

Senior Executive Officer,
Planning and Strategic Infrastructure Department,
Fingal County Council,
County Hall,
Main St.,
Swords,
Co. Dublin,
K67X8Y2

7th February 2020

Re: Variation No. 2 to the Fingal County Development Plan 2017-2023 - Alignment of the Fingal Development Plan 2017 – 2023 with the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES).

Dear Sir/Madam,

On behalf of Crekav Trading GP Limited, Heritage House, 23 Saint Stephen's Green, Dublin 2, D02 AR55, Ireland, we are making this submission to Variation No. 2 to the Fingal County Development Plan 2017 – 2023, which has been made in response to the publication of the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES). Proposed Variation No. 2 will result in the following changes:

- Amendments to the Core Strategy and associated tables in the written statement; and
- Minor amendments to text and objectives/policies throughout the written statement to refer to the National Planning Framework and the Regional Spatial and Economic Strategy.

This submission relates to the proposed amendments to the Core Strategy specifically in relation to Howth, where our client currently has 2 No. Strategic Housing Development (SHD) applications submitted to An Bord Pleanála. These applications include the following;

1. **Claremont SHD** - ABP File Ref 306102: Former Techrete Site, Howth Road, Howth, Co. Dublin for 512 no. residential units, due for decision 7th April 2020;
2. **Rennie Place SHD** - ABP File Ref 305828: Balcadden Road and 66 Main Street, Howth, Co. Dublin for 177 no. residential units, due for decision 3rd March 2020.

TOWN PLANNING CONSULTANTS



If planning permission is approved on both of these sites, this will provide for a total of 689 No. residential units (512 No. at Techrete and 177 No. at Main St./Balscadden Road) by April 2020.

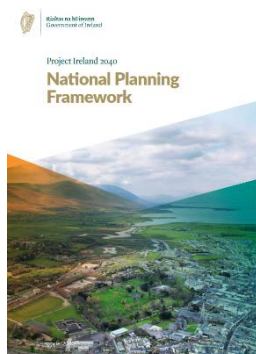
As part of the SHD Planning Application process, it was necessary to submit a Material Contravention Statement with both planning applications in relation to the Fingal Core Strategy. The Material Contraventions related to the quantum of residential development significantly exceeding the identified remaining residential capacity in the Howth area by c. 38% as designated in the Core Strategy. These tables are indicated on Figure 1 and 2 on the following page. Please refer to Appendix 1 and 2 for copies of Material Contravention Statements submitted with both applications.

The Material Contravention Statements indicate why the Fingal Core Strategy does not accord with the National Planning Framework. These arguments appear to have been ignored in the current Variation to the Core Strategy for Howth.

This submission will concentrate on the following concerns in relation to the Variation to the Fingal Core Strategy;

- **National Planning Framework** - Fingal's blanket numerical limitation on residential units is at odds with the policies laid out in the National Planning Framework. There is a major disconnect between the policies contained with the National Planning Framework and Fingal County Councils Core Strategy.
- **Conversion Rates of 'Permitted Units' vs. Commencement/Build/Occupation**– There is an unrealistic assumption that 'planning units' granted equals 100% house builds/occupation. This is simply not the case as evidenced by historical rates.
- **Proposed Residential Densities** - Densities proposed for Howth in the Core Strategy are at c. 30 units per ha. This is an unsustainable use of zoned, serviced land and does not accord with National Policy and recent SHD planning applications current being assessed by An Bord Pleanála whose densities range from 114 – 191 units per hectare.
- **Public/Elected Representative Expectations** - There is an expectation from the public and from public representatives that the Development Plan and correspondingly, its associated Core Strategy will have correct and meaningful figures in relation to expected housing predictions/targets for a particular area. This enables proper planning for an area. This is not the case for Fingal's Core Strategy for Howth, as evidenced in the current Strategic Housing Developments currently being assessed by An Bord Pleanála, which significantly exceeds predictions.

The National Planning Framework (NPF) & Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES) vs. Fingal Core Strategy



The NPF targets a significant proportion of future urban development on infill/brownfield development sites within the built footprint of existing urban areas.

Objective 11 of the NPF states:

“In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth”.

The NPF also states that “to avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas”. Objective 35 states that it is an objective to:

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

The Urban Development and Building Heights, Guidelines for Planning Authorities, December 2018 emphasise the policies of the NPF to increase levels of residential development in urban centres and increase building heights and overall density by both facilitating and encouraging the development of increased heights and densities by Local Authorities and An Bord Pleanála. We note the following Specific Planning Policy Requirements (SPPRs) of the Guidelines:

*‘SPPR 1 - Support increased building height and density in locations with good public transport accessibility to secure the objectives of the NPF and RSES **and shall not provide for blanket numerical limitations on building height.**’ (TPA Emphasis)*

Logically, if a blanket numerical limitation should not be provided on building heights, it corresponds that a blanket numerical limitation should not be set on the number of residential units that can be achieved on a zoned and serviced development site.

The Proposed Variation updates Table 2.6 with Table 2.8 of the Fingal Development Plan which relates to the Remaining Zoned Residential Capacity in Fingal from the start of the Development Plan period.



Focusing on Howth as an example, it is illustrated in the extracts of the relevant tables below that the Variation concludes there is no requirement for any additional residential zoned lands in the Howth area to fulfill population targets outlined. In fact, for Howth, it identifies that there has been a reduction of 2 hectares of lands to provide for residential development (from publication of FDP 2017-2023 to publication of Variation 2).

Town/Village	Remaining Land Supply (hectares)	Remaining Capacity Residential Units	Metropolitan-Hinterland % Land	Metropolitan-Hinterland % Units
Howth	16	498		
Baldoyle/Sutton	29	1498		

Figure 1. Extract from Table 2.6 of the Current Fingal County Development Plan 2017-2023

Town/Village	Remaining Capacity (hectares)	Remaining Residential Units	Metropolitan-Core % Land	Metropolitan-Core % Units
Howth	14	436		
Baldoyle/Sutton	29	1498		

Figure 2. Extract from Table 2.8 of Variation 2 to the FDP 2017-2023

'Permitted Units' vs. Commencement/Build/Occupation

It should be noted that the above 'Remaining Residential Units' calculations for Howth appear to exclude extant permissions relating to the development of the Former Techrete site on Howth Road and the Baily Court/Balscadden Site in Howth.

"To date (September 2019), approximately 5,582 units have been granted planning permission in the Fingal area, which leaves a requirement of 8,919 over the remaining lifecycle of the Development plan. It is considered this is sufficient capacity for further growth in Fingal during this time period."

Fingal base their calculations of 'remaining units' on approved planning permissions, or 'permitted units', **not** commenced or built units. It seems that Fingal have taken the target number of approved



planning permission as a maximum. **It should be taken as a minimum number of residential units permitted.**

Furthermore, the Variation does not provide for the allowable 25% growth headroom up to 2026 from the National Planning Framework, therefore the high range population target for the County could potentially be increased for Fingal.

In our opinion, there should always be an over-supply of extant planning permissions in a County, as the conversion rate of planning permission to commencement/build units has historically been less than c. 30% per annum in Fingal as illustrated on Figure 3.

To discount 5,582 units which have been granted from the overall target assumes that there is a 100% conversion rate from granted permissions to completed units and that these units will also be delivered by 2023. This is completely unrealistic and does not accord with historical conversion rates in Fingal for permission to commencement/build.

Figure 3. Estimated Annual Conversion Rate of Approved Planning Permissions to Commencement and Completed for Fingal 2015 – 2019			
Fingal Co.	DHTF Units with Planning Permission (Tier 1 – 10+ units)	DoHPLG BCMS Commencements (all units/12mo prior)	Completed CSO 12 month period (all units)
Q1.2019	14989	2599	2078
Q1.2018	17522	2082	1945
Q1.2017	16237	1721	1247
Q1.2016	15757	1950	1128

Figure 3 indicates the Dublin Housing Task Force (DHTF) data which highlights that in Q1 2019, there were 17,522 units with planning permission in the Fingal area (this does not tally with FCC’s own figure of c. 5,582 units) and by Q1 2019 the Department of Housing, Planning and Local Government confirmed that 2,599 units have commenced development and the Central Statistics Office (CSO) noted that 2,078 units had been completed. Even combining commencement / completion of units this would represent c. 26% of the available permissions in Fingal, and c. 11.9% of units completed annually. It is clear therefore that extant permissions for residential development should not be discounted from the overall housing target for Fingal.



Densities Proposed in the Core Strategy

Fingals Core Strategy is in direct contravention with the National Planning Framework, as it limits the number of units that can be achieved in Howth. In the Variation, it has been estimated that there is 14ha remaining capacity of available zoned land in Howth and that this land can provide potentially 436 remaining units (See Figure 2).

This numerical limitation has the effect of blocking housing (in a housing crisis) rather than supporting house building and the policies of the National Planning Framework, the aim of which is to promote densification of urban areas such as Howth, which are well serviced by good public transport. Densities are indicated on Table 2.8 as being c. 30 units per hectare for Howth. The densities proposed on the current Strategic Housing Development planning applications for Howth are as follows;

1. The Former Techrete Site proposes a density of **191 units per hectare** and
2. Balscadden/Main St. proposes a density of **114 units per hectare**.

The densities proposed for Howth on Table 2.8 does not accord with the National Planning Framework because densities of 30 units per hectare are considered unsustainable on zoned, serviced sites adjacent to DART stations. Low densities as indicated in the Core Strategy on such urban sites would not be considered acceptable by An Bord Pleanala and would most probably be refused planning permission.

The Core Strategy by proposing densities of c. 30 units per hectare is underproviding for the required density in Howth in terms of their own Development Plan and also in terms of current National Guidance in the form of the National Planning Framework and the RSES.

Public/Elected Representative Expectations

The Core Strategy is the official public document produced by the Council which indicates the expected number of residential units in a particular area of the County. The proposed Variation to the Core Strategy gives the citizens and elected representatives of Howth an unrealistic expectation of the numbers of residential units that could be achieved on zoned, serviced development sites in Howth based on the principals of sustainable planning.

This is evident in the observations that have been submitted by local residents and public representatives in Howth in relation to the Claremont and Rennie Place SHD applications. Yet the

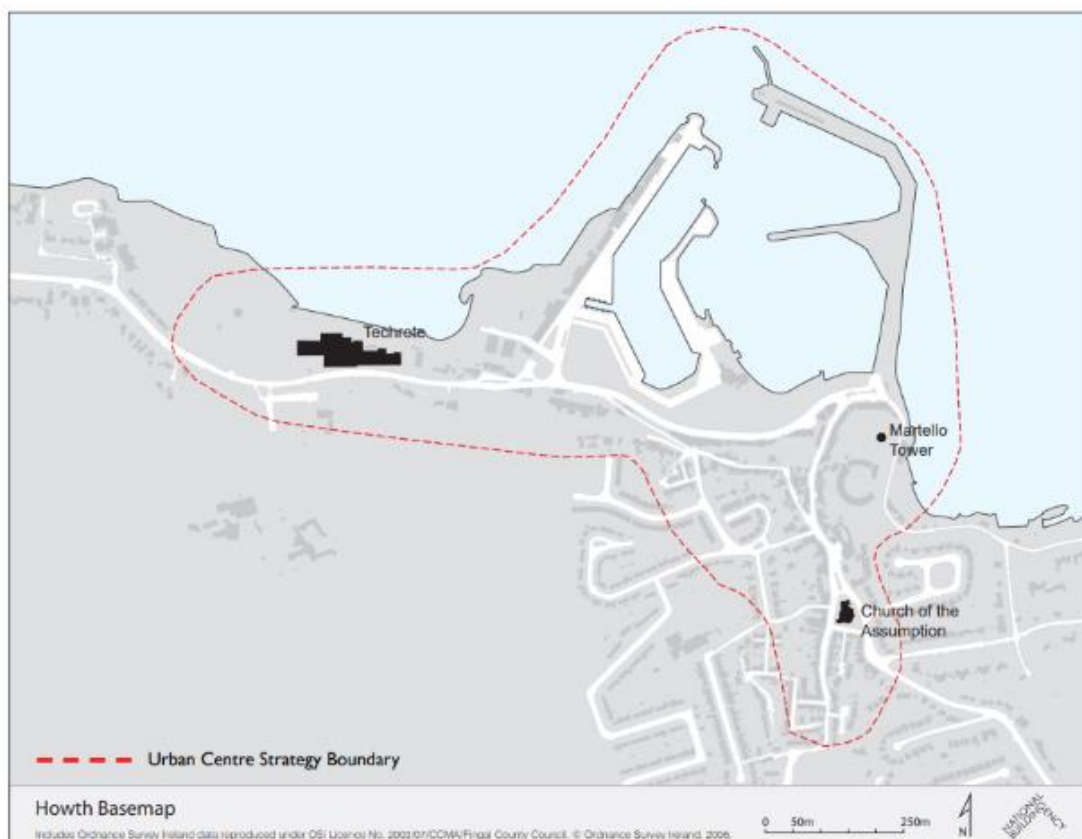
applications lodged in Howth are wholly in compliance with National Policy for densification of urban sites close to public transport.

As mentioned previously, in April 2020, it is expected that the 2 no. SHD planning applications for 689 no. units in Howth will be approved by An Bord Pleanála. This will be 38% higher than the 436 no. units indicated in the Variation of the Core Strategy.

We consider that the Variation to the Core Strategy should aim to be clear for the ordinary citizen so that they know what to expect in relation to new residential development in a particular area. This would remove ambiguity from the planning process.

Howth Urban Centre Strategy, December 2008

We would like to re-iterate that the development of Howth is 'Plan Led', through both the Fingal Development Plan and the Howth Urban Centre Strategy which was published in December 2008. The plan does not limit the number of residential units that can be permitted in Howth. In the Howth Urban Centre Strategy, the Techrete site is indicated as Opportunity Site 1. At the time of publication, a circular apartment scheme was indicated on the Balscadden Road Site (See Figure 4).



Map 1.1 Map of Howth delineating strategy boundary

Figure 4 – Extract from Howth Urban Centre Strategy – Map 1.1



This proposed an apartment scheme which was never implemented. Nevertheless, it is clear that there is a clear plan for the development of Howth Urban Centre. The development of the Urban Centre is Plan Led and planning permissions should not be limited because permissions do not necessarily lead to build out. The plan does not cap the amount of residential units that could be achieved on the site.

Practical Implications of Limiting Residential Units for Howth based on ‘Units Permitted’

There are practical implications of under-providing residential units in Howth as per Table 2.8 of the Variation. If the 2 no. Strategic Housing Development applications which are currently before An Bord Pleanála are approved, this will take up all of the housing allocation for Howth until 2023.

An Bord Pleanála are in a position to approve such Strategic Housing Developments, comprising schemes of over 100 units, which are accompanied by A Statement of Material Contravention. However, Fingal County Council are not in the same position. The Council are not permitted to contravene their own Development Plan. The Core Strategy forms part of the Development Plan.

Potentially, any housing application in Howth, which is lodged directly to Fingal County Council following the approval of the 2 no. SHD applications could be materially contravening the Development Plan. The Council must refuse such applications, and then it will be a decision of An Bord Pleanála.

This situation leads to ambiguity for any potential applicant applying for planning permission in Howth, even for 1 house, for both the applicant and the Council. National Policy promotes densification of our urban areas, not artificial restrictions, based on unrealistic figures as seems to be supported by the current Variation to the Core Strategy.



Conclusion

We would respectfully ask the Council to consider this submission and to amend Table 2.8 to ensure a minimum number of residential 'units permitted' rather than a maximum number, thus allowing for a realistic residential target to be indicated for Howth.

If you have any queries in relation to this submission, please don't hesitate to contact the office.

Yours Sincerely



Laura Finn
Senior Planner
Tom Phillips + Associates



Appendix 1

Statement of Material Contravention for Claremont SHD

Statement of Material Contravention with Fingal County Development Plan 2017-2023

In respect of

**Lands at Claremont,
Howth,
Dublin 13**

Prepared by

John Spain Associates

On behalf of

Atlas GP Limited

December 2019



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1.0 INTRODUCTION

1.1. This statement is provided as the proposed development materially contravenes a number of policies in the *Fingal County Development Plan 2017-2013*. However, though the application may materially contravene certain development plan policies, this does not preclude An Bord Pleanála from granting planning permission for the proposed development, as the Board is legally entitled to, in particular circumstances. This statement outlines the justification for this proposed development.

1.2. The circumstances that apply that allow An Bord Pleanála materially contravene a development plan are set out in Section 37(2)(b) of the *Planning and Development Act, 2000*, as amended:

“2) (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”.

1.3. As this application is being made under to the Strategic Housing Division of An Bord Pleanála, it is slightly more constrained than in an ordinary planning appeal under Section 37 (2)(b) as the *Planning and Development (Housing) and Residential Tenancies Act 2016* states under Section 9 (6) (a):

“(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.”

1.4. There is no material contravention in relation to the zoning of the land, which is for town centre use.

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- 1.5. An Bord Pleanála may consider that the proposed development may materially contravene the core settlement strategy for Fingal County Council for the Howth area, as it appears the proposed development provides for additional housing units over and above the core strategy target. Policy SS02 requires that all proposals for residential development are to be consistent with the settlement hierarchy.

Objective SS02;

“Ensure that all proposals for residential development accord with the County’s Settlement Strategy and are consistent with Fingal’s identified hierarchy of settlement centres.”

- 1.6. In the settlement strategy, Howth is in the second highest tier within the metropolitan area. It is a Consolidation Area within the Gateway. The plan states that:

“the policy approach in these areas will be to gain maximum benefit from existing transport, social, and community infrastructure through the continued consolidation of the city and its suburbs. Future development will happen in a planned and efficient manner utilising opportunities to achieve increased densities where appropriate.”¹

Table 2.8 of the plan attributes a potential of 498 housing units for Howth, predicated on the development of 16 ha. There is already a consented scheme for 163 dwelling units in Balscadden in Howth. It may appear that the proposed development combined with that permission exceeds the development plan by circa 330 units. In addition, the developer of that site, a sister company of the applicant for this permission, intends to make a new application for permission for a revised design for 177 dwelling units. This proposed development combined with any such permission, if granted, would also likely exceed the development plan by circa 344 units.

- 1.7. The proposed development rises to a maximum of 24.25m, 8 no. storeys at the western end of the site. The proposed height of the development may be considered by An Bord Pleanála to be a material contravention of Local Objective 108 in Appendix 6 in the Fingal County Development Plan 2017-2023:

“Development shall be between three and five storeys. The three storey aspect of the development shall be on the western side of the site and a maximum of 30% of the overall development shall be five storeys.”

- 1.8. This Statement of Material Contravention will outline the justification under which An Bord Pleanála can grant planning permission for the proposed development, should it conclude that the proposed development materially contravenes the development plan, under both Section 9 (6) (a) of the *Planning and Development (Housing) and Residential Tenancies Act 2016* and in Section 37(2)(b) of the *Planning and Development Act, 2000*, as amended.

2.0 JUSTIFICATION

Settlement Strategy

- 2.1. Fingal County Council's Settlement Strategy is set out in the *Fingal Development Plan 2017 - 2022*. The development plan based its housing and population targets on the *National Spatial Strategy 2002-2020* and the *Regional Planning Guidelines for the Greater Dublin Area, 2010 – 2022*. Both documents have since been superseded by *Project Ireland 2040: The National Planning Framework* and the *Regional Spatial and Economic Strategy 2019*. As the population projections in these documents are higher than the targets set out in the current Fingal Development Plan, 2017 – 2022, these targets are now out of date and underestimate the amount of housing required to house the future population of the wider Dublin Metropolitan area. Section 37 (2) (b) allows An Bord Pleanála to materially contravene a policy of the development plan where the regional planning guidelines of the area conflict with the policy in the development plan. It occurs in this instance. The council's core strategy is to be reviewed following this new regional policy.
- 2.2. The Settlement Strategy anticipates that in the 16ha of lands available for residential development, there is potential for 498 residential units. The proposed development will exceed this target. There is already a consented scheme for 163 dwelling units in Balcadden in Howth. It may appear that the proposed development combined with that permission exceeds the development plan by circa 330 units. In addition, the developer of that site, a sister company of the applicant for this permission, intends to make a new application for permission for a revised design for 177 dwelling units. This proposed development combined with any such permission, if granted, would also likely exceed the development plan by circa 344 units.
- 2.3. We respectfully suggest that this increase in units over and above the core strategy is appropriate given Howth's strategic location in regional terms, of being within the Dublin City & Suburbs area.

Eastern and Midlands Regional Authority *Regional Spatial and Economic Strategy 2019*:

- 2.4. *RPO 4.3: 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 co-ordinated with the delivery of key water infrastructure and public transport projects.*

Settlement Strategy

- 2.5. *Dublin City and Suburbs: Support the consolidation and re-intensification of infill, brownfield and underutilised lands with 50% of all new homes to be provided in the existing built up area of Dublin City and Suburbs in tandem with the delivery of key infrastructure to achieve a population of 1.4 million people by 2031.*
- 2.6. *"For urban-generated development, the development of lands within or contiguous with existing urban areas should be prioritised over development in less accessible locations. Residential development should be carried out sequentially, whereby lands which are, or will be, most accessible by walking, cycling and public transport – including infill and brownfield sites – are prioritised."*

2.7. Howth is located in the “Dublin City and Suburbs” area in regional terms. Local Objective 108 would in effect result in the underutilisation of a brownfield site close to public transport. The Local Objective conflicts with regional policy and An Bord Pleanála may grant permission in such a situation.



Figure 2.1. Settlement Strategy. Source: Regional Spatial and Economic Strategy

Local Objective 108

- 2.8. The site has a Local Objective: *“Development shall be between three and five storeys. The three storey aspect of the development shall be on the western side of the site and a maximum of 30% of the overall development shall be five storeys.”* The proposed development reaches eight storeys in height, with its higher elements located at the western end of the site.

National Policy

- 2.9. The restriction on height in this location, proximate to the DART station has the effect of limiting density and the number of residential units that can be provided on site. National policy supports higher density development in locations proximate to high quality public transport. National Strategic Objective 1 of the *Project Ireland 2040: The National Planning Framework* requires compact growth. The Local Objective would militate against the achievement of this National Strategic Objective. Therefore, it is open to An Bord Pleanála to materially contravene the development plan to permit the proposed development, should it consider that the proposed development is in accordance with national policy.

- 2.10. Objective 13 of *Project Ireland 2040 National Planning Framework* states that:

“In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria enabling alternative solutions that seek to achieve well-designed high quality and safe outcomes in order to achieved targeted growth and that protect the environment”.

- 2.11. In response to objective 13 of the *Project Ireland 2040 National Planning Framework*, the proposed development will provide for increased heights and densities in a high-quality urban design to achieve targeted growth of the area. The proposed development will also provide for reduced car parking standards at a ratio of 0.7 spaces per unit given the location of the site and in particular adjacent to a public transport hub. The proposed development is in accordance with national policy.

- 2.12. *Project Ireland 2040 National Planning Framework* also states that *“to avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas”*. Objective 35 states that it is an objective to;

*“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**”.*

- 2.13. The proposed development is in accordance with national policy and Local Objective 108 restricts the achievement of national policy. Therefore, An Bord Pleanála may materially contravene the local objective in this instance.

Section 28 Guidelines and Statutory Requirements

2.14. Section 28 (1) of the Planning and Development Act states that:

“The Minister may, at any time, issue guidelines to planning authorities regarding any of their functions under this Act and planning authorities shall have regard to those guidelines in the performance of their functions”.

2.15. It is therefore the duty of the planning authority and the Board to have regard to the Section 28 Ministerial Guidelines in applying their functions under legislation. The guidelines contain a number of SPPRs. Section 28(1)(C) of the 2018 Act states that:

“Without prejudice to the generality of subsection (1), guidelines under that subsection may contain specific planning policy requirements with which planning authorities, regional assemblies and the Board shall, in the performance of their functions, comply”.

2.16. Where they conflict with the provisions of the development, the Board is required by Section 9(3)(a) and (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016 to apply specific planning policy requirements instead of the development plan:

(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.

Pending any such amendment, the Board is entitled to grant permission for development that complies with the requirements of Section 28. Indeed, it has a duty to materially contravene the local objective where it conflicts with Specific Planning Policy Requirements. The Specific Planning Policy Requirements are set out below.

Section 28 Guidelines – The Urban Development and Building Height Guidelines 2018

2.17. The *Urban Development and Building Height Guidelines* were adopted on 7th December 2018 under Section 28 of the Planning and Development Act 2000. The Guidelines set out 4 no. specific planning policy requirements (SPPR) objectives for the assessment of building height. An Bord Pleanála is required to assess the proposed development having regard to these SPPRS and not limit its assessment to Local Objective 108.

2.18. In this case, the Section 28 Guidelines specifically promote the increase in building heights in appropriate urban locations and as such the policies set out in the Guidelines should be applied to the site in this regard. Section 1.14 of the Guidelines clarifies this position further stating:

*“Accordingly, where SPPRs are stated in this document, they take precedence over any conflicting policy and **objectives** of development plans, local area plans and strategic development zone planning schemes”.*

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- 2.19. Where a development plan, such as the Fingal County Development Plan, pre-dates the 2018 Guidelines then SPPR 3 sets out the circumstances in which the Board may grant permission notwithstanding the existence of specific objectives that indicate otherwise.
- 2.20. The subject lands are also located adjacent to a public transport corridor in the context of the densities required under the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* (2009). These areas are defined as being located within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station.
- 2.21. The category of accessible urban location classified as being located within 10 minutes walking distance of a high capacity urban public transport stop bus service is also further clarified in the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018* which states that these specific locations are suited for high density apartment development with car parking wholly eliminated or substantially reduced.
- 2.22. National policy which promotes increased densities at well-served urban sites, and discourages universal height standards in certain urban areas, such as the subject site.
- 2.23. The *Urban Development and Building Height Guidelines 2018* set out national planning policy guidelines on building heights in urban areas in response to specific policy objectives set out in the *National Planning Framework* and *Project Ireland 2040*.
- 2.24. The *Urban Development and Building Height Guidelines 2018* in effect put in place a presumption in favour of higher buildings at public transport nodes. The guidelines state that it is Government policy to promote increased building height in locations with good public transport services.
- 2.25. The *Urban Development and Building Height Guidelines 2018* emphasise the policies of *Project Ireland: 2040 The National Planning Framework* to greatly increase levels of residential development in urban centres and significantly increase building heights and overall density and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level.
- 2.26. The *Urban Development and Building Height Guidelines 2018* also state that the implementation of the *Project 2040 National Planning Framework* requires increased density, scale and height of development in town and city cores with an appropriate mix of uses. The site is part of the Town Centre zoning for Howth. These guidelines state that “to meet the needs of a growing population without growing our urban areas outwards requires more focus in planning policy and implementation terms on reusing previously developed “brownfield” land, building up urban infill sites (which may not have been built on before) and either reusing or redeveloping existing sites and buildings that may not be in the optimal usage or format taking into account contemporary and future requirements”. This is a brownfield site; there is a significant housing crisis and the site is suitable for increased scale.
- 2.27. The *Urban Development and Building Height Guidelines 2018* also place significant emphasis on promoting development within the existing urban footprint utilising the existing sustainable mobility corridors and networks.

“In order to optimise the effectiveness of this investment in terms of improved and more sustainable mobility choices and enhanced opportunities and choices in access to housing, jobs, community and social infrastructure, development plans must actively

plan for and bring about increased density and height of development within the footprint of our developing sustainable mobility corridors”.

- 2.28. It is stated in the *Urban Development and Building Height Guidelines 2018* and Section 9(3)(a) and (b) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the SPPRs take precedence over any conflicting policies and objectives of development plans, local area plans, and strategic development zone planning schemes. Where such conflicts arise, such plans / schemes need to be amended by the relevant planning authority to reflect the content and requirement of these guidelines and properly inform the public of the relevant SPPR requirements. Pending any such amendment, the Board is entitled to grant permission for development that complies with the requirements of the Guidelines and the policies of the National Planning Framework.
- 2.29. The *Urban Development and Building Height Guidelines 2018* also state that *“the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights”.*
- 2.30. The proposed development is located at a strategic location next to an existing public transport hub. The proposed development is located on a key gateway site at the western side of Howth, on Howth Road. The proposed development therefore represents an opportunity to provide for a landmark feature at this location.
- 2.31. The proposed development ranges in height up to 8 no. storeys and exceeds the site-specific building height limit as set out in the development plan. However, given the context of the proposed development and the location of the subject site adjacent to quality public transport services it is considered that the proposed development is capable of achieving greater heights at this location.
- 2.32. The increase in height at this location provides for good urban design principles and frames the location of the subject site at a key position in the area. The proposed development is therefore in accordance with the planning policy objectives both nationally and locally.
- 2.33. SPPR 3 notes that where the applicant sets out compliance with the criteria for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise. We believe that we have done so in the application and as set out below.
- 2.34. SPPR 3 (A) states:
- “It is specific planning policy requirement that where:*
- 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and*
 - 2. the assessment of the planning authority concurs, taking account of the wider strategic 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, local area plan or planning scheme may indicate otherwise”.*

2.35. The *Urban Development and Building Height Guidelines 2018* set out the criteria for developments at the scale of the relevant city / town as follows:

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

The subject site is located adjacent to Howth DART station which provides a frequent service on the DART network.

2.37. *“Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into / enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.”*

The subject site is located outside of the designated Architectural Conservation Area of Howth Castle and St. Mary’s Church. The current condition of the site is poor and in need of regeneration.

The application is accompanied by a Landscape and Visual Impact Assessment (LVIA) by The Paul Hogarth Company. The LVIA finds that the impacts of the proposed development are generally moderate. Where the impact is more significant is on approach to the site from the Howth Road from the west. The changes are described as inherently notable, as to be expected. However, these are deemed positive due to the current buildings on site. The proposed development will be visible from Muck Rock, a protected view at a height with panoramic views over Howth, Dublin city, and Dublin Bay. However, it will be another example of human intervention in the landscape.

The Paul Hogarth Company undertook a comparison with the permitted apartment development, as this is an extant permission on the site. The purpose of the comparison is to evaluate the proposed development with its permitted alternative to ascertain which would be the better development from a Landscape and Visual Impact perspective.

While the increase in height is acknowledged, the perception of this increase was negligible in the majority of views assessed. The layout, design and finishes are considered more positive than the permitted scheme; particularly the visual permeability of the finger blocks and strong road frontage at the Howth Road rather than the wider blocks of the apartment permission.

2.38. The *Conservation Assessment* prepared by Historic Building Consultants find that:

“The examination of the potential impact of the proposed development on architectural heritage has shown that the effect would range from no impact to moderate impact. The placing of a new development within an area that has been zoned for development will always result in changes to the character of the area. The key issue is whether these changes are within acceptable limits and in this instance the analysis has shown that the impacts would be in keeping with emerging trends and would not have damaging effects on architectural heritage.” Page 20.

2.39. *“On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale*

and form to respond to the scale of adjoining developments and create visual interest in the streetscape.”

The proposed development will provide for a high-quality architectural development that will respond to and reflect on the existing and permitted development in the area. The proposed development will create a focal point at this location marking the entry into Howth village. The proposed height will respond on all site boundaries to the existing and permitted development.

The proposed development will create a sense of place that is inviting to the wider community and proposed future occupants.

The proposed development will provide for ground floor creche, retail, café and restaurant use which will further enhance the area and promote activity and a sense of place for the locality at this location.

The proposed development will significantly improve the quality of the street frontage along Howth Road and will provide for a quality public realm area which is currently significantly lacking at this location. The proposed development will provide for new public walkways and open spaces that will add to the sense of place and make a positive contribution to the overall structure, form and connectivity of the development.

These guidelines further set out the criteria for developments at the scale of district/ neighbourhood / street context as follows:

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

The proposed development ranges in height from east to west and south to north. The range in building heights takes account of the surrounding context of development. The reduced height of the Howth Road responds to the existing properties in the area and provides for an appropriate transition in heights from the existing 2 no. storey residential and commercial buildings and the higher elements located further north.

- 2.41. *“The proposal avoids long, uninterrupted walls of building in the form of perimeter blocks or slab blocks with materials / building fabric well considered;”*

The proposed development is set out in four separate blocks which will allow for a high level of visual permeability. The design offers variety and interest in the elevations by providing varying height and features to enhance the architectural quality of the building. The materials and finishes of the proposed blocks will be designed to a high architectural standard. The proposed development ranges in building heights along each boundary in response to the existing features surrounding the subject site. The variation in the building heights provides for visual interest to the development and avoids a monolithic visual appearance.

The materials and finishes have also been considered with regard to the surrounding existing pattern of development and material palette in the locality. The duplex units fronting onto Howth Road will be finished in brick, echoing the private dwelling and former Station Master’s House at the eastern end of the site.

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

and enclosure while being in line with the requirements of the Planning System and Flood Risk Management Guidelines for Planning Authorities 2009;”

The proposed development provides for an appropriate urban edge to Howth Road. The proposed height and scale of the development represents good quality urban design principles and provides for a quality street frontage at this location.

- 2.43. *“The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrated in a cohesive manner.”*

The proposed development significantly enhances the public realm and street frontage at this location. The provision of ground floor own-door duplex units creates a strong urban design character and vitality to Howth Road.

The proposed development significantly improves the pedestrian quality of the area and creates an appropriate use of the subject site by providing active residential, creche, retail, café and restaurant uses at ground level with high quality residential accommodation on the upper levels.

- 2.44. The guidelines lastly set out the following criteria for developments at the scale of the site / building:

- 2.45. *“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.”*

A daylight / sunlight assessment has been prepared by J.V. Tierney & Co. and is submitted with this application. The report assesses a variety of different unit types and uses within the development. The proposed internal layout has been carefully considered with regard to the best possible results for daylight / sunlight levels. The orientation of the room layout has been carefully considered to ensure that the best amenity value is obtained for the residents.

The communal areas have also been assessed as part of this application. The report indicates that more than 50% of these areas receive sunlight for more than 2 hours a day.

As such it is respectfully submitted that the proposed development has been carefully designed as to maximise access to natural daylight, ventilation and views and to minimise overshadowing and loss of light.

- 2.46. *“Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlines in guides like the Building Research Establishment (BRE)’s ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2;2008 – ‘lighting for Buildings – Part 2; Code of Practice for Daylighting’.”*

As mentioned above, a daylight / sunlight analysis has been prepared and is submitted with this application. The design, form and layout have been informed by achieving the best possible results for daylight / sunlight within the development and the surrounding properties. The guidelines also note that:

“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 to an effective urban design and streetscape solution”.

- 2.47. In some instances, certain rooms do not achieve the recommended guidelines target for Average Daylight Factor as noted in the BRE Guidelines. At these locations, compensatory design solutions have been introduced to improve the overall quality of these units. The design mitigation measures included increases to the level of glazing to the unit and fenestration on the façade to provide for greater levels of light to be obtained within the unit. In addition, in some cases the layout of the units have been revised to relocate the balconies to allow greater levels of light penetrate directly into the living spaces of the units. It is considered that these compensatory design measures improve the overall quality of the units and thereby enable the wider planning objectives to be achieved such as increased heights and densities at this location.
- 2.48. The proposed development provides for a range of building heights adjacent to a public transport hub, with extensive sea frontage, beside Baltray Park and within walking distance of a substantial parkland area, Howth Castle Demesne.
- 2.49. It is respectfully submitted that the proposed development complies with the criteria set out in Section 3.0 of the *Urban Development and Building Height Guidelines 2018* and takes account of the wider strategic and national policy parameters set out in *Project Ireland 2040 National Planning Framework*. The provision of residential development at this location up to 8 no. storeys is supported by the height guidelines which encourages increased density and building heights. The proposed development complies with such objectives therefore is to be considered in accordance with the provisions of national policy guidelines.
- 2.50. The role of the *Urban Development and Building Height Guidelines 2018* for Planning Authorities is to ensure the sustainable delivery of new development throughout the country.
- 2.51. The *Urban Development and Building Height Guidelines 2018* provide guidance on the core principles of urban design when creating places of high quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality design in their policy documents and in their development management process. In this regard, the Guidelines are accompanied by a Design Manual discussed below which demonstrates how design principles can be applied in the design and layout of new residential developments, at a variety of scales of development and in various settings.
- 2.52. The *Urban Development and Building Height Guidelines 2018* reinforce the need to adopt a sequential approach to the development of land and note in Section 2.3 and *‘the sequential approach as set out in the Department’s Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities...’*.
- 2.53. It is respectfully submitted that the proposed development complies with the criteria set out in Section 3.0 of the *Urban Development and Building Height Guidelines 2018* and takes account of the wider strategic and national policy parameters set out in *Project Ireland 2040 National Planning Framework*. The provision of residential development at this location up to 8 no. storeys is supported by the height guidelines which encourages increased density and building heights. The proposed development complies with such

objectives therefore is to be considered in accordance with the provisions of national policy guidelines.

3.0 CONCLUSION

- 3.1 It is respectfully requested that An Bord Pleanála have regard to the justification to materially contravene the settlement strategy of the county development plan which limits housing in Howth to 498 housing units on the basis of the national planning framework, and recently adopted regional policies. Local Objective 108 limits height on the site. Section 28 Government Guidelines, the *“Urban Development and Building Height Guidelines 2018”* enable increased building height on sites adjacent to public transport hubs and within existing urban areas. These policies apply to the site, notwithstanding the Local Objective to limit height – in particular SPPR 3.
- 3.2 The proposed development is an application being made under the Strategic Housing Division of An Bord Pleanála. The government considers that the provision of housing is of national, strategic importance and it has established this very planning process to enable strategic housing applications (developments in excess of 100 residential units or more and other large scale housing type developments). As the proposed development is of strategic importance, then this is the type of development that An Bord Pleanála is facilitated to materially contravene development plan policies to permit.
- 3.3 It is respectfully submitted that An Bord Pleanála that there is sufficient national policy, ministerial guidelines and regional policy to overcome the development plan policy and objective. An appropriate justification is set out within this statement demonstrating that the proposed development should be considered for increased building heights due to the location of the subject site, the overall context of the development adjacent to quality public transport corridors and the policies and objectives set out within Section 28 Guidelines.
- 3.4 An Bord Pleanála are required to consider the redevelopment of brown field sites close to public transport and have regard instead to performance criteria to test the appropriateness of the height of a development. This application the proposed development can meet national objectives and pass the performance criteria set out therein.
- 3.5 The proposed development is a high quality, mixed use development, appropriate to its town centre location and designed to acknowledge the sensitive landscape in which it is located. It would be entirely appropriate to materially contravene the development plan to grant permission for this proposed development.

ⁱ Fingal Development Plan 2017-2013: Page 45



Appendix 2

Statement of Material Contravention for Rennie Place SHD



MATERIAL CONTRAVENTION STATEMENT

With Fingal County Development Plan 2017 - 2023

Rennie Place Strategic Housing Development (SHD) Application at the Former Baily Court Hotel, Main Street, and at lands located south of the Martello Tower on Balscadden Rd., Howth, County Dublin

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1.0 Introduction

Prior to submitting this application, the Applicant had to consider whether the proposed development materially contravened the Fingal County Development Plan (2017-2023) in order to comply with the requirement under Section 8 of the Planning and Development (Housing) and Residential Tenancies Act 2016 ('the 2016 Act') that the statutory newspaper notice state:

“where the proposed development materially contravenes the said plan other than in relation to 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,...”

The Applicant has identified one aspect of the proposed development that raises the issue of material contravention which is that:

The core strategy for Howth indicates a figure of 498 potential residential units. As well as this current application for 177 units, there is a concurrent application running on the Former Techrete site in Howth which is proposing 512 units. Depending on which application is approved first, this could potentially result in a material contravention of the Development Plan in relation to the core strategy.

2.0 Description of Development

Crekav Trading GP Limited intend to apply for Planning Permission for a strategic housing development at this site at the Former Baily Court Hotel, Main Street, and at lands located south of the Martello Tower on Balscadden Rd., Howth, County Dublin, all on a site measuring c. 1.55 ha (net).

The development will consist of:

- The demolition of existing structures on site including the disused sports building (c. 604 sq m) on the Balscadden Rd. Site and the Former Baily Court Hotel Buildings on Main St (c. 2051 sq m).
- Construction of 177 no. residential units in 3 no. separate apartment blocks and 1 mews building ranging in height from 2 – 5 storeys, comprising 171 no. apartments and 6 duplexes which includes 44 no. 1 bed units, 103 no. 2 bed units and 30 no. 3 bed units.
- Balconies/winter gardens/terraces to be provided on all elevations at all levels for the 3 no. apartment blocks. Roof Gardens will be provided on Block C.
- Provision 406 no. private bicycle parking spaces and a total of 146 no. car parking spaces, which comprises 112 no. spaces in an underground basement in Block C, 26 spaces in a podium car park in Block B and 8 no. on-street parking spaces.



- Provision of commercial/retail space (c. 757 sqm), which includes a community room (c. 161sqm), 2 no. retail units (c. 429sqm and c. 96sqm) and a café (c. 71sq m).
- The main vehicular entrance to the scheme will be from Main Street to serve the underground car park in Block C. A secondary vehicular entrance from Balscadden Road will access the podium parking in Block B.
- The scheme provides for a new linear plaza which will create a new pedestrian link between Main St and Balscadden Rd to include the creation of an additional 2 no. new public plazas and also maintains and upgrades the pedestrian link from Abbey Street to Balscadden Road below the Martello Tower. The public footpath on the opposite side of Balscadden Road will be widened for the length of the site as part of the development.
- All other ancillary site development works to facilitate construction and the provision of the basement car park, site services, piped infrastructure, a sub-station, public lighting, plant, bin stores, bike stores, boundary treatments and hard and soft landscaping. It is proposed to reduce the ground levels on the site from c. 35.0m OD to c. 20.0m OD. The basement car park of Block C is proposed at c. 17.0m OD. Excavation will range from 0m to up to c. 18m in depth to facilitate the construction of the development and basement car park. This equates to c. 78,000m³ of material to be removed from site in total.
- Commercial and retail signage (c. 75 sqm).



3.0 Planning Context

This statement outlines the justification for the proposed residential development at the Former Baily Court Hotel, Main Street, and at lands located south of the Martello Tower on Balscadden Rd., Howth, County Dublin, which could potentially materially contravene the Fingal County Development Plan 2017 - 2023 in terms of Core Strategy. The Development Plan provides a total residential capacity of 498 units for the Howth area (See Table 2.8 below). The planning application on the subject site provides for 177 no. residential units.

It must also be brought to the Bords attention that an application has been lodged for pre-application to An Bord Pleanála under the SHD process on the former Techrete Site which is located on The Howth Road, Howth. The 'Techrete' site is currently proposing 512 no. residential units (An Bord Pleanála, File Ref PL06F.304637). If this current application for 177 no units and the application on the former Techrete site are approved, the extent of residential units granted in Howth on just these two sites will be in the region of c. 689 no. units. As these two applications are running concurrently, it is not yet determined which application will be approved first, hence the proposed development could potentially be a material contravention of the Core Strategy of the Development Plan.

Table 2.8 Total Residential Capacity provided under the Fingal Development Plan 2017-2023

Town/Village	Land Supply (hectares)	Potential Residential Units
Consolidation Towns		
Swords	514	15,828
Blanchardstown	329	11,757
Consolidation Areas within the Gateway		
Malahide	88	1114
Portmarnock	57	1490
Howth	16	498
Baldoyle/Sutton	29	1498
Other Settlements*	80	2791

Source: Extract from Fingal County Development Plan 2017 – 2023, Table 2.8, pg. 38

4.0 Justification

It is respectfully requested that An Bord Pleanála have regard to the following justification for a material contravention of the development plan in terms of core strategy on the basis that the policies and objectives stated in the Section 28 of the Planning and Development Act 2000, as amended Government Guidelines, in particular in relation to;



- Guidelines for Planning Authorities on Sustainable Residential development in Urban Areas (2009);
- Urban Development and Building Heights Guidelines for Planning Authorities (2018);
- The National Planning Framework 2040 (NPF);
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018);
- Eastern and Midland Regional Assembly, Regional Spatial & Economic Strategy, 2019 - 2031 (RSES)

These guidelines enable increased building height and residential densities on sites adjacent to quality public transport routes and within existing urban areas. Therefore, the proposed development should be considered by An Bord Pleanála even if the proposed development contravenes materially the Development Plan relating to the area. In relation to public transport, the site is located within a ten minute walk (c. 800m) of Howth DART station and a one minute walk of a bus stop to Dublin City. The subject lands are located adjacent to 'Public Transport Corridors' in the context of the densities required under the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009). These areas are defined as being located within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station.

Restricting the density of the development at such a well-served location under the Development Plan is not supported by National policy which promotes increased densities at well served urban sites.

The National Planning Framework in relation to National Policy Objective (NPO) 34 states that:

'Historically, low-density housing development has been a feature of Ireland's housing landscape in cities, towns, villages and the countryside. To avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas. The infill/brownfield targets set out in NPOs 3a, 3b and 3c of this Framework will necessitate a significant and sustained increase in urban housing output and apartment type development in particular, if we are to avoid a continuation of the outward expansion of cities and larger urban areas..... To more 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. This means that apartments will need to become a more prevalent form of housing, particularly in Ireland's cities.'



Objective 3a of the National Planning Frameworks stresses the need to

‘Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements’.

Objective 13 further states 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.”.

Objective 35 of the National Planning Framework continues to stress the importance of increased density stating:

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

In addition, the site is defined as an intermediate urban location as part of the Sustainable Urban Housing: Design Standards for New Apartments (Guidelines for Planning Authorities). These are defined as follows:

“Such locations are generally suitable for smaller-scale (will vary subject to location), higher density development that may wholly comprises 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.*

Section 2 of the Urban Development and Building Height Guidelines states that the implementation of the NPF requires increased density, scale and height of development in town and city cores, including an appropriate mix of both the living, working, social and recreational space we need in our urban areas.

Paragraph 2.3 states that whilst achieving high density does not automatically and constantly imply taller buildings alone, increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability. Paragraph 2.11 states that areas, particularly those in excess of 2 hectares should be accompanied by an appropriate master-planning exercise.

The Regional strategy (RSES) focuses on contained growth and reduced sprawl by targeting infill and brownfield lands in existing built up areas. This involves sustainable development patterns which promotes compact growth, reduce transport demand and encourage low carbon transport modes. A regional strategic outcome as indicated in Chapter 2.3 is for Compact Growth and Urban Regeneration to;

‘Promote the regeneration of our cities, towns and villages by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and employment choice for the Region’s citizens. (NSO 1)’

The plan promotes;

‘compact urban growth to realise targets of at least 50% of all new homes to be built, to be within or contiguous to the existing built up area of Dublin city and suburbs and a target of at least 30% for other urban areas.’

It is clear that National Policy is promoting increased density in appropriate locations within existing urban centres and along public transport corridors. As such it is submitted that the density proposed in the current scheme is in line with government guidance and trends for sustainable residential developments.



The distribution of Fingal’s housing capacity on zoned residential/mixed use land in the 2017-2023 Development Plan is set out in Table 2.8. The key tenet of the overall Settlement Strategy is *‘the continued promotion of sustainable development through positively encouraging consolidation and densification of the existing urban built form – and thereby maximising efficiencies from already established physical and social infrastructure.’*

Howth has a remaining land supply of 16ha with 498 potential residential units. This equates to a density of c. 31 units per hectare. The proposed development on the subject site provides 177 units on a site of 1.55 ha. This equates to a density on the site of 114 units per hectare. It should be noted that the proposed development density of 114 units per hectare is not considered to be a material contravention of the Development Plan and would be considered to be in line with government policy in relation to maximising serviced residentially zoned land along good public transport networks.

The role of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009, is to ensure the sustainable delivery of new development throughout the country. Section 5.8 of the Guidelines in relation to Public transport corridors recommends *that;*

‘in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes’.

It is clear that it is national policy to promote increased densities in excess of 50 units per hectare on zoned lands within close proximity of public transport routes. To achieve increased density in a sustainable manner requires increased building heights through the development of well-designed apartment schemes, as has been proposed within the current development on the site.

The density of c. 31 units per hectare as indicated in the Fingal Core Strategy for Howth is considered well below the expected densities that are promoted in National Guidance for sites which are located in close proximity to public transport routes. As such it is considered that the c. 114 no. units per hectare proposed is appropriate for the subject site and in compliance with National Policy.

5.0 Material Contravention Policy Context

The Department of the Environment, Heritage and Local Government Development Management Guidelines for Planning Authorities (2007) states;

“In deciding whether any development would materially contravene the plan, the authority should consider whether there would be a departure from a fundamental provision of the plan or whether the development, alone or in conjunction with others, would seriously prejudice an objective of the plan.”



Section 9(6)(c) of the 2016 Act, sets out the circumstances in which permission may be granted for a proposed Strategic Housing Development (SHD) proposal where there is a material contravention of a provision of the Development Plan, other than land use zoning objective;

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

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

“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 (Section 37(2)(b) 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.’

In our professional planning opinion, the Applicant would acknowledge that there is a reasonable basis for concluding that the proposed development could potentially materially contravene the core strategy of the Development Plan as indicated in Chapter 2, Table 2.8 Total Residential Capacity provided under the Fingal Development Plan 2017 – 2023.

Therefore, the statutory notices for this application include a statement as follows;

“The application contains a statement indicating why permission should be granted for the proposed development, having regard to a consideration specified in section 37(2)(b) of the



Planning and Development Act, 2000, as amended, notwithstanding that the proposed development materially contravenes a relevant development plan or local area plan other than in relation to the zoning of the land.”

This Material Contravention Statement is therefore included to allow An Bord Pleanála (the competent authority for strategic housing development applications) to make a determination on this matter during their assessment of the application for permission.

Should An Bord Pleanála consider the proposal to contravene the core strategy for Howth, then it is respectfully submitted that the justification set out in Section 3 of this report would allow the Board to grant permission under section 37(2)(b) (iii) of the Planning and Development Act, 2000 (as amended).

6.0 Conclusion

As set out in Section 37(2)(b), An Bord Pleanála may materially contravene a Development Plan or Local Area Plan where national planning policy objectives take precedence. It is respectfully submitted that the justification set out within this statement clearly demonstrates that the proposed development should be considered appropriate for the subject site, due to the sites location adjacent to public transportation routes and the policies and objectives set out within the Section 28 Guidelines, regardless of the figure stated in the Core Strategy for Howth.

It is considered that given the site’s excellent locational characteristics proximate to high quality bus and DART services and an established social infrastructure, the proposed development will inherently accord with National and Regional sustainable planning principles particularly in relation to the promotion of more compact and efficient forms of urban development on brownfield sites and significantly increased residential densities in appropriate locations. This is in line with the NPF and the recently adopted Apartment Design and Building Height Guidelines, 2018. The realisation of the objectives of this national guidance necessitates facilitating residential development to a height in appropriate locations or otherwise, the requisite sustainable densities cannot be achieved.

As such it is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit a deviation from the core strategy of the Fingal County Development Plan 2017 – 2023.