



# MATERIAL CONTRAVENTION STATEMENT

PROPOSED RESIDENTIAL DEVELOPMENT ON LANDS AT BEACH ROAD, DUBLIN 4  
An Bord Pleanála Pre-Application Consultation Reference Number: ABP 308090-20



**PREPARED FOR:**

MAXOL PROPERTY LIMITED  
3 Custom House Plaza  
IFSC  
Dublin 1  
D01 VY76

**PREPARED BY:**

TOM PHILLIPS + ASSOCIATES  
80 Harcourt Street  
Dublin 2  
D02 F449

**IN ASSOCIATION WITH:**

JOHN FLEMING ARCHITECTS  
The Tree House  
17 Richview Office Park  
Clonskeagh, D14 XR82

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## 1.0 INTRODUCTION

Tom Phillips + Associates<sup>1</sup> have been instructed by Maxol Property Limited<sup>2</sup> to prepare this *Material Contravention Statement* to accompany this application for planning permission in respect of a proposed Strategic Housing Development (SHD) at Beach Road, Dublin 4.

The development is described as follows:

Maxol Property Limited intends to apply to An Bord Pleanála for permission for a strategic housing development at this c. 0.385 ha site comprising the Maxol Filling Station and a vacant motor sales/service garage (formerly Michael Grant Motors), Beach Road, Dublin 4 (Eircodes D04 A9P3 and D04 T4A0). The site is bounded by Church Avenue to the north; existing education (St Matthew's National School) and residential development to the south and west; the junction between Cranfield Place and Beach Road to the south; and Beach Road to the east.

The development will consist of: the demolition and removal of all existing buildings and associated structures above and below ground (total 1,311 sq m) and the construction of a 6-storey apartment building (with set-backs at Third, Fourth and Fifth Floor Levels) (accommodating 112 No. apartments (56 No. 1-bed and 56 No. 2-bed units) and 297 sq m communal space primarily comprising a gym, lounge, work space, bookable room, office and parcel store) over single basement level (accommodating 79 No. car parking spaces (including 2 No. car club spaces), 4 No. motorbike parking spaces, 224 No. bicycle spaces, together with ancillary areas including circulation, plant, attenuation tank, waste management storage areas, and service areas).

Vehicular and pedestrian access to the site will be from Beach Road with additional pedestrian access via Church Avenue; (the total gross floor area of the proposed development is 12,273 sq m (including basement of 2,679 sq m and a detached single storey ground floor ESB Substation/ switchroom of 25 sq m)).

The development will also consist of the provision of: private open space in the form of balconies and terraces (on the Beach Road, Church Avenue frontages and to the rear of the building on the northwestern, southeastern and southwestern facades), and semi-private and public open space at ground level; all hard and soft landscaping including boundary treatments; changes in levels; plant; PV panels; SUDs' measures including a green roof; 10 No. bicycle spaces at ground level; waste collection area; and all other associated site excavation and site development works above and below ground.

This report seeks to address the issue of potential material contravention in relation to the Height Policy contained in the *Dublin City Development Plan 2016-2022* and the reference to

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<sup>1</sup> 80 Harcourt Street, Dublin 2, D02 F449.

<sup>2</sup> 3 Custom House Plaza, IFSC, Dublin 1, D01 VY76.



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development being guided by the principles of *Site Layout Planning For Daylight And Sunlight, A Guide To Good Practice* (Building Research Establishment Report, 2011) also in the *Dublin City Development Plan 2016-2022*.



## 2.0 HEIGHT POLICY IN THE *DUBLIN CITY DEVELOPMENT PLAN 2016-2022*

This Statement provides a justification for the material contravention of the *Dublin City Council Development Plan 2016 – 2022* (hereinafter *Development Plan*) in relation to height parameters, Section 16.7.2 of the *Development Plan* includes the *Building Height in Dublin Table* (page 320), which provides the maximum permissible heights for the Low-rise, Mid-rise and High-rise areas.

As the site is not located in any of the areas earmarked for high or medium-rise development listed in the *Building Height in Dublin Table* and *Figure 39 Building Height in Dublin Context* of the *Development Plan* it is considered to be a Low-rise area. Accordingly, the following maximum height limit applies.

Category	Area	Height (m)
Low rise (relates to the prevailing local height and context)	Outer City	Up to 16 m (commercial and residential)

The proposed development is 19m in height when measured to the top of the parapet (excluding the 900mm lift overruns) and therefore exceeds the maximum height limit set out in the *Development Plan*.

The proposed building height is therefore in excess of the Development Management Standard contained within Dublin City Council’s Development Plan which sets out a maximum height allowance of 16m, which excluding plant, flues and lift overruns as long as they are set back and properly screened and do not significantly add to the shadowing or otherwise of natural light beyond that of the main structure.

However, given the specific characteristics of the subject site, its relationship with existing surrounding development and its strategic location close to existing (and proposed) public infrastructure, it is considered that additional height can be comfortably accommodated at the site, without giving rise to significant adverse planning impact.

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

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



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

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

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

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

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

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

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

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*

It is submitted that National Policy provides justification for the proposed increased density and building heights at the subject site, which is appropriately zoned, close to employment hubs and served by good transport connections.

It is, therefore, considered that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development notwithstanding the material contravention of the *Development Plan*.

It should be noted that, notwithstanding the adoption of *Urban Development and Building Heights – Guidelines for Planning Authorities* in December 2018, until such time as a *Development Plan* is varied to align with the requirements of the *Guidelines*, a material contravention is still considered to have occurred.



## 2.1 National Policy

A number of national planning policy documents and Section 28 Guidelines have been published in recent years which seek to increase residential densities on zoned serviced lands adjacent to high quality public transport corridors. These include:

- *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* (2020)
- *Project Ireland: National Planning Framework 2040* (2018)
- *Urban Development and Building Heights, Guidelines for Planning Authorities* (2018)

### 2.1.1 National Planning Framework 2040

The *National Planning Framework 2040* (hereinafter NPF) states that there is a serious need to avoid urban sprawl and the associated pressure that it puts on the environment and infrastructure demands through increasing residential densities in urban areas.

The NPF identifies the need to consolidate development in existing urban areas in order to meet the housing needs of our growing population. In line with this, National Policy 13 and 35 state:

*“National Policy Objective 13*

*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<sup>3</sup>”.*

*“National Policy Objective 35*

*Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, **area or site-based regeneration and increased building heights**<sup>4</sup>”.*

The above demonstrates that increased residential densities and building heights are vital to the achievement of national policy objectives.

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<sup>3</sup> *National Planning Framework*, 2018, p. 67

<sup>4</sup> *National Planning Framework*, 2018, p. 93

## 2.1.2 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)

The *Design Standards for New Apartments Guidelines for Planning Authorities* (hereinafter *Apartment Guidelines*) build upon the provisions of the NPF in signalling a move away from blanket restrictions on heights in certain locations in favour of an evidence based approach based on performance criteria.

The *Apartment Guidelines* do not go as far as to detail these performance criteria but note that this will be provided by forthcoming Section 28 Guidelines (as published in the *Urban Development and Building Heights, Guidelines for Planning Authorities, 2018*).

Notwithstanding this, the *Apartment Guidelines* provide clear guidance with regard to the types of location which are considered suitable for higher density developments that may wholly comprise apartments, referred to as ‘Central and /or Accessible Locations’. It is clear from Table 1 below that the subject site generally meets the identified criteria for such developments.

Criterion	Response
Sites within walking distance (i.e. up to 15 minutes or 1,000 - 1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions.	As shown on Figure 2.1, the application site is located in close proximity to a number of high density employment locations in Dublin. For example, the subject site is approximately 1000m (13 mins) from the South Dock.
Sites within reasonable walking distance (i.e. up to 10 minutes or 800 - 1,000m) to/from high capacity urban public transport stops (such as DART or Luas);	The site is located within reasonable walking distance (approx. 900m) of Lansdowne DART station.
Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) to/ from high frequency (i.e. min 10 minute peak hour frequency) urban bus services.	The site is also serviced by Dublin Bus Nos. 1, 47 and 84N. The nearest bus stop served by route No.1 and 47 is within c.220m of the subject site (3 mins walk) and the nearest bus stop served by route No. 84N is within c.650m of the subject site (9 mins walk). Dublin Bus route No.1 operates at a c. ten minute frequency at peak hours.

**Table 1: Demonstration of compliance with Central / Accessible Area criteria**

The above table confirms the appropriateness of the subject site to accommodate higher density development. It further indicates that the height limitation provided by the *Development Plan* is in direct conflict with the provisions set out by the *Apartment Guidelines*.





### 2.1.3 *Urban Development and Building Heights, Guidelines for Planning Authorities (2018)*

The *Urban Development and Building Heights, Guidelines for Planning Authorities 2018* (hereinafter *Height Guidelines*) were published in December 2018.

The *Height Guidelines* were prepared in response to the publication of *Project Ireland 2040* and the *National Planning Framework*, which signalled the preparation of new Section 28 guidelines regarding building height.

The *Height Guidelines* note Local Authorities have set generic height limits within their functional areas and state the following:

*“Such limits have resulted from local-level concerns, like maintaining the character of an existing built-up area, for example. However, such limits, if inflexibly or unreasonably applied, can undermine wider national policy objectives to provide more compact forms of urban development as outlined in the National Planning Framework and instead continue an unsustainable pattern of development whereby many of our cities and towns continue to grow outwards rather than consolidating and strengthening the existing built up area. Such blanket limitations can also hinder innovation in urban design and architecture leading to poor planning outcomes<sup>5</sup>”.*

The *Height Guidelines* state that it is appropriate to support heights of at least six storeys at street level with scope for greater height subject to design parameters. This is contrary to the 16m height limitation set by the *Development Plan*.

It is further stated that in some cases *Development Plans* have set out overly restrictive maximum heights limits which leads to development being displaced to less suitable locations resulting in a lost opportunity for key urban areas. This is applicable to the subject site which represents a serious underutilisation of zoned and serviced land within a ‘Central and /or Accessible Location’.

The *Height Guidelines* include criteria against which proposals for taller buildings can be assessed for suitability. It is clear that the proposed development aligns with the identified criteria which include proximity to good public transport, positive contribution to placemaking and contribution to mix of dwellings in the local area.

It is then stated that where the relevant authority considers that the criteria have been incorporated into development proposals, the following SSPR 3(A) will apply:

*“It is a specific planning policy requirement that where;*

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<sup>5</sup> *Urban Development and Building Heights: Guidelines for Planning Authorities* (December 2018), p.1



1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and

2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;

then the planning authority may approve such development, even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise”<sup>6</sup>.

The application of the *Height Guidelines* is therefore considered crucial to the fulfilment of national policy objectives which seek a movement towards higher densities in the interests of sustainable development. The assessment of the proposed development against the *Height Guidelines* therefore accords, and is required by, national policy.

COMPLIANCE WITH CRITERIA REFERRED TO IN SPPR 3A (Section 3.2)		
Scale	Criteria	Response
City / Town	Access to Public Transport;	The site is serviced by Dublin Bus Nos. 1, 47 and 84N. The nearest bus stop served by route No. 1 and 47 is within c. 220 m of the subject site (3 mins walk) and the nearest bus stop served by route No. 84N is within c. 650 m of the subject site (9 mins walk). Dublin Bus route No. 1 operates at a ten minute frequency at peak hours.  Lansdowne Road DART Station is c. 900 m of the subject site.
	Appropriate Visual Integration;	A set of photomontages has been prepared by 3DDB in respect of the proposal, which demonstrates its successful integration with the surrounding area.
	Contribution to place-making;	The proposal will provide a significant improvement to the local area through the provision of a high quality development which will replace an existing petrol station and unoccupied service garage/vehicle showroom that are not compatible with the zoning objective for the site.  Refer to the enclosed <i>Architectural Design Statement</i> for further details.
District / Neighbourhood / Street	Contribution to the streetscape;	The development will include active ground floor elevations which will serve to activate the local streetscape.

<sup>6</sup> *Urban Development and Building Heights: Guidelines for Planning Authorities* (December 2018), p.15



	Avoidance of long monolithic walls;	The proposed Beach Road elevation is carefully articulated with fenestration and architectural detailing to sufficiently break down the massing, providing an appropriate interface with the streetscape. Based on this, the proposed development will not give rise to long monolithic walls.
	Contributes to the improvement of legibility;	The proposed development will introduce a continuous building line and active elevation directly adjacent to the street. It will therefore contribute to better defining the local streetscape.
	Contributes to the mix of uses and / or dwellings in the neighbourhood;	The development provides a mix of residential units, including 1 no. and 2 no. bedroom units of varying sizes. The proposed unit mix and type will complement surrounding existing development that largely comprises family sized housing.
<b>Site / Building</b>	Maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light;	<p>The proposal has been designed in order to ensure access to natural daylight, ventilation and views for future occupants of the development. This is further detailed below.</p> <p>However, it is noteworthy that despite the design constraints presented by a brownfield site in an existing urban context, and the site's orientation to the northeast, the overall standard of accommodation within the development will be of high quality and contribute to a long term and sustainable solution to housing shortage in Dublin. This is in addition to fulfilling national and regional policy objectives which seek the delivery of compact urban growth and higher densities in locations such as the subject site. As set out in the <i>Housing Quality Assessment</i> prepared by JFA, the development complies with the <i>Apartment Guidelines</i> in full.</p> <p>In terms of natural daylight, the <i>Daylight Assessment Report</i>, prepared by BPG3 has regard to the daylight and sunlight levels available to the proposed residential units. The Assessment has been undertaken in line with the BRE guidelines, as required by policy.</p> <p>From a daylight perspective, the Report concludes that the proposed residential units would, in most cases, meet the advisory minimums contained within the BRE Guidelines (88% compliance is predicted). In terms of the residential units that are reported as not meeting the advisory levels, it is important to have regard to the standard of accommodation provided by the proposal as a whole.</p>



		<p>For example, it is noted that the provision of open plan kitchen/living/diners, by virtue of the resultant depth of the rooms, can give rise to constrained daylight levels. However, when considered in the context of the alternative, that is the provision of internal kitchens without any windows, the proposed development is considered to maximise the overall quality of accommodation whilst delivering the increased densities required by National and regional policy.</p> <p>The provision of balconies is also a key factor that can result in constrained daylight levels to below windows. Nevertheless, when considered as part of the wider standard of accommodation, the provision of balconies accessible from living rooms (rather than from bedrooms, which is the case in a few cases) enables the development to provide each residential unit with private amenity space (as required by planning policy), whilst also ensuring increased densities.</p> <p>Furthermore, 50% of the proposed residential units will be dual aspect. This exceeds the policy requirement of 33% and stands to enhance the overall standard of accommodation provided by the development.</p> <p>In terms of the impact of the proposed development upon surrounding existing development, it is important to note that the proposal seeks an additional storey to the formerly permitted 5 storey development. The proposed development therefore gives rise to very little material impact in this regard, beyond what was considered to be acceptable by both DCC and the Board in respect of the permitted 5 storey scheme. The additional quantum of development is considered to be modest and the insignificant extent of additional impact described in the <i>Daylight Assessment Report</i> reflects this. Refer to the enclosed <i>Daylight Assessment Report</i> for full details.</p> <p>In relation to daylight, the Report concludes that with the proposed development in place, neighbouring windows would comply with advisory BRE guidelines in the majority of cases. Nevertheless, where it has not been possible to demonstrate full compliance with the advisory minimums, it has been possible, through secondary testing, to demonstrate that the affected neighbouring rooms would remain capable of receiving acceptable levels of internal skylight. In terms of potential sunlight impact upon neighbouring windows,</p>
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		<p>the Report concluded that the full compliance with the BRE guidelines is achieved in all cases.</p> <p>The <i>Daylight Assessment</i> also has regard to potential overshadowing impact to neighbouring gardens and recreational spaces. The Report further concludes that full compliance with the BRE guidelines is achieved in all cases.</p>
<b>Specific Assessments</b>	Assessment of micro-climatic effects;	As the proposed development is of moderate scale and height (six storeys) and will not sit in close proximity to buildings of a similar scale, it is not considered that micro-climatic impacts will arise.
	Assessment of impacts for development locations proximate to bird and / or bat areas;	<p>This application is supported by an <i>Ecological Impact Assessment</i> (ECiA) and a <i>Natura Impact Statement</i> (NIS). These Reports fully consider the potential impact of the proposed development upon birds and bats.</p> <p>The Reports conclude that no bat roosts or foraging was noted on site during the survey works.</p> <p>In relation to birds, it is further noted that there is no bird nesting resource at the existing site. However, the EciA concludes in relation to the sites proximity to South Dublin Bay and River Tolka SPA that:</p> <p><i>“impacts on flight lines or qualifying interests of the SPA would not be expected”</i></p> <p>And</p> <p><i>“Noise generated from the works will require mitigation to remain at baseline levels at sensitive ecological receptor sites i.e. within the SPA and the nearest foraging site for wintering birds”.</i></p> <p>The <i>Ecological Impact Assessment</i> further concludes:</p> <p><i>“Based on the successful implementation of onsite construction phase controls, no significant impact is foreseen on species and habitats of conservation importance or conservation sites of National or international importance.”</i> (page 47 of EciA).</p> <p>Please refer to the EciA and NIS prepared by Altemar, dated May 2021 for full details.</p>
	Assessment that the proposal allows for	The proposed development will not impact any telecommunication channels, as heights of only six storeys are proposed.



	retention of telecommunication channels;	
	An assessment that the proposal maintains safe air navigation;	Due to the scale, nature and location of the proposed development, it will not impact upon safe air navigation.
	An urban design statement;	An <i>Architectural Design Statement</i> has been prepared by John Fleming Architects and details the design rationale for the proposal.
	Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.	Due to the scale and nature of the proposed development, neither a SEA or EIA are required. A NIS (and associated AA Screening exercise) and an EcIA accompany this submission.

**Table 2: Compliance with Section 3.2 and SP3A of the Height Guidelines 2018.**

The above table confirms that the proposed development complies with the requirements of SP3(A). It further indicates that the height limitation provided by the *Development Plan* is in direct conflict with the provisions set out by the *Height Guidelines*.



#### 2.1.4 Eastern and Midlands Regional Spatial and Economic Strategy 2019

The Eastern and Midlands Regional Spatial & Economic Strategy (hereinafter referred to as the 'RSES') has been published by the Eastern and Midland Regional Assembly and covers nine counties, including twelve Local Authorities. The purpose of the RSES is to provide a long-term strategic planning and economic framework in order to support the implementation of Project Ireland 2040.

The RSES includes the Dublin Metropolitan Area Strategic Plan (MASP) which aims to unlock the development capacity of strategic areas within the metropolitan area.

Within the MASP area, the RSES identifies the area in which the subject site is located as "Dublin City and Suburbs". The population of this area in 2016 was 1.2 million<sup>7</sup> and the RSES envisions a growth of 200,000 to 1.4 million people by 2031<sup>8</sup>.

To realise this ambition for population growth Regional Policy Objectives 3.3 and 5.4 state:

##### Regional Policy Objective 3.3

*Local authorities shall, in their core strategies, identify regeneration areas within existing urban settlements and set out specific objectives relating to the delivery of development on urban infill and brownfield regeneration sites in line with the Guiding Principles set out in the RSES and to provide for increased densities as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing; Design Standards for new Apartments Guidelines' and the 'Urban Development and Building Heights Guidelines for Planning Authorities.'* (p.39)

##### Regional Policy Objective 5.4

*Future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and qualitative standards as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing; Design Standards for New Apartments Guidelines and 'Urban Development and Building Heights Guidelines for Planning Authorities.'* (p.112)

Table 4.3 of the RSES Document sets out a 'Policy Response' for the Dublin City and Suburbs settlement typology. It states:

*"Continued consolidated population and employment growth with a focus on improving housing supply and amenity provision to create sustainable communities and improve public transport and sustainable travel options."* (p.47)

It is clear from the RSES Policies and Objectives that the achievement of compact growth through the development of strategically located residential sites, such as the subject site,

<sup>7</sup> Eastern and Midlands Regional Spatial Economic Strategy (2019) p.99.

<sup>8</sup> Eastern and Midlands Regional Spatial Economic Strategy (2019) p.34.



should ensure that higher densities are delivered to ensure the projected population growth is delivered sustainably within the contiguous built-up area of Dublin City and Suburbs.

This will be achieved in tandem with the provision of increased building heights at such strategic sites, including the subject site.

### 3.0 REFERENCE TO *SITE LAYOUT PLANNING FOR DAYLIGHT AND SUNLIGHT, A GUIDE TO GOOD PRACTICE* (BUILDING RESEARCH ESTABLISHMENT REPORT, 2011) IN THE *DUBLIN CITY DEVELOPMENT PLAN 2016-2022*

This Statement provides a justification for the potential material contravention of the *Dublin City Council Development Plan 2016 – 2022* (hereinafter *Development Plan*) in relation to the reference to development being guided by the principles of *Site Layout Planning For Daylight And Sunlight, A Guide To Good Practice* (Building Research Establishment Report, 2011) also in the *Dublin City Development Plan 2016-2022*.

The *Development Plan* states in Section 16.10.1 that:

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

The *Apartment Guidelines, 2020* also require Planning Authorities to have regard to the quantitative performance approaches provided by in guides like the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’. The *Apartment Guidelines, 2020* require the clear identification and a rationale for any alternative design solutions where an applicant cannot fully meet all the requirements of the daylight provisions identified in the relevant guides:

*“Where an applicant cannot fully meet all of the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting taking account of its assessment of specific. This may arise due to a design constraints associated with the site or location and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.” (Section 6.7.)*

In this case there are design constraints presented by a brownfield site in an existing urban context, and the site’s principal orientation to the northeast and the need to create an effective urban design and streetscape solution.

As set out in the *Housing Quality Assessment* prepared by JFA, the development complies with the *Apartment Guidelines* in full.





In terms of natural daylight, the *Daylight Assessment Report*, prepared by BPG3 has regard to the daylight and sunlight levels available to the proposed residential units. The Assessment has been undertaken in line with the BRE guidelines, as required by policy.

From a daylight perspective, the Report concludes that the proposed residential units would, in most cases, meet the advisory minimums contained within the BRE Guidelines (88% compliance is predicted). In terms of the residential units that are reported as not meeting the advisory levels, it is important to have regard to the standard of accommodation provided by the proposal as a whole.

For example, it is noted that the provision of open plan kitchen/living/diners, by virtue of the resultant depth of the rooms, can give rise to constrained daylight levels. However, when considered in the context of the alternative, that is the provision of internal kitchens without any windows, the proposed development is considered to maximise the overall quality of accommodation.

The provision of balconies is also a key factor that can result in constrained daylight levels to below windows. Nevertheless, when considered as part of the wider standard of accommodation, the provision of balconies accessible from living rooms (rather than from bedrooms, which is the case in a few cases) enables the development to provide each residential unit with private amenity space (as required by planning policy), whilst also ensuring increased densities.

Furthermore, 50% of the proposed residential units will be dual aspect. This exceeds the policy requirement of 33% and stands to enhance the overall standard of accommodation provided by the development.

In terms of the impact of the proposed development upon surrounding existing development, it is important to note that the proposal seeks an additional storey to the formerly permitted 5 storey development. The proposed development therefore gives rise to very little material impact in this regard, beyond what was considered to be acceptable by both DCC and the Board in respect of the permitted 5 storey scheme. The additional quantum of development is considered to be modest and the insignificant extent of additional impact described in the *Daylight Assessment Report* reflects this. Refer to the enclosed *Daylight Assessment Report* for full details.

The following tables set out alternative compensatory design solutions that are available to the apartments, which are identified in the *Assessment of Daylight Levels* prepared by BPG3 as not strictly meeting the advisory minimums contained within the BRE Guidelines.



**Compensatory Design Solutions for Units That Do Not Meet the Advisory Targets in Respect of the Assessment of Skylight Amenity Available Within Proposed Accommodation  
(Study D, BPG3 Assessment of Daylight Levels)**

BPG3 Daylight Assessment Room Reference	Min. ADF recommended in BS 8206	Predicted ADF (those 1.5 or over highlighted)	Unit No. (as per John Fleming Architect's Plans)	GFA as a % of Required floor area (units 110% highlighted)	Balcony area proposed (required) SQM (Balconies that exceed requirement highlighted)	Windows facing proposed open space
16	2.0	1.9	0.16	107	10.3 (5)	
19	2.0	1.9	0.15	113	6 (5)	
21	2.0	1.8	0.14	108	16.7(7)	
27	2.0	1.6	0.3	122	7 (7)	Y
29	2.0	1.3	0.4	122	7 (7)	Y
32	2.0	1.5	0.5	111	9.6 (7)	Y
33	2.0	1.6	0.9	111	10.2 (7)	Y
61	2.0	1.9	1.20	113	7.8 (5)	
63	2.0	1.7	1.19	108	18.1(7)	
69	2.0	1.6	1.3	122	7 (7)	Y
71	2.0	1.5	1.8	122	7 (7)	Y
73	1.0	0.8	1.8	122	7 (7)	Y
74	2.0	1.3	1.9	111	11.2(7)	Y
75	2.0	1.4	1.13	111	11.8 (7)	Y
92	2.0	1.9	1.7	122	5.2 (5)	Y
94	2.0	1.8	1.6	114	7 (7)	Y
114	2.0	1.9	2.20	113	7.8 (5)	
116	2.0	1.8	2.19	108	18.1(7)	
122	2.0	1.6	2.3	122	7 (7)	Y
124	2.0	1.2	2.8	122	7 (7)	Y
127	2.0	1.4	2.9	111	11.2 (7)	Y
128	2.0	1.6	2.13	111	11.8 (7)	Y
145	2.0	1.9	2.7	122	5.2 (5)	Y
167	2.0	1.8	3.20	113	7.8 (5)	
169	2.0	1.9	3.19	108	18.1(7)	
175	2.0	1.9	3.3	122	7 (7)	Y
180	2.0	1.5	3.9	111	11.2 (7)	Y
181	2.0	1.6	3.13	111	11.8 (7)	Y
218	2.0	1.7	4.18	111	6.4 (5)	
229	2.0	1.7	4.8	111	11.2 (7)	Y
230	2.0	1.8	4.12	111	11.8 (7)	Y
247	2.0	1.8	5.1	108	26.9(7)	
252	2.0	1.8	5.8	114	27.5 (5)	

This table demonstrates that in each case the apartments in question are either more than 110% the minimum floor area required, have a significantly larger balcony than required or



overlook the proposed open spaces within the subject site. The majority of these units benefit from at least two of these compensatory design solutions.

It is therefore considered that the proposed development provides high quality residential accommodation.

<b>Compensatory Design Solutions in Respect of Units That Do Not Meet the Advisory Targets in Respect of the Assessment of Direct Sunlight Access Available to Proposed Accommodation (Study E, BPG3 Assessment of Daylight Levels)</b>					
Unit No. (as per John Fleming Architect's Plans)	APSH (non-conformity with Advisory Minimum Levels)	Winter APSH (non-conformity with Advisory Minimum Levels)	GFA as a % of Required floor area (units 110% highlighted)	Balcony area proposed (compared to required)	Windows facing proposed open space
0.1	X	X	113	11.8 (7)	Y
0.2	X	Conforms	114	7 (7)	Y
0.3	X	X	122	7 (7)	Y
0.4	X	Conforms	122	7 (7)	Y
0.5	X	Conforms	111	9.6 (7)	Y
0.6	X	X	107	10.5 (5)	
0.7	X	X	112	13.2 (7)	
0.8	X	X	111	9.6 (7)	
0.9	X	Conforms	111	10.2 (7)	Y
0.14	X	X	108	16.7(7)	
0.15	X	X	113	6 (5)	
0.16	x	X	107	10.3 (5)	
1.1	X	X	113	11.8 (7)	Y
1.2	X	X	114	7 (7)	Y
1.3	X	X	122	7 (7)	Y
1.4	X	X	122	5.2 (5)	Y
1.5	X	X	114	7 (7)	Y
1.9	X	Conforms	111	11.2 (7)	Y
1.10	X	X	125	6.2 (5)	
1.11	X	X	112	7 (7)	
1.12	X	X	115	7 (7)	
1.13	X	Conforms	111	11.8 (7)	Y
1.14	X	Conforms	121	5.2 (5)	Y
1.19	X	X	108	18.1 (7)	
1.20	X	X	113	7.8 (7)	
1.21	X	X	125	6.2 (5)	
2.1	X	X	113	11.8 (7)	Y
2.2	X	X	114	7 (7)	Y
2.3	X	X	122	7 (7)	Y
2.4	X	X	122	5.2 (5)	Y



2.5	X	X	114	7 (7)	Y
2.8	X	Conforms	112	7 (7)	Y
2.9	X	Conforms	111	11.2 (7)	Y
2.10	X	X	125	6.2 (5)	
2.11	X	X	112	7 (7)	
2.12	X	X	115	7 (7)	
2.13	X	X	111	11.8 (7)	Y
2.19	X	X	108	18.1 (7)	
2.20	X	X	113	7.8 (5)	
2.21	X	X	125	6.2 (5)	
3.1	X	x	113	11.8 (7)	Y
3.2	X	Conforms	114	7 (7)	Y
3.3	X	X	122	7 (7)	Y
3.4	X	X	122	5.2 (5)	Y
3.5	X	Conforms	136	7 (5)	Y
3.9	X	Conforms	111	11.2 (7)	y
3.10	X	X	125	6.2 (5)	
3.11	X	X	112	7 (7)	
3.12	X	X	115	7 (7)	
3.13	X	Conforms	111	11.8 (7)	Y
3.19	X	x	108	18.1 (7)	
3.20	X	x	113	7.8 (5)	
3.21	X	x	125	6.2 (5)	
4.1	X	X	118	8.1 (7)	Y
4.3	X	X	122	7 (7)	Y
4.4	X	x	111	10.8 (5)	Y
4.8	X	Conforms	111	11.2 (7)	Y
4.9	X	X	125	6.2 (5)	
4.10	Conforms	X	112	7 (7)	
4.11	Conforms	X	115	7 (7)	
4.12	X	Conforms	111	11.8 (7)	y
4.18	X	X	111	6.4 (5)	
4.19	X	X	125	6.2 (5)	
5.1	X	X	108	26.9 (7)	Y
5.3	X	X	133	7 (5)	Y
5.8	X	X	112	27.5 (5)	
5.9	X	X	113	19.3 (5)	
5.14	X	X	107	32.5 (7)	

This table demonstrates that in each case the apartments in question are either more than 110% the minimum floor area required, have a significantly larger balcony than required or overlook the proposed open spaces within the subject site. The majority of these units benefit from at least two of these compensatory design solutions.

It is therefore considered that the proposed development provides high quality residential accommodation.



The above analysis identifies the compensatory design solutions for individual apartments which do not meet the advisory minimums provided by the BRE guidance and is therefore consistent with the requirements of the *Apartment Guidelines, 2020*.

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

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

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

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

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

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

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

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

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



*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*

It is submitted the Apartment Guidelines, 2020 allow for deviations from the BRE guidelines where alternative compensatory design solutions are identified.

It is, therefore, considered that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development notwithstanding the potential material contravention of the *Development Plan*.



#### 4.0 CONCLUSION

##### 4.1 Why, in the Applicant's Opinion, Permission Should Be Granted, Notwithstanding a Material Contravention of the Development Plan

In summary, we submit that permission should be granted for the proposed development despite exceeding the building height provisions of the *Dublin City Development Plan, 2016-2022* and despite not all proposed apartments meeting the quantitative approaches to daylight provision outlined in the relevant guides.

We respectfully submit that permission for the proposed development should be granted having regard inter alia to the following:

1. Location.
2. Subject lands can help solve the housing crisis.
3. National Policy emphasis on high density on central locations.
4. National guidance specifically seeks to avoid blanket height restrictions.
5. National guidance specifically allows for alternative compensatory design solutions where an applicant cannot fully meet all the requirements of the daylight provisions.

In consideration of the fact that the subject site meets many, if not all, criteria set out by National and Regional Policy in terms of suitability for a high density development, it is submitted that there is ample justification for An Bord Pleanála to permit a material contravention of the Development Plan in terms of allowable height and despite not all proposed apartments meeting the quantitative approaches to daylight provision outlined in the relevant guides having regard to Section 37(2)(b)(ii) and Section 37(2)(b)(iii) of the Planning and Development Act, 2000 (as amended).

Signed:

**Julie Costello**  
**Associate**  
**Tom Phillips + Associates**