

SHD Planning
Application to
An Bord
Pleanála

Material
Contravention
Statement

Proposed Strategic
Housing Development

At

Kellystown, Clonsilla,
Dublin 15

For

Castlethorn
Construction UC and
Castlethorn
Developments
(Kellystown) UC

November 2020

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1 INTRODUCTION

This statement has been prepared by Stephen Little & Associates, Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2, to address development matters that may be considered to material contravene the Development Plan, in accordance with Section 8 (1)(iv)(II) of the Planning & Development (Housing) and Residential Tenancies Act 2016.

Under Section 8(1)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016, where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the SHD application must include a statement indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2) (b) of the Act of 2000.

This statement, prepared by Stephen Little & Associates, addresses the possibility that the proposed development could be deemed by Fingal County Council or An Bord Pleanála to represent a material contravention of the Core Strategy (settlement strategy / housing allocation for Blanchardstown) of the Fingal County Development Plan 2017-2023.

However, it lies with the local Planning Authority or An Bord Pleanála to determine whether the proposed development materially contravenes the Development Plan.

2 PROPOSED DEVELOPMENT

The proposed development is described in detail in the plans and particulars that accompany this planning application, and in the planning report prepared by this office.

Briefly the development comprises **360no. residential units** (128no. houses and 232no. apartments in 3no. apartment blocks), a childcare facility, a retail unit, a public park and all associated and ancillary site development, landscaping and boundary treatment works. Building height ranges from 2 storey houses to apartment buildings of up to 8 storeys.

The proposed residential development is located on that part of the application site is zoned '**RA - Residential Area**', the objective of which is: -

"Provide for new residential community subject to the provision of the necessary social and physical infrastructure"

The remainder of the application site where a link Road and playground space is proposed is zoned '**OS - Open Space**', the objective of which is: -

"Preserve and provide for open space and recreational amenities"

The site is generally bounded by the Porterstown Road, St. Brigid's Lawn traveller halting site, St. Mochta's FC sports grounds and Diswellstown Road overpass / Dr. Troy Bridge to the east; the Dublin-Maynooth rail line, Porterstown level crossing and an existing dwelling to the north; greenfield lands to the west and south; and, Scoil Choilm Community National School and Luttrellstown Community College to the south east.

The proposed development achieves a net residential density of approximately 65 units per hectare. This is on the basis that the proposed public park, road extension to Kellystown Link Road cycleway and public road works within the red line of the application are excluded, resulting in a net development area of c. 5.6 hectares.

3 MATERIAL CONTRAVENTION

3.1 Fingal County Development Plan 2017 - 2023

3.1.1 Core Strategy

The Fingal County Development Plan 2017 – 2023 came into effect on March 2017 with the Variation No. 2 of the Fingal Development Plan 2017-2023 taking effect from 19th June 2020 and is the statutory land-use plan governing the subject site.

Chapter 2 of the Development Plan sets out the Core Strategy and Settlement Strategy requirements for the Fingal County Council Plan Area. The adopted variation sets out to achieve consistency with the National Planning Framework (NPF) which is ‘*overarching policy and planning framework for the social, economic and cultural development of our country.*’ The variation also sets out that ‘*as the economy continues to improve, it is anticipated there will be further demand for housing.*’. It is important that an adequate supply of various house types is provided.

The Development Plan must in the short-term plan for an additional 15,285 housing units. These units shall be located at appropriate locations proximate to existing settlement centre lands where infrastructural capacity is readily available, and they are along an existing or proposed high quality public transport corridor

Table 2.4 sets out the total residential capacity under the Fingal Plan 2017 – 2023 updated as of September 2019 as per Variation No. 2 (Extract of same shown under Figure 1), where Blanchardstown has a land supply of 260 Hectares capable of delivering 9,306no. residential units for the plan period.

Table 2.4 Total Residential Capacity provided under Fingal Development Plan 2017 – 2023, updated as of September 2019

Town/Village	Remaining Capacity (hectares)	Remaining Residential Units	Metropolitan Core % Land	Metropolitan Core % Units
Metropolitan Area				
Key Town				
Swords	481	14,799		
Dublin City and Suburbs				
Blanchardstown	260	9,306		
Howth	14	436		
Baldoyle/Sutton	29	1498		
Other	66.5	2,320		
Settlements*				
Other Metropolitan Areas				
Portmarnock	43	1,116		
Self Sustaining Growth Towns				
Donabate	101	3,532		
Self Sustaining Town				
Malahide	75.5	956		
Towns/Villages				
	92	844		
Total Metropolitan	1,162	34,806	76%	81%
Core Area				
Self-Sustaining Towns				
Balbriggan	134	3805		
Rush	51.5	1771		
Lusk	38	1020		
Skerries	32.7	883		
Towns & Villages				
	101	818		
Total Core	357	8,298	24%	19%
TOTAL Fingal**	1,519	43,104	100	100

*This includes Charlestown & Meakstown, Santry & Ballymun, Balgriffin & Belcamp, Baskin and Kinsaley.
 **The total number of units does not include permissions for rural ‘one-offs’ or rural clusters.

Figure 1: Total Residential Capacity provided under the Fingal Development Plan 2017 – 2023, updated as of September 2019, an extract of Table 2.4 of the Development Plan (SLA insert of the Blanchardstown Area)

A simple assessment of these figures would conclude that the approximate average density for land supply in the Blanchardstown area would be c. 35.8 units per hectare (9,306no. units divided by 260 Ha). The proposed development density of approximately 65 units per hectare, therefore, is above the density average of the Development Plan core strategy, with potential consequently to result in higher population and housing growth than anticipated by the Core Strategy.

4 JUSTIFICATION FOR MATERIAL CONTRAVENTION

The Fingal County Development 2017 – 2023 was adopted in March 2017, before the publication of the National Planning Framework (NPF), the Regional Economic and Spatial Strategies for the Eastern & Midlands (RSES) with the Variation No. 2 of the Fingal Development Plan 2017-2023 taking effect from 19th June 2020. The objectives of the Development Plan are not clear in respect of the appropriate residential density for this site. The Core Strategy would indicate average density for new residential development in Blanchardstown in the order of 36 units per hectare.

It is noted that in February 2020 the Office of the Planning Regulator, in making its recommendation in respect of the proposed variation to bring the Fingal County Development Plan 2017-2023 in line with the National Planning Framework and Regional Spatial and Economic Strategy, identified that the Council must take more robust account of national and regional strategic policy and objectives in its Core Strategy settlement hierarchy. The Council have endeavoured to address this recommendation by way of Variation No. 2, as discussed above in this report.

The proposed development at a net density of c. 65 dwellings per hectare is further justified, being compliant with Section 28 Ministerial Guidelines ('Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities, 2009'), the National Planning Framework - Ireland 2040 and Regional Economic and Spatial Strategies for the Eastern & Midlands, and the recommendations of An Bord Pleanála in its Opinion dated 1st July 2020.

The 'Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities, 2009'. (2009 Guidelines) place an emphasis on efficient use of serviced land whilst ensuring a balance is achieved and avoid over development of a site. For sites on 'Public Transport Corridors', section 5.8 of the Residential Guidelines states:

*“Walking distances from public transport nodes (e.g. stations / halts / bus stops) should be used in defining such corridors. It is recommended that increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station. The capacity of public transport (e.g. the number of train services during peak hours) should also be taken into consideration in considering appropriate densities. 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. Minimum densities should be specified in local area plans, and maximum (rather than minimum) parking standards should reflect proximity to public transport facilities.**”*

[SLA Emphasis Added]

The subject site is located both within 500 metres of a bus stop (high frequency service connecting to Dublin city centre) and within 1km of a rail station (Coolmine Station – served by high frequency, high capacity urban rail service).

We note in the context of these requirements that the National Planning Framework and Regional Economic and Spatial Strategies for the Eastern & Midlands Regional Assembly have come into effect since the making of the Fingal County Development Plan. These new national and regional policies take precedence over Local Authorities Development Plans and place an emphasis on compact urban growth.

An Bord Pleanála issued an Opinion following pre-planning consultation with the Applicant on the 1 July 2019. As part of this opinion, the Board raised density as a particular issue, in so far as:

“Further consideration and/or justification of documents as they relate to the proposed residential density, having regard to the existing and future accessibility of the site to surrounding public transport options, including existing rail stations at Coolmine and Clonsilla, any future rail stations in the Porterstown Area,

and to the nearest existing and proposed bus stops/routes. **Particular regard should be had to the criteria relating to appropriate residential density, as set out in Sustainable Residential Development in Urban Areas Guidelines (2009).** Further consideration of this issue may require amendments to the documents and/or design proposals submitted.”

[SLA Emphasis Added]

Having regard to the locational context of the subject site (including its existing/planned accessibility), and to relevant planning policy guidance as described in this report, we consider that the proposed density of c. 65 dwellings per hectare is sustainable and delivers a mix of residential dwelling types appropriate to this location. It does not prejudice the balanced delivery of sustainable density throughout the Kellystown Local Area Plan lands. For further details in this regard, we refer the Board to the accompanying Planning Report & Statements of Consistency, prepared by Stephen Little & Associates, and to the accompanying Architectural Design Statement, prepared by O’Mahony Pike Architects.

5 DISCRETION OF AN BORD PLEANÁLA TO GRANT PERMISSION FOR DEVELOPMENT THAT MATERIALLY CONTRAVENES THE DEVELOPMENT PLAN

In accordance with Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the Board may grant permission for a proposed strategic housing development that materially contravenes the Development Plan or Local Area Plan, **other than in relation to zoning.** Section 9(6)(a) states:

“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.”

Section 9(6)(c) of the 2016 Act, states that the Board may only grant permission for a development that materially contravenes a Development Plan (other than in relation to the zoning of the land) where it considers that, if section 37(2)(b) of the Planning & Development Act of 2000 were to apply, it would grant permission for the proposed development.”

Section 37(2)(b) of the Planning Act, 2000, states that where a proposed development materially contravenes the Development Plan, the Board may grant permission 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.”

6 APPLICATION OF SECTION 37(2)(B) CONSIDERATIONS TO THE PROPOSED DEVELOPMENT

We set out below our interpretation of how the Section 37(2)(b) considerations relate to the proposed development, from a planning perspective: -

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

The proposed development was deemed on foot of a pre-application request and subsequent tri-partite meeting with An Bord Pleanála and Fingal County Council, to meet the legislative definition of strategic housing development. It may therefore be deemed of strategic importance with respect to the timely delivery of urban housing and implementation of the current Government’s Action Plan for Housing and Homelessness – Rebuilding Ireland. The significant shortfall in housing output to address current and projected demand is a national problem, with lack of housing in Metropolitan Dublin and elsewhere having social and economic ramifications for sustainable national growth. We would therefore submit that the proposed development is of strategic and national importance.

As previously stated above, in February 2020 the Office of the Planning Regulator, in making its recommendation in respect of the proposed variation to bring the Fingal County Development Plan 2017-2023 in line with the National Planning Framework and Regional Spatial and Economic Strategy, identified that the Council must take more robust account of national and regional strategic policy and objectives in its Core Strategy settlement hierarchy. As previously stated above, this proposed variation took effect from 19th June 2020.

The proposed development, located on serviced, greenfield lands zoned for residential development and contiguous to the built-up area of Dublin, is considered to be in accordance with Objective 3a of the National Planning Framework. The proposed development represents the achievement of more sustainable higher residential development, in line with emerging trends for urban settlements within the Dublin Metropolitan Area. The proposal represents an increased density of development in a sustainable manner, compared to the prevailing lower densities that have previously been delivered at finite development lands in the surrounding Blanchardstown area notwithstanding the area’s connection to Dublin City by high frequency Dublin Bus and Irish Rail commuter services.

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

The proposed development meets the qualifying thresholds for strategic housing development, prescribed by current legislation.

The net residential density of the proposed development is conservatively calculated at approximately 65no. units per hectare. There is no specific residential density standard prescribed by the Fingal County Development Plan. Objective PM 41 seeks to:

“Encourage increased densities at appropriate locations whilst ensuring that the quality of place, residential accommodation and amenities for either existing or future residents are not compromised.”

The Development Plan otherwise refers to the assessment of planning applications having regard to the Sustainable Residential Development in Urban Areas Guidelines (2009) and its companion document Urban Design Manual. For sites on ‘Public Transport Corridors’, the Guidelines promote general minimum net residential densities of 50 dwellings per hectare, involving a variety of housing types. The Guidelines also advocate a design-led approach to achieving appropriate density, that meets the relevant residential amenity safeguards.

Density objectives for this site are not therefore clearly stated in the Development Plan.

6.3 (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, or

The lands at Kellystown lie within 'Dublin & Suburbs' and are identified for residential development as part of the strategic Dublin 15 residential development area in the Regional Spatial Economic Strategy (RSES). The Kellystown lands have been zoned for residential development since previous county development plans (2008).

The proposal has also been framed having regard to the tri-partite dialogue with An Bord Pleanála and Fingal County Council, at which both the National Planning Framework (NPF) and Ministerial Guidelines were cited as the basis for determining the appropriate density of development at this location.

The proposed development is considered to be consistent with current Government policy for the sustainable delivery of housing to meet population growth projections, as articulated in NPF and RSES objectives for the Dublin Metropolitan Area and settlements outside 'Dublin City and Suburbs'.

The proposed development is consistent with relevant Ministerial Guidelines for sustainable residential development, apartment design and building height in urban areas. The proposed development achieves a sustainable net density of approximately 65 units per hectare, at an underutilised site in the built-up area of Clonsilla. The scheme comprises well-designed accommodation in a good mix of dwelling types and supported by appropriate amenity open space and ancillary facilities, including a childcare facility. At the same time, it has regard to the specific site conditions, providing a clear urban block strategy with variety of building scale and typology, and integrating existing trees and hedgerows into the landscape proposals where possible.

6.4 (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 publication of the NPF, RSES and various supporting Ministerial Guidance has heralded stronger promotion of sustainable development at this site, in comparison to the prevailing densities of existing residential developments in the surrounding area.

The proposed development achieves higher density that is appropriate in the context of the particular site characteristics described above.

7 KELLYSTOWN DRAFT LAP (SEPTEMBER 2020)

We would be of the understanding that a Material Contravention Statement is not required for draft plans that have not yet been adopted. The Draft Kellystown LAP was published on 17 September 2020 and is subject of public consultation until 6th November 2020. The Kellystown LAP may ultimately be adopted, amended or rejected prior to the determination by the Board of this SHD application.

Having regard to this, we would be of the opinion that the proposed development is generally consistent with the written objectives, indicative plan and strategies of the draft LAP.

In respect of the written objectives of the draft LAP, we would however raise **Objective 8.8** for the attention of the Board, which identifies the hedgerows that must be retained save for works relating to the construction of the Kellystown Link Road. The wording of this objective appears not to allow for consideration of other conditions preventing the retention of the full extent of the existing hedgerow.

The proposed development seeks to retain the hedgerows identified in Figure 8.5 of the Draft Plan as far as possible. It may however be noted that some sections of these hedgerows are proposed to be removed to facilitate the construction of the Kellystown Link Road, the green route along the Porterstown Road and some of the proposed residential development in the western corner of the site.

The Tree File, arborist, carried out a tree and hedgerow survey of the site and have prepared a Tree Survey Report and a series of drawings describing the condition of the trees and the impacts of the development on the trees and hedgerows on site, which accompany the application. The Tree Survey contains a general comment that the hedge material on site is often of mediocre or poor quality.

The landscape rationale is provided in the Doyle O'Troithigh landscape report and supported by the EciA prepared by Scott Cawley. The issue of tree and hedgerow retention is also addressed in the LVIA prepared by Doyle O'Troithigh. We refer also to the Design Statement prepared by O'Mahony Pike Architects. The design proposals to retain the western and a substantial part of the eastern hedgerow is considered to be the most practical approach for this site, given the residential density requirements, the condition of the retained hedgerows and their landscape and biodiversity value.

Further discussion of how the proposed development responds to the requirements of Objective 8.8 of the draft LAP is provided in section 12.2.7 of the accompanying Planning Report & Statements of Consistency, prepared by Stephen Little & Associates.

In the event that the draft LAP is adopted in its current form or with further amendments, prior to the Board's determination of this SHD application, the Board may be required to consider the proposed development against the LAP in effect at that time, and its justification for any material contravention considerations that may arise, in the same manner as set out in Section 5 above.

8 CONCLUSION

On the basis of all of the reasons and considerations set out in the report above, we consider that sufficient justification is available for An Bord Pleanála to grant permission for the proposed development, notwithstanding that a material contravention of the Development Plan may occur.

STEPHEN LITTLE & ASSOCIATES

6 November 2020