



THORNTON O'CONNOR
TOWN PLANNING

Material Contravention Statement

Material Contravention Statement

In respect of a Strategic Housing Development comprising a 183 No. Build-to-Rent units and a café/retail unit

At No. 146A and Nos. 148-148A Richmond Road, Dublin 3

Submitted on Behalf of Birkey Limited

December 2021



MATERIAL CONTRAVENTION STATEMENT - TABLE OF CONTENTS

1.0 INTRODUCTION

- 1.1 Summary of the Proposed Development
- 1.2 Detailed Description of the Subject Development
- 1.3 Purpose of this Material Contravention Statement

2.0 STATUTORY BASIS FOR MATERIAL CONTRAVENTION

3.0 JUSTIFICATION FOR THE MATERIAL CONTRAVENTION

- 3.1 For each of the Material Contravention Items – Strategic or National Importance
- 3.2 Subject No. 1 – Building Height
- 3.3 Subject No. 2 - Proposed Dwelling Mix, Requirement of Units to Exceed Floor Area by 10%, Location of the Proposed Build-to-Rent Unit and Build-to-Rent Legal Covenant
- 3.4 Subject No. 3 - Number of Units per Core
- 3.5 Subject No. 4 - Daylight / Sunlight Assessment
- 3.6 Subject No. 5 - 5% Variation to Living/Kitchen/Dining Room Areas
- 3.7 Subject No. 6 – Ratio of Glazing
- 3.8 Subject No. 7 – Children’s Play Space

4.0 CONCLUSION

1.0 INTRODUCTION

1.1 Summary of the Proposed Development

The subject planning application is categorised as a Strategic Housing Development as defined in Section 3 of the *Planning and Development (Housing) and Residential Tenancies Act 2016* (as amended) (“The SHD Act”), which states that Strategic Housing Development means:

- 'a) ***the development of 100 or more houses on land zoned for residential use for a mixture of residential and other uses,***
- b) *the development of student accommodation units which, when combined, contain 200 or more bedspaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon,*
 - i) *development consisting of shared accommodation units that, when combined contain 200 or more bed spaces, and*
 - ii) *on the zoning of which facilitates the provision of shared accommodation or a mixture of shared accommodation thereon and its application for other uses,*
- c) *development that contains development of the type to which all of the foregoing paragraphs, or any two of the foregoing paragraphs, apply, or*
- d) *the alteration of an existing planning permission granted under section 34 (other than under subsection (3A)) where the proposed alteration relates to development specified in paragraph a), b) or c).'* [Our Emphasis]

As the proposed development is comprised of 183 No. residential units, it is therefore considered to be a Strategic Housing Development and the application must be lodged directly to An Bord Pleanála.

1.2 Detailed Description of the Subject Development

The description of the proposed development is as follows:

Birkey Limited intend to apply to An Bord Pleanála for permission for a strategic housing development at this c. 0.61 hectare (c. 6,067 sq m) site at No. 146A and Nos. 148-148A Richmond Road, Dublin 3 (Eircodes Do3 W2H1, Do3 T6Po, Do3 Y8R9, Do3 PX27, Do3 K6F7, Do3 E447 and Do3 HR27). The site is bounded to the north-east by Richmond Road and the Leyden's Wholesalers & Distributor Site, to the north-west by an apartment development (Deakin Court), to the south-west by the Tolka River and to the south-east by a residential and commercial development (Distillery Lofts). Improvement works to Richmond Road are also proposed including carriageway widening and a new signal controlled pedestrian crossing facility on an area of c. 0.08 hectares (c. 762 sq m). The development site area and road works area will provide a total application site area of c. 0.69 hectares (c. 6,829 sq m).

The proposed development will principally consist of: the demolition of all existing structures on site (c. 2,346 sq m) including warehouses and 2 No. dwellings; and the construction of a part 6 No. to part 10 No. storey over basement development (with roof level telecommunications infrastructure over), comprising 1 No. café/retail unit (157 sq m) at ground floor level and 183 No. Build-to-Rent apartments (104 No. one bedroom units and 79 No. two bedroom units). The proposed development has a gross floor area of c. 16,366 sq m over a basement of c. 2,729 sq m. The proposed development has a gross floor space of c. 15,689 sq m.

The development also includes the construction of a new c. 126 No. metre long section of flood wall to the River Tolka along the site's southern boundary. The new flood wall is positioned at the top of the existing river bank and will connect to existing constructed sections of flood wall upstream and downstream of the site. The top of the wall will be set at the required flood defence level resulting in typical wall heights of c. 1.2 to 2 metres above existing ground levels. The development will also include the repair and maintenance of the existing river wall on site adjacent to the River Tolka.

The development also provides ancillary residential amenities and facilities; 71 No. car parking spaces including 8 No. electric vehicle spaces, 4 No. mobility impaired spaces and 1 No. car share space; 5 No. motorcycle parking spaces; bicycle parking; electric scooter storage; a drop off space; the decommissioning of the existing telecommunications mast at ground level and provision of new telecommunications infrastructure at roof level including shrouds, antennas and microwave link dishes; balconies facing all directions; public and communal open space; a pedestrian/bicycle connection along the north-western boundary of the site from Richmond Road to the proposed pedestrian/bicycle route to the south-west of the site adjoining the River Tolka; roof gardens; hard and soft landscaping; boundary treatments; green roofs; ESB Substation; switchroom; comms rooms; generator; lift overruns; stores; plant; and all associated works above and below ground.

1.3 Purpose of this Material Contravention Statement

The purpose of this Material Contravention Statement is to set out the justification for aspects of the proposed development which may be considered to materially contravene the *Dublin City Development Plan 2016-2022* ("Development Plan").

The scheme as proposed may be determined to materially contravene the Development Plan with regard to the following matters:

- **Building Height with reference to Chapter 16 of the Development Plan;**
- **Dwelling Mix, Requirement of Units to Exceed Floor Area by 10%, Location of the Proposed Build-to-Rent Units and Build-to-Rent Legal Covenant Dwelling Mix with reference to Section 16.10.1 of the Development Plan;**
- **Number of units provided per core with reference to Section 16.10 of the Development Plan;**
- **Daylight/Sunlight with reference to Section 16.10.1 of the Development Plan;**



- Apartment Rooms Sizes with reference to Section 16.10 of the *Development Plan*;
- Ratio of Glazing with reference to Section 16.10.1 of the *Development Plan*; and
- Children's Play Space with reference to Section 16.10.1 of the *Development Plan*.

This document will provide justification regarding the possible contravention of the provisions of the *Development Plan* as outlined above.

2.0 STATUTORY BASIS FOR MATERIAL CONTRAVENTION

Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended)* sets out the following in relation to developments which materially contravene the policies and objectives of a *Development Plan*:

- (a) *'Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned.*
- (b) *The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land.*
- (c) ***Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.'*** [Our Emphasis]

TOC Comment:

The subject site is zoned Z10 'Inner Suburban and Inner City Sustainable Mixed-Uses' in the *Dublin City Development Plan 2016-2022* where the stated aim is *to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant uses in inner city areas*. Permissible uses for lands zoned Z10 include, but are not limited, to residential, restaurant, *shop (district) and shop (neighbourhood)*. As the subject scheme proposes a mixed-use development with 183 No. Build-to-Rent residential units and 1 No. café/retail unit, the proposed development fully complies with the zoning objective for the subject site.

This Material Contravention Statement relates to building height, dwelling mix, requirement of units to exceed floor area by 10%, location of Build-to-Rent units/Legal Covenant, number of units per core, daylight/sunlight, studio apartment room sizes, ratio of glazing and children's play space. We consider that the design, scale and massing of the proposed development is appropriate at this location and justifiable for the subject lands having regard to recently adopted National Policy as detailed throughout this report.

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

- (a) *'Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*
- (b) *Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—*

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

In the event that the Board were to grant permission, the Board's "reasons and considerations" would have to 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(1)(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.'*

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 in particular:

- *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*
- *The Guidelines for Planning Authorities on the Sustainable Residential Development in Urban Areas (May 2009)*

Section 9(3) of the SHD Act 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.'
[Our Emphasis]

On one legal view, the effect of subsection (3)(b) above is that if the SPPRs apply instead of conflicting provisions of the *Development Plan*, then no issue of material contravention can arise in relation to conflicting provisions of the *Development Plan*. However, this Material Contravention Statement has adopted a more conservative approach and has treated any breach of any such conflicting provisions of the *Development Plan*, even where disapplied by the provisions of the relevant SPPR, as material contravention issues.

Having regard to the analysis set out below of the compliance with the proposed development with national planning policy and Section 28 Guidelines, and having considered the strategic nature of the site and the proposed development, it is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the *Development Plan*, by reference to sub-paragraphs (i) and (iii) of Section 37(2)(b) for the reasons set out below in Section 3.0.

3.0 JUSTIFICATION FOR THE MATERIAL CONTRAVENTION

3.1 For each of the Material Contravention Items – Strategic or National Importance

The proposed development is of strategic or national importance (Section 37 (2)(b)(i) of the Act)

The proposed development will deliver much needed residential units in response to the *Rebuilding Ireland - Action Plan for Housing and Homelessness* that was published by the Government on 19th July 2016, which identifies that accelerated '*delivery of housing for the private, social and rented sectors is a key priority for the Government*'. The supply of residential units remains a priority for the current Government.

The strategic or national importance of the proposed development is reinforced by the contribution it will make to the achievement of the guidelines and policies identified for the purposes of Section 37(2)(b)(iii) of the Act throughout this statement.

In particular, the mix of 1 and 2 No. bed apartments within the proposed development are urgently required in order to provide an appropriate mix of dwelling typologies in the area, as recognised in the *Dublin City Development Plan 2016 – 2022* and the *National Planning Framework*, the latter of which notes that '*the 2016 Census indicates that if the number of 1-2-person dwellings is compared to the number of 1-2-person households, there is a deficit of approximately 150%, i.e. there are approximately two and half times as many 1-2- person households as there are 1-2 person homes.*'

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 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). Therefore, the proposed development is of both strategic and national importance.

3.2 Subject No. 1 – Building Height

Potential Material Contravention in Relation to Building Height - The Proposed Development Can be Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act) and Can be Facilitated Having Regard to the Pattern of Development, and Permissions Granted, in the Area since the making of the Development Plan (Section 37 (2)(b)(iv) of the Act)

Section 16.7.2 of the current *Dublin City Development Plan 2016-2022* permits a building height of up to 16 No. metres within 'low rise rest of city' areas, such as where the subject site is located.

The proposed development exceeds the maximum height prescribed by the *Development Plan* which applies to the subject location (16 No. metres) and therefore may materially contravene the *Development Plan*. The height of the proposed development ranges in height from part 6 No. to part 10 No. storeys, exploring the potential for increased height whilst

being cognisant of the surrounding context of the subject site. The maximum overall heights is set out below:

Top of Roof	c. 33.5 metres
Top of Parapet	c. 34.6 metres
Top of Lift Overrun	c. 34.8 metres
Top of Equipment Cabinet	c. 35.9 metres
Top of Dishes	c. 36.5 metres
Top of Antenna Ballast Mount	c. 37.5 metres

The *Urban Development and Building Heights Guidelines for Planning Authorities, 2018* ("*Building Height Guidelines*") set out that a key objective of the *NPF* is to ensure that significant increases in building heights and overall density of development in our urban centres is not only facilitated but actively sought out and brought forward by our planning processes [para 1.20]. Detailed compliance with the performance criteria under Section 3.2 of these *Guidelines* will be considered further below.

The *Development Plan* was made before these *Building Height Guidelines* were published. The *Development Management Principles* in the *Guidelines*, at paragraph 3.1, state that it is Government policy that building heights must generally be increased and that planning authorities must apply certain broad principles when considering development proposals for buildings taller than prevailing building heights in pursuit of the *Guidelines*. The third bullet of paragraph 3.1 requires consideration to whether the implementation of the pre-existing policies of a plan that predates the *Guidelines* align with and support the objectives and policies of the *NPF*. The *NPF* is considered below in this document. As the *Development Plan* was made before the *NPF* and *Building Height Guidelines* were published, the pre-existing policies in relation to height in the *Development Plan* do not fully align. There is no doubt, therefore, that the *Specific Planning Policy Requirements* ("*SPPR*") in the *Building Height Guidelines* are relevant to the assessment of this proposed development.

In particular, where there is a conflict between the provisions of the *Development Plan* which provide for a maximum height of 16 No. metres, and *SPPR 3A*, which is considered further below, the provisions of the latter must be applied instead.

The *Development Plan* must now be considered in conjunction with the *Building Height Guidelines* and the objectives of the *National Planning Framework*. There is significant potential for the subject site to provide increased heights, subject to appropriate safeguards. It is our professional planning opinion that the inclusion of heights principally ranging from part 6 to part 10 No. storeys in height over basement at the subject site can be readily absorbed without any undue impact on the character of the area or the amenity of neighbouring properties, particularly having regard to the site's frontage onto the Tolka River and noting the grant of permission for heights of up to 18 No. storeys on the Holy Cross site opposite (ABP Ref: ABP-310860-21) as detailed below.

Despite the proposed increase in height, it has been demonstrated in the accompanying documentation, particularly the *Landscape Visual Impact Assessment* and *Daylight/Sunlight Analysis*, that the subject scheme will not have a significant material impact on the amenity of surrounding properties. It is considered that the height proposed can be absorbed into the natural and built environment as the layout of the development has been thoroughly considered. In this regards, generous setbacks have been provided from sensitive boundaries

and greater heights are provided towards the centre of the site, which can be absorbed due to the site’s frontage onto the River Tolka.

In our opinion, the heights provided in the subject development are appropriate having regard to the express requirement in National level policy to achieve compact growth, in addition to the careful modulation of height throughout the site.

In addition, permission has recently been granted by An Bord Pleanála on 4th November 2021 for a residential development at Holy Cross College, Clonliffe Road, to the south-west of the subject site (across the Tolka River):

- **ABP Ref. ABP-310860-21**
Holy Cross College, Clonliffe Road, Dublin 3 and Drumcondra Road Lower, Drumcondra, Dublin 9 [heights ranging from 2 to 18 No. storeys]

Therefore, it is clear that increased height has been granted in the area since the *Development Plan* was published. Please see images below which demonstrate the height of this recently permitted scheme.



Figure 3.1: CGI of the Proposed Development at the Holy Cross College Site

(Source: ABP Ref. ABP-310860-21, www.holycrosscollegeshd.ie)



Figure 3.2: CGI of the Proposed Development at the Holy Cross College Site

(Source: ABP Ref. ABP-310860-21, www.holycrosscollegeshd.ie)



Figure 3.3: CGI of the Proposed Development at the Holy Cross College Site

(Source: ABP Ref. ABP-310860-21, www.holycrosscollegeshd.ie)

Project Ireland 2040: National Planning Framework

Project Ireland 2040: National Planning Framework (“NPF”) is the Government’s high-level overarching strategic plan that aims to shape the future growth and development of the country. The NPF is a long-term Framework that sets out how Ireland can move away from the current ‘business as usual’ pattern of development.

A number of key national policy objectives are identified throughout the NPF such as the following (in summary):

- **National Policy Objective 2a** states that 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 3a and National Policy Objective 3b** aim to deliver at least 40% of all new homes nationally, within the build-up of existing settlements and to deliver at least 50% of all new homes that are targeted in the five main Cities within their existing built-up footprints.
- **National Policy Objective 4** aims to provide diverse and integrated communities ensuring the creation of attractive, livable, well designed, high quality urban places.
- **National Policy Objective 13** stipulates that ‘*in urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth*’.

- **National Policy Objective 32** sets a target of 550,000 No. additional homes to 2040.
- **National Policy Objective 33** prioritises the provision of residential development at appropriate scales within sustainable locations.
- **National Policy Objective 35** notes the aim to increase residential density in settlements through a range of measures including (amongst others) in-fill development schemes and increased building heights.

The *NPF* sets out that:

'to effectively address the challenge of meeting the housing needs of a growing population in our key urban areas, it is clear that we need to build inwards and upwards rather than outwards.' [Our Emphasis]

TOC Comment: The proposed scheme involves the development of an underutilised infill site in a prime urban location within a mixed-use area, which will contribute towards compact growth in Dublin in line with the objectives of the *NPF*.

We note that the *NPF* recognises that building inwards and upwards is important to effectively address the housing crisis. There is significant importance placed in the *NPF* to develop high quality accommodation by increasing building heights and densities in existing urban areas. The proposed development, which principally ranges in height from part 6 No. storeys to part 10 No. storeys is appropriate given the site's location fronting the River Tolka, which assists in absorbing the scheme and given its proximity to Drumcondra Railway Station (c. 1.3 km / c. 16 minutes walking distance), bus stops on Drumcondra Road (c. 750 metres / c. 9 minutes walking distance) and within a short distance from a number of significant employment locations including, but not limited to, St Vincent's General Hospital (c. 600 metres / c. 7 minutes walking distance) and DCU St. Patrick's Campus (c. 800 metres / c. 10 minutes walking distance).

Urban Development and Building Heights – Guidelines for Planning Authorities (December 2018)

The *Urban Development and Building Heights Guidelines for Planning Authorities* ("*Building Height Guidelines*") were adopted in December 2018 under Section 28 of the 2000 Act, some two and a half years after the adoption of the *Dublin City Development Plan 2016-2022*. It is our professional opinion that the Development Plan does not align with and support the objectives and policies of the *NPF* in relation to the provision of increased height as detailed below. This is significant in the context of the third "broad principle" under Section 3.1 of the *Building Height Guidelines*, which is considered further below. An Bord Pleanála and Planning Authorities must have regard to these Guidelines and, in particular, compliance with the Specific Planning Policy Requirements (SPPRs) is mandatory.

The Guidelines state that a key objective of the *NPF* is to significantly increase the building heights and overall density of developments.

The Minister's foreword to the *Building Height Guidelines* acknowledges that Ireland's classic development models for city and town cores has tended to be dominated by employment

and retail uses, surrounded by extensive and constantly expanding low-rise suburban residential areas which is an unsustainable model. There is an opportunity for our cities and towns to be developed differently. Urban centres could have much better use of land, facilitating well located and taller buildings, meeting the highest architectural and planning standards. The Guidelines are intended to set a new and more responsive policy and regulatory framework for planning the growth and development of cities and towns upwards rather than outwards.

The *Building Height Guidelines* state that the:

*'Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, **by building up and consolidating the development of our existing urban areas.**'* [Our Emphasis]

The *Building Height Guidelines* further note that:

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

The *Building Height Guidelines* also emphasise that increasing prevailing building heights have a critical role to play in addressing the delivery of more compact growth in our urban areas, particularly our cities and large towns through enhancing both the scale and density of development and it notes that the planning process must actively address how this objective will be secured.

The *Building Height Guidelines* expressly seek increased building heights in urban locations:

*'In relation to the assessment of individual planning applications and appeals, it is Government policy that **building heights must be generally increased in appropriate urban locations.** There is therefore a presumption in favour of buildings of **increased height in our town/city cores and in other urban locations with good public transport accessibility.**'* [Our Emphasis].

The *Building Height Guidelines* also advise that taller buildings can assist in contributing to a sense of place and can indicate important street junctions:

*'Furthermore, while **taller buildings** will bring much needed additional housing and economic development to well-located urban areas, they **can also assist in reinforcing and contributing to a sense of place** within a city or town centre, such as indicating the main centres of activity, **important street junctions**, public spaces and transport interchanges. In this manner, **increased building height is a key factor in assisting modern placemaking** and improving the overall quality of our urban environments'.* [Our Emphasis]

TOC Comment: The layout of the proposed development has comprehensively considered the position of the proposed block on site and the modulation in height provided across the site. For example, the development provides the greater heights

towards the centre of the site and fronting the River Tolka, with lower heights fronting Richmond Road, opposite lower density dwellings. The layout of the development allows high-quality open spaces to be provided including 1,501 sq m of public open space (25% of the developable site area) provided along the River Tolka which provides a pedestrian/bicycle route that will form part of a future Greenway public route and also includes a public route along the north-western boundary of the site which will connect to the public open space adjacent to the River Tolka. This will form part of the future Greenway. In addition, large areas of communal open space solely for the use of the residents have been provided. The scheme provides active frontage onto Richmond Road and the River Tolka (and future greenway) which will activate the streetscape. Therefore, it is considered that the scheme as proposed is the optimal solution for the lands.

It is considered that the scheme design strikes a balance between respecting the surrounding environment of the scheme and ensuring the development potential of a significantly scaled, strategically positioned and underutilised plot is maximised, with frontage onto the Tolka River, which allows additional height on the subject site to be absorbed.

A Visual Impact Assessment and Daylight/Sunlight Analysis have been carried out in conjunction with the design of the subject development. These assessments demonstrate that the proposed development will not have an undue negative impact on its receiving environment. It is our professional planning opinion that the site has the capacity and capability to accommodate increased height that is actively sought in National policy guidance, particularly given the strategic location of the subject site in proximity to public transport, employment locations and services and facilities.

Chapter 3 of the *Height Guidelines, 2018* expressly seeks increased building heights in urban locations:

*'In relation to the assessment of individual planning applications and appeals, it is Government policy that **building heights must be generally increased in appropriate urban locations**. There is therefore a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility.'* [Our Emphasis]

Under the heading, Development Management Principles, the *Building Height Guidelines* state (at paragraph 3.1) that it is Government policy that building heights must generally be increased, and that Planning Authorities must apply certain broad principles when considering development proposals for buildings taller than prevailing building heights in pursuit of the *Building Height Guidelines*. The third bullet point or "broad principle" in paragraph 3.1 requires consideration to whether the implementation of the pre-existing policies of a plan that predates the *Building Height Guidelines* align with and support the objectives and policies of the *NPF*. The *NPF* is considered above. As the *Development Plan* was made before the *NPF* and *Building Height Guidelines* were published, it is not surprising that the pre-existing policies of the *Development Plan* in relation to height do not fully align. There is no doubt, therefore, that the Specific Planning Policy Requirements in the *Building Height Guidelines* are relevant to the assessment of this proposed development.

Section 3.1 of the *Building Height Guidelines* states that '*Planning Authorities must apply the following broad principles in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines*':

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 infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?

TOC Response: The proposed scheme involves the development of an underutilised, brownfield, infill site, in a core urban location. The subject development will contribute towards delivering compact growth in Dublin City. The scheme is therefore fully in accordance with the preferred approach of the *National Planning Framework*.

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?

TOC Response: Other than as set out in this Material Contravention Statement, the proposal is in line with the *Development Plan*. The *Development Plan* has not yet been updated in light of the *Building Height Guidelines*. However, as discussed further below, the proposal is consistent with the Guidelines, and in our professional opinion the *Development Plan* should be read in conjunction with the *Building Height Guidelines*.

It is considered that the heights proposed principally ranging from part 6 No. storeys to part 10 No. storeys are appropriate at the subject lands especially having regard to the site's frontage onto the River Tolka and the overall modulation of the scheme, in order to accord with Government policy to increase building heights in sustainable locations. The variation in proposed heights across the site provides visual interest and is appropriate in this location in order to accord with Government policy to increase building heights in sustainable locations. The Daylight and Sunlight Assessment and Landscape Visual Impact Assessment demonstrate that these design measures have been successful in reducing any potential adverse impact on the surrounding area.

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?

TOC Response: The prescriptive heights of the *Dublin City Development Plan 2016 – 2022* are now incompatible with the developments in National Policy, which have occurred since the Plan's adoption.

We note in particular National Policy Objective 35 of the *National Planning Framework*, which seeks an increase in residential density in settlements, through a range of measures including infill development schemes, area or site-based regeneration and increased building heights. Insisting on the application of the height requirements in the *Development Plan* of a maximum of 16 No. metres would not align with NPO 35.

It is our opinion that the subject site has the potential for increased heights to sustainably densify this strategic site having regard to the high quality architectural composition of the scheme, the open spaces provided and the site's location with prominent frontage onto the River Tolka, which will all contribute towards absorbing the proposed building heights.

We note that a Landscape and Visual Impact Assessment and Daylight/Sunlight Analysis have been carried out in conjunction with the design of the subject development and demonstrate that the proposed development will not have an undue negative impact on its receiving environment.

Specific Planning Policy Requirement 3

SPPR₃ of the Building Height Guidelines sets out that:

'It is a specific planning policy requirement that where;

- (A) *1. an applicant for planning permission sets out how a development proposal complies with the criteria [below]; and*
- 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;*

*then the planning authority **may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.*** [Our Emphasis]

Section 9(3) of the SHD Act provides as follows:

'(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.' [Our Emphasis]

We now wish to consider how the proposed development complies with the specified criteria under Section 3.2 of the *Building Height Guidelines*, which are referred to in SPPR₃ as follows:

Development Management Criteria	
At the Scale of the Relevant City/ Town	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.</i> 	<ul style="list-style-type: none"> • A Mobility Management Strategy prepared by DBFL Consulting Engineers and enclosed with this planning application provides further detail in relation to the existing and proposed high-quality public transport facilities serving the subject site. • The subject site is considered eminently suitable for the proposed development given the availability of sustainable

	<p>modes of transport such as Drumcondra Railway Station (c. 1.3 km / c. 16 minutes walking distance) and bus stops on Drumcondra Road (c. 750 metres / c. 9 minutes walking distance). These bus stops serve the following bus routes (peak frequency): Nos. 1 (every 10 mins), 11 (every 15 mins), 13 (every 10 mins), 16 (every 10-12 mins), 41 (every 20 mins) and 44 (every 60 mins). The site is also linked with other modes of public transport. For example, bus route No. 1 provides a connection to the LUAS at Abbey Street.</p>
<ul style="list-style-type: none"> • <i>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 landscape and visual assessment (LVIA), by a suitably qualified practitioner such as a chartered landscape architect.</i> 	<ul style="list-style-type: none"> • It is our professional opinion that the proposed scheme will successfully assimilate into the surrounding context, regenerating the subject site through the replacement of under-utilised industrial units and 2 No. dwellings, with much needed higher density residential units, which will contribute positively towards addressing the national housing crisis. • The subject scheme includes the provision of 1,501 sq m public open space along the banks of the Tolka River and includes a public route from Richmond Road to this space along the river. The provision of this high-quality landscaped area along the riverbank, which will contribute to the Tolka Greenway, represents a significant improvement to the existing public realm and therefore a significant planning gain for the surrounding area and community. • The subject scheme will result in the appropriate densification of a key infill site which has a generally flat topography, providing much needed residential units which will contribute towards addressing the national housing crisis. • We note that the subject site fronts the River Tolka, a large water body, which has the capacity to absorb increased height. It is considered that the proposed development takes the opportunity to enhance the Conservation Area that

	<p>incorporates part of the subject site, particularly due to the active frontage and high quality design that will be provided. The proposed scheme will complement the Conservation Area and will have a positive impact on the character of the area, by providing a high-quality scheme with active frontage onto the River Tolka including provision for a new greenway link.</p> <ul style="list-style-type: none"> • A Daylight / Sunlight Analysis has been carried out by 3D Design Bureau, which demonstrates that no significant material impacts will occur to the surrounding properties. • A Landscape Visual Impact Assessment has been carried out by Mitchell and Associates Landscape Architecture, which assess key views of the site. The Assessment, a copy of which is enclosed with this planning application, clearly demonstrates that there will be no adverse visual impact as a result of the proposed development. Views towards the site will also be significantly improved, removing the existing unsightly industrial nature of the site, and replacing it with a high-quality development.
<ul style="list-style-type: none"> • <i>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.</i> 	<ul style="list-style-type: none"> • The proposed scheme will make a positive contribution to the surrounding area by developing a key underutilised site and providing a high-quality residential development which will contribute positively towards addressing the national housing crisis. In addition, a café/retail unit will be provided at ground floor fronting Richmond Road which will enliven the streetscape and create visual interest in the streetscape and thus will positively contribute to place-making. • As noted by RKD Architects in the Design Statement, the proposal encompasses a variety of heights & mass and is an 'assembly' of architectural volumes articulated by differing heights and brick

	<p>façade materiality. This approach generates a stepped roof profile and offers a visual richness/variety when approaching the site.</p> <ul style="list-style-type: none"> • The subject scheme provides connectivity from Richmond Road to the banks of the Tolka River, which will be a pedestrian/bicycle pathway. This will significantly enhance recreational amenity available to the existing community in the area and will incorporate new public spaces for the community. The scheme also allows for the future extension of Richmond Road into the site, which will allow new streets to be incorporated. • The subject scheme also includes a café/retail unit at the ground floor along Richmond Road which will introduce animation to the streetscape. The height of the subject scheme steps down at Richmond Road to a more human scale and to harmonise with the buildings opposite. The site's frontage onto the River Tolka will allow the greater heights at the rear portion of the site to be absorbed and assimilated into the receiving environment.
--	--

Development Management Criteria	
At the scale of District/ Neighbourhood / Street	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.</i> 	<ul style="list-style-type: none"> • The high quality design and strategic layout of the proposed development will allow the development to be readily absorbed into the surrounding area and will positively enhance the permeability of area, and will make a positive contribution to the urban neighbourhood and streetscape. The layout also allows high-quality public and communal open space to be provided. The high-quality materials utilised in the scheme, the provision of new pedestrian linkages and open spaces and the provision of a café/retail

	<p>space fronting Richmond Road, will also ensure that the development will make a positive contribution to the streetscape. The development has regard to clear guidance provided in National Planning Policy which seeks the densification of brownfield sites in sustainable locations such as the subject site.</p> <ul style="list-style-type: none"> • The development will respond to its natural environment by contributing to the green infrastructure of the city and by providing large areas of public and communal open spaces. The provision of public open space fronting the River Tolka, which will be part of the future Greenway, will enhance the natural environment and demonstrates that the natural and built environment have been comprehensively considered. A public link is provided through the public open space from Richmond Road to this public open space along the River Tolka. This will also encourage connectivity and permeability for the wider public, will enhance legibility and will create a vibrant sense of place. • The height of the subject scheme modulates throughout the site with a lower scale street edge created by the proposed part 6 No. storey element presenting a human scale element having regard to the receiving context of Richmond Road. Elsewhere the height rises to part 10 No. storey towards the middle of the site, where the capacity to absorb increased height is greatest with large frontage onto the River Tolka. The height is modulated throughout the site and a variety of materials are utilised, which provides varied and interesting facades. • We submit that no material impacts on surrounding residential dwellings will occur as a result of the proposed development, having regard to the positive results of the Daylight/Sunlight assessment and the Visual Impact
--	---

	<p>Assessment. The proposal therefore responds well to its overall built environment. In addition, the Applicant now has control of the neighbouring Leyden's site and a scheme is being prepared that will complement the scheme proposed.</p> <ul style="list-style-type: none"> • The proximity of the site to the Conservation Area and Protected Structures has also been duly considered as part of the design process of the subject scheme. The high-quality scheme provided which will principally replace the existing unsightly industrial units will enhance the surrounding environment and thus will have a positive impact on the Conservation Area and Protected Structures.
<ul style="list-style-type: none"> • <i>The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.</i> 	<ul style="list-style-type: none"> • The Design Statement prepared by RKD Architects, a copy of which is enclosed with this Planning Application, details the use of materials, the elevational treatment and modulated height arrangement which break up the massing of the proposed development. The scheme has been designed to ensure interesting and relieved facades which reduce the perceived mass and scale of the block. As discussed, the height varies across the site, which demonstrates that the block has been broken down to ensure that the scheme will not represent a monolithic form. • As set out in the Design Statement, the building form and massing are broken down into smaller entities with the choice of different brick materials and the modulation of heights. The façade of each part of the building has been considered in detail to deliver an overall visual variety but with façade modules designed with detail, colour and textural variety. • Furthermore, the high-quality open spaces and the permeable link provide visual relief throughout the scheme.

	<ul style="list-style-type: none"> • It is clear that a significant effort has been made to provide a well-considered and interesting building form which enhances legibility, wayfinding and connectivity within the site for future residents and the existing wider area.
<ul style="list-style-type: none"> • <i>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)".</i> 	<ul style="list-style-type: none"> • The subject scheme will enhance the public realm, particularly due to the high-quality design proposed with café/retail fronting onto Richmond Road, in addition to the public open space, the residents' amenity space at ground floor and the communal open space within the scheme all fronting the River Tolka. The scheme represents a planning gain for the wider neighbourhood and legibility and permeability will be enhanced. • The Flood Risk Assessment prepared by DBFL Consulting Engineers and enclosed with this application concludes that <i>'as per the OPW Guidelines, the sequential approach has been applied, the proposed development has passed the necessary justification tests, the development does not increase flood risk elsewhere and the development's design incorporates measures to address flood risk.'</i>
<ul style="list-style-type: none"> • <i>The proposal makes a positive contribution to the improvements of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.</i> 	<ul style="list-style-type: none"> • The high-quality design of the scheme will ensure the development will be a legible and attractive addition to the area. As previously noted, the scheme will provide a permeable link through the site and will provide active frontage onto the River Tolka and Richmond Road with the provision of a café/retail unit, ancillary residents' amenity space and public and communal open space. • The design of the public open space includes a public access route through the subject scheme to the banks of the River Tolka, ensuring the legibility, permeability and quality of the public realm in the vicinity of the subject site is enhanced.

<ul style="list-style-type: none"> • <i>The proposal positively contributes to the mix of uses and/ or building / dwelling typologies available in the neighbourhood.</i> 	<ul style="list-style-type: none"> • The <i>Dublin City Development Plan 2016 -2022</i> recognises the need to provide appropriately sized households. Policy SC14 stipulates that a variety of adaptable housing types must be provided as follows: <ul style="list-style-type: none"> <i>'It is the policy of Dublin City Council...to promote a variety of housing and apartment types which will create a distinctive sense of place in particular areas and neighbourhoods, including coherent streets and open spaces.'</i> • Furthermore, the <i>NPF</i> states that: <ul style="list-style-type: none"> <i>'the 2016 Census indicates that if the number of 1-2-person dwellings is compared to the number of 1-2-person households, there is a deficit of approximately 150%, i.e. there are approximately two and half times as many 1-2- person households as there are 1-2 person homes.'</i> • Therefore, it is clear that the mix of 1 and 2 No. bed apartments proposed are required in order to provide an appropriate mix of dwelling typologies in the area, as recognised in the <i>Dublin City Development Plan 2016 – 2022</i> and the <i>NPF</i>, due to the predominately larger house types in the area. • The commercial element of the scheme fronting Richmond Road and ancillary residents' amenity space fronting the River Tolka, will provide an active frontage and passive surveillance of the open spaces. In addition, the creation of public open space will enhance the amenity of the overall site for the community and the provision of communal internal and external amenities will provide a high quality living environment for future residents.
--	---

Development Management Criteria	
Site Specific Assessments	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>Specific impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measurements 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.</i> 	<ul style="list-style-type: none"> • A Wind and Microclimate Impact Assessment has been prepared by AWN Consulting, a copy of which is enclosed with this Planning Application. The Assessment clearly demonstrates that there will be no adverse impacts on the existing microclimate as a result of the proposed development.
<ul style="list-style-type: none"> • <i>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.</i> 	<ul style="list-style-type: none"> • The Natura Impact Statement prepared by Enviroguide Consulting has concluded that: <ul style="list-style-type: none"> <i>'Where potentially significant adverse impacts were identified, a range of mitigation and avoidance measures have been proposed to negate them. Therefore, as a result of the complete, precise and definitive findings of this Appropriate Assessment; it has been concluded beyond any reasonable scientific doubt, that the Proposed Development will not have any significant adverse impact on the above European Sites.'</i> • The scheme has considered the potential interaction of the building location, materials, artificial lighting to potentially impact on flight lines and/or collisions. The Ecological Impact Assessment by Enviroguide Consulting notes the following: <ul style="list-style-type: none"> <i>'Birds that fly over the Site to commute across the city or in order to reach feeding grounds at various locations would fly lower than this, as can be seen in the results of the flight-line surveys. However, even at these lower flight heights, all of the recorded species are capable of flying, and were noted flying, above the maximum height of the proposed buildings (see Table 3), and once said structures are made of visible materials i.e., not entirely comprised</i>

	<p><i>of reflective materials such as glass, the birds would simply fly around or over them...</i></p> <p><i>The overall façades of the proposed buildings are well broken up, with a varied material composition which breaks up any reflective areas. These architectural design features provide important visible cues as to the presence and extent of the proposed structures to any commuting/foraging bird species should they be in the vicinity of the Site. This overall visual heterogeneity of the building façades will be sufficient to further ensure that the risk of bird collisions as a result of the Proposed Development is negligible...</i></p> <p><i>As such, based on the heights of the proposed structures, the physical appearance of these structures, and as supported by the results of focused flightline surveys, it is deemed that birds including SCI [Special Conservation Interests] species such as Brent Geese and any other 'at-risk' bird species, do not have the potential to be impacted by the Proposed Development; through collisions or obstructions to flight-lines over the Site, and the collision risk is therefore deemed to be negligible in the absence of any mitigation.'</i></p> <ul style="list-style-type: none"> • In relation to bats, the Ecological Impact Assessment by Enviroguide Consulting notes that there was no evidence of bats in any of the buildings in the site but there was some bat activity along the River Tolka. The Report also states: <p><i>'Based on an assessment of the presence or absence of crevices, ivy cover and accessibility to bats in flight, the trees on the site perimeter have nil to very low roost potential... Regarding collisions with proposed structures at the Site, it is noted that bats commute and forage largely</i></p>
--	---

	<p><i>using echolocation and as such are capable of navigating buildings unless largely made of smooth reflective metal or glass. In this regard, due to the heterogenous composition of the proposed building façades, collisions are not deemed to represent a significant risk, and light spill is the more likely obstruction to bat movements in the absence of mitigation.'</i></p>
<ul style="list-style-type: none"> • <i>An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.</i> 	<ul style="list-style-type: none"> • It is proposed to relocate the existing Telecommunications equipment from ground level to roof level of the proposed building. • A Telecommunications Report has been prepared for the subject scheme by Independent Site Management (ISM), which concludes the following: <ul style="list-style-type: none"> <i>'ISM can therefore 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, to satisfy the criteria of Section 3.2 of the Building Height Guidelines (2018).'</i>
<ul style="list-style-type: none"> • <i>An assessment that the proposal maintains safe air navigation.</i> 	<ul style="list-style-type: none"> • The <i>Dublin City Development Plan 2016-2022</i> does not identify the subject site to be located within close proximity of any air safety zones. Having regard to the location of the proposed development and the proposed height, no specific Aviation Assessment is considered necessary.
<ul style="list-style-type: none"> • <i>An urban design statement including, as appropriate, impact on the historic built environment.</i> 	<ul style="list-style-type: none"> • An Architect's Design Statement has been prepared by RKD and is submitted with this planning application. It is considered that the proposed development takes the opportunity to enhance the Conservation Area on part of the site and Protected Structures in the vicinity, by replacing the existing underutilised structures on site with a high-quality development. In addition, the site incorporates public open space along the River Tolka which will form

	<p>part a future Greenway, which will enliven the designated Conservation Area.</p> <ul style="list-style-type: none"> This Planning Application is also accompanied by an Architectural Heritage Assessment prepared by Historic Building Consultants which concludes that the development <i>'would have little or no adverse impact on the character of any of the protected structures in the vicinity. It would also result in an improvement in the character of the site itself adjacent to the conservation area, in that it would replace a series of commercial buildings and an open yard that could be seen as conflicting with the conservation area objective'</i>.
<ul style="list-style-type: none"> Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate. 	<ul style="list-style-type: none"> An AA Screening Report, a Natura Impact Statement, an Ecological Impact Assessment, an Environmental Impact Assessment Screening Report and Article 299B Statement prepared by Enviroguide Consulting are also submitted with this planning application.

Development Management Criteria	
At the Scale of the Site/ Building	
Assessment Criteria	Comment
<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> The Design Team have comprehensively considered the scheme layout and modulation in order to ensure that the development improves legibility in the area and will integrate into the surrounding context. This has been achieved by providing a range of heights throughout the site and by breaking down the massing provided in addition to the open space and permeable links proposed. The results of the enclosed Daylight and Sunlight Assessment demonstrate that the proposed scheme will not have an unacceptable or adverse impact on itself or on the surrounding properties with regard to daylight and sunlight. The proposed development would not result in a significant reduction to the level of

	<p>daylight and sunlight received by the surrounding existing properties. Future occupants will enjoy good levels of daylight within the vast majority of the proposed units (c. 97% meeting the ADF targets when the 2% ADF target is utilised for living/kitchen/dining rooms and c. 99% meeting the ADF targets when the 1.5% ADF target is utilised for living/kitchen/dining rooms) and the units will have access to internal and external amenity areas and that are capable of receiving excellent levels of sunlight. The Applicant also now has control of the neighbouring Leyden’s site and any scheme will have to ensure it works in conjunction with the subject site and will be required to ensure that the scheme does not materially affect the amenity of the Richmond Road dwellings.</p> <ul style="list-style-type: none"> • The design of the subject scheme has evolved through a creative process, in conjunction with the results of the Daylight, Sunlight and Shadow Analysis to ensure an attractive living environment for future residents which has a limited impact on the amenity of surrounding properties.
<ul style="list-style-type: none"> • <i>Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guidelines. 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</i> 	<ul style="list-style-type: none"> • As noted above, the Daylight/Sunlight Assessment and the Landscape Visual Impact Assessment are favourable in relation to the proposed development. • The Daylight and Sunlight study has assessed the Average Daylight Factor (ADF) received in all habitable rooms across the two lowest habitable floors (the first and second floor) of the proposed development. As noted in the report, <i>‘this has ensured that where unit types differ by way of layout and/or floor to ceiling heights, a clear understanding has been obtained of the performance of the scheme with regard to ADF’.</i> • A total of 118 No. spaces was analysed. Should a target value of 2.0% for LKDs be upheld, 106 No. spaces would be

<p><i>an effective urban design and streetscape solution.</i></p>	<p>compliant. Should a target value of 1.5% be deemed appropriate, 112 No. spaces would be compliant. Only two LKDs have an ADF value of below 1.5%. These spaces are located in units L1.07 and L2.07, which are situated in a corner of the development, which is a compromised location.</p> <ul style="list-style-type: none"> As part of a compensatory design solution for the rooms that do not meet the recommended minimum average daylight factor, the proposed development includes communal amenity areas, all of which have been assessed and will have adequate levels of daylight. Some 1 No. meeting room will not meet the ADF but this is provided in addition to the co-working space which is well-lit. The meeting room has no external window but will only be used occasionally on for short periods of time. Furthermore, the scheme has incorporated a number of localised compensatory design measures. The rooms that do not meet the ADF target have been provided with either some or all of the following compensatory measures: <ul style="list-style-type: none"> Balcony space, some of which exceed the minimum requirement. Windows that face public open space and/or the River Tolka in the development. Larger apartment floor areas. <p>We have included a list of the rooms that fall short of the daylight provisions and demonstrated the compensatory design measures provided in Section 3.5 of this Report below.</p>
---	---

Conclusion on compliance with criteria under Section 3.2 of the *Building Height Guidelines*

Having regard to the response to each element of the Development Management Criteria outlined above, it is our considered opinion that the proposed development meets the criteria under Section 3.2 of the *Building Height Guidelines*. The application proposes a mixed-use development principally ranging from part 6 No. storeys to part 10 No. storeys. The development can be appropriately assimilated within the surrounding context having regard to the location of the subject site within an existing built-up area with large frontage

onto the Tolka River with the opportunity to also open up the site to the public by providing access from Richmond Road to the banks of the River. The site is well served by public transport and in proximity to employment locations, services and facilities.

It is our professional planning opinion that the subject site is capable of achieving additional height and density having regard to the introduction of the *National Planning Framework* and the *Building Height Guidelines* which encourages increased height and density on appropriate sites. It is considered that the design response ensures that the development potential of a strategically positioned underutilised plot is maximised without impacting adversely on the amenity of adjacent properties and the surrounding area.

Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2020

The *Department of Housing, Planning and Local Government* published the updated *Sustainable Urban Housing: Design Standards for New Apartments* in December 2020 (“*Apartment Guidelines, 2020*”).

These Guidelines update previous guidance in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply and projected need for additional housing supply out to 2020, the Government’s *Rebuilding Ireland – Action Plan for Homelessness, 2016* and the *National Planning Framework – Ireland 2040*, published since the 2015 Guidelines. We note that the *Development Plan* should be read in conjunction with the *Apartment Guidelines, 2020* which were issued after the publication of the *Development Plan* pursuant to Section 28 of the Planning Acts.

It is considered that the subject site is located within a ‘Intermediate Urban Location’ as set out in the Apartment Guidelines, which states:

‘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:

- *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;*
- *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;*
- *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 range of locations is not exhaustive and will require local assessment that further considers these and other relevant planning factors.’

TOC Comment: As noted in the *Apartment Guidelines, 2020*, 'the range of locations is not exhaustive and will require local assessment that further considers these and other relevant planning factors'. The subject site is located on Richmond Road, approximately c. 1.3 km from Drumcondra Railway Station and within a short distance from a number of significant employment locations including but not limited to St Vincent's General Hospital (c. 600 metres / c. 7 minutes walking distance) and DCU St. Patrick's Campus (c. 800 metres / c. 10 minutes walking distance). There are bus stops on the N1 Drumcondra Road Lower within c. 750 metres / c. 9 minutes walking distance from the subject site which serve the following bus routes (peak frequency): Nos. 1 (every 10 mins), 11 (every 15 mins), 13 (every 10 mins), 16 (every 10-12 mins), 41 (every 20 mins) and 44 (every 60 mins).

We note that although there is no bus service within 5 minutes or 400-500 metres walking distance, that the site is appropriately located close to Drumcondra, employment locations, Drumcondra Train Station is within c. 1.3km / c. 16 minutes walking distance and the Drumcondra Quality Bus Corridor is within c. 750 metres / c. 9 minutes walking distance.

Based on the above outlined criteria, in our professional planning opinion the subject site can therefore be considered an Intermediate Urban Location. The subject development has therefore been designed with increased building height and density in accordance with National level guidance.

Regional Spatial and Economic Strategy for the Eastern and Midlands Region

The Regional Spatial and Economic Strategy for the East and Midlands Regional Assembly ("RSES") comprises a number of core Regional Policy Objectives which coincide with the *National Planning Framework* ("NPF"). The purpose of the guidelines are to guide all Local Authority future plans, projects and activities requiring consent of the Regional Assembly. Under **RPO 4.3** 'Consolidation and Re-intensification' the following objective is stated:

'Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin city and suburbs and ensure that the development of future development areas is coordinated with the delivery of key water infrastructure and public transport projects.' [Our Emphasis]

TOC Comment: The subject development will provide 183 No. Build-to-Rent apartments with ancillary resident amenities and facilities and 1 No. café/retail unit on a brownfield site in an existing built up area in close proximity to employment locations, public transport, services and facilities. The density of the scheme will be 300 No. units per hectare (the higher proportion of 1 No. bedroom units within the subject scheme disproportionately inflates the density figure). Therefore, the proposed development will result in the intensification of a brownfield site in a built-up area in accordance with RPO 4.3 of the *RSES*. 1 beds

The *Metropolitan Area Spatial Plan (MASP) for Dublin* contained within the RSES notes that following objective **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 overall Settlement Strategy for the RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns.'

TOC Comment: The subject development is contained within an established neighbourhood with a mix of residential, industrial and commercial land uses, a short distance from high-quality public transport, employment locations, services and facilities. Therefore, the proposed development represents consolidated growth on a brownfield site in Dublin. The Environmental Reports prepared by Enviroguide Consulting addresses all environmental items that are relevant to the site.

Dublin City Development Plan 2016-2022

As noted throughout this Report, the *Dublin City Development Plan 2016-2022* prescribes a maximum height of 16 No. metres for residential and commercial development at the subject location. In addition, we note the following policy of the *Development Plan*:

'Policy SC16: To recognise that Dublin City is fundamentally a low-rise city and that the intrinsic quality associated with this feature is protected whilst also recognising the potential and need for taller buildings in a limited number of locations subject to the provisions of a relevant LAP, SDZ or within the designated strategic development regeneration area (SDRA).'

TOC Comment: We reiterate that the *Building Height Guidelines* post-date the *Development Plan* and the *Development Plan* must be read in light of the changes to building height requirements introduced by the Guidelines. In particular, we note that an Bord Pleanála and Planning Authorities must have regard to these Guidelines and that the subject site has significant capacity to provide increased heights as has been demonstrated throughout this report. In addition, although the site is not subject to the provisions of a Local Area Plan, Strategic Development Zone or SDRA, we consider the subject lands within a core urban location and within walking and cycling distance to high-frequency public transport, services and facilities to be suitable for building heights greater than 16 No. metres.

The proposed scheme which involves the development of an existing underutilised, strategically located site is fully in accordance with National and Regional Policy. It is our professional opinion that the subject site can comfortably accommodate the proposed heights which have been appropriately positioned throughout the site. The high quality scheme represents the proper planning and sustainable development of the area. We note that a Landscape and Visual Impact Assessment and Daylight/Sunlight Analysis have been carried out as part of this planning application.

3.3 Subject No. 2 - Proposed Dwelling Mix, Requirement of Units to Exceed Floor Area by 10%, Location of the Proposed Build-to-Rent Unit and Build-to-Rent Legal Covenant

Potential Material Contravention in Relation to Dwelling Mix, Requirement of Units to Exceed Floor Area by 10%, Location of Built to-Rent Units and Legal Covenant Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act)

In relation to dwelling mix, Section 16.10.1 of the *Development Plan* sets out the following:

'Each apartment shall contain:

- *A maximum of 25%-30% one-bedroom units*
- *A minimum of 15% three- or more bedroom units'*

This section of the *Development Plan* further states that:

'The above mix of units will not apply to managed 'build-to-let' apartment schemes for mobile workers where 42-50% of the total units may be in the form of one-bed or studio units'.

In addition, this section of the *Development Plan* notes:

'It is a requirement that the majority of all apartments in a proposed scheme of 100 units or more must exceed the minimum floor area standard by at least 10% (studio apartments must be included in the total but are not calculable as units that exceed the minimum). In schemes of 10-99 units the same approach is applied but it is acceptable to redistribute part of the minimum 10% additional floor space throughout the scheme.'

The proposed residential element of the development will provide 183 No. Build-to-Rent apartments including 104 No. one bedroom units (57%) and 79 No. two bedroom units (43%). Therefore, the development exceeds the maximum standards for 1 No. bedroom units set out in the *Development Plan* (42-50%), which could be considered to materially contravene this *Development Plan* policy. Some 33% of the proposed apartments exceed the minimum floor areas by 10% (i.e. not a majority), which could be considered to materially contravene this *Development Plan* policy.

We note that the *Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2020* ("Apartment Guidelines, 2020") post-date the *Development Plan* and the *Development Plan* must be read in light of the changes introduced by the *Apartment Guidelines, 2020* (updated since 2015 and 2018).

Specific Planning Policy Requirement 8 of the *Apartment Guidelines, 2020* applies to Build-to-Rent developments and states:

'For proposals that qualify as specific BTR developments in accordance with SPPR7:

- i. No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise'.*

And

iv. The requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes.

As SPPR 8 of the *Apartment Guidelines, 2020* applies to the proposed Build-to-Rent apartments, no restrictions on dwelling mix apply and the conflicting provisions of the *Development Plan* in relation to housing mix do not apply. In addition, the requirement for the majority of all apartments to exceed minimum floor areas by 10% do not apply. A total of 33% of apartments in this proposal exceed 10% of the minimum floor areas regardless. The *Development Plan* must be read in conjunction with SPPR8(i) of the *Apartment Guidelines, 2020*. Therefore, the proposed development is consistent with the *Apartment Guidelines, 2020* and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act.

In addition, we note that in terms of meeting future housing need, the *Apartment Guidelines, 2020* sets out that:

'demographic trends indicate that two-thirds of households added to those in Ireland since 1996 comprise 1-2- person, yet only 21% of dwellings completed in Ireland since then comprise apartments of any type'.

Furthermore, the 2016 Census indicates that:

'if the number of 1-2 person dwellings is compared to the number of 1-2 person households, there is a deficit of approximately 150%, i.e. there are approximately two and half times as many 1-2- person households as there are 1-2- person homes.'

The *Apartment Guidelines, 2020* recognise the need for alternative types of accommodation to facilitate the societal and economic changes that have affected household formation and housing demand.

The subject site is located within the Drumcondra South A Electoral Division. The 2016 Census results demonstrate that the Electoral Division recorded an average of 2.5 No. persons per private household in 2016 which is lower than the national state average of 2.7 No. persons and the same as the Dublin average of 2.5 No. persons. Therefore, the ED is predominated by smaller households and it is important to provide tenure choice for such household formations as is provided in the subject scheme.

In addition, the Census data demonstrated that there are a large number (1,201 No.) of permanent private households which comprise 4 No. rooms or more within the Drumcondra South A ED (61% of total housing stock)¹. As such, it has been concluded from the Census data that the correlation between household sizes and average household sizes is disproportionate as the data demonstrates that despite the smaller average household sizes of 2.5 in the area, a large number of households comprise dwellings with 4 to 8+ rooms.

¹ *Census 2016 definition when stating number of rooms: 'Do not count bathrooms, toilets, kitchenettes, utility rooms, consulting rooms, offices, shops, halls or landings, or rooms that can only be used for storage such as cupboards • Do count all other rooms such as kitchens, living rooms, bedrooms, conservatories you can sit in, and studies • If two rooms have been converted into one, count them as one room'.*

From analysing the Census data, we consider that there is a significant opportunity to densify this area of Dublin with a predominance of smaller units, which will better serve the demographic profile of the area.

Furthermore, we note that the Build-to-Rent units will provide rental options in the area and as such the scheme will cater for a wide cohort of persons.

The *NPF* states that:

'while apartments made up 12% of all occupied households in Ireland and 35% of occupied households in the Dublin City Council area in 2016 (Census data), we are a long way behind European averages in terms of the numbers and proportion of households living in apartments, especially in our cities and larger towns. In many European countries, it is normal to see 40%-60% of households living in apartments.'

The *NPF* further calculates that:

*'between 2018 and 2040, an average output of at least 25,000 new homes will need to be provided in Ireland every year to meet the needs for well-located and affordable housing, **with increasing demand to cater for one and two-person households**'.* [Our Emphasis]

Furthermore, it is noted that *'achieving this level of supply will require increased housing output into the 2020s to deal with a deficit that has built up since 2010.'*

The *NPF* highlights that 7 No. out of 10 No. households in the state consist of three people or less. In terms of changing family size, *'in Dublin city, one, two and three-person households comprise 80 percent of all households.'* It is also noted in a more general context that the *'household sizes in urban areas tend to be smaller than in suburbs or rural parts of the country'*. The policy document denotes that *'...meeting the housing requirements arising in major urban areas for people on a range of incomes will be a major priority for this framework and the actions flowing from it'*. [Our Emphasis]

The proposed mix of units will provide a wide choice of tenure which is a direct response to the housing shortage that is readily reported and identified in recent planning policy.

Furthermore, the *Development Plan* notes that:

*'Communal facilities such as common rooms, gyms, laundry rooms etc. will be encouraged within such developments. **This provision only applies to long-term purpose-built managed schemes of over 50 units, developed under the 'build-to-let' model and located within 500 m (walking distance) of centres of employment or adjoining major employment sites.** Centres of employment are identified in Fig W Housing Strategy Appendix 2A, and for clarity these centres are located within the following Electoral Divisions:*

- North Dock B Mansion House A
- Pembroke West C
- North Dock C Mansion House B
- Pembroke East E
- North City Saint Kevins Pembroke

- East D
- Royal Exchange A South Dock Ushers F
- Royal Exchange B
- Mansion House A
- Mansion House B
- Saint Kevins
- South Dock
- Pembroke West C
- Pembroke East E
- Pembroke East D
- Ushers F
- Beaumont B

This particular managed rental model shall be retained in single ownership for 20 years (minimum) during which period units may not be sold off on a piecemeal basis’.

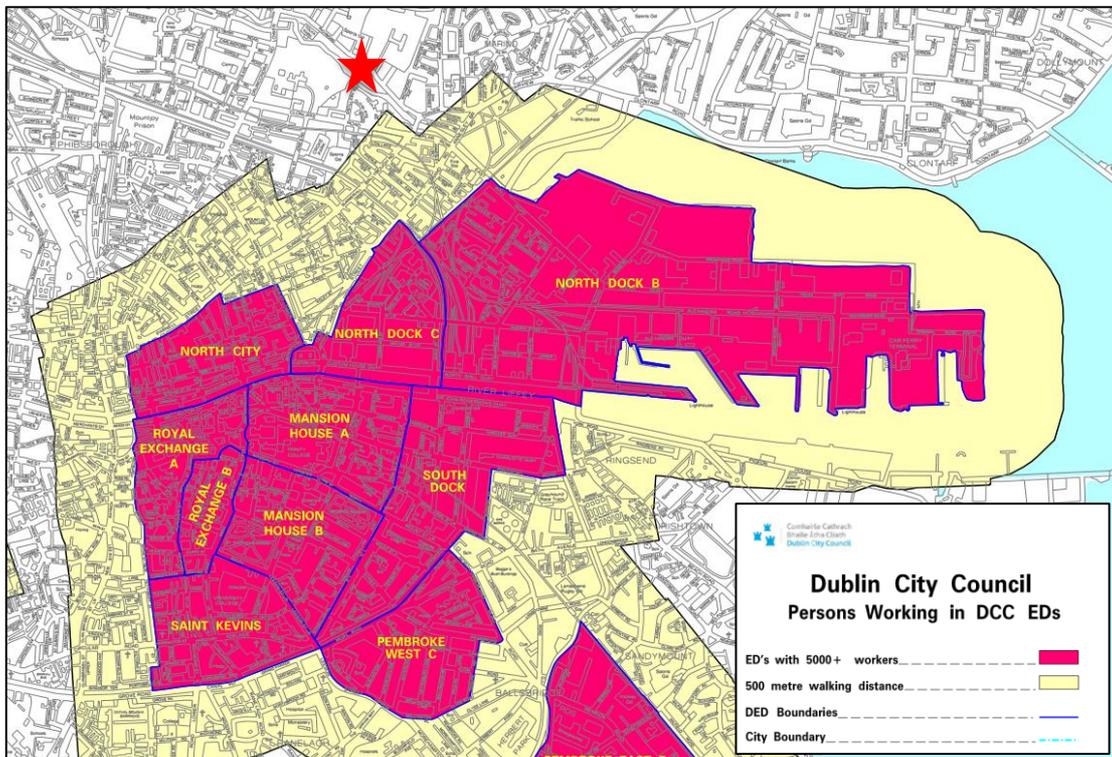


Figure 3.4: Map Demonstrating Indicative Location of the Site [Red Star] in Close Proximity to Areas within 500 Metre Walking Distance of EDs with 5000+ Workers

(Source: *Dublin City Development Plan 2016-2022, Figure W, Appendix 2A, annotated by Thornton O’ Connor Town Planning, 2021*)

The subject site is located just outside the 500 No. metre walking distance of the relevant EDs as shown above. Therefore, on a precautionary basis, this policy is included in the Material Contravention Statement. The site is located in a ‘Intermediate Urban Location’ as defined by the *Apartment Guidelines, 2020, in proximity to public transport, employment, services and facilities* and is located close to the 500 No. metre walking distance of centres of

employment shown above, and thus we consider that the subject Build-to-Rent units proposed are acceptable at the subject site.

Furthermore, the *Apartment Guidelines, 2020* requires a Built-to-Rent Covenant/Legal Agreement be submitted to confirm that proposed Build-to-Rent units will remain owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 No. years and that similarly no individual residential units are sold or rented separately for that period. The *Development Plan* requires an agreement for 20 No. years.

It is considered that the development is in accordance with the *Apartment Guidelines, 2020* which requires a 15 No. year covenant, and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act of 2000 as National Policy has progressed (guidelines under Section 28) since the adoption of the *Development Plan*. The *Apartment Guidelines, 2020* post-date the *Development Plan* and the *Development Plan* must be read in light of the changes introduced by the *Apartment Guidelines, 2020*. This item has been included on a precautionary basis.

3.4 Subject No. 3 - Number of Units per Core

Potential Material Contravention in Relation to Number of Units per Core Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act)

Section 16.10 of the *Dublin City Development Plan 2016-2022* sets out that there shall be a maximum of 8 No. units per core per floor.

We note that the proposed development provides a range of 6 No. to 12 No. units per core at the upper levels, which could be considered to materially contravene this specific requirement of the *Development Plan*.

We note that the *Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, 2020* ("*Apartment Guidelines, 2020*") post-date the *Development Plan* and the *Development Plan* must be read in light of the changes introduced by the *Apartment Guidelines, 2020*.

The *Apartment Guidelines, 2020* set out the following in relation to units per core under Specific Planning Policy Requirement 6:

'A maximum of 12 apartments per floor per core may be provided in apartment schemes. This maximum provision may be increased for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, subject to overall design quality and compliance with building regulations.'

Furthermore, SPPR8(v) of the *Apartment Guidelines, 2020* states that:

'The requirement for a maximum of 12 apartments per floor per core shall not apply to BTR schemes, subject to overall design quality and compliance with building regulations.'

Therefore, it is clear that SPPR8(v) sets out that the requirement for the maximum of 12 No. units per core does not apply to Build-to-Rent. We note that the scheme does not exceed 12 No. units per core.

Therefore, we note that although the proposed development could be considered to materially contravene the specific policy of the *Development Plan* in relation to the units per core, we note that the *Development Plan* should be read in conjunction with SPPR6 and SPPR8(v) of the *Apartment Guidelines, 2020* and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act of 2000 as National Policy has progressed (guidelines under Section 28) since the adoption of the *Development Plan*.

3.5 Subject No. 4 - Daylight / Sunlight Assessment

Potential Material Contravention in Relation to Daylight/Sunlight Facilitated Through the Section 28 Guidelines (Section 37 (2)(b)(iii) of the Act)

Section 16.10.1 of the *Development Plan* sets out the following:

'Development shall be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011).'

The *Apartment Guidelines, 2020* state:

'Planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.'

As set out in the Daylight and Sunlight Assessment Report prepared by 3D Design Bureau,

'The BRE Guide is preceded by the following very clear statement 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."

'That the recommendations of the BRE Guide are not suitable for rigid application to all developments in all contexts, is of particular importance in the context of national and local policies for the consolidation and densification of urban areas or when assessing applications for highly constrained sites (e.g. lands in close proximity or immediately to the south of residential lands).'

The *Apartment Guidelines, 2020* further state:

'Where an applicant cannot fully meet all of 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, which planning authorities should apply their

discretion in accepting taking account of its assessment of specific. This may arise due to a design constraints associated with the site or location 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’.

Therefore, the *Apartment Guidelines, 2020* notes that any shortfalls in daylight provisions must be identified. The daylight/sunlight report demonstrates a very small number of units that do not fully meet the daylight requirements. As part of a compensatory design solution for the rooms that do not meet the recommended minimum average daylight factor, the proposed development includes communal amenity areas, all of which have been assessed and will have adequate levels of daylight. Some 1 No. meeting room will not meet the ADF but this is provided in addition to the co-working space which is well-lit. The meeting room has no external window but will only be used occasionally on for short periods of time. Furthermore, the scheme has incorporated a number of localised compensatory design measures. The majority of the rooms that do not meet the ADF target have been provided with either some or all of the following compensatory measures:

- Balcony space, some of which exceed the minimum requirement.
- Windows that face public open space in the development.
- Larger apartment floor areas.

We have included a list of the residential rooms that fall short of the guidelines for daylight provisions and demonstrated the compensatory design measures provided in the table below:

Unit No.	Room	ADF	ADF Target Value	ADF Lower Target Value	Meets Lower Target Value	GFA as a % of Required Floor Area	Private Open Space (POS) area proposed (required in brackets)	Windows facing proposed open space
L1.08	LKD	1.94%	2.0%	1.5%	Yes	128%	48.1 sq m (5 sq m)	Towards public route and River Tolka
L1.06	LKD	1.61%	2.0%	1.5%	Yes	108%	21.6 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L1.07	LKD	0.92%	2.0%	1.5%	No	108%	9 sq m (7 sq m)	Towards public route and angled box window towards River Tolka
L1.07	Bedroom	0.64%	1.0%	1.0%	No	108%	9 sq m (7 sq m)	Towards public route and angled box window towards River Tolka

L2.05	LKD	1.98%	2.0%	1.5%	Yes	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L2.06	LKD	1.92%	2.0%	1.5%	Yes	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L2.07	LKD	1.39%	2.0%	1.5%	No	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L2.07	Bedroom	0.75%	1.0%	1.0%	No	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L3.07	LKD	1.65%	2.0%	1.5%	Yes	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L3.07	Bedroom	0.84%	1.0%	1.0%	No	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L4.07	LKD	1.87%	2.0%	1.5%	Yes	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka
L4.07	Bedroom	0.92%	1.0%	1.0%	No	108%	5 sq m (5 sq m)	Towards public route and angled box window towards River Tolka

In conclusion, the *Apartment Guidelines, 2020* allow alternative, compensatory design solutions to be provided where some units do not fully meet the ADF requirements. In this instance the scheme will achieve wider planning objectives such as sustainably densifying lands in an intermediate urban location and the development will secure comprehensive urban regeneration and will provide an effective urban design and streetscape solution at the site, by providing a large quantum of public and communal open space and internal communal amenity space and a permeable link through the site, which will benefit both the future residents and the community.

3.6 Subject No. 5 - 5% Variation to Living/Kitchen/Dining Room Areas

Section 16.10 of the *Development Plan* sets out the floor areas for apartments, for living/kitchen/dining rooms and for bedrooms.

The *Apartment Guidelines, 2020* allows a variation of up to 5% to be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas (see below).

Minimum aggregate floor areas for living/dining/kitchen rooms:		
Minimum widths for the main living/dining rooms		
Apartment type	Width of living / dining room	Aggregate floor area of living/ dining/kitchen area*
Studio	5 m**	30 sq.m**
One bedroom	3.3 m	23 sq.m
Two bedroom	3.6 m	30 sq.m
Three bed	3.8 m	34 sq.m

*Note: an enclosed (separate) kitchen should have a min floor area of 6.5 sq.m. In most cases, the kitchen should have an external window.
**Note: Combined living/dining/bedspace

Minimum aggregate floor areas for living/dining/kitchen rooms, and minimum widths for the main living/dining rooms		
Apartment type***	Width of living/dining room	Aggregate floor area of living / dining / kitchen area*
Studio	4m**	30 sq m**
One bedroom	3.3 m	23 sq m
Two bedrooms (3 person)	3.6m	28 sq m
Two bedrooms (4 person)	3.6 m	30 sq m
Three bedrooms	3.8 m	34 sq m

* Note: An enclosed (separate) kitchen should have a minimum floor area of 6.5 sq. metres
** Note: Combined living/dining/bedspace, also includes circulation
*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas

Figure 3.5: Minimum Widths and Floor Areas for Living/Dining Rooms in the *Development Plan* (Left) and *Apartment Guidelines, 2020* (Right)

Minimum bedroom floor areas/widths:		
Minimum bedroom floor areas/widths		
Type	Minimum width	Minimum floor area
Studio	5 m**	30 sq.m**
Single bedroom	2.1 m	7.1 sq.m
Double bedroom	2.8 m	11.4 sq.m
Twin bedroom	2.8 m	13 sq.m

*Note: Minimum floor areas exclude built-in storage presses
**Note: Combined living/dining/bedspace

Minimum bedroom floor areas/widths***		
Type	Minimum width	Minimum floor area
Studio	4m**	30 sq m**
Single bedroom	2.1 m	7.1 sq m
Double bedroom	2.8 m	11.4 sq m
Twin bedroom	2.8 m	13 sq m

* Note: Minimum floor areas exclude built-in storage presses that are contributing to storage space requirements
** Note: Combined living/dining/bedspace
*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas

Figure 3.6: Minimum Widths and Floor Areas for Bedroom in the *Development Plan* (Left) and *Apartment Guidelines, 2020* (Right)

This 5% variation in aggregate floor space and/or room widths has been applied to the following units only, which all meet the overall minimum floor area requirements of the *Apartment Guidelines, 2020*, as per the Housing Quality Assessment Table enclosed separately:

	Room Type	Unit No.	Unit Type	Area Required	Area Provided	Within 5 % Variation
1.	Living/Kitchen/Dining	L1.18	2B4P-03	30 sq m	29.2 sq m	Yes
2.	Living/Kitchen/Dining	L2.18	2B4P-03	30 sq m	29.2 sq m	Yes
3.	Living/Kitchen/Dining	L3.18	2B4P-03	30 sq m	29.2 sq m	Yes
4.	Living/Kitchen/Dining	L4.18	2B4P-03	30 sq m	29.2 sq m	Yes
5.	Living/Kitchen/Dining	L5.18	2B4P-03	30 sq m	29.2 sq m	Yes
6.	Living/Kitchen/Dining	L6.16	2B4P-03	30 sq m	29.2 sq m	Yes
7.	Living/Kitchen/Dining	L7.16	2B4P-03	30 sq m	29.2 sq m	Yes
8.	Living/Kitchen/Dining	L8.13	2B4P-11	30 sq m	29.2 sq m	Yes

For these 8 No units, the area required under the *Development Plan* and *Apartment Guidelines, 2020* for living/kitchen/dining rooms is 30 sq m. Therefore, a 5% variation would require a floor area of 28.5 sq m. The area provided for these 8 No. living/kitchen/dining rooms is 29.2 sq m and thus is well above the minimum required under the 5% variation.

Therefore, as a result, these units within the scheme will not meet the *Development Plan* standards in relation to living/kitchen/dining rooms areas in some cases, however this flexibility is allowed under the *Apartment Guidelines, 2020*.

It is considered that the proposed aggregate areas are accordance with the *Apartment Guidelines, 2020* and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act of 2000 as National Policy has progressed (guidelines under Section 28) since the adoption of the *Development Plan*.

3.7 Subject No. 6 – Ratio of Glazing

Section 16.10.1 of the *Development Plan* sets out that:

'Glazing to all habitable rooms should not be less than 20% of the floor area of the room.'

This policy helps to steer projects in the right direction in the early stages of design in terms of achieving adequate standards of daylighting within the units for example. In relation to the proposed development, some 70% (128 No.) of the units are provided with 20% (or more) glazing, therefore 30% (55 No.) of the units are below the 20% target.

In our professional assessment, the level of non-compliance should not be considered a material contravention and it is clear that the vast majority of the proposed units have met the target of 20% glazing.

The units that do not meet the 20% target are set out below:

Unit Type	Room Type	Total No. of Rooms	% of Glazing Provided
1B2P_01B	Bedroom 1	18	15.1%
1B2P_02B	Bedroom 1	6	15.1%
2B4P_02	Bedroom 1	9	13.6%
2B4P_03	Bedroom 1	7	13.2%
2B4P_06	Bedroom 1	7	13.6%
2B4P_07	Bedroom 1	7	11.7%
2B4P_11	Bedroom 2	1	17.5%

As noted above, all rooms that do not meet the 20% glazing target relate to bedrooms and therefore all living/kitchen/dining rooms are provided with glazing of 20%+ of the floor area of the room. The majority of the rooms that don't meet the 20% glazing ratio have been provided with pop out windows with views towards the River Tolka (38 No.), which will ensure a high quality outlook is provided from these bedrooms.

The small number of units that don't meet the 20% glazing ratio have been predominately provided with 13.2%-17.5% glazing with a small number of units provided with 11.7% glazing (these have angled box windows facing the river). These units represent a small portion of the units in the scheme, however we have included detail on the remaining units that do not meet the 20% target here on a precautionary basis.

It is considered that this slight deviation from the 20% glazing target is a minor deviation in nature and in our professional assessment should not be considered a material contravention of the *Development Plan*. Our assessment notwithstanding, the scheme needs to achieve higher density and taller buildings, which are encouraged in the *Apartment Guidelines*, the *Building Height Guidelines* and the *National Planning Framework*.² Thus full compliance with policies such as the 20% glazing target may not always be achievable when attempting to achieve wider planning objectives. Therefore, it is considered that the development is in accordance with the wider planning objectives of the *Apartment Guidelines, 2020*, the *Building Height Guidelines* and the *National Planning Framework*, and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act of 2000 as National Policy has progressed (guidelines under Section 28) since the adoption of the *Development Plan*.

3.8 Subject No. 7 – Children's Play Space

Section 16.10.1 of the *Development Plan* requires the following:

'In schemes of 25 or more units small play spaces of 85-100 sq m are considered suitable for toddlers and children up to the age of six, with suitable play equipment, seating for parents/ guardians, and within sight of the apartment building. For larger schemes of 100 or more apartments, play areas of 200-400 sq. m for older children and young teenagers should be provided.'

The *Apartment Guidelines, 2020* provide slight variation of this policy as follows:

'The recreational needs of children must be considered as part of communal amenity space within apartment schemes. Experience in Ireland and elsewhere has shown that children will play everywhere.

Therefore, as far as possible, their safety needs to be taken into consideration and protected throughout the entire site, particularly in terms of safe access to larger communal play spaces. Children's play needs around the apartment building should be catered for:

- within the private open space associated with individual apartments (see chapter 3);
- ***within small play spaces (about 85 – 100 sq. metres) for the specific needs of toddlers and children up to the age of six, with suitable play equipment, seating for parents/guardians, and within sight of the apartment building, in a scheme that includes 25 or more units with two or more bedrooms; and***

² E.g. 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

- *within play areas (200–400 sq. metres) for older children and young teenagers, in a scheme that includes **100 or more apartments with two or more bedrooms.***

The subject scheme comprises 183 No. Build-to-Rent Units (104 No. 1 bedroom units and 79 No. 2 bedrooms units). The scheme does not provide more than 100 No. units with two or more bedrooms and thus in accordance with the *Apartment Guidelines, 2020*, a larger 200-400 sq m play space is not required. The proposed development comprises a children's play space of 89 sq m which meets the requirements of the *Apartment Guidelines, 2020*.

It is considered that the proposed children's play space is in accordance with the *Apartment Guidelines, 2020* and is therefore acceptable in line with Section 37 (2)(b)(iii) of the Act of 2000 as National Policy has progressed (guidelines under Section 28) since the adoption of the *Development Plan*.

4.0 CONCLUSION

According to Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, An Bord Pleanála may grant permission for a development, which materially contravenes the policies and objectives of a Development Plan, having regard to the adoption of Section 28 Guidelines or where the pattern of development or permissions granted in the area since the making of the development plan are considered, as prescribed in Section 37 (2)(b) of the *Planning and Development Act (as amended)*.

As noted throughout this Material Contravention Statement, the Statement relates to:

- Building Height with reference to Chapter 16 of the Development Plan;
- Dwelling Mix, Requirement of Units to Exceed Floor Area by 10%, Location of the Proposed Build-to-Rent Units and Build-to-Rent Legal Covenant Dwelling Mix with reference to Section 16.10.1 of the Development Plan;
- Number of units provided per core with reference to Section 16.10 of the *Development Plan*;
- Daylight/Sunlight with reference to Section 16.10.1 of the *Development Plan*;
- Apartment Room Sizes with reference to Section 16.10 of the *Development Plan*;
- Ratio of Glazing with reference to Section 16.10.1 of the *Development Plan*; and
- Children’s Play Space with reference to Section 16.10.1 of the *Development Plan*.

As set out in Section 37(2)(b) and Section 28(1)(c) of the *Planning and Development Act 2018* (as amended), An Bord Pleanála may materially contravene a development plan where national planning policy objectives take precedence. In particular, 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.

Taking into account all of the foregoing set out in this report, it is therefore considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the *Dublin City Development Plan 2016-2022*, by reference to sub-paragraphs (iii) and (iv) of Section 37(2)(b) of the 2000 Act, as amended, for the reasons set out above.

In the event that the Board decides to grant permission, the Board is obliged in its "*Reasons and Considerations*" for the decision to 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.

