



HUGHES
PLANNING
& DEVELOPMENT CONSULTANTS

STATEMENT OF MATERIAL CONTRAVENTION

STRATEGIC HOUSING DEVELOPMENT
The Lord Mayor's Public House,
Main Street,
Swords,
Co. Dublin

APRIL 2022

SUBMITTED ON BEHALF OF:
Jacko Investments Limited,
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1.0 Introduction

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have prepared this Statement of Material Contravention on behalf of our client, Jacko Investments Limited, to accompany a planning application to An Bord Pleanála for a proposed Strategic Housing Development at The Lord Mayor's Public House, Main Street, Swords, Co. Dublin. The subject application involves a site comprising approximately 1.4 hectares of land located between Main Street, Church Road and the Ward River. The development site area (red line area excluding high amenity zoned lands and lands subject to enclosed letter of consent) extends to 1.2 hectares.

In summary, the proposed development, as designed by Aughey O'Flaherty Architects, provides for 146 no. apartments (69 no. one bed, 68 no. two bed, and 9 no. three bed apartments) across 4 no. blocks (A-D), ranging in height from four to six storeys, a childcare facility (424sq.m), 5 no. commercial units, 3,551sq.m of external communal amenity space and 2,041sqm of public open space area.

This statement has been prepared to set out the justification for the proposed public open space provision. While the Applicant does not consider the proposed public open space provision to be a material contravention of the Fingal County Development Plan 2017-2023, it is a matter for An Bord Pleanála to determine if the proposed development in fact materially contravenes the Fingal Development Plan 2017-2023 and if minded to do so, grant permission for the proposed development by reference to the provisions of Section 37(2)(b) of the Planning and Development Act 2000 (as amended).

Therefore, the Applicant will take a conservative approach to compliance with the above requirement regarding the statutory newspaper notice (when it comes to the planning application) and the provision of a justification for the proposed public open space provision in the context of the provisions of Section 37(2)(b) of the Planning and Development Act, 2000 (as amended).

In summary, this Statement of Material Contravention outlines the following:

- (1) The Legislative Context for a Material Contravention;
- (2) The Potential Material Contraventions arising from the proposed development;
- (3) The Rationale for Potential Material Contraventions; and
- (4) The Justification for the Potential Material Contraventions.

It is respectfully requested therefore that An Bord Pleanála have regard to the following justification for a potential material contravention of the Fingal Development Plan 2017-2023 (as it relates to public open space provision), having regard to the fact that the proposed development is by definition 'of strategic importance', the emerging pattern of development approved in the area and having regard to the compliance of the proposed development with national planning policy and section 28 Guidelines.

2.0 Legislative Context

Pursuant to Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (2016 Act), where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), the Board can determine that permission should, nonetheless, be granted, having regard to a consideration specified in Section 37(2)(b) of the Planning and Development Act, 2000 as amended (the Act). Section 9(6)(c) of the 2016 Act stating that:

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

Section 37(2)(b) of the Act states that where a proposed development materially contravenes the development plan, the Board may grant permission where it considers that:

- (i) *the proposed development is of strategic or national importance,*
- (ii) *there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

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

It is respectfully requested that An Bord Pleanála, should they determine the proposal materially contravenes the Fingal Development Plan 2017-2023, have regard to the justification for the proposed public open space provision provided in the subsequent sections.

3.0 Potential Material Contravention

3.1 Public Open Space

Sections 3.5 and 12.7 of the Fingal County Development Plan 2017-2023 sets out the criteria for public open space provision. The development plan states that:

'sufficient quantities of open space and recreational facilities are provided for and that for all developments with a residential component, the overall standard for public open space provision is a minimum 2.5 hectares per 1,000 population. In general, this shall be provided at a ratio of 75% Class 1 and 25% Class 2'.

The development plan also states that in order to provide existing and future communities with adequate recreational and leisure opportunities, *'the Council will employ a flexible approach to the delivery of public open space and more intensive recreational/amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area'.* The following are stated objectives of the Development Plan in relation to public open space provision:

Objective PM52 *Require a minimum public open space provision of 2.5 hectares per 1,000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. For all developments with a residential component, the overall standard for public open space provision is a minimum 2.5 hectares per 1,000 population. In order to provide existing and future communities with adequate recreational and leisure opportunities, the Council will employ a flexible approach to the delivery of public open space and more intensive recreational / amenity facilities. It is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 10% of a development site area.*

Objective DMS57 *Require a minimum public open space provision of 2.5 hectares per 1,000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.*

Objective DMS57A *Require a minimum 10% of a proposed development site area be designated for use as public open space. The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities outside the development site area, subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5.*

The Council has the discretion for the remaining open space required under Table 12.5 to allow provision or upgrade of Regional Parks in exceptional

circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational / amenity facilities is not achievable. This is subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5.

Objective DMS57B Require a minimum 10% of a proposed development site area be designated for use as public open space. The Council has the discretion to accept a financial contribution in lieu of remaining open space requirement required under Table 12.5, such contribution being held solely for the purpose of the acquisition or upgrading of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities subject to the open space or facilities meeting the open space 'accessibility from homes' standards for each public open space type specified in Table 12.5.

The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision or upgrade of Regional Parks in exceptional circumstances where the provision or upgrade of small parks, local parks and urban neighbourhood parks and/or recreational/amenity facilities is not achievable, subject to the Regional Park meeting the open space 'accessibility from homes' standard specified in Table 12.5. Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.

Based on Objectives DMS57A and DMS57B above, the subject proposal generates a minimum open space requirement of 0.14Ha. Based on Objective DMS57 above, the subject proposal generates an open space requirement of 0.65Ha as illustrated in Figure 3.0, overleaf.

Dwelling Type	No. of Dwellings	Occupancy Rate	Calculation	Total Population
3+ bed dwellings	9	3.5 persons	9 X 3.5	31.5
1 or 2-bed dwellings	137	1.5 persons	137 X 1.5	205.5
Total	146			237
Required Open Space Area based on 2.5 hectares per 1000 population				0.592Ha

Figure 1.0 Public open space requirements pursuant to the Fingal Development Plan 2017-2023.

Of the 0.65Ha required, 0.48Ha of Class 1 open space is required and 0.16Ha of Class 2 open space is required. Our development provides 3,840m² of Class 1 open space in the north-western corner of the site which exceeds the 10% minimum requirement but falls short of the requirements pursuant to Objective DMS57.

Of the 0.592Ha required, this would consist of 0.444Ha Class 1 public open space and 0.148Ha of Class 2 public open space. The proposal provides for a total of 0.4352Ha of public open space. Of the total provided space, 0.2311Ha of Class 1 public open space is provided adjacent to the Ward River, adjacent to the site's eastern boundary and 0.2041Ha of Class 2 open space is provided throughout the site.

The open space provided within the scheme exceeds the 10% minimum requirement but falls short of the requirements pursuant to Objective DMS57.

4.0 Rationale for Potential Material Contraventions

4.1 Public Open Space

The application site comprises a total area of 1.4 hectares of which 1.2 hectares is considered representative of the development area. The proposed site layout plan incorporates public open spaces which equates to 31% of the larger 1.4 hectare area. This is considered reasonable on the basis of the above background and we would consider the stated provision to accord with Objectives DMS57A and

DMS57B of the Fingal Development Plan 2017-2023, which require 'a *minimum 10% of a proposed development site area be designated for use as public open space*'. We note that that Fingal County Council has the discretion to accept a financial contribution in lieu of remaining open space requirements. However, the proposed public open space meets the minimum standards for same as per the Development Plan and also realises an efficient density of development.

Should the criteria of the Development Plan be applied to the proposed development in providing a minimum public open space provision of 2.5 hectares per 1,000 population, and using the basis of calculating same on an occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms, the proposed development produces an occupancy rate of 237 persons and a corresponding public open space requirement of 0.59hectares, equating to 42% of the overall site area, which is a considerably significant proportion of the overall site area.

We would argue this is appropriate in this instance given the subject site's proximity to the Ward River Valley Park and the high quality nature of the Class 2 open space provided. We would argue that the link created between Main Street and the Ward River Valley Park and the opening to the Ward River Valley Park created to the north of the site, negate the need for a financial contribution as these aspects of the development facilitate the realisation of a number of key objectives of the Fingal Development Plan 2017-2023, including Objective SWORDS 12 and Objective SWORDS 15.

In summary, the net density of the development now proposed equates to 104.2 dwellings per hectare and therefore is considered to accords with the guidance contained in the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, issued by the Department of Environment, Community and Local Government, 2009. It is considered that the public open space provided within the proposal, equating to 31% of the site area, is a sufficient quantum to serve the proposal, is in accordance with Objective 57A and 57B of the Fingal County Development Plan.

5.0 Justification for Potential Material Contraventions pursuant to Section 37(2)(b) of the 2000 Act.

A justification for the potential material contravention of the Fingal County Development Plan 2017-2023 is set out below, under the relevant parts of Section 37(2)(b) of the 2000 Act.

5.1 Part (i) - Proposed Development is of Strategic or National Importance

The proposed development comprises of inter alia the provision of 154 no. residential apartments. The subject site, being a greenfield site on serviced and zoned land, is representative of an ideal location for infill development. The site is located within close proximity to existing public transport services, educational/recreational facilities and employment centres and its efficient development will provide a greater quantum of commercial floor space and residential population for the benefit of the local centre.

It is considered that the timely delivery of suburban housing, as is proposed under the current application, on this site is appropriate and accords with the national focus on housing development, in response to the housing crisis, and the implementation of the current Government's Action Plan for Housing and Homelessness, Housing for All - A new Housing Plan for Ireland.

On this basis it is submitted that the proposed development is of strategic importance with respect to the timely delivery of urban housing and implementation of the current Government's Action Plan for Housing and Homelessness – Rebuilding Ireland. National guidance, such as the National Planning Framework, Urban Development and Building Height Guidelines, Sustainable Urban Housing Design Standards for New Apartments and the Regional Spatial and Economic Strategy for the Eastern and Midlands Region seek to create compact sustainable residential to be located in appropriate urban locations, close to existing/proposed infrastructure and services. The scheme is located on residentially zoned land in an evolving urban settlement and is adjacent to existing infrastructure and services.

The development also provides significant improvements to the adjoining public realm in the form of an upgraded views and accessibility to the Ware River Valley from Main Street, Swords. It is therefore submitted that the proposed development can be considered to be of strategic importance.

5.3 Part (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

The following section shall demonstrate how the proposed public open space provision is justified in the context of recent National Planning Policy and Section 28 Government Guidelines.

5.4 Part (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

We would contend that permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan. The pattern of development and permissions granted proximate to the subject site are key considerations in the rationale for the current Strategic Housing Development proposal. The pattern of development in the surrounding area are of relevance to the current development proposal. Several strategic housing developments have been approved in the immediately surrounding area, or are being currently considered, which involve densities in excess of that outlined in the Development Plan and public open space areas which fall short of the requirements pursuant to Objective DMS57 included in the Fingal Development Plan 2017-2023. These include the following:

Fosterstown North and Cremona, Forest Road, Swords, Co. Dublin

ABP Ref. ABP-308366-20

Permission was sought from An Bord Pleanála for a Strategic Housing Development at Fosterstown North and Cremona, Forest Road, Swords, Co. Dublin. In summary, the proposal included the construction of 278 no. apartments, a childcare facility and associated works. The scheme applied for ranged in height from 5 no. storeys to 9 no. storeys. An Bord Pleanála granted permission on 3rd February 2021 subject to 28 no. conditions.



Figure 2.0 Computer generated images of development granted under ABP Ref. ABP-308366-20.



Figure 3.0 Site layout plan of development granted under ABP Ref. ABP-308366-20.

The approved scheme provided for 3,385sq.m of public open space. This open space comprised approximately 12% of the overall site area and, thus, accorded with DMS57A. However, under DMS57, the as lodged scheme would result in a population of 431 no. persons which results in a public open space of 10,775sq.m. Despite this shortfall, An Bord Pleanála did not consider there to be a material contravention in terms of public open space and granted permission.

Similarly, it is contended that the proposed quantum of public open space provided at the Lord Mayor's Public House is sufficient as it also exceeds the 10% requirement required under DMS57A.

Lands adjacent to the existing residential development known as 'The Gallery', Turvey Walk, off Turvey Avenue, To the west of Donabate Train Station, Donabate, Co. Dublin

ABP Ref. ABP-306794-20 Permission was sought from An Bord Pleanála for a Strategic Housing Development on Lands adjacent to the existing residential development known as 'The Gallery', Turvey Walk, off Turvey Avenue, To the west of Donabate Train Station, Donabate, Co. Dublin. In summary, the proposed Strategic Housing Development involves construction of a residential development comprising of 144 no. apartment units (26 no. one beds, 100 no. two beds, 18 no. three beds) within 3 no. blocks (ranging in height from 3 - 5 storeys over basement) and 1 no. retail unit. An Bord Pleanála granted permission on 10th August 2020 subject to 30 no. conditions, including the following which required the omission of 4 no. apartments to facilitate the introduction of a childcare facility.



Figure 4.0 Computer generated images of development granted under ABP Ref. ABP-306794-20.



Figure 5.0 Computer generated images of development granted under ABP Ref. ABP-306794-20.

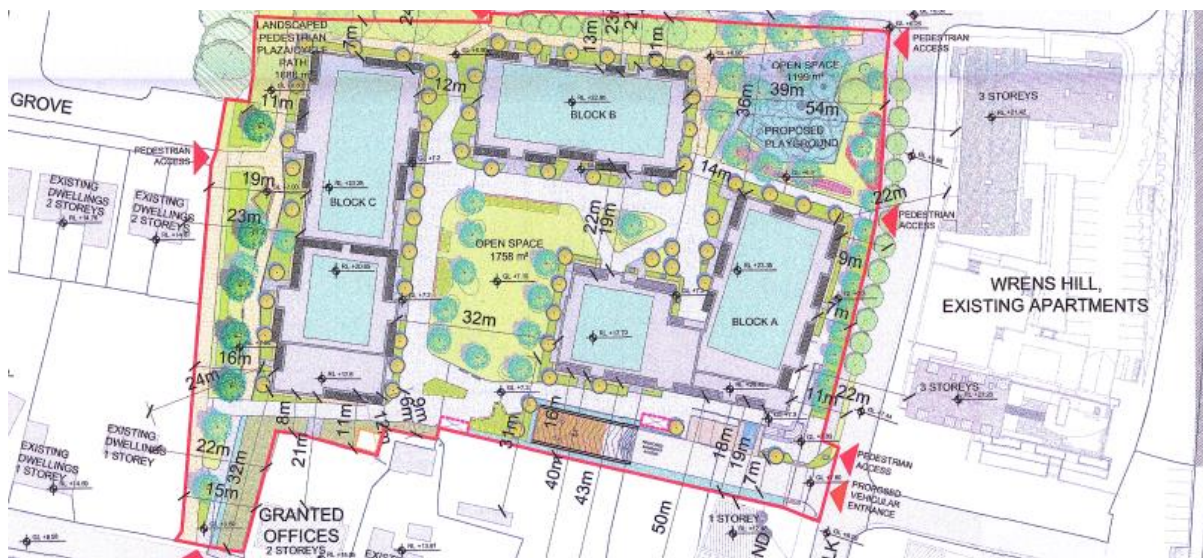


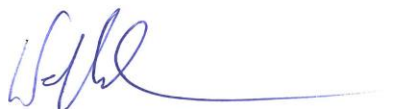
Figure 6.0 Site layout plan of development granted under ABP Ref. ABP-306794-20.

This planning permission remains in force until 2025 and sets a precedent for the construction of suitably designed residential developments in this area. This development also fell short of the public open space areas that falls short of the requirements pursuant to Objective DMS57 (4,645sqm provided as opposed to 6,300sqm required).

6.0 Conclusion

Having regard to the foregoing, including the SHD precedent development referenced above, it is considered that the proposed public open space provision is justified in this instance. It is submitted that the proposed development is consistent with the proper planning and sustainable development of the area and is consistent with all relevant national and regional planning policies and guidelines.

It is respectfully submitted that should An Bord Pleanála consider the proposed development a material contravention of the Fingal Development Plan 2017-2023 that an appropriate justification is set out within this statement demonstrating that the proposed public open space provision is appropriate having regard to the policies and objectives set out within the Section 28 Guidelines, as well as the strategic nature of the development and the emerging pattern of development approved in the immediately surrounding area.



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