

# MATERIAL CONTRAVENTION STATEMENT

## PROPOSED STRATEGIC HOUSING DEVELOPMENT

NO. 2 FIRHOUSE ROAD AND THE FORMER 'MORTON'S, THE FIRHOUSE INN', FIRHOUSE ROAD, DUBLIN 24



### PREPARED FOR:

BLUEMONT DEVELOPMENTS  
(FIRHOUSE) LIMITED

### PREPARED BY:

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## 1.0 INTRODUCTION

### 1.1 Summary

Tom Phillips + Associates has been instructed by Bluemont Developments (Firhouse) Limited, to prepare this *Material Contravention Statement* to accompany this application for planning permission in respect of a proposed Strategic Housing Development (SHD) on a c. 0.46 ha site located at No. 2 Firhouse Road and the former 'Morton's, the Firhouse Inn', Firhouse Road, Dublin 24.

The development will consist of the demolition of all existing structures on site (c. 1,326 sq m), including:

- Two storey building formally used as public house, ancillary off-licence and associated structures (c. 972 sq m);
- Two storey building comprising an existing barber shop and betting office (c. 260 sq m);
- Single storey cottage building and associated structures (c. 94 sq m); and
- Eastern boundary wall and gated entrance from Mount Carmel Park.

The development with a total gross floor area of c. 11,638 sq m, will consist of 100 no. residential units arranged in 2 blocks (Blocks 01 and 02) ranging between 3 and 5 storeys in height, over lower ground floor and basement levels, comprising:

- 96 no. apartments (consisting of 2 no. studio units; 45 no. one bedroom units; 10 no. two bedroom (3 person) units; 34 no. two bedroom (4 person) units; and 5 no. three bedroom units), together with private (balconies and private terraces) and communal amenity open space provision at podium and roof levels; and
- 4 no. duplex apartments (consisting of 2 no. one bedroom units and 2 no. two bedroom units (4 person) located within Block 01, together with private balconies and terraces.

The development will also consist of non-residential uses (c. 355 sq m), including:

- 1 no. café (c. 58 sq m) and 1 no. office (c. 30 sq m) located at ground floor level of Block 01;
- 1 no. medical unit (c. 59 sq m) and 1 no. betting office (c. 66 sq m) located at ground floor level of Block 02;
- 1 no barber shop (c. 28 sq m) located at ground floor level between Blocks 01 and 02; and
- 1 no. crèche (c. 114 sq m) located at lower ground floor level of Block 01 and associated outdoor play area to the rear.

Vehicular access to the site will be from the existing access off Firhouse Road. The proposal includes minor alterations to the existing access, including the provision of new and enhanced pedestrian infrastructure.



The development will also consist of the provision of public open space and related play areas; hard and soft landscaping including internal roads, cycle and pedestrian routes, pathways and boundary treatments, street furniture, basement car parking (80 no. spaces in total, including accessible spaces); motorcycle parking; electric vehicle charging points; bicycle parking (long and short stay spaces including stands); ESB substations, piped infrastructural services and connections to existing public services, (including relocation of existing surface water sewer and water main from within the application site onto the public roads area along Firhouse Road and Mount Carmel Park); ducting; plant; waste management provision; SuDS measures; stormwater management and attenuation; sustainability measures; signage; changes in levels; public lighting; and all ancillary site development and excavation works above and below ground.

This Statement provides a justification for the material contravention of the *South Dublin County Council Development Plan 2016-2022* ('*Development Plan*') in relation to height parameters, mix of residential unit types, separation distances and residential floor areas proposed in the subject application and provides detailed explanation and justification as to how An Bord Pleanála can grant planning permission in that context.

We also draw attention to Appendix B of this Statement which provides a Supplementary *Material Contravention Statement* which addresses material contravention in the context of the Draft *South Dublin Development Plan 2022-2028*.

## 1.2 Legislative Context

Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016* states the way in which An Bord Pleanála may grant permission for a development which materially contravenes a *Development Plan* (or Local Area Plan), other than in relation to the zoning of land. It is stated,

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

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

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



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

*“(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 demonstrating the reasons why An Bord Pleanála can grant planning permission for the proposed development, despite the material contraventions identified, we provide a detailed overview of the relevant local policy context together with any national planning policy that rationalises such material contraventions.

As part of this, we submit to An Bord Pleanála that the proposed development is strategically important and that it complies in full with national and regional planning policy pertaining to housing delivery, compact growth, higher density development and the efficient use of land. Of particular note are the *National Planning Framework (2018) (NPF)* and *Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031 (2019) (RSES)*.

We further demonstrate that the proposed development complies with the provisions of the *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009)*, *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)* and *Urban Development and Building Height Guidelines (2018)*, which are ministerial guidelines under Section 28 and supersede the provisions of the *South Dublin County Council Development Plan 2016 – 2022* where conflict arises.

Having regard to above, we demonstrate that planning permission can be granted for the development as proposed, in line with the provisions of Section 37(2)(b) of the *Planning and Development Act, 2000*.



## 2.0 THE MATERIAL CONTRAVENTIONS, PLANNING CONTEXT AND JUSTIFICATION

The *South Dublin County Council Development Plan 2016-2022* sets out the relevant policies and objectives for the development of South Dublin. The relevant provisions of this Plan with respect to the identified material contraventions are considered below.

Below we set out the material contraventions that arise in respect of the proposed development and provide justification on the context of Section 37(2)(b) of the *Planning and Development Act, 2000 (as amended)*.

In summary, the following identified material contraventions are considered to occur:

- Residential Building Heights
- Mix of Dwelling Types
- Privacy
- Space Standards for Apartments

### 2.1 A SCHEME OF STRATEGIC IMPORTANCE

Before discussing the detail of the identified material contraventions, it is our view that all of the material contraventions arising in respect of the scheme are justifiable in the context of Section 37(2)(b)(i) of the *Planning and Development Act, 2000 (as amended)* on the basis that the proposed development is strategically important as it makes a contribution to the delivery of national and regional policy objectives surrounding housing, consolidated and compact growth and efficient use of land.

The subject site is a brownfield, infill site located within an 'intermediate' location when assessed against the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)*. As demonstrated through the site-specific assessments enclosed with this application submission, the site is suitable for the delivery of increased density and therefore, compact growth in line with the national and regional planning objectives.

In our view, the proposal optimises the sustainable redevelopment of the lands and the delivery of housing on an appropriately located site, within the Dublin Metropolitan Area. As further addressed below, the proposal accords with the national policy requirement in respect of compact growth on the basis that it seeks the redevelopment of an infill, brownfield site. We conclude that in line with the strategic objectives, the proposed development makes better use of the current site, which in our opinion, is under-utilised. It is on this basis that the proposed development is considered to be strategically important. The relevant planning policy justification for this is set out below.



We note that in justifying the strategic importance of the scheme in the context of its compliance with national and regional policy objectives, we also demonstrate that planning permission can be granted for all of the material contraventions identified by this document in the context of Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)* on the basis that the scheme complies with national and regional planning policy.

The *Statement of Consistency*, prepared by Tom Phillips + Associates provides a more detailed assessment of the proposed development in the context of the *National Planning Framework (Ireland 2040 – Our Plan)* and the *Eastern & Midlands Regional Assembly Regional Spatial & Economic Strategy 2019-2031*. However, for completeness, the relevant policy extracts are set out below.

### ***National Planning Framework (2018) (NPF)***

The *National Planning Framework* (NPF), published in February 2018, sets out a strategic development framework for the Country to 2040. The *National Planning Framework* 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.

The framework focuses on:

- Growing regions, their cities, towns and villages and rural fabric.
- Building more accessible urban centres of scale.
- Better outcomes for communities and the environment, through more effective and coordinated planning, investment and delivery.

Under the heading of ‘Compact Growth’, the NPF is:

*“Targeting a greater proportion (40%) of future housing development to happen **within and close to existing built-up areas**. Making **better use of under-utilised land**, including ‘infill’ and ‘brownfield’ and publicly owned sites together with higher housing and jobs densities, better serviced by existing facilities and public transport”. (our emphasis.)*

Further to the above, we note that a recurring theme in the Plan is the requirement to ensure that the future growth of Dublin occurs within its Metropolitan limits. The NPF estimates that Dublin City and suburbs will grow by c. 264,000 people in the period to 2040. Ireland 2040 targets a significant proportion of future urban development on infill/brownfield development sites within the built envelope of existing urban areas. This is applicable to all scales of settlement, from the largest city, to the smallest village.



The relevant National Policy Objectives (NPOs) which seek to implement policies surrounding housing delivery and compact growth are set out below (note: this is not an exhaustive list):

- **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.*
- **National Policy Objective 3b** – *Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.*
- **National Policy Objective 5** - *Develop cities and towns of sufficient scale and quality to compete internationally and to be drivers of national and regional growth, investment and prosperity.*
- **National Policy Objective 6** - *Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.*
- **National Policy Objective 7** - *Apply a tailored approach to urban development, that will be linked to the Rural and Urban Regeneration and Development Fund, with a particular focus on:- **Dublin**; the four Cities of Cork, Limerick, Galway and Waterford; Strengthening Ireland’s overall urban structure, ... Encouraging population growth in strong employment and service centres of all sizes, supported by employment growth; Reversing the stagnation or decline of many smaller urban centres, by identifying and establishing new roles and functions and enhancement of local infrastructure and amenities; Addressing the legacy of rapid unplanned growth, by facilitating amenities and services catch-up, jobs ... In more self-contained settlements of all sizes, supporting a continuation of balanced population and employment growth.*
- **National Policy Objective 8** – *To ensure that the targeted pattern of population growth of Ireland’s cities to 2040 is in accordance with the targets set out in Table 4.1.*
- **National Policy Objective 10** - *There will be a presumption in favour of development that encourages more people, jobs and activity within existing urban areas, subject to development meeting appropriate planning standards and achieving targeted growth.*
- **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.*
- **National Policy Objective 28** - *Plan for a more diverse and socially inclusive society that targets equality of opportunity and a better quality of life for all citizens, through improved integration and greater accessibility in the delivery of sustainable communities and the provision of associated services.*





- **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 inherently complies with the overarching themes of the NPF by proposing a compact well-designed sustainable form of mixed use (primarily residential) development on an underutilised suburban site located in close proximity to a range of social and commercial facilities and public transport services. The development accords with the NPF's aims to consolidate Dublin through the development of underutilised, brownfield sites.

The locational characteristics of the subject site therefore provides an opportunity for a sustainable, higher residential development and the delivery of notable contribution to meeting housing need.

### **Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031 (2019) (RSES)**

The Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031 (RSES) is a strategic plan and investment framework to shape future development and to better manage regional planning and economic development throughout the Eastern and Midland Region.

The RSES includes a strategic plan for Dublin, the Metropolitan Area Strategic Plan (MASP). To achieve the Vision the MASP identifies a number of Guiding Principles for the sustainable development of the Dublin Metropolitan Area including Compact sustainable growth, which aims to:

***“Promote consolidation of Dublin city and suburbs, refocus on the development of brownfield and infill lands to achieve a target of at least 50% of all new homes within or contiguous to the existing built up area in Dublin and at least 30% in other settlements.” (our emphasis.)***

The RSES includes Policy RPO 5.5 which focuses on housing delivery. It states:

***“RPO 5.5: Future residential development in the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs, supported by the development of Key Metropolitan Towns in a sequential manner as set out in the Metropolitan Area Strategic Plan (MASP) and in line with the overall Settlement Strategy for the draft RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns.” (our emphasis.)***

In our opinion, the proposed development is in full accordance with the objectives of the RSES realising the potential of brownfield lands in the consolidation of Dublin and its suburbs.





We therefore conclude that the proposed development represents a strategically important development that contributes to the delivery of the national and regional policy objectives referred to above. On this basis, it is our view that this provides justification as to why the proposed development can be granted by An Bord Pleanála, having regard to Section 37(2)(b)(i) of the *Planning and Development Act, 2000 (as amended)*.

We note that in justifying the strategic importance of the scheme in the context of its compliance with national and regional policy objectives, we have also demonstrated that planning permission can be granted for all of the material contraventions identified by this document in the context of Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)* on the basis that scheme complies with national and regional planning policy.

Below we provide further justification in relation to each material contravention identified at 2.0 above.

## 2.2 RESIDENTIAL BUILDING HEIGHT

The *South Dublin County Council Development Plan 2016-2022* (herein referred to as ‘*Development Plan*’) discusses the concept of Residential Building Height within Section 2.2.3 where it is stated that ‘*varied building heights are supported across residential and mixed use areas in South Dublin County to promote compact urban form, a sense of place, urban legibility and visual diversity.*’

A number of policy objectives are listed with regard to acceptable building heights within the County, as shown below:

HOUSING (H) Policy 9 Residential Building Heights
<b>It is the policy of the Council to support varied building heights across residential and mixed use areas in South Dublin County.</b>
<b>H9 Objective 1:</b> To encourage varied building heights in new residential developments to support compact urban form, sense of place, urban legibility and visual diversity.
<b>H9 Objective 2:</b> To ensure that higher buildings in established areas respect the surrounding context.
<b>H9 Objective 3:</b> To ensure that new residential developments immediately adjoining existing one and two storey housing incorporate a gradual change in building heights with no significant marked increase in building height in close proximity to existing housing (see also Section 11.2.7 Building Height).
<b>H9 Objective 4:</b> To direct tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centres, Mixed Use zones and Strategic Development Zones and subject to an approved Local Area Plan or Planning Scheme.
<b>H9 Objective 5:</b> To restrict general building heights on ‘RES-N’ zoned lands south of the N7 to no more than 12 metres where not covered by a current statutory Local Area Plan.

Figure 2.1: Residential Building Height Objectives (Source: *South Dublin Development Plan 2016-2022, p.35.*)



With regards to H9 Objective 3, Section 11.2.7 of the *Development Plan* sets out that the appropriate maximum or minimum height of any building will be determined by factors such as the prevailing building height in the surrounding area and the proximity to existing housing:

*“The appropriate maximum or minimum height of any building will be determined by:*

- *The prevailing building height in the surrounding area.*
- *The proximity of existing housing - new residential development that adjoins existing one and/or two storey housing (backs or sides onto or faces) shall be no more than two storeys in height, unless a separation distance of 35 metres or greater is achieved.*
- *The formation of a cohesive streetscape pattern – including height and scale of the proposed development in relation to width of the street, or area of open space.*
- *The proximity of any Protected Structures, Architectural Conservation Areas and/or other sensitive development.’*

*Proposals for ‘tall buildings’, that exceed five storeys will only be considered at areas of strategic planning importance such as key nodes, along the main street network and along principal open spaces in Town Centres, Regeneration zones and Strategic Development Zones, and subject to an approved Local Area Plan or Planning Scheme.”*

### **2.2.1 Detail of Material Contravention**

The proposed development features 2 no. residential buildings (Block 01 and 02), with heights ranging from 3 to 5 storeys.

Block 01 (ranging between 12.7 m to 20.5 m in height) exceeds two storeys and is within 35m of the existing two storey dwellings within Mount Carmel Park. The proposed development would therefore not comply with Section 11.2.7 or Housing Policy 9 - Objective 3 of the *Development Plan*. On this basis, we identify a material contravention in relation to both Section 11.2.7 and Housing Policy Objective 3.

We provide detailed justification for this material contravention below in Section 2.2.2 which sets out why An Bord Pleanála can grant planning permission for the proposed development.



It is our opinion, with the exception of Housing Policy 9 - Objective 3, that the proposed development otherwise complies with Housing (H) Policy 9 (Residential Building Heights), for the following reasons:

- H9 Objective 1 encourages varied building heights in new residential developments to support compact urban form. sense of place, urban legibility and visual diversity.
- The higher elements of the proposal respect the surrounding context and this is evident in the assessments which accompany the planning application, including the Visual Impact Assessment and the Daylight and Sunlight Assessment.
- the proposed building heights do not exceed 5 storeys and therefore do not constitute a 'tall buildings' as per the *Development Plan* definition as outlined in Section 11.2.7 (Building Height).
- H9 Objective 5 relates specifically to 'RES-N' zoned lands south of the N7 and not the subject site which is zoned 'Local Centre'.

It is acknowledged that the proposed development is considered to be a 'higher building' (over three storeys in a residential area) as per Section 11.2.7 of the *Development Plan*. As required by Section 11.2.7, the application is supported by an *Architectural Design Statement*, prepared by OMP Architects, which includes a strong urban design rationale, site analysis and character appraisal addressing any potential impact the proposed development may have on the surrounding context.

### 2.2.2 Justification for Material Contravention

In our view, this material contravention can be justified under Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*. The explanation for this is set out in Section 2.1 of this Statement.

It is also our view that this material contravention can be further justified under Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)* on the basis that specific planning policy requirements (SPPRs) in the *Urban Development and Building Height Guidelines (2018)* ('Building Height Guidelines') take precedence over the *Development Plan* policies where they are in conflict and the Building Height Guidelines are Ministerial Guidelines pursuant to s.28 of the 2000 Act.

Having regard to the provisions of the *Urban Development and Building Height Guidelines (2018)* and specifically, Specific Planning Policy Requirement (SPPR) 3, we highlight that these guidelines allow for proposed development to be granted permission in circumstances where the *Development Plan* otherwise restricts height, provided certain criteria are addressed. The relevant policy extract is provided below.

**SPPR 3**

*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.*

- (B) *In the case of an adopted planning scheme the Development Agency in conjunction with the relevant planning authority (where different) shall, upon the coming into force of these guidelines, undertake a review of the planning scheme, utilising the relevant mechanisms as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme*

- (C) *In respect of planning schemes approved after the coming into force of these guidelines these are not required to be reviewed.*

Figure 2.2: Extract from the *Urban Development and Building Heights, Guidelines for Planning Authorities* setting out the requirements of SPPR 3.

Appendix A of this Statement demonstrates the application of the Development Management criteria set out in Section 3.1 of the Building Height Guidelines, as required by SPPR 3. It concludes that the proposed development, including 2 no. blocks ranging between 3 and 5 storeys, complies with the Guidelines, as demonstrated by the full suite of site-specific assessment enclosed with this planning application submission. The proposed development provides for an appropriate gross residential density (c. 217 units per hectare) and has been designed to provide a good level of residential amenity for future residents of the scheme, in addition to preserving the existing residential amenity of adjoining residents.

Further to this, we highlight that in the absence of finite land supply, increased building height is an essential component of achieving the required higher densities whilst maintaining a high standard of living accommodation and achieving sustainable communities. Following on from this, we note that the strict application of the building height policy as contained within the Development Plan would render part of the site undevelopable and therefore restrict the delivery of increased densities and compact growth in line with national policy. We, therefore, conclude that the application of H9 Objective 3 and Section 11.2.7 of the *Development Plan* would misalign with the policies and objectives of the NPF.

In the case of the proposed development materially contravening the building height guidelines set out in the *Development Plan*, Section 37(2)(b)(i) and (iii), as outlined in Section 2.1 above, allows for the development to be granted permission despite this contravention.



We conclude that the proposed development complies in full with SPPR 3 in respect of increased building heights. On the basis that the SPPR's take precedence over any conflicting development plan policies or standards, we contend that the proposed building height is acceptable and justified. We further conclude that An Bord Pleanála can grant planning permission having regard to Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*.

## 2.3 MIX OF DWELLING TYPES

Section 11.3.1(i) *Mix of Dwelling Types* of the *Development Plan* states:

*"The overall dwelling mix in residential schemes should provide for a balanced range of dwelling types and sizes to support a variety of household types. On smaller infill sites, the mix of dwellings should contribute to the overall dwelling mix in the locality. With the exception of student accommodation, proposals that include a high proportion of one bedroom dwellings (more than 10%) shall be required to demonstrate a need for such accommodation, based on local demand and the demographic profile of the area. Design Statements for residential or mixed use development proposals with a residential element (see Section 11.2.2 Design Statements) will be required to address the mix of dwelling types."* (our emphasis.)

### 2.3.1 Detail of Material Contravention

The proposed development provides the following unit mix:

- 2 No. studio units (c. 2%);
- 47 No. 1 bed apartment and duplex units (c. 47%);
- 46 No. 2 bed apartment and duplex units (c. 46%); and
- 5 No. 3 bed apartment units (c. 5%).

It is therefore acknowledged that the proposed development includes in excess of 10% one-bedroom dwelling types (49% in total, including studio units) and therefore does not comply with Section 11.3.1(i) of the *Development Plan*, as set out above.

We therefore note this as a material contravention of the *Development Plan*.

We provide detailed justification for this material contravention below which sets out why An Bord Pleanála can grant planning permission for the proposed development.

### 2.3.2 Justification for Material Contravention

In our view, this material contravention can be justified under Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*. The explanation for this is referred to in Section 2.1 of this Statement.

We also outline how this material contravention can be further justified under Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)* on the basis that the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)* ('Apartment Guidelines') are Section 28 guidelines which take precedence over the Development Plan policies where in conflict with the SPPR's. In this regard, the Apartment Guidelines (page 4) states the following:

*"These guidelines have been issued by the Minister for Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines and are also required to apply any specific planning policy requirements (SPPRs) of the guidelines, within the meaning of Section 28 (1C) of the Planning and Development Act 2000 (as amended) in carrying out their functions.*

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

Specific Planning Policy Requirement (SPPR) 1 of the Apartment Guidelines sets out the requirements for housing mix. The relevant extract is below.

**Specific Planning Policy Requirement 1**

**Housing 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).**

Figure 2.3: Extract from SPPR 1 of the Apartment Guidelines

As demonstrated above, the Guidelines state that '*housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studio)*'. The unit mix therefore complies in full with SPPR 1. On the basis that the SPPR's take precedence over any conflicting development plan policies or standards, we contend that the housing mix is acceptable in this regard. We further conclude that An Bord Pleanála can grant planning permission having regard to Section 37(2)(b)(i) and (iii) of the Planning and Development Act, 2000 (as amended).



## 2.4 PRIVACY

Section 11.3.1(v) *Privacy of the Development Plan* states:

*“A separation distance of 22 metres should generally be provided between directly opposing above ground floor windows to maintain privacy. Reduced distances will be considered in respect of higher density schemes or compact infill sites where innovative design solutions are used to maintain a high standard of privacy.*

*Dwellings with direct street frontage should generally include a privacy strip of at least 1 metre or a front garden.”*

### 2.4.1 Detail of Material Contravention

The proposed design strategy has sought to maximise separation distances between opposing windows to ensure a high standard of residential accommodation within the scheme and also mitigate adverse impact upon neighbouring development.

Although the proposed development is considered to be acceptable in this regard (for the reasons expanded upon below), we identify the separation distances between opposing windows across the scheme and between windows on neighbouring adjacent sites (see Figure 2.4 as an example) which fall below 22 metres and would therefore not comply with Section 11.3.1(v) of the *Development Plan*.

We therefore identify this as a material contravention of the *Development Plan*.

In all instances, the residential units which directly front the street are provided with a privacy strip of a minimum 1 metre, which is a further requirement of Section 11.3.1(v).





Figure 2.4: Extract from Dwg. no. 20022-OMP-00-SP-DR-A-1000 (Proposed Site Plan layout) showing the instances where the 22m separation distance is not met with measurements circled in red (source: OMP Architects.)

We provide detailed justification for this material contravention below which sets out why An Bord Pleanála can grant planning permission for the proposed development.

## 2.4.2 Justification for Material Contravention

In our view, this material contravention can be justified under Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*. The explanation for this is set out in Section 2.1 of this Statement.

Whilst this is identified as a material contravention, we confirm that despite the reduced separation distances, the design strategy (see enclosed *Architectural Design Statement*, prepared by OMP Architect), which includes, *inter alia*, staggered balconies, inset/recessed balconies, stepped facades and privacy screens to ensure that the proposed development does not give rise to unacceptable impact upon the proposed standard of accommodation or surrounding neighbouring amenity. The results of the daylight, sunlight and overshadowing assessments are considered to evidence the above position.



In summary, the proposed development which presents reduced separation distances in some places delivers on the objectives of national planning policy surrounding compact growth and higher density development, whilst providing a high quality environment for both future residents and neighbours. We therefore conclude that An Bord Pleanála can grant planning permission having regard to Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*.

## 2.5 DWELLING STANDARDS

Section 11.3.1(vi) *Dwelling Standards* of the *Development Plan* states that all apartments must accord with or exceed the open space and floor area standards set out in Appendix 1 of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, DECLG (2015)* and the minimum floor areas set out in Table 11.21, an extract of which is included Figure 2.5 below.

TYPE OF UNIT	APARTMENTS	PRIVATE OPEN SPACE	COMMUNAL OPEN SPACE	STORAGE
Studio	40 sq.m	4 sq.m	4 sq.m	3 sq.m
One Bedroom	45 sq.m	5 sq.m	5 sq.m	3 sq.m
Two Bedroom	73 sq.m	7 sq.m	7sq.m	6 sq.m
Three Bedrooms	90 sq.m	9 sq.m	9 sq.m	9 sq.m

Figure 2.5: Minimum Space Standards for Apartments (source: *South Dublin Development Plan 2016-2022*, p 206.)

Alongside these overall minimum space standards, the *Development Plan* sets out minimum standards for each bedroom type, as follows:

*“In houses and apartments (apartment/duplex units) the floor area of single bedrooms must be a minimum of 7.1 sq. metres; the floor area of a double bedroom must be a minimum of 11.4 sq. metres; and the floor area of the main bedroom should be at least 13 sq. metres.”*

Section 11.3.1(vi) of the *Development Plan* makes reference to compliance with prescribed national guidelines for apartment floor area, however, we note that the national guideline standards set out in Table 11.21 have since been superseded by the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)* (‘Apartment Guidelines’).

## 2.5.1 Detail of Material Contravention

A breakdown of the residential unit floor areas within the proposed scheme against the minimum floor area standards for apartments contained within the *Development Plan* is outlined in Table 2.1 below.

Type of Unit	Minimum Space Standards for Apartment Units (sq m) as per the Development Plan	Average Floor Area Proposed within the Scheme
Studio Apartment	40	<b>37.4</b>
One Bedroom Apartment	45	49.6
Two Bedroom Apartment	73	77.3
Three Bedroom Apartment	90	90

Table 2.1: Breakdown of proposed floor areas and the floor area standard for unit types contained within the *Development Plan* (collated by TPA, 2022.)

The proposed apartment component of the development has been designed in accordance with the Apartment Guidelines which require the following minimum overall apartment floor areas.

Minimum overall apartment floor areas	
Studio	37 sq m (n/a)*
One bedroom	45 sq m (38 sq m)*
Two bedrooms (3 person)**	63 sq m (n/a)*
Two bedrooms (4 person)	73 sq m (55 sq m)*
Three bedrooms	90 sq m (70 sq m)*

\* Figures in brackets refer to 1995 guidelines  
\*\*Permissible in limited circumstances

Figure 2.6: Extract from Appendix 1 of the Apartment Guidelines which outlines the minimum overall apartment floor areas requirements.

The proposed studio apartments (2 No. in total) fall short of the minimum apartment unit areas contained in Table 11.21 of the *Development Plan*. The enclosed *Housing Quality Assessment* (HQA) provides full details in terms of proposed apartment floor areas.

We therefore identify a material contravention on the basis that the proposed studio apartments do not comply, in full, with the minimum standards set out for in Section 11.3.1(iv) and Table 11.21 of the *Development Plan*.

We therefore note this as a material contravention of the *Development Plan*.

We provide detailed justification for this material contravention below which sets out why An Bord Pleanála can grant planning permission for the proposed development.

## 2.5.2 Justification for Material Contravention

In our view, this material contravention can be justified under Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*. The explanation for this is set out in Section 2.1 of this Statement.

Furthermore, in our view, this material contravention can also be further justified under Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)* on the basis that Apartment Guidelines are Section 28 guidelines which take precedence over the Development Plan policies where in conflict with the SPPR's. In this regard, the Apartment Guidelines (page 4) states the following:

*"These guidelines have been issued by the Minister for Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines and are also required to apply any specific planning policy requirements (SPPRs) of the guidelines, within the meaning of Section 28 (1C) of the Planning and Development Act 2000 (as amended) in carrying out their functions.*

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

Specific Planning Policy Requirement (SPPR) 3 refers to the minimum apartment floor areas, which is also provided in greater detail by Appendix 1 of the Apartment Guidelines. The relevant extract is provided below:

<b>Specific Planning Policy Requirement 3</b>	
<b>Minimum Apartment Floor Areas:</b>	
• Studio apartment (1 person)	37 sq.m
• 1-bedroom apartment (2 persons)	45 sq.m
• 2-bedroom apartment (4 persons)	73 sq.m
• 3-bedroom apartment (5 persons)	90 sq.m

Figure 2.7: Extract from SPPR 3, contained within the Apartment Guidelines



We note that in this regard, the Apartment Guidelines also seeks to safeguard higher standards by requiring a minimum of 10% of each unit type to exceed the minimum floor area standard by 10%. The Apartment Guidelines also allow for 2 bedroom 3 person units, but require that no more than 10% of the total number of units comprise this category of 2 bedroom apartment.

Having regard to the above requirements, together with the requirements of SPPR3, we confirm that the proposed apartment component of the development complies in full with the Apartment Guidelines.

Notwithstanding the compliance of the proposed development with the Apartment Guidelines, it is worth noting that the standard of residential accommodation proposed by the scheme is of a high quality, providing residents with an excellent standard of residential amenity, including excellent levels of daylight and open space.

We therefore conclude that the proposed development complies in full with the Apartment Guidelines in respect of minimum apartment floor areas and the associated requirements. On the basis that Section 28 guidelines take precedence over any conflicting development plan policies or standards, we contend that the standard of the proposed apartment development is acceptable in this regard. We further conclude that An Bord Pleanála can grant planning permission having regard to Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*.



### 3.0 CONCLUSION

Having regard to the above, it is submitted that there is ample justification for An Bord Pleanála to permit the identified material contraventions of the *South Dublin Development Plan 2016 – 2022* having regard to Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*.

The proposed development will provide a significant and strategically important residential development, comprising 100 No. new homes. As well as responding to housing demand within the Local Authority, the proposed development will provide public open space and commercial uses, which will serve both the new and existing communities.

The development of this underutilised site directly delivers national and regional planning policy objectives surrounding the delivery of housing. It complies with the overarching themes of the National Planning Framework by proposing a compact, well-designed, sustainable form of residential development on an underutilised suburban site, located in close proximity to a range of social, recreational and community facilities and public transport services.

The proposed development accords with the relevant National Planning Objectives in addition to a full suite of national and regional policy and guidelines, as summarised below.

- *National Planning Framework (Ireland 2040 – Our Plan) (2018)*
- *Urban Development and Building Height Guidelines (2018)*
- *Rebuilding Ireland: Action Plan for Housing and Homelessness (2016)*
- *Regional Spatial & Economic Strategy for the Eastern and Midlands Region (2019)*

On this basis, we conclude that the Board can grant planning permission for the proposed development in respect of the various items discussed throughout, having regard to Section 37(2)(i), (ii) and (iii) below.

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

*“(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—*

- the proposed development is of strategic or national importance,*
- there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- 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, (our emphasis), 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.”*





## Appendix A - Applicant’s Response to the criteria set out in Section 3.2 in line with Policy SPPR3.

### (Urban Development and Building Heights: Guidelines for Planning Authorities (2018)).

Compliance of the subject proposal with Policy SPPR 3, as contained within the *Urban Development and Building Heights: Guidelines for Planning Authorities (2018)*

Scale	Criteria	Response
City / Town	The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.	<p>The proposed development site is served by a number of bus routes serving stops located on Firhouse Road and Ballycullen Road, namely the 49, 65b and 75. Furthermore, the 54a and 77a routes operate on the N81 to the north of the site which can be accessed via pedestrian and cycle infrastructure through Dodder Valley Park and under the M50 junction to the northeast of the site. The high frequency route 15 also operates on the St. Colmcille’s Way (R113) to the south of the site.</p> <p>High frequency urban bus routes will be provided as part of the BusConnects programme which will further enhance public transport within the area providing bus services at 10-15 minute intervals. Evidence of public transport capacity can be found in the TTA which is enclosed with this planning application.</p> <p>The TTA further outlines that it is estimated that 270 No. persons may occupy the residential portion of the site. It is assumed that each resident will generate 1.87 trips per day, equating to a total daily production of ca. 505 No. trips. Of the 505 No. daily trips, 21% are assumed to travel by public transport, equating, to c. 106 no. public transport trips per day. The capacity of bus services, namely the Nos. 49, 65B and 75, within the immediate vicinity of the site i.e. &lt;150 metres have been calculated.</p>



		<p>The number of resident trips undertaken by public transport in the direction of demand has been calculated by Transport Insights (See Tables 8.2 and 8.3 of the TTA). Based on detailed calculations, Transport Insights are of the opinion that the current public transport capacity is sufficient to accommodate the small additional demand generated by the proposed development.</p>
	<p>Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.</p>	<p>The proposed development includes 2 No. buildings on a c. 0.46 ha site ranging in height from 3 and 5 storeys. The design strategy locates lower heights around the edge of the site (3 storeys with setback 4 storey) in closest proximity to existing residential properties in order to minimise potential impacts on the residential amenities of these properties in relation to overlooking, daylight and sunlight impact, overshadowing and overbearing.</p> <p>The topography of the site has also been used, where possible, to minimise visual impact yet deliver buildings to an appropriate height and scale. It is considered that this approach successfully integrates the new development into the area and whilst clearly comprising a new and higher density form of development than the prevailing two storey housing, it will not give rise to significant amenity or visual impacts as evidenced by the enclosed <i>Visual Impact Assessment (VIA)</i>, prepared by Landscape Architect David O’Sullivan M. Ag. Sc. (HORT), M.L.A., MLI of Doyle + O’Troithigh Landscape Architecture and the enclosed <i>Daylight &amp; Sunlight Report</i> prepared by OCSC Consulting Engineers.</p> <p>The proposed public open space and enhancements to the public realm will provide a new positive interface between the subject lands and Firhouse Road/Mount Carmel Park at this location, which will replace extensive hardstanding</p>



		<p>surface car parking. The permeability will be enhanced at this location.</p> <p>The planning application is supported by an <i>Archaeological Impact Assessment and Method Statement</i>, prepared by AHC Ltd. The report notes that the proposed development area falls within the Zone of Archaeological Potential associated with Sally Park House (DU022-103----) as recorded on the Record of Monuments and Places. However, as the site is recorded as 'House - 18th/19th century' on the Sites and Monuments Record, the possibility of any physical elements of the RMP site extending into the proposed development area are negligible. It is the opinion of the Archaeologist that any impacts on Sally Park house are deemed to be indirect, in the form of impacts on the visual amenity. It is further noted in the report that the proposed development will not be visible from the grounds on the south side of the house. It is noted that the development will be visible from the north side of the house, however as this is the rear of Sally Park, with the main façade, south facing, any impacts on the house are deemed only slightly negative.</p>
	<p>On larger urban redevelopment sites, proposed developments should make a positive contribution to placemaking, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.</p>	<p>Notwithstanding that the site is small infill in nature, the proposed development is designed to include new spaces and pedestrian/cyclist routes which serve to create a more animated streetscape on a corner site. The scheme will deliver a gross density of 217 No. units per hectare through the provision of a range of architectural styles and contrasting scales within the development.</p> <p>As noted above, the proposed development responds to the scale of adjoining development through the varied use of building heights (lower along the eastern edges) and the creation of generous separation distances between</p>



		<p>the taller elements of the scheme and neighbouring properties.</p> <p>As discussed previously, the proposed scheme includes a series of landscaping measures that will ensure a long term positive impact in areas, in particular, to the Firhouse Road.</p>
<p><b>District / Neighbourhood / Street</b></p>	<p>The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.</p>	<p>The proposal will inherently improve the existing streetscape through the provision of public open space and significant public realm improvements as well as introducing active street frontages. The landscape strategy for the lands will enhance the connections to the Dodder Valley Park and promote the provision of pedestrian and cycle routes through the site.</p> <p>In terms of improving permeability and connectivity, the site's primary interface with the surrounding road network is onto Firhouse Road and proposes the removal of the boundary wall along Mount Carmel Park in order to open up the site and facilitate public interaction between the development and the adjoining roadway. This also facilitates permeability through the site and provides a new urban edge and contemporary streetscape.</p>
	<p>The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.</p>	<p>The subject development comprises 2 No. buildings which are of varying scale, form and height. There are no <i>'uninterrupted walls of building in the form of slab blocks'</i>. A simple palette of materials, the use of setbacks at roof levels and the introduction of a variety of balcony types provide appropriate visual variety to the elevations and the massing of the buildings.</p> <p>The design will also activate the street frontage along Mount Carmel Park which currently defined by a render wall and gateway. All details regarding the material and elevation treatment is contained within the enclosed Architectural Design</p>



		Statement which is submitted as part of this planning application.
	<p>The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of “The Planning System and Flood Risk Management – Guidelines for Planning Authorities” (2009).</p>	<p>Regarding flood risk, the site was subject to a flood risk assessment in line with the requirements of “<i>The Planning System and Flood Risk Management – Guidelines for Planning Authorities</i>” (2009), which concluded that the site will not be subject to flood risk due to it being in Flood Zone C and is therefore appropriate for residential development (refer to the Water Service Report submitted with this planning application which includes a flood risk assessment).</p> <p>The proposed development will deliver an area of new public open space that is fully accessible to public transport. The creation of this space and the incorporated setback distances between the proposed development and existing neighbouring properties enables building ranges between 3 and 5 storeys to be established on the site.</p>
	<p>The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.</p>	<p>The proposed development, which will introduce a new residential development together with commercial uses will be a new destination for the future occupiers of the development and the existing community. The proposal includes a number of new pedestrian and cyclist access points which enable connection into the existing road and street network.</p> <p>The proposal will provide for increased movement and fluidity of pedestrians and cyclists from Firhouse Road up through Mount Carmel Park and into the Dodder Valley Park and will act as a meeting point for social activities. The proposed public open space will also enhance the green infrastructure network in the local area.</p>
		<p>The proposed development will deliver a good range of uses including residential,</p>



	<p>The proposal positively contributes to the mix of uses and/or building/ dwelling typologies available in the neighbourhood.</p>	<p>crèche, café, office, medical unit, barber shop and a betting office. These uses will all contribute to the limited services available to the existing area.</p> <p>The proposal will deliver a range of residential unit types that will serve a wide range of household types. The unit mix will include Studio, 1, 2 and 3 bedroom apartments in a neighbourhood predominately defined by low density, two storey detached and semi-detached houses. We also note that units have been designed to cater for the possibility of future conversion into age-appropriate living. This unit mix will ensure that a variety of unit types.</p>
<p><b>Site / Building</b></p>	<p>The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.</p>	<p>The development is designed to ensure that there will be no significant overshadowing or loss of daylight or sunlight to adjoining residential properties. Building heights, particularly those adjacent to housing within Mount Carmel Park, have been designed to minimise impact on access to sunlight or daylight on these properties. The enclosed <i>Daylight &amp; Sunlight Report</i>, prepared by OCSC Consulting Engineers, provides further details in this regard. Furthermore, the development has also been designed to maximise daylight and sunlight access to the proposed residential units and amenity spaces within the development.</p> <p>The enclosed <i>Energy &amp; Sustainability Report</i>, prepared by OCSC Consulting Engineers, provides further details of the overall positive performance of the proposed development in this regard.</p>
	<p>Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision</p>	<p>As set out in detail in the enclosed Daylight &amp; Sunlight Report, the proposed development is assessed having regard to the BRE 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code</p>



	<p>outlined in guides like the Building Research Establishment’s ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’</p>	<p>of Practice for Daylighting’, which confirms that daylight and sunlight assessment undertaken accords in full with the methodology set out in the above referenced guidance.</p> <p>Further to this, a sample of the proposed units have also been assessed in line with the new European Standard on daylight – ‘EN 17037:2018 Daylight in buildings’</p>
	<p>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.</p>	<p>As noted above, the daylight, sunlight and overshadowing assessments demonstrate an excellent level of compliance with the target values set out in the BRE Guidelines.</p>
<p><b>Specific Assessments</b></p>	<p>Specific impact assessment of the micro-climatic effects such as downdraft. Such assessments shall include measures to avoid/mitigate such microclimatic effects and, where appropriate, shall include an assessment of the cumulative microclimatic effects where taller buildings are clustered.</p>	<p>As the proposed development is of moderate scale and height, up to 5 storeys, and will not result or contribute to a cluster of tall buildings, it is not considered that micro-climatic impacts will arise.</p> <p>The design strategy and landscaping proposals at roof and podium levels will ensure all amenity areas are fully useable throughout the year.</p> <p>Additionally, the enclosed <i>Daylight &amp; Sunlight Report</i> demonstrates that all outdoor amenity spaces have been afforded excellent levels of sunlight throughout the day throughout the year</p>





		<p>and the pedestrian environment, from a sunlight perspective, will be comfortable.</p>
	<p>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.</p>	<p>Bird surveys and bat surveys were carried out by Flynn Furney Environmental Consultants as part of the application process at optimal times of the year.</p> <p>In terms of bats, the survey found no bats or evidence of bat presence was noted in the Firhouse Inn building and the two adjacent buildings. The Bat Survey Report submitted as part of this planning application recommended that an ecologist has input into the external lighting plan for the future development to ensure the correct positioning and models of lighting columns are installed and the habitats around the development are not impacted by light overspill. OCSC Consulting Engineer have prepared the site light specifications in consultation with the Environmental Consultant.</p> <p>No birds were observed entering or exiting any of the buildings at the former Firhouse Inn and the adjacent buildings. No nesting activity was observed in any of the areas within the grounds of these premises. A number of bird species were seen and heard overflying the site and alighting in the mature trees adjoining the site.</p> <p>Due to the modest height of the proposed development (max. 20.5 m) it is our opinion flight lines of birds will not be negatively impacted.</p>
	<p>An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.</p>	<p>There are no telecommunication channels currently traversing the subject site therefore none will be affected due to the proposed development of this proposal.</p>
	<p>An assessment that the proposal maintains safe air navigation.</p>	<p>An Aeronautical Assessment is not considered necessary as the maximum height of the proposed scheme is 5 storeys</p>



		<p>and the site is a considerable distance from the airport.</p>
	<p>An urban design statement including, as appropriate, impact on the historic built environment.</p>	<p>An <i>Architectural Design Statement</i> has been prepared by OMP Architects and details the design rationale for the proposal.</p> <p>Mesh Conservation Architects have also prepared a <i>Heritage Impact Assessment</i> report which is enclosed with this planning application.</p>
	<p>Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.</p>	<p>An EIA screening was undertaken by AWN Consulting and a report is enclosed with this planning application.</p> <p>A screening for appropriate assessment and ecological impact assessment was undertaken by Flynn Furney Environmental Consultants in respect of the proposal and full detailed reports are also enclosed with this planning application.</p> <p>This <i>Statement of Consistency</i> demonstrates that the proposed development is broadly consistent with the <i>South Dublin County Council Development Plan 2016-2022</i> (and the <i>Draft South Dublin County Development Plan 2022-2028</i>), which are both subject to SEA. Overall, the proposed development is in line with the objectives of the development plan and the land use zoning, therefore a SEA is not required in our opinion.</p>



**Appendix B - Supplementary Material Contravention Statement for Firhouse Road SHD addressing the Draft Policies of the *Draft South Dublin County Development Plan 2022-2028***



## 1.0 INTRODUCTION

The purpose of this Supplementary Material Contravention Statement is to address the *Draft South Dublin County Development Plan 2022-2028* ('*Draft Plan*') in the context of material contravention and the *Planning and Development (Housing) and Residential Tenancies Act, 2016* which states the way in which An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan or Local Area Plan, other than in relation to the zoning of land.

Whilst the *South Dublin County Council Development Plan 2016 – 2022* is the current development plan at the time of writing, this supplementary material contravention statement covers the eventuality that the new County Development Plan is in legal effect at the time that An Bord Pleanála determine this planning application.

The *Draft Plan* went on public display on 7<sup>th</sup> July 2021 until the 15<sup>th</sup> September 2021.

Public consultation on the Amendments to the *Draft Plan* began on the 29<sup>th</sup> March 2022. It is understood that the adopted Plan will come into force 6 weeks after the Development Plan is made on July 1<sup>st</sup>, 2022.

In this context, it is further noted that the policy wording addressed within the supplementary statement is draft and based upon the original *Draft Plan* and the Proposed Amendments version of the Plan. For the avoidance of doubt, we acknowledge that the final wording of the new County Development Plan will be subject to further consideration by Elected Members before reaching the adoption stage. This supplementary statement therefore provides a basis for An Bord Pleanála to assess potential material contraventions arising from the (draft) new County Development Plan.

The proposed development which is the subject of this supplementary Material Contravention Statement, is outlined in Section 1.1 of the main Statement. Refer to this for further details.

## 1.1 LEGISLATIVE CONTEXT

As set out in Section 1.2 of the main Statement, the basis upon which planning permission can be granted by An Bord Pleanála, where material contraventions of the Development Plan or Local Area occur (other than in relation to zoning of the land), is the *Planning and Development (Housing) and Residential Tenancies Act, 2016*. The relevant sections state:

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

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



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

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

*“(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.”*

This supplementary statement demonstrates the reasons why An Bord Pleanála can grant planning permission for the proposed development, despite the potential material contraventions of the *Draft Plan* identified, we provide a detailed overview of the relevant draft local policy context together with any national planning policy that rationalises such material contraventions.



## 2.0 THE MATERIAL CONTRAVENTIONS, PLANNING CONTEXT AND JUSTIFICATION

The *Draft South Dublin County Development Plan 2022-2028* ('Draft Plan') sets out the relevant policies and objectives for the development of South Dublin. The relevant provisions of this Plan with respect to the identified material contraventions are considered below.

Below we set out the material contraventions that arise in respect of the proposed development and provide justification on the context of Section 37(2)(b) of the *Planning and Development Act, 2000 (as amended)*.

In summary, the following identified material contraventions are considered to occur:

- Unit Mix
- Separation Distance

## 2.1 A SCHEME OF STRATEGIC IMPORTANCE

Before discussing the detail of the identified material contraventions, it is our view that all of the material contraventions arising in respect of the scheme are justifiable in the context of Section 37(2)(b)(i) of the *Planning and Development Act, 2000 (as amended)* on the basis that the proposed development is strategically important as it makes a contribution to the delivery of national and regional policy objectives surrounding housing, consolidated and compact growth and efficient use of land.

We note that in justifying the strategic importance of the scheme in the context of its compliance with national and regional policy objectives, we also demonstrate that planning permission can be granted for all of the material contraventions identified by this document in the context of Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)* on the basis that scheme complies with national and regional planning policy.

Refer to Section 2.1 of the main *Material Contravention Statement* for our justification in this regard.

## 2.2 UNIT MIX

Section 6.1 *Housing Strategy and Interim Housing Needs Demand Assessment* of the *Draft Plan* sets out policies and objectives relating to the output from the Housing Strategy and HNDA.

H1 Objective 13 states:

*“Proposals for residential development shall provide a minimum of 30% 3-bedroom units, unless it can be demonstrated that a lesser provision may be acceptable where it can be demonstrated that:*

- *there are unique site constraints that would prevent such provision; or*



- *that the proposed housing mix meets the specific demand required in an area, having regard to the prevailing housing type within a 10-minute walk of the site and to the socioeconomic, population and housing data set out in the Housing Strategy and Interim HNDA; or*
- *the scheme is a social and/or affordable housing scheme*

*Note: Build-To-Rent (BTR) residential developments shall comply with the Sustainable Urban Housing: Design Standards for New Apartments (2020) (or any superseding Section 28 Ministerial Guidelines)."*

### 2.2.1 Detail of Material Contravention

The proposed development comprises of 96 no. apartments and 4 no. duplex units (100 No. residential units in total), broken down as follows:

- 2 No. studio units (c. 2%);
- 47 No. 1 bed apartment units (47%);
- 46 No. 2 bed apartment units (c. 46%); and
- 5 No. 3 bed apartment units (c. 5%).

The proposed apartment mix does not comply with H1 Objective 13 of the *Draft Plan*, given that the total number of three bedroom units proposed amounts to 5% of the overall total, below the 30% minimum required by H1 Objective 13.

We therefore note this as a material contravention of the *Draft Plan*.

We provide justification for this material contravention below which sets out why An Bord Pleanála can grant planning permission for the proposed development

### 2.2.2 Justification for Material Contravention

Whilst this is identified as a material contravention, we note also that by virtue of the wording of H1 Objective 13, a degree of flexibility is provided for in respect to the 30% 3-bedroom unit minimum requirement, as outlined below.

*"Proposals for residential development **shall** provide a minimum of 30% 3-bedroom units, **unless it can be demonstrated that a lesser provision may be acceptable** where it can be demonstrated that:*

- ***there are unique site constraints that would prevent such provision; or***
- *that the proposed housing mix meets the specific demand required in an area, having regard to the prevailing housing type within a 10-minute walk of the site and to the socioeconomic,*





*population and housing data set out in the Housing Strategy and Interim HNDA; or*

- *the scheme is a social and/or affordable housing scheme.”*  
**(our emphasis.)**

Having regard to the above criterion, we identify the subject lands as an ‘infill’ site of c. 0.46 ha which is located in a large suburban area within the Dublin Metropolitan Area.

In our opinion, a balance has to be struck between making the most sufficient use of serviced lands in accordance with national planning policy objectives and:

- providing an appropriate mix of uses to comply with the Local Centre zoning;
- protecting the west/north boundary wall and mature trees;
- protecting the residential amenity of proximate existing houses.
- the need to provide an attractive useable open space on Local Authority lands; and  
and the need to preserve protected views

It is our view that providing 30% of the scheme as 3-bedroom units would not make the most efficient use of the serviced lands in an area which is dominated by low density suburban housing units as evidenced in the enclosed *Unit Mix Review & Justification Report*’ report, prepared by Hooke & MacDonald Estate Agents and Property Services.

We further highlight the conclusion of this report, which states:

*‘On review of the local and surrounding areas at Firhouse, there is a significant shortage of good quality modern apartments for sale or to rent in the market. The provision of the proposed unit mix at the Property, predominately one bedroom and two bedroom apartments, will allow for increased delivery of accommodation and more efficient use of land, thus allowing South Dublin County Council area, and the State, a better opportunity of meeting its housing targets, as previously outlined. And it will also assist in rebalancing the locality away from houses towards much needed apartments, which currently only make up 13% of the stock in the Local Authority area. This approach is also in line with the with national spatial strategies to increase densities.’*

Having regard to the above, it is our opinion the mix of apartment types is appropriate for this site given the significant quantum of traditional housing stock within the area, the demographic age profile of the area (see enclosed *Community and Social Infrastructure Audit*) and the need to accommodate higher densities in line with strategic planning policy. The proposed scheme will provide for a mix of apartment typologies and thus contribute to the overall residential mix within the wider area and facilitate a range of household sizes.

Additionally, we further outline how this material contravention can be further justified under Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)* on the basis that the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning*

*Authorities (2020)* ('Apartment Guidelines') are Section 28 guidelines which take precedence over the Development Plan policies where in conflict with the SPPR's.

In this regard, the Apartment Guidelines (page 4) states the following:

*'These guidelines have been issued by the Minister for Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines and are also required to apply any specific planning policy requirements (SPPRs) of the guidelines, within the meaning of Section 28 (1C) of the Planning and Development Act 2000 (as amended) in carrying out their functions.*

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

Specific Planning Policy Requirement (SPPR) 1 of the Apartment Guidelines sets out the requirements for housing mix. The relevant extract is below.

**Specific Planning Policy Requirement 1**

**Housing 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).**

Figure 2.1: Extract from SPPR 1 of the Apartment Guidelines

As shown above, the SPPR1 of the Apartment Guidelines states that '*there shall be no minimum requirement for apartments with three or more bedroom*', therefore the proposed unit mix complies in full with SPPR 1. On the basis that the SPPR's take precedence over any conflicting development plan policies or standards, we contend that the housing mix is acceptable in this regard. We further conclude that An Bord Pleanála can grant planning permission having regard to Section 37(2)(b)(i) and (iii) of the Planning and Development Act, 2000 (as amended).

## 2.3 SEPARATION DISTANCES AND BLOCK LAYOUT

Section 13.5.4 *Residential Standards* of the *Draft Plan* includes the following standard in relation to ‘Separation Distances and Block Layout’:

*“...Section 10 of the Urban Design Manual (2009) addresses privacy and amenity and sets out that rather than establishing a minimum window-to-window standard, the aim should be to assess the impact on privacy of each layout and home design based on:*

- *The site’s location and residents’ expected levels of privacy*
- *The size of the windows – both those overlooking and overlooked*
- *Changes in level between overlooking windows*
- *Ability to screen/partially obscure views through design*

*In this regard and as benchmark for development, a minimum clearance distance of circa 22 metres, in general, is required between opposing windows, including in the case of apartments up to three storeys in height. In taller blocks, a greater separation distance may be prescribed having regard to the layout, size, and design.*

*Reduced distances will be considered in respect of higher density schemes or compact infill sites where innovative design solutions are used to maintain a high standard of privacy in line with the provisions of the Urban Design Manual as detailed above. In all instances where the benchmark separation distance is not being met, the applicant shall submit a daylight availability analysis for the proposed development and detail appropriate design measures to reduce undue overlooking.”*

H11 Objective 4 also states:

*“To ensure that opposing balconies and windows at above ground floor level have an adequate separation distance, design or positioning to safeguard privacy without compromising internal residential amenity.”*

### 2.3.1 Detail of Material Contravention

The proposed design strategy has sought to maximise separation distances between opposing windows to ensure a high standard of residential accommodation within the scheme and also mitigate adverse impact upon neighbouring development.

There are however a number of instances where the separation distances between opposing windows, both within and outside of the development, fall below these standards as set out in the Development Plan.

Although the proposed development is considered to be acceptable in this regard (for the reasons expanded upon below), we identify the separation distances between opposing windows across the scheme (see Figure 2.2) which fall below 22 metres and would therefore not comply with Section 13.5.4 of the *Draft Plan*.

In all instances, the residential units which directly front the street are provided with a privacy strip of a minimum 1.5 metres.



Figure 2.2: Extract from Dwg. no. 20022-OMP-00-SP-DR-A-1000 (Proposed Site Plan layout) showing the instances where the 22m separation distance is not met with measurements circled in red (source: OMP Architects.)

We provide detailed justification for this material contravention below which sets out why An Bord Pleanála can grant planning permission for the proposed development.

### 2.3.2 Justification for Material Contravention

In our view, this material contravention can be justified under Section 37(2)(b)(i) and (iii) of the *Planning and Development Act, 2000 (as amended)*. The explanation for this is set out in Section 2.1 of this Statement.

Whilst this is identified as a material contravention, we confirm that despite the reduced separation distances, the design strategy (see enclosed *Architectural Design Statement*, prepared by OMP Architect), which include staggered, inset/recessed balconies, stepped facades, privacy screens etc., ensures that the proposed development does not give rise to unacceptable impact upon the proposed standard of accommodation or surrounding



neighbouring amenity. The results of the daylight, sunlight and overshadowing assessments are considered to evidence the above position.

In summary, the proposed development which presents reduced separation distances in some places delivers on the objectives of national planning policy surrounding compact growth and higher density development, whilst providing a high quality environment for both future residents and neighbours. We therefore conclude that An Bord Pleanála can grant planning permission having regard to Section 37(2)(b)(i), (iii) and (iv) of the *Planning and Development Act, 2000 (as amended)*.



### 3.0 CONCLUSION

Having regard to the above, it is submitted that there is ample justification for An Bord Pleanála to permit the identified material contraventions of the *Draft South Dublin Development Plan 2022-2028* having regard to Section 37(2)(b)(i), (iii) and (iv) of the *Planning and Development Act, 2000 (as amended)*.

The proposed development will provide a strategically important residential development, comprising 100 no. new residential units. As well as responding to housing demand within the Local Authority, the proposed development will provide public open space and commercial uses, which will serve both the new and existing communities.

The development of this mostly vacant site directly delivers national and regional planning policy objectives surrounding the delivery of housing. It complies with the overarching themes of the National Planning Framework by proposing a compact, well-designed, sustainable form of residential development on an underutilised suburban site, located in close proximity to a range of social and community facilities and public transport services.

The proposed development accords with the relevant National Planning Objectives in addition to a full suite of national and regional policy and guidelines, as summarised below.

- *National Planning Framework (Ireland 2040 – Our Plan) (2018)*
- *Urban Development and Building Height Guidelines (2018)*
- *Rebuilding Ireland: Action Plan for Housing and Homelessness (2016)*
- *Regional Spatial & Economic Strategy for the Eastern and Midlands Region (2019)*

On this basis, we conclude that the Board can grant planning permission for the proposed development in respect of the various items discussed throughout, having regard to Section 37(2)(i), (ii), (iii), and (iv) below:

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

*“(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, (our emphasis), 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.”*