



THORNTON O'CONNOR
TOWN PLANNING

Material Contravention Statement

Planning Application

In respect of a Student Accommodation Development on a site
at:

Our Lady's Grove
Goatstown
Goatstown Road
Dublin 14

Submitted on Behalf of
Colbeam Limited

February 2021



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1.0 INTRODUCTION

1.1 Summary of the Proposed Development

The subject planning application is categorised as a Strategic Housing Development as defined in Section 3 of the *Planning and Development (Housing) and Residential Tenancies Act 2016* (amended July 2018), which states that Strategic Housing Development means:

- 'a) *the development of 100 or more houses on land zoned for residential use for a mixture of residential and other uses,*
- b) ***the development of student accommodation units which, when combined, contain 200 or more bedspaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon.***
- c) *development that includes developments of the type referred to in paragraph a) and of the type referred to in paragraph b), or*
- d) *the alteration of an existing planning permission granted under section 34 (other than under subsection (3A)) where the proposed alteration relates to development specified in paragraph a), b) or c).'* [Our Emphasis]

The subject scheme is comprised of 698 No. bedspaces of student accommodation arranged in 8 No. blocks which range in height from part 3 No. to part 6 No. storeys over part lower ground floor level. The proposed development also includes the demolition of a disused portion of the Goatstown Afterschool building located in the north eastern corner of the subject site, which has become derelict, in addition to the removal of a pre-fabricated structure to the south of the Afterschool building.

The subject site is eminently suitable for Student Accommodation given the proximity to University College Dublin, which is located approximately 850m to the north west and is readily accessible by foot or bicycle.

1.2 Detailed Description of Development

The development will principally consist of: the construction of a Student Accommodation development containing 698 No. bedspaces with associated facilities located in 8 No blocks, which range in height from part 3 No. storeys to part 6 No. storeys over part lower ground floor level (7 No. storeys as viewed from an internal courtyard). Some 679 No. bedspaces are provided in 99 No. clusters ranging in size from 5 No. bedspaces to 8 No. bedspaces, each with a communal Living/Kitchen/Dining room. The remaining 19 No. bedspaces are accessible studios. The development includes the provision of communal residential amenity space at lower ground floor level (349 sq m) including the provision of a movie room (108 sq m), a music room (42 sq m) and a laundry (37 sq m); communal residential amenity space (1,356 sq m) at ground floor level including the provision of a gym (228 sq m), reception desk and seating area (173 sq m), a common room (338 sq m), a study space (104 sq m), a library (64 sq m), a yoga studio (74 sq m), a prayer room (33 sq m) and group dining (33 sq m).

The development also includes staff and administrative facilities (195 sq m); 9 No. car parking spaces; 4 No. motorcycle parking spaces; 860 No. cycle parking spaces; refuse stores; signage; an ESB substation and switchroom; boundary treatments; green roofs; PV panels; hard and soft landscaping; plant; lighting; and all other associated site works above and below ground. The development includes the demolition of part of the Goatstown Afterschool building (558 sq m) and the construction of a new external wall to the remaining ope, in addition to the demolition of a prefabricated structure adjacent to the Afterschool building (161 sq m).

The subject site is eminently suitable for Student Accommodation given the proximity to University College Dublin, which is located approximately 850m to the north west and is readily accessible by foot or bicycle.

North Block (119 No. Bedspaces)

The North Block is a part 5 to part 6 No. storey over lower ground level block located in the north western corner of the subject site, adjacent to the hockey pitch associated with Our Lady's Grove School. The North Block contains 119 No. bedspaces provided in clusters as follows:

- 9 No. bedspaces divided into two clusters, each with a communal living/kitchen/dining area at lower ground floor level.
- 20 No. bedspaces divided into three clusters each with a communal living/kitchen/dining area at ground floor level.
- 20 No. bedspaces divided into three clusters each with a communal living/kitchen/dining area at first floor level.
- 20 No. bedspaces divided into three clusters each with a communal living/kitchen/dining area at second floor level.
- 20 No. bedspaces divided into three clusters each with a communal living/kitchen/dining area at third floor level.
- 20 No. bedspaces divided into three clusters each with a communal living/kitchen/dining area at fourth floor level.
- 10 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at fifth floor level.

Middle Block (168 No. Bedspaces)

The Middle Block is a part 5 No. storey to part 6 No. storey over lower ground level block located in the centre of the subject site comprised of 167 No. bedspaces provided in clusters and 1 No. accessible studio and ancillary facilities as follows:

- At lower ground floor level: a bicycle store; a music room; a movie room; a laundry; and 11 No. bedspaces divided into two clusters each containing a communal living/kitchen/dining area.

- A reception desk and seating area and a main common room at ground floor level and 18 No. bedspaces divided into three clusters each containing a communal living/kitchen/dining area.
- 30 No. bedspaces divided into four clusters, each containing a communal living /kitchen/dining area at first floor level.
- 30 No. bedspaces divided into four clusters, each containing a communal living /kitchen/dining area at second floor level.
- 30 No. bedspaces divided into four clusters, each containing a communal living /kitchen/dining area at third floor level.
- 30 No. bedspaces divided into four clusters, each containing a communal living /kitchen/dining area at fourth floor level.
- 18 No. bedspaces divided into three clusters, each containing a communal living /kitchen/dining area and 1 No. accessible studio at fifth floor level.

South Block (159 No. Bedspaces)

The South Block is a part 5 No. to part 6 No. storey over lower ground block comprised of 18 No. accessible studios and 141 No. bedspaces provided in clusters and ancillary facilities as follows:

- A plant room; staff changing rooms and toilet facilities; store rooms and an electrical room at lower ground floor level.
- A study space; a gym; a meeting room; a prayer room; a yoga studio; an administration and managers office; and a communal dining room at ground floor level.
- 4 No accessible studios and 30 No. bedspaces divided into four clusters each with a communal living/kitchen/dining area at first floor level.
- 4 No accessible studios and 30 No. bedspaces divided into four clusters each with a communal living/kitchen/dining area at second floor level.
- 4 No accessible studios and 30 No. bedspaces divided into four clusters each with a communal living/kitchen/dining area at third floor level.
- 4 No accessible studios and 30 No. bedspaces divided into four clusters each with a communal living/kitchen/dining area at fourth floor level.
- 2 No accessible studios and 21 No. bedspaces divided into four clusters each with a communal living/kitchen/dining area at fifth floor level.

Mews Block A (56 No. Bedspaces)

Mews Block A is a 4 No. storey block located adjacent to the western boundary of the subject site and is comprised of 56 No. bedspaces provided in clusters and ancillary facilities as follows:

- 14 No. bedspaces divided into two clusters with each with a communal living/kitchen/dining area at ground floor level.
- 14 No. bedspaces divided into two clusters with each with a communal living/kitchen/dining area at first floor level.
- 14 No. bedspaces divided into two clusters with each with a communal living/kitchen/dining area at second floor level.
- 14 No. bedspaces divided into two clusters with each with a communal living/kitchen/dining area at third floor level.

Mews Block B (42 No. Bedspaces)

Mews Block B is a part 3 No. to part 4 No. storey block located in the south western corner of the subject site and is comprised of 42 No. bedspaces provided in clusters and ancillary facilities as follows:

- 12 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at ground floor level.
- 12 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at first floor level.
- 12 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at second floor level.
- 6 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at third floor level.

Mews Blocks C and D (56 No. Bedspaces x 2 = 112 No. Bedspaces)

Mews Blocks C and D, are part 3 No. to part 4 No. storey blocks located along the southern boundary of the subject site, with each containing 56 No. bedspaces provided in clusters and ancillary facilities as follows:

- 16 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at ground floor level.
- 16 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at first floor level.
- 16 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at second floor level.
- 8 No. bedspaces in a single cluster and a communal living/kitchen/dining area at third floor level.

Mews Block E (42 No. Bedspaces)

Mews Block E, which is located in the south easter corner of the subject site, is a part 3 to part 4 No. storey block containing 42 No. bedspaces provided in clusters and ancillary facilities as follows:

- 12 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at ground floor level.
- 12 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at first floor level.
- 12 No. bedspaces divided into two clusters each with a communal living/kitchen/dining area at second floor level.
- 6 No. bedspaces in a single cluster with a communal living/kitchen/dining area at third floor level.

Demolition

The proposed development includes the demolition of part of the Goatstown Afterschool building, namely a portion of the building which has fallen into disrepair (558 sq m). The existing Goatstown Afterschool buildings consist of a single storey classroom block with a 2 No. storey accommodation block extension. It is proposed to demolish the 2 No. storey accommodation block extension which is no longer in use and has fallen into a serious state of disrepair. The demolition of this disused portion of the Goatstown Afterschool building is in the interests of the health and safety of staff and students of the facility. Following the demolition of the disused portion of the building, the Applicant will make good the façade through the construction of a new external wall to enclose the remaining ope.

In addition, a prefabricated structure (161 sq m) located to the south of the Afterschool building is proposed to be removed.

Ancillary Works

The proposed development also includes ancillary works including but not limited to signage; 9 No car parking spaces; 860 No. cycle parking spaces; 4 No. motorcycle spaces; hard and soft landscaping; photovoltaic panels; plant; and all associated works above and below ground.

1.3 Purpose of this Report – Height and Density Considerations, Quantum of Open Space, Removal of Trees, Quantum of Car Parking, Extent of Green Roofs and Compliance with Part V Policy

The purpose of this Material Contravention Statement is to set out the justification for aspects of the proposed development which may be considered to contravene materially the *Dún Laoghaire Rathdown County Development Plan 2016-2022*.

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

- Height with reference to Appendix 9 of the *Dún Laoghaire-Rathdown Development Plan 2016-2022*;
- Density with specific reference to the 'INST' objective which pertains to the site which aims 'to protect and/or provide for Institutional Use in open lands';
- Quantum of Public Open Space with reference to Section 8.2.8.2 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022*;
- Tree Removal and Replacement, with reference to the Objective to 'Protect and Preserve Trees and Woodland' that affects part of the site;
- Car parking quantum with reference to Tables 8.2.3 and 8.2.4 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022*;
- Extent of green roofs with reference to Appendix 16 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022*; and
- Compliance with Part V social/affordable housing policy with reference to Section 7.6 of Appendix 2 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022*.

This document will provide justification regarding the possible contravention of the provisions of the Development Plan in relation to the height and density of the proposed development, the quantum of open space provision, the removal and replacement of trees; the quantum of car parking proposed; the extent of green roofs proposed; and the non-provision of Part V social/affordable housing units as part of this student accommodation development.

2.0 PLANNING AND DEVELOPMENT (HOUSING) AND RESIDENTIAL TENANCIES ACT, 2016 (AS AMENDED)

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

- (a) *'Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application Planning and Development (Housing) [2016.] and Residential Tenancies Act 2016 under section 4 even where the proposed development, or a part of it, contravenes materially the development plan relating to the area concerned.*
- (b) *The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land.*
- (c) *Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2)(b) of the Act of 2000 were to apply, it would grant permission for the proposed development.'* [Our Emphasis]

TOC Comment: The subject site is zoned *Objective 'A'* in the *Dún Laoghaire Rathdown County Development Plan 2016 – 2022* where the objective is *'to protect and-or improve residential amenity'*.

Land uses that are *'Permitted in Principle'* and *'Open for Consideration'* on lands zoned *'Objective A'* include, but are not limited to:

Permitted in Principle
Assisted living accommodation; Open Space; Public Services; Residential; Residential Institution; and Traveller Accommodation.

Open for Consideration
Carpark; Community Facility; Childcare Service; Education; and Neighbourhood Sports Facility.

Student Accommodation is considered to be a residential land use, as such, the proposed development fully complies with the zoning objective of the site.

'Residential' development is permitted in principle on lands zoned *Objective A*. As the subject scheme proposes 698 No. student accommodation bedspaces with ancillary facilities, the proposed development fully complies with the zoning objective for the subject site.

This Material Contravention Statement relates to building height which we consider is appropriate and justified for the subject lands; density parameters that apply to lands subject to the *'Institutional'* objective in the *Dun Laoghaire Rathdown County Development Plan 2016-2022*; a policy applying to the site to *'protect and preserve trees and woodlands'*; the quantum of open space provision; the quantum of car parking provision; and the non-provision of Part V social/affordable housing units as part of this student accommodation scheme.

3.0 PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

As noted above, the *Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended)* sets out in summary that 'where the proposed strategic housing development would materially contravene the development plan...then the Board may only grant permission where it considers that, if section 37(2)(b) of the Act of 2000 were to apply'.

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

- (a) *'Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*
- (b) *Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—*
 - i. the proposed development is of strategic or national importance,*
 - ii. there are conflicting objectives in the Development Plan or the **objectives are not clearly stated**, insofar as the proposed development is concerned, or*
 - iii. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
 - iv. permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.'* [Our Emphasis]

TOC Comment:

Building Height

The maximum overall height of the proposed development is 18.030m from ground level (an equivalent of 6 No. storeys from ground level). It should be noted that, owing to the topography of the subject site, the maximum height of the subject scheme when viewed from the north courtyard is 7 No. storeys, however the north courtyard is positioned at lower ground floor level and thus the scheme will be legible as 6 No. storeys from surrounding locations external to the site.

Appendix 9 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* sets out a broad strategy for building heights in the County, with Section 4 of the Strategy detailing the policy approach against which building heights will be assessed. With regard to suburban infill sites, Section 3 of Appendix 9 states that when a proposed development is in context and scale with its surroundings (and does not have a particularly detrimental effect where the location

does not coincide with a central place or node), heights may be increased beyond the standard 2 – 3 No. storeys to heights.

*'... smaller infill sites within the established fabric of the built-up urban or suburban area, in which the proposed development can often **exceed the average height of its immediate surroundings**. In some cases, such developments - which **may be only two storeys higher** than the surrounds - can help to create **new localised high points** which are contextually acceptable, may set the standard for future, more intensive development in the surrounding area, and can assist in the establishment of attractive local landmarks.'* [Our Emphasis].

The heights in the vicinity of the subject site are varied, ranging from single storey houses to a five storey residential block at the entrance to The Grove from the Goatstown Road. The proposed maximum height of 6 No. storeys over lower ground level and 7 No. storeys from internal courtyard only exceeds the heights of some adjacent buildings by more than two storeys.

Appendix 9 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* sets out the Policy for Residual Suburban Areas not included within Cumulative Areas of Control and states that 'A *general recommended height of two storeys will apply.*' The policy further states that apartment or town-house type developments or commercial developments in the established commercial core of these areas to a maximum of 3-4 storeys may be permitted in appropriate locations - for example on prominent corner sites, on large redevelopment sites or adjacent to key public transport nodes - providing they have no detrimental effect on existing character and residential amenity. The Plan further states that:

'This maximum height (3-4 storeys) for certain developments clearly cannot apply in every circumstance. There will be situations where a minor modification up or down in height could be considered.'

It is considered that the subject lands are suitable for 'upward modifiers' having regard to the planning gain that will be provided in contributing to the public realm and the size of the site which is greater than 0.5 hectares can set its own context for development with greater building heights set away from the boundaries.

As the proposed development is 6 No. storeys in height as viewed from surrounding properties with an internal lower courtyard providing a view of 7 No. storeys it is considered that the development exceeds the heights indicated in Appendix 9 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022*.

The *Urban Development and Building Heights Guidelines for Planning Authorities (December 2018)* take precedence over the Development Plan. In particular, SPPR 1 of the Guidelines notes that blanket numerical limitations on building height shall not be provided for through statutory plans therefore the imposition of a restriction at the subject site would be contrary to SPPR 1. Therefore, the height proposed in the subject scheme has taken the opportunity to explore the potential for increased height, rising to a height of 18.030m from ground level and 21.380m from lower ground level.

Despite the proposed increase in height, it has been demonstrated in the accompanying documentation, particularly the Landscape Visual Impact Assessment and Daylight/Sunlight

Analysis, that the subject scheme will not have a significant material impact on the residential amenity of existing surrounding dwellings. It is considered that the height proposed can be absorbed at the location of the subject lands due to the generous setbacks provided from sensitive boundaries and the design of the scheme which has sought to reduce bulk and massing at locations close to site boundaries.

Density

The *Dun Laoghaire-Rathdown Development Plan 2016-2022* indicates that there is an 'INST' designation pertaining to the lands at Our Lady's Grove, which includes the subject site. The Development Plan outlines this objective as follows:

'To protect and/or provide for Institutional Use in open lands.'

Policy RES 5 and Section 2.1.3.5 of the Development Plan outlines Dún Laoghaire Rathdown County Council's approach to housing density on 'institutional' designated lands as follows:

'In the development of such lands, average net densities should be in the region of 35 - 50 units p/ha. In certain instances, higher densities will be allowed where it is demonstrated that they can contribute towards the objective of retaining the open character and/or recreational amenities of the lands.'
[Our Emphasis]

The density parameter set out above relates to residential units per hectare and there is no equivalent standard provided in the *Dun Laoghaire-Rathdown Development Plan 2016-2022* for student use. We note that the policy refers to 'net density'.

The *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, May 2009* state:

'A net density is the most commonly used approach in allocating housing land within Local Area Plans and is appropriate for development on infill sites where the boundaries of the site are clearly defined and where only residential uses are proposed.' [Our Emphasis]

As per the above, the National Guidelines are clear that net density is a standard developed for the assessment of residential uses. Whilst student accommodation is a type of residential development, it has its own use class and cannot be assessed in terms of units per hectare due to the wide range of unit types that can be provided from small studios to medium size clusters or larger clusters resulting in a quantitative standard that is not comparable to apartment/housing residential developments. It is thus not possible to accurately determine the density of a student scheme in an equivalent method to providing the density of a residential housing/apartment development.

We note that Dún Laoghaire Rathdown County Council in their Report of the Chief Executive on the pre-application stage of this application referred to the density of the scheme on a per cluster basis and noted that the scheme submitted at pre-application stage comprised a density of c. 61 No. clusters per hectare based on 112 No. clusters + 17 No. studios/2.12. Using that calculation methodology, the now amended and reduced scheme comprises a density of 55.6 No. clusters per hectare (99 No. clusters + 19 No. studios)/2.12).

It is our professional planning opinion that the subject site is ideally suited to the provision of a student development given its institutional origins and the institutional nature of the adjacent campus. Due to the scale and massing of the scheme, An Bord Pleanála may consider that it would have a higher net density equivalent than 35 – 50 residential units p/ha. Thus, the density of the scheme has been included in this Material Contravention Statement for the consideration of An Bord Pleanála despite the fact that the Development Plan does not include a density Objective for student use on 'INST' lands.

However, it should be noted that the height of the scheme facilitates density whilst protecting the open space nature of the lands at ground level and thus in our opinion the verticality of structures proposed contributes towards the objective of retaining the open character and/or recreational amenities of the lands in accordance with the above policy applying to lands subject to the 'INST' Objective which expressly states *'In certain instances, higher densities will be allowed where it is demonstrated that they can contribute towards the objective of retaining the open character and/or recreational amenities of the lands.'*

In relation to the objective of Policy RES 5 to 'retain the open space and character of the lands', the portion of land to be built on has no recreational amenities at present. Therefore, the construction of the proposed development will not affect recreational amenities. In addition, the substantive open spaces proposed as part of the subject scheme will ensure its character is protected. Thus, in our opinion it is thus possible to contend that there is no contravention of RES 5, however this matter is included in the enclosed Material Contravention Statement in the event that the Board may consider that the development contravenes Policy RES 5.

Quantum of Open Space

Due to the inclusion of the 'INST' objective at the subject lands, some 25% of the site is required to be provided as open space. Sections 2.1.3.5 & 8.2.3.4(xi) of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* state that: *'A minimum open space provision of 25% of the total site area (or a population based provision in accordance with Section 8.2.8.2 whichever is the greater) will be required on Institutional Lands.'*

The proposed development includes the provision of 7,956 sq m of public open space, which equates to 37.5% of the subject site. The subject site also includes 2,852 sq m of external open space for the students which will further contribute to the open space and character of the scheme. In addition, the subject site includes an open space area of 280 sq m which will remain within the boundary of the Afterschool facility. The total area of the open space within the subject site is thus 11,088 sq m or 52% of the subject site (7,956 sq m public open space + 2,852 sq m external student open space + 280 sq m Afterschool open space). This is detailed further and graphically illustrated in Section 6.6 of the Planning Report prepared by Thornton O'Connor Town Planning.

Section 8.2.8.2 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* states the following with regard to a population based equivalent open space standard:

'For all developments with a residential component – 5+ units - the requirement of 15 sq m- 20 sq m. of Open Space per person shall apply based on the number of residential/housing units. For calculation purposes, open space requirements shall be based on a presumed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.'

In our opinion, the above policy is clearly designed for housing units, with presumed occupancy rates also provided in the policy for standard housing units. The policy does not refer to student housing use and does not provide any calculation methodology for student housing. Thus, in our opinion this policy does not apply to the proposed student scheme. However, we have included this matter in the Material Contravention Statement out of an abundance of caution in the event that the Board may consider that it does in fact apply. Applying the total number of bedspaces (698 No.) by the 15-20 sq m standard would result in an open space standard of 10,470 sq m – 13,960 sq m. Thus, the minimum amount of open space required would be more than a hectare in area. We strongly submit that requiring such a substantive tract of residentially zoned urban land to be dedicated to open space would not be in the interests of sustainable planning and maximising efficiencies of scarce urban land.

Trees

The subject lands include an objective to 'Protect and Preserve Trees and Woodland'. Section 8.2.8.6 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* clarifies that:

*'New developments shall be designed to incorporate, **as far as practicable**, the amenities offered by existing trees and hedgerow and new developments shall have regard to objectives to protect and preserve trees and woodlands as identified on the County Development Plan Maps.'* [Our Emphasis]

The Plan further states in Section 8.2.8.6 that:

*'Where it **proves necessary to remove trees to facilitate development**, the Council **will require the commensurate planting** or replacement trees and other plant material. This will be implemented by way of condition.'*

The Design Team has sought to maximise opportunities for tree retention as part of the subject scheme to aid in the assimilation of the scheme into its context. However, 34 No. trees are required to be removed as part of the development and thus a planting plan which involves the replacement of 56 No. trees is proposed, resulting in a net gain of 22 No. trees upon completion of the proposed development. In our opinion this proposal is in line with the Development Plan objectives however this matter is included in the enclosed Material Contravention Statement in the event that the Board may consider that any tree removal constitutes a Material Contravention.

Car Parking

The subject scheme provides 9 No. car parking which include 2 No. accessible spaces and 1 No. car sharing space. Tables 8.2.3 and 8.2.4 of the Development Plan outlines the car parking standards for the Dún Laoghaire Rathdown County Council administrative area. There is no standard for student accommodation included within the Development Plan. Whilst in our opinion the scheme does not contravene the Development Plan with regard to quantum of car parking as there is no car parking standard for student use, this matter is included in the Material Contravention Statement in the event that the Board may assess the car parking in accordance with another landuse i.e. residential. The standard for residential apartment use is 1 No. space per 1 bed unit, 1.5 spaces per 2 bed unit or 2 No. spaces per 3 bed unit+. Importantly, Table 8.2.3 which outlines the Residential Land Use Car Parking standards acknowledges states that the standards are '(depending on design and location)'.

Extent of Green Roofs

Section 3.2.5 of the enclosed Infrastructure Design Report prepared by DBFL Consulting Engineers provides details of the green roof extents and PV Panel design. In relation to the green roof provision of the proposed development, the enclosed Infrastructure Design Report notes that:

'55% of the roof areas will include green roofs (extensive), and the remaining 45% of the roof areas will be utilised for PV panels, lift access opes and a buffer between PV panels and the Green Roofs and edge of building. Dun Laoghaire Rathdown County Council have agreed a side wide approach to the provision of green roofs (60% green roof policy). Due to the quantity of PV panels and lift access opes and the requirement for a buffer between the green roofs and the PV panels, the quantity of green roofs falls short of the minimum 60% coverage by circa 5%. To comply with the green roof requirement of 60% green oof coverage in Dun Laoghaire's Green Roof Policy Document, other soft SuDS measures are proposed to make up the shortfall of 5.2%. These soft SuDS measures include a swale and raingarden for the Northern Block and a raingarden for the middle block.'

Section 3.1 of Appendix 16 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* states:

'Green Roof, where required, shall in all cases cover a minimum of 60% of the Roof area.'

Section 3.1 further states that:

'Any habitable or employment related development type not covered under the above headings will be deemed to require the installation of a Green Roof unless exempted or partially exempted by DLRCC's Municipal Services Section following consideration of the suite of complimentary or alternative "soft" SUDS measures being proposed.'
[Our Emphasis]

DBFL Consulting Engineers state in the Infrastructure Report that the additional soft SuDS measures bring the proposed development into compliance with Dun Laoghaire Rathdown County Council's green roof policy. In particular, the soft SuDS measures are intended to achieve a partial exemption. However, this matter is included in the enclosed Material Contravention Statement in the event that the Board may consider that the development contravenes the Council's green roofs policy as 55% of the roof areas provide green roofs.

Part V Social/Affordable Units

Section 7.6 of Appendix 2 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* states that:

'No social housing will be required in instances where it is proposed that student accommodation is to be provided on the campus of a Third Level Institution. In all other instances of student accommodation the standard 20% social housing requirement will apply.'

The subject development does not propose to provide Part V social housing units as Part V is not applicable to student accommodation development as student accommodation does not constitute a 'house'. There would clearly be significant management difficulties that would

arise in applying Part V to student accommodation. We note that the adjacent Planning Authority Dublin City Council does not apply Part V to student accommodation and we also note that there is precedence in the functional area of Dun Laoghaire Rathdown County Council where An Bord Pleanála have confirmed that off-campus student accommodation should not be subject to Part V social/affordable housing. Of particular note in this regard is a scheme at Blake’s and Esmonde Motors Site, Lower Kilmacud Road, Stillorgan (ABP Ref. ABP-300520-17). Condition No. 6 attached to the Order in the Decision on ABP Ref. ABP-300520-17 expressly states:

*‘Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. **The requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, shall only apply to residential apartments contained in Building 01 and Building 02 and shall not apply to student accommodation contained in Building 03 and Building 04.** Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.’ [Our Emphasis].*

The Board may deduce that a Material Contravention has taken place due to the non-provision of Part V units. Thus, in the event that the Board consider that the development materially contravenes the Plan, this Material Contravention Statement provides justification for the non-provision of Part V social/affordable housing.

We note that if An Bord Pleanála consider that the proposed development represents a Material Contravention of the *Dun Laoghaire Rathdown County Development Plan 2016-2022* in relation to building height, density, open space, tree removal, car parking quantum, green roof provision and/or compliance with Part V social/affordable housing, we submit that the Board can grant permission as criteria provided in Section 37(2)(b) of the *Planning and Development Act 2000 (as amended)* applies as detailed below:

Section 37(2)(b)(i)	<i>‘The proposed development is of strategic or national importance,’</i>	The proposed development student accommodation development is defined as a ‘Strategic Housing Development’ in accordance with the <i>Planning and Development (Housing) and Residential Tenancies Act 2016</i>
Section 37(2)(b)(ii)	<i>‘There are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned, or’</i>	Objectives of the Development Plan in respect of student use are not clearly stated – i.e. there is no car parking standard provided for student use. In respect of Part V, permission for the development should be granted having

		<p>regard to Policy RES2: Implementation of Interim Housing Strategy which states; <i>'Specific exemptions to Part V where a reduced social and affordable element may be acceptable are Third level student accommodation of the type that has or would have otherwise qualified for tax relief under Section 50 of the Finance Act 1999 (Refer also to Policy RES12).'</i> In this regard the proposed scheme has been designed to meet the criteria outlined within <i>'The Guidelines of Residential Developments for 3rd Level Students, Section 50 of the Finance Act 1999'</i>.</p>
Section 37(2)(b)(iii)	<p><i>'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'</i></p>	<p>The policies and objectives of the <i>Dun Laoghaire Rathdown County Development Plan</i>, particularly as they relate to height and density, are not considered be aligned with or in accordance with National level policies and objectives, particularly <i>Project Ireland 2040: National Planning Framework and Urban Development and Building Heights – Guidelines for Planning Authorities</i> (December 2018) (detailed in Section 4.0 below)</p> <p>In respect of Part V provision, the <i>Sustainable Urban Housing: Design Standards for New Apartments; Guidelines for Planning Authorities, 2018</i> state:</p> <p><i>'In addition to the above, as is the case with student accommodation projects, shared accommodation units will not normally be subject to Part V requirements in relation to the reservation of 10% of the units as social housing because shared accommodation would not be suitable for social housing given that they are not provided as individual self-contained residential units.'</i> [Our Emphasis].</p>
Section 37(2)(b)(iv)	<p><i>'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.'</i></p>	<p>With regard to height, we note that a large number of developments have recently been granted in the area that exceed the height limits of the <i>Dun Laoghaire Rathdown County Development Plan 2016-2022</i>. Examples include the recent 17 No. storeys granted at the former Aldi site in Sandyford (ABP Ref. ABP-305940- 19) and</p>

		<p>the recent 8 No. storeys granted at the Green Acres site in Kilmacud (ABP Ref. ABP-307683-20).</p> <p>With regard to Part V provision, we note that An Bord Pleanála confirmed in their Decision regarding an off-campus student scheme in Stillorgan (ABP Ref. ABP-300520-17 that Part V shall not apply to student accommodation. In addition, the student accommodation development at Avid Technology International, Carmanhall Road, Sandyford Industrial Estate, Dublin 18 was granted permission by An Bord Pleanála (ABP Ref. ABP303467-19) without a requirement for Part V provision.</p>
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4.0 JUSTIFICATION FOR THE MATERIAL CONTRAVENTION

The following section demonstrates how the proposed development is wholly consistent with national planning policy, pursuant to Section 37(2)(b)(iii) of the *Planning and Development Act 2000 (as amended)*.

4.1 *Project Ireland 2040: National Planning Framework*

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

The NPF has set a specific objective in relation to lifelong learning and investment in higher education as a means of also improving employment and innovation in Ireland. It views investment in education and training as central to delivery of sustainable communities, promoting inclusion and offering a range of choices and pathways to better education and employment.

National Policy Objective 31

'Prioritise the alignment of targeted and planned population and employment growth with investment in:

- *The provision of early childhood care and education (ECCE) facilities and new and refurbished schools on well-located sites within or close to existing built-up areas, that meet the diverse needs of local populations.*
- *The expansion and consolidation of third level facilities at locations where this will contribute to regional development.*
- *Programmes for life-long learning, especially in areas of higher education and further education and training where skills gaps are identified.'*

This means that cities like Dublin, with a strong higher education sector will play a key role in delivering further consolidated expansion of its Institutions and Universities. This growth and expansion will result in an increased demand on student accommodation. Regarding the relationship between demand for student accommodation and the knock-on effect on supply of the rental market, the NPF states that:

"Demand for student accommodation exacerbates the demand pressures on the available supply of rental accommodation in urban areas in particular. In the years ahead, student accommodation pressures are anticipated to increase. The location of purpose-built student accommodation needs to be as proximate as possible to the centre of education, as well as being connected to accessible infrastructure such as walking, cycling and public transport. The national student accommodation strategy supports these objectives."

TOC Comment: The subject scheme proposes a high-quality purpose-built student accommodation scheme which is ideally located proximate to University College Dublin.

As such, the scheme will contribute positively towards increasing the supply of much needed student accommodation in close proximity to University College Dublin. The subject scheme also has the potential knock-on effect of easing some of the pressure on the private rental sector as future occupants from the scheme may relocate from private rented accommodation to the proposed development which would offer students a more suitable and affordable option.

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

- **National Policy Objective 3a and National Policy Objective 3b** aim to deliver at least 40% of all new homes nationally, within the build-up of existing settlements and to deliver at least 50% of all new homes that are targeted in the five main Cities within their existing built-up footprints.
- **National Policy Objective 33** prioritises the provision of residential development at appropriate scales within sustainable locations.
- **National Policy Objective 35** notes the aim to increase residential density in settlements through a range of measures including (amongst others) in-fill development schemes and increased building heights.

The NPF sets out that:

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

TOC Comment: The proposed scheme involves the development of an existing underutilised infill site within an existing residential area which has excellent access to public transport and is located just 850m from University College Dublin. The subject scheme will therefore contribute towards compact growth in Dublin in line with the objectives of the NPF.

We note that the NPF recognises that building inwards and upwards is important to effectively address the housing crisis. There is a significant importance placed in the NPF to increase building heights and densities in existing urban areas. The heights proposed on parts of the subject site (part 3 to part 6 No. storeys over lower ground level (legible as 7 No. storeys from lower ground level internal to the site), with the highest elements setback to reduce the potential for impact on adjacent existing residential dwellings) facilitate increased density at the lands and are appropriate given the site's location in an existing built-up area and its proximity to public transport and University College Dublin.

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

The *Urban Development and Building Heights Guidelines for Planning Authorities* were adopted in December 2018. The Guidelines set out that a key objective of the NPF is to significantly increase the building heights and overall density of developments.

The Minister's foreword to the *Height Guidelines* acknowledges that Ireland's classic development models for city and town cores has tended to be dominated by employment and retail uses, surrounded by extensive and constantly expanding low-rise suburban residential areas which is an unsustainable model. There is an opportunity for our cities and towns to be developed differently. Urban areas could have much better use of land, facilitating well located and taller buildings, meeting the highest architectural and planning standards. The Guidelines are intended to set a new and more responsive policy and regulatory framework for planning the growth and development of cities and towns upwards rather than outwards.

The *Height Guidelines* denote that the:

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

Chapter 2 of the Guidelines sets out the following Specific Planning Policy Requirement:

Specific Planning Policy Requirement 1

*'In accordance with Government policy to support increased building height and density in locations with good public transport accessibility, particularly town/ city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and **shall not provide for blanket numerical limitations on building height.**'* [Our Emphasis]

TOC Comment: Appendix 9 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022* sets out the Policy for Residual Suburban Areas not included within Cumulative Areas of Control and states that *'A general recommended height of two storeys will apply.'* The policy further states that apartment or town-house type developments or commercial developments in the established commercial core of these areas to a maximum of 3-4 storeys may be permitted in appropriate locations - for example on prominent corner sites, on large redevelopment sites or adjacent to key public transport nodes - providing they have no detrimental effect on existing character and residential amenity. The Plan further states that:

'This maximum height (3-4 storeys) for certain developments clearly cannot apply in every circumstance. There will be situations where a minor modification up or down in height could be considered.'

It is considered that the subject lands are suitable for 'upward modifiers' having regard to the planning gain that will be provided in contributing to the public realm and the size of the site

which is greater than 0.5 hectares can set its own context for development with greater building heights set away from the boundaries.

As the proposed development is 6 No. storeys in height as viewed from surrounding properties with an internal lower courtyard providing a view of 7 No. storeys it is considered that the development exceeds the heights indicated in Appendix 9 of the *Dun Laoghaire-Rathdown Development Plan 2016-2022*.

It is our professional planning opinion that the imposition of such height restrictions is contrary to Specific Planning Policy Requirement 1 which notes that blanket numerical limitations on building height shall not be provided for through statutory plans.

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

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

The Guidelines further note that '*Planning Authorities must apply the following broad principles in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines:*

- 1. Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?***

TOC Response: As noted in Section 4.1, the proposed scheme involves the development of an underutilised, appropriately zoned, urban infill site at a location very close to University College Dublin and thus the subject development will contribute to delivering compact growth in urban areas. The scheme is therefore fully in accordance with the preferred approach of the National Planning Framework.

- 2. Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these Guidelines?***

TOC Response: SPPR 1 within Chapter 2 of the Guidelines sets out that blanket numerical restrictions on building heights shall not be provided for in plans, in order to support building height and density in urban areas with good public transport accessibility. As previously noted, the *Dún Laoghaire Rathdown County Development Plan 2016-2022* prescribes a height of 4 No to 6 No. storeys at the subject site.

We reiterate that it is our professional planning opinion that imposing this height restriction at the subject site would be contrary to Specific Planning Policy Requirement 1 which notes that blanket numerical limitations on building height shall not be provided for through statutory plans. Therefore, we consider the maximum heights proposed within the subject scheme of 6 No. storeys over lower ground level (legible as 7 storeys from an internal courtyard only owing to the topography of the site), are appropriate in order to accord with Government policy to increase building heights in sustainable locations. It is important to note that the subject scheme has been sensitively designed to have minimal impact on the residential amenity of surrounding existing dwellings. Examples of these design measures include, but are not limited to, the incorporation of design features such as the shortest elevation of the larger blocks being turned towards the most sensitive boundaries and the provision of setback upper floors. Furthermore, due to reduced floor to ceiling heights, the structure will have a lower height than a typical/average residential apartment development providing the same number of storeys.

The Daylight/Sunlight Analysis and the LVIA, which are enclosed with this Planning Application, demonstrate that these design measures have been successful, as the subject scheme will have no significant material impact on the surrounding area.

3. ***Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?***

TOC Response: We have clearly demonstrated that the prescribed heights of Appendix 9 of the *Dún Laoghaire Rathdown County Development Plan* are now outdated as a result of the progression of National Policy and implementing such an objective would be contrary to SPPR1 of the *Height Guidelines, 2018* as discussed above. We note that an LVIA has been carried out by The Big Space Landscape Architecture and a Daylight/Sunlight Analysis has been carried out by 3D Design Bureau, both of which demonstrate that no significant material impacts will occur as a result of the proposed development.

Specific Planning Policy Requirement 3

SPPR3 of the Building Height Guidelines sets out that:

'It is a specific planning policy requirement that where;

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

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

The Guidelines also note the following:

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

As increased heights are proposed at the subject site, we have demonstrated how the proposed development satisfies the specified criteria set out in Section 3 of the Height Guidelines as follows:

Development Management Criteria	
At the Scale of the Relevant City/ Town	
Assessment Criteria	Comment
<ul style="list-style-type: none"> <i>The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.</i> 	<ul style="list-style-type: none"> The subject site has excellent public transport accessibility, as detailed in the accompanying Planning Report and Transport Statement. The subject site is considered eminently suitable for student accommodation given the availability of sustainable modes of transport.
<ul style="list-style-type: none"> <i>Development proposals incorporating increased building height, including proposals within architecturally sensitive areas, should successfully integrate into/ enhance the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views. Such development proposals shall undertake landscape and visual assessment (LVIA), by a suitably qualified practitioner such as a chartered landscape architect.</i> 	<ul style="list-style-type: none"> It is our professional opinion that the proposed scheme will successfully assimilate into the surrounding context. The development will integrate into the public realm by providing an additional institutional building next to an existing institutional, educational building. It will provide increased pedestrian footfall which will enhance the natural surveillance of the area throughout the day and evening. A Daylight/Sunlight Analysis and Landscape Visual Impact Assessment have been carried out, both of which demonstrate that no significant negative impacts will occur.

<ul style="list-style-type: none"> • <i>On larger urban redevelopment sites, proposed developments should make a positive contribution to place-making, incorporating new streets and public spaces, using massing and height to achieve the required densities but with sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape.</i> 	<ul style="list-style-type: none"> • The proposed scheme will make a positive contribution to the surrounding area by developing a key underutilised infill site. • The height, scale and massing of the proposed scheme responds to the institutional nature of the lands and allows a sufficient and sustainable density of development to be achieved through building vertically to reduce the site coverage of development, thus protecting the open space and character of the lands and ensuring generous public open space is afforded at ground level. • The subject scheme responds to its immediate surrounding context, through the orientation of the proposed blocks at a 90° angle to the western boundary thus reducing the potential for overlooking, overbearing and overshadowing of adjacent properties by facing the 'short' elevation in the direction of the third party dwellings to the west.
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Development Management Criteria	
At the scale of District/ Neighbourhood / Street	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.</i> 	<ul style="list-style-type: none"> • The high-quality design of the subject scheme will make a positive contribution to the area, particularly through the provision of public open space in the form of a linear parkland trail and parkland area in addition to an active recreation space that will also be publicly accessible.
<ul style="list-style-type: none"> • <i>The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.</i> 	<ul style="list-style-type: none"> • The Design Statement prepared by Stephen Marshall Urbanism and enclosed with this application details the use of materials and the stepped height arrangement to break up the elevations of the proposed development.
<ul style="list-style-type: none"> • <i>The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling additional height in</i> 	<ul style="list-style-type: none"> • The subject scheme includes 7,956 sq m of Public Open Space in the form of a linear nature trail and parkland area, and active recreational space which will play a key role in protecting the open space

<p><i>development form to be favourably considered in terms of enhancing a sense of scale and enclosure while being in line with the requirements of "The Planning System and Flood Risk Management – Guidelines for Planning Authorities (2009)".</i></p>	<p>and parkland character of the lands and providing a 'softer' landscape scheme.</p> <ul style="list-style-type: none"> • The height of the scheme as proposed will provide a sense of enclosure to the public amenity walkway included within the scheme. • The Flood Risk Assessment prepared by DBFL Consulting Engineers and enclosed with this application concludes that there is an overall low risk level of flooding at the subject site.
<ul style="list-style-type: none"> • <i>The proposal makes a positive contribution to the improvements of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.</i> 	<ul style="list-style-type: none"> • The high-quality design of the scheme will ensure the development will be an attractive addition to the area. • The inclusion of 7,956 sq m of public open space in the form of a linear nature trail/parkland and active recreational space, will contribute positively towards the retention of the open character of the subject site.
<ul style="list-style-type: none"> • <i>The proposal positively contributes to the mix of uses and/ or building / dwelling typologies available in the neighbourhood.</i> 	<ul style="list-style-type: none"> • As set out in the accompanying Planning Report, the proposed scheme seeks to contribute towards reducing the deficit of purpose-built student accommodation in Dublin. The subject site is ideally located, in close proximity to University College Dublin, which is readily accessible by foot, by bicycle and by public transport.

Development Management Criteria	
At the Scale of the Site/ Building	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>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.</i> 	<ul style="list-style-type: none"> • The Daylight/Sunlight Analysis demonstrates that the assessed bedspace clusters comfortably meet the BRE guidelines on average daylight factor. • The design of the subject scheme has evolved through a creative process, in conjunction with the results of the Daylight/Sunlight analysis to ensure an attractive living environment for future

	<p>residents which has a limited impact on the surrounding residential amenity.</p> <ul style="list-style-type: none"> • The design of the subject scheme, particularly the orientation of the blocks was carefully considered to minimise the potential for overlooking and overshadowing adjacent properties. • The design of the subject scheme has been carefully considered to ensure the functional amenities such as bin stores have been located in areas of the subject site which may not have as much daylight/sunlight throughout the day as other parts of the subject site.
<ul style="list-style-type: none"> • <i>Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guidelines. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and an effective urban design and streetscape solution.</i> 	<ul style="list-style-type: none"> • As noted above, the Daylight/Sunlight Assessment ultimately concludes that the proposed development will have an imperceptible level of impact on the daylight and sunlight amenity of neighbouring properties. • The Report also notes that the future occupants will enjoy good levels of daylight/sunlight within the proposed development and have access to good levels of sunlight in the adjoining public amenity areas.

Development Management Criteria	
Site Specific Assessments	
Assessment Criteria	Comment
<ul style="list-style-type: none"> • <i>Specific impact assessment of the micro-climatic effects such as down-draft. Such assessments shall include measurements to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.</i> 	<ul style="list-style-type: none"> • These assessments are generally required when buildings are at least 30 No. metres in height. Therefore, as the maximum overall height of the proposed development is 18.030m from ground level, it is considered that this assessment is not required.
<ul style="list-style-type: none"> • <i>In development locations in proximity to sensitive bird and/ or bat areas, proposed developments need to consider the potential interaction of the building location, building materials and artificial lighting to impact flight lines and/ or collision.</i> 	<ul style="list-style-type: none"> • An AA Screening Report and Ecological Impact Statement have been prepared by Scott Cawley Limited, copies of which are enclosed with this Planning Application. • The AA Screening process concluded that there will be no significant effects for any European sites. <p><i>'Following an examination, analysis and evaluation of the best available information, and applying the precautionary principle, it can be concluded that the possibility of any significant effects on any European sites, whether arising from the project alone or in combination with other plans and projects, can be excluded.'</i></p> <p>It is considered that the development will not be likely to lead to significant effects on the environment.</p>
<ul style="list-style-type: none"> • <i>An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.</i> 	<ul style="list-style-type: none"> • This criterion is not applicable as the proposed development will not have any impact whatsoever on the retention of important telecommunication channels, such as microwave links.
<ul style="list-style-type: none"> • <i>An assessment that the proposal maintains safe air navigation.</i> 	<ul style="list-style-type: none"> • This criterion is not applicable as the proposed development will not have any impact whatsoever on safe air navigation.
<ul style="list-style-type: none"> • <i>An urban design statement including, as appropriate, impact on the historic built environment.</i> 	<ul style="list-style-type: none"> • A Design Statement prepared by Stephen Marshall Urbanism Limited has been submitted with the application. The scheme has been sensitively designed to integrate into the

	surrounding context and protect the amenity of the surrounding residential dwellings.
<ul style="list-style-type: none"> • <i>Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.</i> 	<ul style="list-style-type: none"> • An AA Screening Report and Ecological Impact Statement have been prepared by Scott Cawley Limited, copies of which are enclosed with this Planning Application. <p>The AA Screening process concluded that there will be no significant effects for any European sites. It is considered that the development will not be likely to lead to significant effects on the environment.</p>

TOC Comment: It is considered that the proposed development providing heights of part 3 to part 6 No. storeys over lower ground level and comprising 698 No. bedspaces of student accommodation and ancillary facilities at the subject site represents the proper planning and sustainable development of the area as it has been demonstrated that the proposed height of the subject scheme will not have a material impact on surrounding amenity.

We submit that the development as proposed is in accordance with the clear direction in recent national legislation to increase height and density in appropriate locations and the proposed development can be successfully assimilated into its context. We further note that the development allows for the retention of a substantial number of trees, particularly on the more sensitive parts of the site, adjacent to boundaries with residential properties. A tree replacement strategy to reinforce these boundaries is also proposed. The removal of a select number of trees is necessary to allow the site to be developed and to ensure adherence to current standards (i.e., the width of the fire tender access).

4.3 ***Regional Spatial and Economic Strategy for the Eastern and Midlands Region***

The *Regional Spatial and Economic Strategy* (or RSES) for the East and Midlands Regional Assembly was published in June 2019. From this document a number of core Regional Policy Objectives have emerged to work in concert with the National Planning Framework (NPF), and to guide all Local Authority future plans, projects and activities requiring consent of the Regional Assembly.

Under **RPO 4.3** 'Consolidation and Re-intensification', the following objective is stated:

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

TOC Comment: The subject scheme will provide 698 No. student accommodation bedspaces with ancillary resident support facilities therefore appropriately densifying this underutilised infill site.

The subject site is ideally located in just 850m from University College Dublin. The proposed development will result in the provision of much needed purpose-built student accommodation within close proximity to University College Dublin and therefore constitutes the appropriate intensification of an infill site in an appropriate urban location. The scheme provides 9 No. car parking spaces as the site is well served by public transport infrastructure and easily accessible by foot or by bicycle to the Belfield campus of University College Dublin.

The Metropolitan Area Spatial Plan (MASP) for Dublin contained within the RSES notes the following objective RPO 5.5:

'Future residential development in the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs, supported by the development of Key Metropolitan Towns in a sequential manner as set out in the Metropolitan Area Strategic Plan (MASP) and in line with the overall Settlement Strategy for the RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns.'

TOC Comment: The subject site is contained within an established neighbourhood with a mix of institutional and residential land uses, adjacent to high-quality public transport and within walking distance of University College Dublin. Therefore, the proposed development represents consolidated growth on an ideally located urban infill site.

4.4 **Dún Laoghaire Rathdown County Development Plan 2016-2022**

The *Dún Laoghaire Rathdown County Development Plan 2016-2022* notes that development in the Dún Laoghaire – Rathdown functional area should:

'continue to facilitate appropriate levels of sustainable development predicated on the delivery of high quality community, employment and recreational environments – allied to the promotion of sustainable transportation and travel patterns - but all the while protecting Dún Laoghaire – Rathdown's unique landscape, natural heritage and physical fabric to ensure the needs of those living and working in the County can thrive in a socially, economically, environmentally sustainable and equitable manner'

TOC Comment: We submit that achieving the envisioned 'sustainable development' and ensuring the 'promotion of sustainable transportation and travel patterns' requires strategically located sites such as the subject site to seek to maximise density through consolidation whilst ensuring that the achievement of high-quality design is prioritised and the protection of residential amenity is a fundamental tenet of that high quality design. We submit that the subject scheme has successfully achieved these objectives whilst also maintain the open character and recreational amenities of the lands in accordance with the objectives applying to the 'INST' designation.

The scheme has sought to maximise opportunities for sustainability by providing 55% of the roof areas as green roofs and the remaining 45% of the roof areas will be utilised for PV panels, lift access opes and a buffer between PV panels and the Green Roofs and edge of building. Further to that, soft SuDS measures including a swale and raingarden for the Northern Block and a raingarden for the middle block are proposed.

5.0 CONCLUSION

According to Section 9 (6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, An Bord Pleanála may grant permission for a Strategic Housing Development where national policy takes precedence over the objectives of the Development Plan as prescribed in Section 37 (2)(b) of the *Planning and Development Act (as amended)*.

As noted throughout this Material Contravention Statement, the Development Plan prescribes a height of 4 No. to 6 No. storeys at the subject site. We note that this policy was provided prior to the introduction of the *Building Height Guidelines*. An Bord Pleanála and Planning Authorities must have regard to these Guidelines and we note with particular reference to the Specific Planning Policy Requirements (SPPRs) set out in the *Building Height Guidelines*, these elements are mandatory. SPPR 1 of the Guidelines notes that blanket numerical limitations on building height shall not be provided for through statutory plans therefore the imposition of the prescribed height at the subject site would be contrary to SPPR 1. It is our professional planning opinion that given the progression of National Policy, the Building Height Guidelines take precedence over the height prescriptions of the Development Plan.

We note that the Development Plan requires that lands such as the subject lands which include the 'INST' designation are required to respect density parameters. The Plan states that average net densities should be in the region of 35 - 50 units per hectare. However, the Plan also acknowledges that in certain instances, higher densities will be allowed where it is demonstrated that they can contribute towards the objective of retaining the open character and/or recreational amenities of the lands.

We submit that the subject development, which is a student scheme, cannot be assessed in accordance with the density criteria for standard housing/apartment development and to do so would result in significantly skewed results that are not comparable to standard housing development densities. We further submit that the density provided at the subject scheme, which is principally achieved through verticality/building upwards, is ultimately designed to maximise the provision of open space and maintain the character of the lands (in accordance with the 'INST' objective pertaining to the lands) and ensure significant tree retention through reduced building footprints (in accordance with the objection to preserve trees applying to the lands). In our opinion, the scheme as proposed accords with National Policy which seeks to increase density and consolidate development in urban areas. The subject site is easily accessible to University College Dublin and the site is also well served by public transport providing good access to the city centre and the greater Dublin area which negates the need for a significant number of car parking spaces. In addition, the scheme has sought to maximise opportunities for sustainability by providing 55% of the roof areas as green roofs and the remaining 45% of the roof areas will be utilised for PV panels, lift access opes and a buffer between PV panels and the Green Roofs and edge of building. Further to that, soft SuDS measures including a swale and raingarden for the Northern Block and a raingarden for the middle block are proposed.

Having regard to the reasons set out in this Material Contravention Statement it is our professional planning opinion that An Bord Pleanála should be favourably disposed to granting permission for the subject scheme in accordance with Section 37 (2)(b) of the *Planning and Development Act, 2000 (as amended)*.

We submit that the proposed development represents the proper planning and sustainable development of the area.

