

# STATEMENT OF MATERIAL CONTRAVENTION

## Whitehaven Strategic Housing Development



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Statement of Material  
Contravention  
F01  
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31 March 2022

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Prepared by:

**RPS**

Prepared for:

**Cosgrave Developments Unlimited Company**

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## 1 INTRODUCTION

This *Statement of Material Contravention* has been prepared by RPS Group Ltd on behalf of Cosgrave Developments Unlimited Company (the applicant) to accompany an application for permission for a proposed Strategic Housing Development (SHD) consisting of 255 no. units on lands between Swift Square and Sports Surgery Clinic, Northwood Avenue, Santry, Dublin 9.

## 2 LEGISLATIVE CONTEXT

This statement is being submitted having regard to section 8(1)(a)(iv) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, as amended (Act of 2016) which states:

- “8.(1) Before an applicant makes an application under section 4(1) for permission, he or she shall-
- (a) have caused to be published, in one or more newspapers circulating in the area or areas in which it is proposed to carry out the strategic housing development, a notice-
  - (iv) stating that the application contains a statement-
- (II) where the proposed development materially contravenes the said plan other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.”

Section 9(6) of the Act of 2016 states:

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

The local planning policy framework for the site is set out in the *Fingal Development Plan 2017-2023* (Development Plan).

There are some aspects of the proposed development that may be deemed by An Bord Pleanála (the Board) to represent a material contravention of the statutory plans however it is submitted that the overall design intent is to achieve the objectives of the planning authority. In some cases, stated policies, objectives and development management guidelines allow flexibility in design however it is the scale and degree to which this flexibility may be interpreted and still materially align with the plan that requires additional consideration.

The items to be considered further herein are set out below:

- |                    |  |
|--------------------|--|
| Unit Mix:          | The mix of unit types proposed when compared with Objective PM40;        |
| Car Parking:       | Quantum of car parking proposed when compared with Objective DM113;      |
| Public Open Space: | Quantum of public open space proposed when compared with Objective PM52; |

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|                       |   |
|-----------------------|---|
| Play Facilities:      | Quantum of play facilities proposed when compared with Objective DMS75 and DMS76; |
| Separation Distances: | Separation distances when compared with Objective DMS28; and                      |
| Protection of Trees:  | Protection of trees compared with Objectives PM64, DMS77 and DMSO127.             |

Given the items listed above it may be considered that the proposed development represents a material contravention to the Development Plan. This statement indicates why, in the applicant's opinion, permission should nonetheless be granted, having regard to a consideration specified in section 37(2)(b) of the *Planning & Development Act 2000*, as amended (Act of 2000). Section 37(2)(b) states:

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

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

Each of these considerations are reflected upon in the context of these potential departures and are discussed in the following section.

## 3 STATEMENT

### 3.1 (i) The proposed development is of strategic or national importance

The Government's commitment to ending the housing shortage and tackling homelessness is evidenced and underpinned in the Government's *Action Plan on Housing and Homelessness – Rebuilding Ireland* (see Section 7 of the *Planning Report and Statement of Consistency* prepared by RPS and enclosed as part of the application package), two pillars of which focus on building more homes, making permitting and approvals systems more efficient and improving the rental sector. In this regard, the Action Plan included an innovative legislative measure to rapidly increase housing supply through the introduction of temporary fast-track planning arrangements in respect of large-scale housing developments. The proposed development is categorised as a SHD and will facilitate provision of much needed housing supply thus helping to address the current housing supply shortage situation.

The strategic goals of the Government in relation to the delivery of new residential development, and their national importance, is also reflected in the policies and objectives of the *National Planning Framework* (NPF) and the *Eastern and Midland Regional Spatial & Economic Strategy 2019-2031* (EMRA RSES). The *Planning Report and Statement of Consistency* prepared by RPS outlines how the proposed development accords with the provisions of these national and regional planning documents.

According to the EMRA RSES Settlement Strategy, the subject site is located within “*Dublin City and Suburbs*” within which it is intended to:

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*“Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area and ensure that the development of future development areas is co-ordinated with the delivery of key water and public transport infrastructure.”*

The lands are located proximate to planned Bus Connects and Northwood MetroLink station. It is a Strategic Planning Principle of the *Transport Strategy for the Greater Dublin Area, 2016 to 2035* that:

*“Residential development located proximate to high capacity public transport should be prioritised over development in less accessible locations in the GDA.”*

The Development Plan recognises the importance of the Metro and the subject site is zoned with an objective that seeks to:

*“Facilitate opportunities for high-density mixed-use employment generating activity and commercial development and support the provision of an appropriate quantum of residential development within the Metro Economic Corridor.”*

On the basis of the above, it is considered reasonable to conclude that the proposed SHD at this location is clearly of both strategic and national importance and therefore can be granted permission under the provisions of section 37(2)(b)(i) of the Act of 2000.

### **3.2 (ii) There are conflicting objectives in the Development Plan or the objectives are not clearly stated, insofar as the proposed development is concerned**

#### **3.2.1 Unit Mix**

The Development Plan states that *“Residential developments should include a range of house sizes and types to allow for people to remain in an area at every stage of their lives”* (page 71). In this regard Objective PM40 of the Development Plan is to:

*“Ensure a mix and range of housing types are provided in all residential areas to meet the diverse needs of residents.”*

The proposed development will provide a total of 255 no. residential units, comprising of 11 no. 1-bedroom apartment units, 229 no. 2-bedroom apartment units, 15 no. 3-bedroom units in 5 no. blocks over a shared basement. The *Building Life Cycle Report* and the *Architectural Design Statement* prepared by McCrossan O'Rourke Manning Architects (MCORM) accompanying the planning application submission confirm that while all apartments proposed are compliant with the relevant apartment standards the internal layouts may be easily altered to facilitate the needs of occupants' overtime depending on their priority at different stages throughout their lifetime. It is considered that the development shall meet the housing needs of a diverse range of householders.

It is recognised that there are a significant quantum of 2-bedroom units within the proposed development. However the 2-bedroom units include an array of different design layouts, with variation in size and form.

The Development Plan does not provide quantitative standards pertaining to the mix and range of housing types that should be provided within a development. Neither is it clear how a single development may be assessed within an undefined *“residential area”*.

On the basis of the above, it is considered reasonable to conclude that there are objectives in the Development Plan which are not clearly stated, insofar as the proposed development is concerned with regard to mix and range of housing types and therefore the proposed development can be granted permission under the provisions of section 37(2)(b)(ii) of the Act of 2000.

#### **3.2.2 Car Parking**

Objective DM113 of the Development Plan states:

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*“Limit the number of car parking spaces at places of work and education so as to minimise car-borne commuting. The number of car parking spaces at new developments will be in accordance with the standards set out in Table 12.8.”*

With respect to residential development, Table 12.8 of the Development Plan sets out development management standard norms for car parking and provides:

- 1 no. car parking space for 1-bedroom apartments;
- 1.5 no. car parking spaces for 2-bedroom apartments;
- 2 no. car parking spaces for 3 or more bedroom apartments; and
- An additional 1 no. visitor car parking space is to be provided for every 5 no. units.

The Development Plan goes on to state:

*“Car parking standards provide a guide as to the number of required off-street parking spaces acceptable for new developments. The principal objective of the application of car parking standards is to ensure that, in assessing development proposals, consideration is given to the accommodation of vehicles attracted to the site within the context of existing Government policy aimed at promoting modal shift to more sustainable forms of transport.”*

Stating that car parking standards are “a guide” and that the “principal objective” of such standards should be within the context of “promoting modal shift to more sustainable forms of transport” in accordance with Government policy implies that the rigid application of the standards is not required.

Indeed the rigid application of Development Plan parking standards which are inconsistent with the Apartment Guidelines produced by the Department of Housing, Local Government and Heritage does not accord with guidance set out in the Development Plan that the application of the standards should be within the context of existing Government policy aimed at promoting modal shift to more sustainable forms of transport.

The lack of clarity in regard to the requirement to provide car parking in accordance with Table 12.8 and the inconsistency between those standards and wider Government policy means that it is not possible to definitively adjudge if the proposed car parking provision materially contravenes the Development Plan.

Should the Board be of the view that car parking provision proposed is a material contravention of the Development Plan the caveats attached to the application of the car parking standards mean that the objectives are not clearly stated, insofar as the proposed development is concerned and therefore can be granted permission under the provisions of section 37(2)(b)(ii) of the Act of 2000.

### 3.2.3 Public Open Space

Objective PM52 of the Development Plan sets out standards with regard to the provision of public open space, it states:

*“Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.”*

The application of such a standard would require c. 1.0 hectare of open space based on an estimated population of 412.5. Given this site area is c. 1.5 hectares such a provision is not practicable. It is advised in the Development Plan that such a standard may be applied in a flexible manner, stating:

*“the Council will employ a flexible approach to the delivery of public open space and more intensive recreational/ amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area.”*

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The proposed development provides a public open space provision of c. 16% (2,407 sq.m) of the subject site, significantly above the 10% minimum set out in Development Plan, but some way short of 1.0 hectare.

However, the lack of clarity in regard to the extent to which public open space may be provided at a rate below the maximum standard before being considered as materially contravening the objective means that it is not possible to definitively adjudge if the proposed public open space provision materially contravenes the Development Plan.

Should the Board be of the view that public open space proposed is a material contravention of the Development Plan the caveats attached to the application of the public open space standards mean that the objectives are not clearly stated, insofar as the proposed development is concerned and therefore can be granted permission under the provisions of section 37(2)(b)(ii) of the Act of 2000.

### 3.2.4 Play Facilities

Objective DMS76 of the Development Plan sets out standards with regard to the provision of play areas, it states:

*“Ensure that in the instance of an equipped playground being included as part of a specific facility, it shall occupy an area of no less than 0.02 hectares. A minimum of one piece of play equipment shall be provided for every 50sq.m. of playground.”*

In the subject application it is proposed to provide 2 no. play areas. The total area of the two facilities is c. 0.037 hectares. This is significantly in excess of the 0.02 hectares required by Objective DMS76.

One of the 2 no. facilities proposed is on its own in excess of 0.02 hectares. The other is not and is located within communal area dedicated to the residents of the development. It is not clear from the objective as set out in the Development Plan if the area of each play area or the cumulative area of the play areas is required to be in excess of 0.02 hectares.

Should the Board be of the view that the play area proposed is a material contravention of objective DMS76 of the Development Plan the objectives is not clearly stated, insofar as the proposed development is concerned and therefore can be granted permission under the provisions of section 37(2)(b)(ii) of the Act of 2000.

### 3.2.5 Protection of Trees

Objective PM 64 states:

*“Protect, preserve and ensure the effective management of trees and groups of trees.”*

Objective DMS77 states:

*“Protect, preserve and ensure the effective management of trees and groups of trees.”*

Objective DMSO127 states:

*“Protect, preserve and ensure the effective management of trees and groups of trees and hedgerows.”*

In addition Sheet 11 Fingal South of the Fingal Development Plan indicates a specific objective *“Protect & Preserve Trees, Woodlands and Hedgerows”* with tree symbols. One such symbol associated with this objective is located within the masterplan area but is located to the north of Sport Surgery Clinic c. 200 m to the northwest of the subject site.

An *Arboricultural Report* prepared by the Tree File Ltd is enclosed with the application. This report confirms that there are no good quality (Category A) specimens on the site with the majority being of poor (Category C) quality.

There are 2 no. trees listed in the TPO and both are incorporated into the site layout for the proposed development. All other trees located on the application site will be replaced with a large number of predominantly native species thereby compensating for their loss albeit of poor quality. In addition new



hedges are proposed including a significant quantum of semi-mature trees and multi-stem trees or large specimen shrubs. Planting proposals are further described in the Landscape Masterplan Drawing 101 prepared by Kevin Fitzpatrick Landscape Architects. It is considered that the proposals shall protect and enhance trees and hedges within the subject site.

However, should the Board be of the view that the proposed landscaping is contrary to the Development Plan it is highlighted that the objectives PM 64, DMS77 and DMSO127 do not clearly articulate the balance between the protection, preservation and management of trees. Furthermore the placement of a symbol associated with a specific objective seeking to protect and preserve trees, woodlands and hedgerows not on the subject site, but c. 200 m to the northwest means it is not clear if the subject site is specifically excluded from this protection.

In this regard objectives are not clearly stated, insofar as the proposed development is concerned and therefore can be granted permission under the provisions of section 37(2)(b)(ii) of the Act of 2000.

### 3.2.6 Separation Distances

In relation to separation distances, DMS28 states “A separation distance of a minimum of 22 metres between directly opposing **rear** first floor windows shall **generally** be observed unless alternative provision has been designed to ensure privacy.” (Our emphasis)

Notwithstanding, the Apartments Guidelines (2020) state “**general blanket restrictions on building height or building separation distance that may be specified in development plans, should be replaced by performance criteria, appropriate to location**”. (Our emphasis)

It is submitted that the *minimum of 22 metres* standard relates to rear windows and is generally applied to housing arranged back to back. It is noted that while the proposed separation distances between proposed apartment blocks within the scheme do not rigidly accord with the statutory plan, the overall design intent is to achieve the objectives of the planning authority and provide a high quality residential scheme, with controlled aspects, off-set windows and balconies and other design measures integrated into the design from the outset. The buildings have been located on this site to minimise the over-shadowing impact on neighbouring properties and to provide the best quality of daylight to the apartments.

Stating that distances shall “*generally be observed*” and that the “*generally blanket restrictions*” of such standards should be replaced in favour of “*performance criteria, appropriate to location*” in accordance with Apartment Guidelines produced by the Department of Housing, Local Government and Heritage implies that the rigid application of the standards is not required.

The lack of clarity in regard to the requirement to provide the separation distance and the inconsistency with wider Government policy means that it is not possible to definitively adjudge if the proposed separation distance materially contravenes the Development Plan. In this regard objectives are not clearly stated, insofar as the proposed development is concerned and therefore can be granted permission under the provisions of section 37(2)(b)(ii) of the Act of 2000 or section 37(2)(b)(iii) with respect to direction give in the Apartment Guidelines (2020) published under section 28 of the Act of 2000.

### **3.3 (iii) Permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government**

#### **3.3.1 Unit Mix**

The Development Plan states that “Residential developments should include a range of house sizes and types to allow for people to remain in an area at every stage of their lives” (page 71). In this regard Objective PM40 of the Development Plan is to:

*“Ensure a mix and range of housing types are provided in all residential areas to meet the diverse needs of residents.”* (page 71)

The NPF notes that “7 out of 10 households in the state consist of three people or less” and also that “Household sizes in urban areas tend to be smaller than in the suburbs or rural parts of the country”.

In respect of Dublin, the NPF notes in addition that “In Dublin city, one, two and three person households comprise 80% of all households.”

In this regard, it is an NPF objective in respect of ‘Housing Demand’ 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 people’s needs for well-located and affordable housing, with increasing demand to cater for one- and two-person households. Within this figure, there is a wide range of differing housing needs that will be required to be met.”*

The proposed unit mix is supported by the guidance and Specific Planning Policy Requirements (SPPR) set out in the Apartment Guidelines (2020). SPPR 1 states:

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

At the time of writing, a Housing Need and Demand Assessment has not been incorporated into a Development Plan in Fingal. Notwithstanding the development’s compliance with the Apartment Guidelines (2020), the proposed development will enhance the variety of dwelling types available in the local area. This is considered further in the enclosed *Unit Mix Report* prepared by RPS.

It is considered that the proposed unit mix accords fully with national policy supporting the provision of a range of housing types and is further underpinned by the guidance issued under section 28 of the Act of 2000.

#### **3.3.2 Car Parking:**

Objective DM113 of the Development Plan states:

*“Limit the number of car parking spaces at places of work and education so as to minimise car-borne commuting. The number of car parking spaces at new developments will be in accordance with the standards set out in Table 12.8.”*

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With respect to residential development Table 12.8 of the Development Plan set out development management standard norms for car parking and provides:

- 1 no. car parking space for 1-bedroom apartments;
- 1.5 no. car parking spaces for 2-bedroom apartments;
- 2 no. car parking spaces for 3 or more bedroom apartments; and
- An additional 1 no. visitor car parking space is to be provided for every 5 no. units.

Objective 11 of the NPF states that

*“there will be a presumption in favour of development that encourages more people, jobs and activity within existing urban areas, subject to development meeting appropriate planning standards and achieving targeted growth.”*

The proposed development will provide for high quality residential development in an existing urban area adjacent to existing and planned public transport facilities.

The NPF continues, to state that:

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

\*our emphasis

The proposed development is served by buses routing along the Swords Road (R132), Santry Avenue (R104) and Ballymun Road (R108). The subject site is also within 700 m of the planned Ballymun Core Bus Corridor and the MetroLink Northwood Station.

National Policy Objective 13 in the NPF provides 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. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.”*

The proposed quantum of parking is considered to be in accordance with national policies and guidelines including the Apartment Guidelines (2020), which allow for lower levels of car parking including disabled car parking in appropriate locations. In this regard, the Apartment Guidelines (2020) recommend that a reduced quantum of car parking may be considered at ‘Intermediate Urban Locations’ – i.e. *“sites in suburban/urban locations served by public transport or close to town centres or employment areas, and particularly housing schemes with more than 45 dwellings per hectare”*.

In larger scale and higher density development at central and/or accessible urban locations the Apartment Guidelines (2020) recognise there is the opportunity to reduce car parking provision further or even wholly eliminate car parking. The Apartment Guidelines (2020) do not require a particular quantum of disabled car parking to be provided, requiring only that *“designated parking spaces for disabled drivers should be provided”*. The *Transport and Traffic Assessment* prepared by J.B. Barry considers that the subject location can be classified as an intermediate urban location. As outlined in Section 2 of the *Planning Report and Statement of Consistency* prepared by RPS that accompanies the planning application package, the subject site has access and is well connected to existing and planned high capacity public transport services. Having regard for this context, it is considered that the proposed reduced rate of parking is appropriate and in accordance with national policy and guidance. Enclosed as part of the application documentation is a *Transport and Traffic Assessment* and a *Residential Travel Plan* prepared by J. B. Barry. These documents include an analysis of projected car usage in proximity the proposed development, demonstrating the low

level of impacts projected, due in part to the proposed quantum of car parking. The document also outlines the parking and mobility plans for the proposed development and sets out a number of initiatives that will be implemented to encourage sustainable travel practices for all journeys to and from the proposed development.

The proposed quantum of car parking is appropriate and should be granted having regard to the NPF, the general presumption in favour of active travel across all policy documents and the specific policies set out in the Apartment Guidelines (2020) published under section 28 of the Act of 2000.

### 3.3.3 Public Open Space:

Objective PM52 of the Development Plan sets out standards with regard to the provision of public open space, it states:

*“Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.”*

National Policy Objective 4 in the NPF seeks to:

*“Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.”*

The *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* stress at some length that there is now *“an increasing focus on the quality of public open space, which ensures that the reasonable expectations of users are more likely to be fulfilled”*. Notwithstanding this view the Guidelines do offer guidance on quantitative standards of residential public open space, stating:

- *“In green-field sites or those sites for which a local area plan is appropriate, public open space should be provided at a minimum rate of 15% of the total site area.*
- *In other cases, such as large infill sites or brown field sites public open space should generally be provided at a minimum rate of 10% of the total site area.”*

As detailed in the *Planning Report and Statement of Consistency* prepared by RPS the proposed provision of public open space is c. 16% (2,407 sq.m) of the subject site and accords with that required by the application of the quantitative and qualitative standards set out in *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas*.

The proposed public open space is appropriate and should be granted having regard to the NPF and the accordance with guidelines under section 28 of the Act of 2000.

### 3.3.4 Play Facilities

Objectives DMS75 and DMS76 of the Development Plan set out standards with regard to the provision of play areas, they state:

*“Provide appropriately scaled children’s playground facilities within residential development. Playground facilities shall be provided at a rate of 4sq.m. per residential unit. All residential schemes in excess of 50 units shall incorporate playground facilities clearly delineated on the planning application drawings and demarcated and built, where feasible and appropriate, in advance of the sale of any units.” (DMS75)*

*“Ensure that in the instance of an equipped playground being included as part of a specific facility, it shall occupy an area of no less than 0.02 hectares. A minimum of one piece of play equipment shall be provided for every 50sq.m. of playground.” (DMS76)*

The EMRA RSES has as a guiding principle:

*“Support play policies to address the play and recreation needs of children and young people and ensure the integration of play provision and child-friendly neighbourhoods.”*

The Apartment Guidelines (2020) set out standards for play areas.

*“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*

*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 proposed development includes a play area of a play area of 280 sq.m. for older children to the west of Block 5; and a play area of 87 sq.m. for younger children within the central courtyard. An informal kickabout area shall also be provided. This level of provision is in accordance with that which is set out in the Apartment Guidelines (2020) and guiding principles in the EMRA RSES.

The proposed play area provision is appropriate and should be granted having regard to the EMRA RSES and the accordance with guidelines under section 28 of the Act of 2000.

### 3.3.5 Separation Distance

DMS28 states *“A separation distance of a minimum of 22 metres between directly opposing **rear** first floor windows shall **generally** be observed unless alternative provision has been designed to ensure privacy.”* (Our emphasis)

The Apartments Guidelines (2020) state *“general blanket restrictions on building height or **building separation distance** that may be specified in development plans, should be replaced by performance criteria, appropriate to location”*. (Our emphasis)

It is noted that the quantitative standard for separation set out in the Development Plan is contrary to the approach advocated in the Apartments Guidelines.

The overall design intent is to achieve the objectives of the planning authority and provide a high quality residential scheme, with controlled aspects, off-set windows and balconies and other design measures integrated into the design from the outset. The buildings have been located on this site to minimise the over-shadowing impact on neighbouring properties and to provide the best quality of daylight to the apartments.

It is considered that the separation distances proposed accord fully with guidance issued under section 28 of the Act of 2000.

## 3.4 (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

The subject proposals are broadly consistent with a number of proximate permitted developments as described below and in **Table 3-1** with regard to unit mix, car parking provision and public open space and separation distances.

### Reg. Ref. F18A/0421

On 7th March 2019, Fingal County Council granted permission under Reg. Ref. F18A/0421 for phase 1 of a 2 phase mixed-use residential scheme. Together with phase 2 (F18A/0438) the development comprised 198 no. apartments units.

### Reg. Ref. F19A/0401

## STATEMENT OF MATERIAL CONTRAVENTION

On 24th February 2020, Fingal County Council granted permission under Reg. Ref. F19A/0401 for phase 1 of a 2 phase mixed residential and commercial scheme. Together with phase 2 (F19A/0419) the development comprised 183 no. apartment units.

### F15A/0440 (as amended by Reg. Ref. F16A/0362, F16A/0572 and F17A/0371) (Bridgefield, Pappan Grove, Cedar View)

On 18th June 2018 and together with permitted amendments the development provided for 251 no. apartment units and 104 no. house units.

### Reg. Ref. SHD/015/19 & ABP-306075-19

On 24th March 2020, ABP granted permission for a SHD application referred to as Blackwood Square on a site off Northwood Avenue, Santry, Dublin 9 comprising of 4 no. 8-storey apartment blocks consisting of 329 apartment units; a multi-functional area; a gym; childcare facility, 5 no. mixed use units; 338 no. car parking; 690 no. cycle parking spaces; and associated site works. On 29th April 2021 the terms of conditions attached were altered under case reference ABP-309416-21 resulting in the number of apartments increasing to 330 no. units and a childcare facility to accommodate a minimum of 62 childcare places.

**Figure 3-1: Summary of Proximate Development**

| Reg. Ref.  | Total Apartment Units                              | Unit Mix   | Car Parking Spaces   | Public Open Space  | Play Area                                      | Density                      | Blocks < 22m apart | Removal of Trees |
|--|--|--|----------------------|--|--|------------------------------|--------------------|------------------|
| <b>F18A/0421<sup>1</sup> (phase 1)</b>               | 198<br>(combined site area with F18A/0438 phase 2) | 30 no. studio<br>25 no. 1-bed<br>87 no. 2-bed<br>56 no. 3-bed<br>(combined site area with F18A/0438) | 206                  | 1,170 sq.m<br>(10.5% of combined site area with F18A/0438) | -  | 135                          |                    | Yes              |
| <b>F19A/0401<sup>2,3</sup></b>                       | 183<br>(combined with F19A/0419 phase 2)           | 8 no. studio<br>75 no. 1-bed<br>80 no. 2-bed<br>20 no. 3-bed<br>(combined site area with F19A/0419)  | 195<br>(residential) | 1,885 sq.m<br>(16% combined site area with F19A/0419)      | -  | 122                          |                    | Yes              |
| <b>F15A/0440 (as amended (F16A/0572)<sup>4</sup></b> | 251  | 8 no. 1-bed<br>225 no. 2-bed<br>18 no. 3-bed   | 382                  | 8,282 sq.m<br>(12% of overall site area <sup>5</sup> )     | -  | 120<br>(apartment site only) | Yes                |                  |
| <b>ABP-306075-19<sup>6</sup></b>                     | 330 Apts.  | 6 no. 1-bed<br>293 no. 2-bed<br>31 no. 3-bed   | 335                  | 4,672 sq.m<br>(22% site area)                              | incl. 152 sq.m for small children in courtyard | 157                          | Yes                |                  |

1. Chief Executives Order 07.03.2019 (F18A/0421)

2. Chief Executives Order 26.02.2020 (F19A/0401)

3. Chief Executives Order 09.03.2020 (F19A/0419)

4. Chief Executives Order 10.05.2017 (F16A/0572)

5. F15A/0440, 7 hectares

6. [www.pleanala.ie](http://www.pleanala.ie)

Having regard for this context, and for the precedence in the area, it is considered that the proposed provision of 1, 2 and 3-bedroomed units is appropriate and in accordance with national policy and guidance.

### 3.4.1 Unit Mix

Having regard for the pattern of development, and permissions granted, in the area since the making of the development plan it is considered that the proposed provision of 1, 2 and 3-bedroomed units is appropriate

### 3.4.2 Car Parking

The subject proposals are consistent with proximate permitted development and reflect similar car parking provision.

### 3.4.3 Public Open Space

The subject proposals are consistent with proximate permitted development and reflect similar public open space provision.

### 3.4.4 Play Areas

The subject proposals are consistent in overall area and division of spaces with proximate permitted development and reflect similar play area provisions within communal areas as permitted under ABP-306075-19 (Blackwood Square).

### 3.4.5 Protection of Trees

The subject proposals are consistent in overall area and formulation of site layouts which seek to incorporate trees into the overall site plan but where tree and hedge removal is warranted in some instances. Proximate permitted development that reflects similar measures are permitted under F18A/0421 & F18A/0438 and F19A/0401 & F19A/0419.

### 3.4.6 Separation Distances

The subject proposals form a perimeter block format arranged to minimise the over-shadowing impact on neighbouring properties and to provide the best quality of daylight to the apartments. The overall design intent is to achieve the objectives of the planning authority and provide a high quality residential scheme, with controlled aspects, off-set windows and other design measures integrated into the design from the outset and are consistent provisions as permitted under F15A/0440 (as amended) (Bridgefield Pappan Grove) and ABP-306075-19 (Blackwood Square).

## 4 CONCLUSION

This statement has been prepared in relation to the proposed SHD on lands between Swift Square and Sport Surgery Clinic, Northwood Avenue, Santry, Dublin 9.

All of the items considered in this statement relating to development plan policies, objective and standards relating to unit mix, car parking, open space provision, protection of trees and separation distances are subject to multiple caveats and qualifications which mean that it is not possible to adjudge if the proposals constitute a material contravention of the *Fingal County Development Plan 2017-2023*.

Nonetheless, this statement demonstrates that the proposed development is consistent with the relevant national planning policy, guidelines issued under section 28 of the Act of 2000 and with local planning policy as pertaining to:

- Unit Mix and Type;
- Car Parking Provision;
- Public Open Space Provision;
- Play Facilities;
- Protection of Trees; and
- Separation Distances.

It is submitted that the proposed development is in line with evolving trends for sustainable residential developments in urban areas and there are multiple examples in the general area of developments with a similar unit mix, car parking provision and public open space. It is therefore considered that sufficient justification exists for the Board to grant permission for the proposed development notwithstanding a material contravention having consideration to section 37(2)(b) of the Act of 2000.

## STATEMENT OF MATERIAL CONTRAVENTION

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It is submitted that the provision of a high density residential development at this location will provide a more compact and sustainable urban form close to existing and planned public transport services on an underutilised site and within the Dublin Metropolitan Area. The proposed development will promote a strong sense of character and place and will facilitate a safe and socially inclusive community at a highly accessible location close to existing social, leisure, commercial and retail facilities. The development has been designed with cognisance and respect for the existing natural and built environment and with a view to supporting the planned public transport infrastructure.

Having regard to this statement and the accompanying documentation provided as part of the application for permission, it is submitted that delivery of the proposed development is in the interest of proper planning and sustainable development within Northwood and the Metropolitan Area.