the west. The design approach has been to maximise the use of the site around a central open space with pedestrian/cycle shared path that connects the surrounding green network enhancements to the public realm.

There is no inland waterway or marine frontage within the current proposal. We can confirm that Barrett Mahony Consulting have completed a Flood Risk Assessment Report, which confirms that there will be no inappropriate flood risk as a result of the proposal.

In addition, It is this projects vision to retain the sylvan characteristics of the site while introducing new resident's courtyards and green open spaces to further enhance its landscape and amenity value. It is planned to have a 'Tree walk' and jogging route around the perimeter of the site set amongst the mature trees while the new buildings are set back from the boundary to respect this 'Green' edge. The development will also further enhance pedestrian movement by creating pedestrian linkages between the resident's courtyard spaces and the large public park and playing field to the North."

- ***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.***

The current proposal delivers a scheme that is permeable, well connected and legible. A quality new public realm is proposed, which links Leopardstown Road to the greenway network beyond the northern boundary of the site. The permeability of the site is clearly set out in landscape proposals prepared and submitted by Mitchell and Associates. The landscape report states the following:

*'The overall aim of the landscape design is to create a high quality attractive environment with amenity facilities for the surrounding proposed residences and users of the park spaces /green links, taking into account the landscape objectives within the DLRCC Development Plan and National Guidelines to ensure a strong sense of place for the proposed development appropriate within the surrounding landscape context'.*

The landscape design objectives which contributed to the improvement of legibility through the site or wider area are as follows:

- To create a high quality attractive environment with amenity facilities for the proposed residences that is robust, accessible, useable, connected and supervised. The open spaces are multifunctional, catering for amenity uses both active and passive but also fulfilling objectives of movement and access, conservation and biodiversity, microclimate/shelter and SUDS requirements.
- The network of open space is designed to connect with the existing surrounding movement/open space networks to access a number of adjacent neighbourhood amenities and facilities.
- To Integrate with the existing and future surrounding context with new physical and visual connections through the public open space. There are open views to St Joseph's House from the adjacent open space and circulation route. The shared surface forecourt and parkland of lawn and trees creates a visually uncluttered setting.
- Interlinked pedestrian and cycle facilities to the green link to the north maximise safe connectivity and permeability within the area and to public transport facilities.

Section 4.1 of the enclosed landscape report prepared by Mitchell and Associates sets out a comprehensive list of landscape design objectives for the site. A cohesive and integrated

scheme is delivered and we direct An Bord Pleanála to this document for further detail on the matter of public realm as it relates to the site.

- ***The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood."***

An appropriate mix of unit types and sizes are incorporated into the development proposal. Notably, 85 no. studio units (18.4%), 117 no. 1 bed units (25.2%). 248 no. 2 bed (53.5%) and 13 no. 3 bed units (2.87%) are proposed within the current development. The variety in mix will be a welcome addition to the existing housing mix of the local area, which currently consists of housing of varying forms including semi-detached development along the immediately adjoining boundaries. In addition to this a mixture of uses are incorporated into this development with a café, a creche and residential amenity space all included. This mix is compliant with the requirements of the Apartment Guidelines.

In addition, an understanding of the existing site and its constraints has steered the design of this proposal. The presence of the Protected Structure St. Joseph's House and its proximal location to Arkle Square which is an Architectural Conservation Area (ACA) south west of the subject site has been a key consideration for the layout of the proposal and appropriate setbacks and heights around this building are applied. We note that a number of principles including heights and set back distances to St. Joseph's House were established under a previous permission for the site (Reg. Ref. D17A/0334, PL06D. 249248).

The landscape proposal also aims to improve and open up the setting of this structure for the benefit of the wider community. The proposal also protects the existing residential amenity of adjoining and adjacent residential development through locating height and massing away from these boundaries. The proposed development specifically responds to the size of the site to allow for a gradual height increase from the site boundaries towards the center of the site.

The proposal has been designed specifically to enhance connections to the surrounding area including the greenway to the north of the site. The proposed development has been designed to respond positively to the existing residential developments to the south, north and west. Open space areas are designed to maximise on passive surveillance and take advantage of the proximity of the surrounding green network. An integrated development is delivered and one which enhances the presence of the natural landscape with high quality materials sympathetic to the surrounding area.

#### **At the scale of the site/building:**

- ***"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."***

The Daylight & Sunlight Assessments prepared by ARC, enclosed herewith, confirms that there are acceptable levels of access to natural daylight for both proposed residential units and existing residential units and overshadowing is minimised. A suitable variety of building height and articulation has been purposely designed to maximise access to natural daylight and ventilation as per appropriate design standards. Appropriate views and overshadowing/loss of light were also appropriately considered.

The following analysis in terms of daylight access to adjoining zones is identified on pages 9 and 10 of the EIAR daylight and sunlight chapter:

*"ARC's analysis indicates a potential for the proposed development to result in "imperceptible" to "slight" to "moderate" changes in daylight access within existing buildings facing towards the application site in neighbouring residential estates at The Chase (including Sir Ivor Mall and Minstrel Court), Silver Pines (including the Anne Sullivan Centre), Leopardstown Lawns and Leopardstown Avenue. Under a worst case scenario, it is predicted that the impact of the proposed development on daylight access within existing buildings on lands to the west, north and east will be consistent*



with emerging trends for development in the area, particularly having regard to the scale of development previously permitted on the site and in the wider Sandyford Area.

Due to the extent of intervening distance, the construction of the proposed development has the potential to result in little or no change in daylight access within residences to the south of Leopardstown Road or to the Children's Sunshine Home. However, the potential impact of the proposed development on existing buildings at the LauraLynn House Children's Hospice is likely to range from none to "imperceptible" to "significant". The proposed development has the potential to result in a "significant" change in daylight access to north-facing rooms within the LauraLynn House Children's Hospice opposing the proposed Block C, the hospice use of this complex is assumed to be particularly sensitive to impacts on daylight access.

Given that the potential for development to result in impacts on daylight access diminishes with distance, it is the finding of ARC's analysis that the proposed development will have no undue adverse impact on daylight access within buildings in the wider area surrounding the application site."

The following analysis in terms of sunlight access to adjoining zones is identified on pages 26 and 27 of the daylight and sunlight chapter:

"During the mornings and early afternoons of the spring, summer and autumn months, shadows cast by the proposed development will extend west and north to The Chase (including Sir Ivor Mall and Minstrel Court) and to Silver Pines (including the Anne Sullivan Centre) resulting in an "imperceptible" to "moderate" impact in sunlight access to a small number of rooms facing towards the application site and rear gardens bounding the application site, with the rear gardens of Nos. 24 and 25 Silver Pines likely to experience potentially "moderate" to "significant" additional overshadowing for a considerable part of the day during the spring and autumn months.

To the north and east, the proposed development is likely to result in "slight" to "moderate" overshadowing of sections of the adjoining greenway route at various times throughout the day over the course of the year. Notwithstanding shadows cast by the proposed development, the section of greenway route between Brewery Road and Leopardstown Road is likely to remain capable of achieving the level of sunlight recommended by the BRE Guide for amenity spaces to appear adequately sunlit throughout the year.

ARC's analysis shows that the construction of the proposed development will result in some additional overshadowing of lands to the east of the site during the afternoons and evenings throughout the year. The impact of additional overshadowing will range from "imperceptible" to "moderate" overshadowing of closest rear gardens and houses at Leopardstown Lawn and Leopardstown Avenue during the afternoons and evenings throughout the year.

While the potential of new development to result in material additional overshadowing of lands to the south is low, it is noted that the proposed development is likely to result in additional overshadowing of north-facing windows at the LauraLynn House Children's Hospice facing towards Leopardstown Road during the late evenings of the summer months. As a hospice is a use, which could be considered particularly sensitive to changes in the sunlight environment, the impact of the proposed development on sunlight access to the LauraLynn Children's Hospice is assessed as none to "moderate" to "significant" under a worst case scenario.

For a time around mid winter, shadows cast by the proposal are predicted to extend as far as the public park at Leopardstown Park, although this additional overshadowing is not predicted to interfere with the capacity of the public park to achieve the amount of sunlight recommended by the BRE Guide for amenity space. As the shadow environment at this time of year is dense, the impact of this additional overshadowing on Leopardstown Park is predicted to range from "imperceptible" to "slight".

In terms of daylight access within the scheme, the following analysis is identified by ARC on pages 9 and 10 of their report enclosed with the application:

*“ARC’s analysis predicts that all sample study rooms (a large proportion of which represent a worst case scenario) within the proposed development will achieve levels of daylight access at or above the minimum Average Daylight Factor recommended by the BRE Guide for living rooms (i.e. 1.5% Average Daylight Factor) and for bedrooms (i.e. 1% Average Daylight Factor). ARC’s analysis further indicates that all kitchen / living / dining rooms in unit types throughout the proposal are likely to receive a level of daylight access in excess of the recommended 2% Average Daylight Factor for mixed function rooms.*

*Given that worst case analysis units were included in the assessment sample, ARC’s analysis would suggest that all units within the proposed development are likely to achieve Average Daylight Factors in excess of the minimum standards outlined in the BRE Guide.”*

In terms of sunlight access within the scheme, the following analysis is identified by ARC on page 14 of their report enclosed with the application:

*“Most of the proposed open spaces are predicted to receive a level of sunlight in excess of the level recommended by the BRE Guide for amenity spaces and will appear adequately sunlit throughout the year within the meaning of the BRE Guide. Having regard to the location of open spaces throughout the site, ARC’s analysis indicates that open space provision will afford residents a place within the proposed development where residents can go to sit and enjoy the sunshine on a sunny day for a significant portion of the day for most of the year.”*

***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’.***

The Daylight and Sunlight Analysis confirms that there are acceptable levels of access to natural sunlight available to surrounding properties and that overshadowing is minimised. The Vertical Sky Component or VSC percentage is protected as much as possible with some impacts to be expected with the requirements in relation to high density infill development types that are required for sites such as this. In this regard, appropriate consideration has been given to the relevant guidance documents and specifically ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 - ‘Lighting for Buildings - Part 2: Code of Practice for Daylighting’.

Chapter 18 of the accompanying EIAR – Daylight and Sunlight, prepared by ARC states the following:

*‘The standards for daylight and sunlight access in buildings (and the methodologies for assessment of same) suggested in the BRE Guide have been referenced in preparing this chapter. The BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’ was withdrawn in May 2019, while BS EN 17037: Daylight in Buildings was adopted in the United Kingdom in May 2019. Given this, this Chapter does not refer to BS 8206-2: 2008. In the interests of clarity, it should further be noted that this Chapter does not refer to IS EN 17037: Daylight in Buildings or BS EN 17037: Daylight in Buildings as the recommendations of those documents relate to the design of new buildings. Neither IS EN 17037 nor BS EN 17037 provide any guidance on the assessment of impacts on sunlight and daylight access within existing buildings’.*

The BRE Guide does not set out rigid standards or limits, but is preceded by the following very clear warning as to how the design advice contained therein should be used:

*“The advice given here is not mandatory and the guide should not be seen as an instrument of planning policy; its aim is to help rather than constrain the designer.*

Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design.” [Emphasis added.]

- ***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.”***

The scheme was revised following a number of iterations of the sunlight and daylight analysis, with the scheme amended accordingly.

We note specifically in terms of daylight access within the scheme and as set out by ARC on page 11 of their report that ARC engaged in a prolonged iterative process with the design team over a period of months to ensure that all habitable rooms within the proposal are likely to achieve the recommendations of the BRE guide for daylight access, no additional compensatory design solutions are therefore required in terms of daylight access for the scheme.

In terms of sunlight access to open space areas, the subject application proposes 17 no. open spaces and detailed quantitative analysis was carried out (Figure 2 below). As set out in section 3.0 of the accompanying Sunlight and Daylight assessment prepared by ARC.



**Figure 6 - Indicative diagram showing location of open spaces assessed. Communal open spaces are shown in red. Public open spaces shown in green, Visual open spaces shown in purple and Creche open spaces shown in yellow**

Communal open Space 05 in red above will likely receive less sunlight than the BRE Guide recommendations, ARC’s analysis indicated that 7 no. of the proposed 8 no. communal space will achieve at least two sunshine over at least half their respective areas on 21<sup>st</sup> March. Open space 03 receives sunlight over in excess of half its area between 15:30 and 17:30 on 21<sup>st</sup> March.

In addition, visual open Space 06 is likely to receive less sunlight than the BRE Guide recommendation. ARC’s analysis indicated that three if the proposed four visual amenity space areas will achieve at least two sunshine over at least half their respective areas on 21<sup>st</sup>

March. Finally all public open space areas and both of the creche areas will achieve at least two sunshine over at least half their respective areas on 21<sup>st</sup> March.

In summary, most of the proposed open spaces are predicted to receive a level of sunlight in excess of the level recommended by the BRE Guide for amenity space and will appear adequately sunlit throughout the year within the meaning on the BRE Guide.

It is worth setting out at this point that visual amenity space is not included in calculations for the quantum of open space. Furthermore, the size of Communal Area 5, is identified as 977 sq m. This removed from the overall quantum of Open Space delivered (9,885 sq m), leaves a figure of 8,908 sq m, which as set out in the Statement of Consistency still meets the requirements for open space provision in terms of quality space that receives the appropriate amount of daylight space. In summary, 8,908 sq m of the open space areas delivered across the scheme are meeting the sunlight requirements.

### **Specific Assessments**

The guidelines set out that in order to support proposals at some or all of these scales, specific assessments may be required, and these may include:

- ***“Specific impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measures to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.*”**

B-Fluid Consulting have prepared Chapter 11 of the enclosed Environmental Impact Assessment Report, which considers wind and microclimate modelling.

The predicted impact of the proposal has been identified by BFluid as follows:

*The existing environment and the proposed development would receive prevailing winds from South-West and South-East. As discussed in the previous sections and demonstrated through this assessment of CFD modelling, all adverse wind impacts have been considered and shows to be suitable to its intended use.*

*The existing site cumulative assessment has accounted for the modelling and simulation of all the topography and existing developments in the surrounding as the presence of adjacent buildings dictates how the wind will approach the proposed development.*

*From the wind modelling results, the proposed development will introduce no negative wind effect on adjacent, nearby or future phases developments within its vicinity.*

In addition to the above, a summary of the cumulative predicted impact of the proposed development notes the following:

*From the simulation results the following observations are pointed out:*

- *The proposed development has been designed in order to produce a high quality environment that is attractive and comfortable for pedestrians of all categories. To achieve this objective, throughout the design process, the impact of wind has been considered and analysed, in the areas where critical patterns were found, the appropriate mitigation measures were introduced.*
- *As a result of the final proposed, wind flow speeds at ground floor are shown to be within tenable conditions. Some higher velocity indicating minor funnelling effects are found near the South-West side of the development. However, as it is shown in the Lawson map indicate that the area can be utilised for the intended use.*
- *Due to re-circulation effects between Block D and F, this area is suitable for short term sitting instead of long term sitting. These conditions are not occurring at a frequency that would compromise the pedestrian comfort, according to the Lawson Criteria.*



- Regarding the balconies, higher velocities can be found for some directions, only on some of the balconies. However, these velocities are below the threshold values defined by the acceptance criteria and therefore are not critical for safety.
- Tree planting all around the development has been utilised, with particular attention to the corners of the Blocks has positively mitigated any critical wind effects. Thus, it can be concluded that at ground floor good shielding is achieved everywhere.
- The proposed development does not impact or give rise to negative or critical wind speed profiles at the nearby adjacent roads, or nearby buildings. Moreover, in terms of distress, no critical conditions were found for "Frail persons or cyclists" and for members of the "General Public" in the surrounding of the development.
- The proposed development does not impact or give rise to negative or critical wind speed profiles at the nearby adjacent roads, or nearby buildings.

The subject proposal has been subject to a number of design mitigation measures including provision of canopies to provide protection to funnelling and down winds and provision of enhanced landscaping and tree planting to reduce wind impacts.

- ***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.***

Dr. Gavin Fennessy of Ecology Ireland Wildlife Consultants Ltd was appointed to consider and comment on the prospect of bird collisions within the new buildings especially in the context of any Special Conservation Interest species that may occur locally. The closest Special Protection Area (SPA) to the proposed site is 'Brewery Stream'. Located 3.2km downstream.

The input from Dr. Gavin Fennessy is enclosed with this application and makes the following points:

*"At the outset it is acknowledged that any above ground structure, including the proposed buildings pose a potential collision risk to birds. However, this risk needs to be explored and understood in relation to the proposed development site and the ecology of the species of interest in this part of Ireland.*

*The design of the Berwick Pines SHD has not included features that would increase the risk of attracting and disorienting birds flying overhead. The lighting is low-level and directional and the materials used in the tall structures do not present the glass-wall high-reflective finish that has been shown to increase collision risk for certain bird species. Given the location and scale of the development and the nature of the receiving environment there is no obvious concern in relation to bird collision risk at the proposed development site."*

In addition, the site was examined by means of a dedicated bat survey in two periods of mid to late summer 2019; 10th July and 16th August and again on two separate dates in April 2021 (11<sup>th</sup> to 12<sup>th</sup> April and 18<sup>th</sup> to 19<sup>th</sup> April) and one further date in June 2021 (10<sup>th</sup> June) . These dates cover two separate phases in the life cycle of bats. All buildings and trees were examined.

Bats were noted feeding throughout the site at low density while common pipistrelle bats (*Pipistrellus pipistrellus*) were noted to roost within houses (Alhambra and Dalwhinnie) that would be demolished as part of this proposal (under the supervision of a bat specialist as approved by a derogation issued by NPWS) . A single bat was seen to enter and remain in Dalwhinnie. Neither these nor any other buildings examined showed evidence of large numbers of bats and usage by bats is very low and attributable to individual bats rather than a breeding roost.

The bat species roosting within the buildings were common pipistrelle in two buildings and Leisler's bat in one building (St. Joseph's House). Other species noted to feed but not roost here include soprano pipistrelle and a single brown long-eared bat signal over the two

periods of survey (2019 and 2021). No bats emerged from or returned to trees within the site. Mitigation proposed for these potential impacts include the following:

- Derogation for buildings known to be bat roosts,
- Examination of all buildings for bat potential prior to removal,
- Examination of all mature trees for bat potential prior to felling,
- Tree felling outside of the bird nesting period,
- Bio-security: All equipment should be checked and washed before introduction to the site to prevent alien species invasion,
- Planting of native species,
- Staged removal of vegetation to provide cover for birds and other species,
- Introduction and incorporation of bat and bird boxes, .
- Visual signs on glass surfaces to avoid bird-strike,
- Lighting design will be in accordance with guidelines proposed for bat conservation,
- Surface water drainage system following Council-approved design

- **An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.**

Independent Site Management Limited have been appointed to carry out an assessment that the proposal allows for the retention of important telecommunication channels such as microwave links.

The executive summary of this report concludes as follows:

*“...ISM reviewed the height and scale of the applicants development together with their proposal allowances to retain relevant telecommunication channels in the context of the immediate surrounding registered and documented telecommunication sites.*

*...IsM can conclude that the proposal being made by the applicant within its submission to An Bord Pleanála allows for the retention of important telecommunication channels such as microwave links, and therefore satisfied the criteria of Section 3.2. of the Building Height Guidelines.”*

- **An assessment that the proposal maintains safe air navigation.**

In preparation of this planning application, the applicant has entered into discussions with the IAA who had no significant comment to make on the proposal. As identified in the appendix to the rear of this report, the IAA in their review dated 24<sup>th</sup> June 2021 conclude that

*“Based on the information provided, it is likely that only general observations would be issued during the planning process relating to the construction process and the notification of proposed crane operations with at least 30 days notification to the Authority.”*

- **An urban design statement including, as appropriate, impact on the historic built environment.**

A comprehensive Design Statement has been prepared by O’ Mahony Pike Architects and is enclosed. This statement addresses the site context and proposed design in urban design terms and sets out in clear detail the design rationale for the current proposal submitted.

The impact of the proposed development on the historic built environment has been specifically assessed in Chapter 17 Architectural and Built Heritage of the EIAR prepared by David Slattery Conservation Architects Ltd.

The following key points are drawn from the Chapter:

The significance of St. Joseph's House (a Protected Structure) and the proximity of the Arkle Square Architectural Conservation Area have been carefully considered from the early design stages of this proposed scheme, and the scheme has been designed so as to mitigate and minimise any negative impacts on the architectural heritage of the site and its context.

The visual impact of the proposed development was also considered during the early design stages of the proposed scheme, and these considerations guided design decisions. The siting of the new blocks at a distance from the Protected Structure, the landscape design and use of trees as visual screening and the stepping down in height of the various blocks mitigate the potential visual impact of the proposed scheme on the character of the setting of the Protected Structure.

It should further be noted that the setting of St. Joseph's House has been transformed from its original form in modern times, with the development of the neighbouring residential estates. Within the site, later blocks and a modern tarmac carpark also detract from the character of the setting.

In addition, the chapter states that there will be no physical impact on the Arkle Square ACA at all with the proposed new blocks located some distance to the north east of Arkle Square beyond the existing house 'Sir Ivor Mall'. The proposed development does not have the potential to affect views in this area. However, it should be noted that views of Arkle Square are extremely limited due to the suburban development which tightly surrounds it. A number of close-in views of Arkle Square are identified within the ACA as being of note although it is recognised in the ACA that the internal elevations have been altered irrevocably by extensions and alterations. The identified views include a number from outside the block to the west and south as well as from within the much-altered central courtyard.

The visual impact of the proposed development was considered during the early design stages of the proposed scheme, and these considerations guided design decisions. The siting of the new blocks at a distance from the ACA and the stepping down in height of the various blocks mitigate the potential visual impact of the proposed scheme on the character of the ACA.

- ***Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate."***

The relevant environmental assessments have been considered. Wildlife Surveys have prepared an Appropriate Assessment Screening Report, which is enclosed herewith. In addition, an Environmental Impact Assessment Report (EIAR) has also been prepared and is enclosed herewith to assist An Bord Pleanála in their review of environmental impact assessment associated with the development.

On the basis of the foregoing analysis, the proposed development is in compliance with the SPPR's and the relevant development criteria requirements. Therefore, in the event that the Board is of the view that the proposed development might be in material contravention of the development plan in terms of height, such contravention can be justified by reference to the Building Height Guidelines and, in particular, by reference to SPPR 3: see section 37(2)(b)(iii).

We submit that the subject proposal is in accordance with the wider strategic and national policy requirements in relation to regeneration, compact development and integrated communities. The subject site is ideally located to maximise residential supply with exceptional connectivity to Sandyford Urban Core.

It is in consideration of the above that the current proposal for 2 to 10 storeys in height can be positively considered by the competent authority. Specifically, the proposal has addressed the specific development criteria requirements of the Guidelines and is in compliance with SPPR 3. Most

notably the site's location is considered to address the very spirit and intent of the Guidelines that being one proximate to public transport with high frequency services. The current site is therefore appropriate for increased building height and residential densities.



## 4 CONCLUSION

Section 9(6) of the 2016 of the Planning and Development (Housing) and Residential Tenancies Act, 2016, as amended gives the board the power to grant planning permission in Material Contravention of the Development Plan provided the requirements of 37(2)(b) of the 2000 Act are met

It is set out under the Section 9(3)(a) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, as amended, that the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under Section 28 of the Act of 2000.

Section 9(3)(b) of the 2016 Act, as amended, provides that to the extent that they differ from the provisions of the Development Plan, the provisions of SPPRs must be applied instead.

In the context of increased **height**, the most relevant of these requirements is SPPR 3A of the Building Height Guidelines. It is submitted that the Development Management criteria under Section 3.2 of the Guidelines have been satisfied in this regard by the development as proposed and that, accordingly, the Board can grant permission for the proposed development even if it considers that it would be a material contravention of building height policy and standards under the Development Plan, having regard to the terms of the relevant national policy discussed above and SPPR 3A of the Building Height Guidelines, in particular.

In the context of **residential mix**, SPPR 1 of the 2020 Apartment Guidelines applies and the proposal is considered to comply with this Specific Policy requirement. We note specifically that no more than 50% of the proposed units are one-bedroom or studio type units.

In relation to **residential density**, the proposal clearly supports the key policies of the National Planning Framework to deliver appropriate residential densities and brownfield and infill sites.

In relation to **tree preservation**, there are contradictory objectives in the DLRCC Development Plan on requirements to preserve trees with provision made in the Development Plan to remove trees to facilitate development and to provide for commensurate planting, where such trees are removed.

In relation to **car parking**, there is clear provision made within the Apartment Guidelines 2020 to provide for a reduced standard of car parking for intermediate urban locations, such as the subject site and a reduced car parking provision is therefore accepted.

In relation to **transitional zones**, the current proposal is considered to deliver a project of national importance given that it clearly delivers on the key policies of the National Planning Framework in terms of expediting residential development.

As set out in detail in this report there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the Dun Laoghaire-Rathdown County Development Plan 2016-2022.

In the event that the Board were to grant permission, the Board's "reasons and considerations" should reference the matters under Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the Development Plan. It is apparent from section 10(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself.

Section 10(3) provides as follows:

*"(3) A decision of the Board to grant a permission under section 9(4) shall state-*

*....*

*(b) where the Board grants a permission in accordance with section 9(6)(a), the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be."*

Having regard to the justification set out within this statement, it is respectfully submitted that this is an appropriate case for the Board to grant permission for the proposed development in accordance with national planning policy and statutory guidelines and on the basis that there are conflicting provisions in the Development Plan.

## 5 APPENDIX 1 – CORRESPONDENCE WITH IAA

Irish Aviation Authority  
The Times Building  
11–12 D'Olier Street  
Dublin 2, D02 T449,  
Ireland

Údarás Eitlíochta na hÉireann  
Foirgneamh na hAmanna  
11–12 Sráid D'Olier  
Baile Átha Cliath 2, D02 T449,  
Éire

T: +353 1 671 8655  
F: +353 1 679 2934  
www.iaa.ie

Date 24<sup>th</sup> June 2021

Ms Linda McEllin  
Brock McClure  
Planning and Development Consultants  
63 York Road,  
Dun Laoghaire,  
Co. Dublin

**Development:** *Strategic Housing Development Planning Application for lodgement to An Bord Pleanála shortly. The proposal is located at a site situated between Brewery Road and Leopardstown Road, Dublin 18 and provides for a new residential development of 463 residential units, residential amenity space, a café and childcare facility etc. Heights of between 2 and 10 storeys are proposed at Brewery Road and Leopardstown Road, Dublin 18*

Dear Ms. McEllin

Thank you for your email and the attached drawings relating to the proposed SHD Development at Brewery Road and Leopardstown Road, Dublin 18.

Based on the information provided, it is likely that only general observations would be issued during the planning process relating to the construction process and the notification of proposed crane operations with at least 30 days notification to the Authority.

Yours sincerely

PP: Audrey Rafferty

Deirdre Forrest  
Corporate Affairs

Bord Stiúrthóirí/Board of Directors  
Rose Hynes (Cathaoirleach/Chairman),  
Peter Kearney (Príomhfheidhmeannach/Chief Executive)  
Cian Blackwell, Marie Bradley, Ernie Donnelly,  
Gerry Lumsden, Joan McGrath, Diarmuid Ó Conghaile,  
Eimer O'Rourke

Oifig Chláraithe:  
Foirgneamh na hAmanna, 11-12 Sráid D'Olier  
Baile Átha Cliath 2, D02 T449, Éire  
Uimhir Chláraithe: 211082. Áit Chláraithe: Éire  
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