

**MATERIAL CONTRAVENTION STATEMENT**

**FOR A**

**STRATEGIC HOUSING DEVELOPMENT**

**AT**

**‘TEMPLAR PLACE’**

**FORMER MALL SHOPPING CENTRE**

**QUAY STREET & HIGH STREET**

**BALBRIGGAN**

**CO. DUBLIN**

**PREPARED BY**



**ON BEHALF OF**

**RHONELLEN DEVELOPMENTS LTD.**

**AUGUST 2021**

# 1. INTRODUCTION

McGill Planning Ltd. have been instructed by the applicant Rhonnellen Developments Ltd., to prepare this Material Contravention Statement to accompany this application for planning permission in respect of a proposed Strategic Housing Development on the site of the former Mall Shopping Centre, Balbriggan, Co. Dublin.

The proposed development comprises the following:

***A Build to Rent (BTR), Strategic Housing Development (SHD) comprising the following: Demolition of existing buildings (including former supermarket building, car park, substation, and outbuildings (partially in retail use)). Construction of a Build to Rent (BTR) development comprising 3 no. apartment blocks (Blocks A - C) ranging in height from 3 to 6 storeys (with Block B over 3 no. lower courtyard floors) providing a total of 101 units (19 no. studios, 41 no. 1-beds, 41 no. 2-beds). Provision of Resident Support Facilities/Resident Services and Amenities (c.217.03 sq.m). Provision of 2 no. retail units (c.110.15 sq.m). Provision of 25 no. car parking spaces (at ground floor and accessed from Quay Street), 182 no. cycle parking spaces. Provision of ESB substation/switch room, plant areas, bin stores, telecoms areas. Provision of open spaces, landscaping, boundary treatments, all associated site works and services provision.***

This statement addresses the potential that the proposed development could be deemed to represent a material contravention of the Fingal County Development Plan, 2017-2023, and outlines how the Board can grant permission for the proposed development in accordance with the Planning and Development (Housing) and Residential Tenancies Act, 2016.

# 2. LEGISLATIVE CONTEXT

The Planning and Development (Housing) and Residential Tenancies Act, 2016 outlines how the Board may grant permission for a development which materially contravenes a Development Plan or Local Area Plan:

Section 9(6) of the Act states:

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

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

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

Section 37(2)(b) of the 2000 Act states:

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

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

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

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

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

In this instance, it is submitted that the Board can grant permission under Sections 37(2)(b)(i) & (iii). In the first instance given that the application is a Strategic Housing Development it is considered “*of strategic or national importance*”. Furthermore, as will be elaborated below, it is considered that, having regard to the National Planning Framework, and Section 28 Guidelines, there is justification for granting the proposed development despite the material contravention of the Development Plan.

### **3. POTENTIAL MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN**

This report seeks to address the issue of potential material contravention of the Fingal County Development Plan, 2017-2023, in relation to the following:

- **Height and Visual Impact (Policy Objectives DMS39, NH38 & NH40).**
- **Housing Mix (Policy Objectives PM38 & PM40).**
- **Public Open Space Provision (Policy Objectives PM52, DMS57 & DMS57a)**
- **Residential Design & Amenities (Policy Objectives DMS05, DMS23, DMS24, DMS25, DMS28, DMS32, & DMS75).**
- **Car Parking & Childcare Provision (Section 7.1, Table 12.8 Car Parking, & Policy Objective PM76).**
- **Development within an Architectural Conservation Area (Policy Objectives CH32, CH33, CH37, & DMS157).**
- **Compliance with Local Area Plan/Masterplan/Urban Design Framework (Policy Objectives SS02a & PM17).**

A more detailed analysis of how the proposed development contravenes, or may contravene, the County Development Plan and the LAP is detailed below.

**A material contravention of the Development Plan is certainly not definitive in each case. However, taking the precautionary approach, it has been decided to include all relevant policies within this Material Contravention Statement, in order to allow The Bord to review and apply its discretion.**

## Height & Visual Impact

<p><b>Objective DMS39</b>  <i>New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.</i></p>	<p>On this basis that this could be considered a large infill site, then the height and massing proposed would be greater than existing properties in the area.</p> <p>However this policy must be considered in tandem with other Development Plan, RSES, NPF and S28 Ministerial Guidelines with respect to the promotion of increased density and height at central, brownfield sites close to public transport and services.</p>
<p><b>Objective NH38</b>  <i>Protect skylines and ridgelines from development.</i></p>	<p>The proposed development will exceed the existing ridgelines of properties in the town centre area along High Street and Quay Street.</p>
<p><b>Objective NH40</b>  <i>Protect views and prospects that contribute to the character of the landscape, particularly those identified in the Development Plan, from inappropriate development.</i></p>	<p>We refer to the Landscape &amp; Visual Assessment prepared by CSR Landscape Architects. The assessment concludes that the proposed development, whilst taller than many adjoining properties results in a landscape / townscape impact that is considered <i>Beneficial</i> – in that it improves landscape(townscape)/view quality and character, fits with the scale, landform, and pattern, and enables the restoration of valued characteristic features or repairs / removes damage caused by existing land uses.</p> <p>The assessment concludes that the proposed design has undergone many iterations to achieve an elegant design in this town centre site. The development is a large intervention in the town however its effects on the local townscape are broadly Beneficial and no Adverse effects predicted.</p> <p>It therefore represents, from a landscape and visual effect perspective, an appropriate new development within the receiving environment and addition to Balbriggan’s distinctive townscape.</p>

## Housing Mix

<p><b>Objective PM38</b> <i>Achieve an appropriate dwelling mix, size, type, tenure in all new residential developments</i></p>	<p>The proposed mix of studio, 1-bed and 2-bed apartment units is considered a suitable mix for this location within the heart of Balbriggan Town Centre and will appeal to a range of household types includes singles, couples, starter families, and empty nesters, who do not require large, family homes at this stage in their family cycle, and also want to be centrally located close to services and public transport.</p> <p>The mix accords with the 2020 Apartment Guidelines also.</p>
<p><b>Objective PM40</b> <i>Ensure a mix and range of housing types are provided in all residential areas to meet the diverse needs of residents.</i></p>	

## Public Open Space

<p><b>Objective PM52</b> <i>Require a minimum public open space provision of 2.5 hectares per 1000 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.</i></p> <p><b>Objective DMS57</b> <i>Require a minimum public open space provision of 2.5 hectares per 1000 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.</i></p>	<p>The proposed town centre development does not propose a public open space on site.</p> <p>A large communal open space is provided in the heart of the development to serve future residents.</p> <p>This town centre, brownfield site is not considered suitable or practical for provision of public open space.</p> <p>Residents will be able to access significant public open spaces in the vicinity including, Balbriggan Harbour and Beach, and Quay Street Playground less than 200m to the north. The Quay Street Car park area is also being proposed for a multi-purpose plaza area and a linear park alongside the Bracken River.</p> <p>The Council's (and ABP's) discretion in relation to the provision of public open space outside the development area, or to provision of a financial contribution in lieu of open space is noted.</p> <p>Furthermore, we note that the Balbriggan Rejuvenation Project, which includes the Quay Street and Harbour area improvements have recently been allocated €25.4m in funding under the Urban Regeneration Development Fund (URDF).</p>
<p><b>Objective DMS57a</b> <i>Require a minimum 10% of a proposed development site area be designated for use as public open space.</i></p>	

## Residential Design & Amenities

<p><b>Objective DMS05</b>  <i>Require new residential developments in excess of 100 units and large commercial/retail developments in excess of 2000 sq m to provide for a piece of public art to be agreed with the Council.</i></p>	<p>Given that a final design for Quay Street has not yet been finalised by FCC it is considered that provision of a piece of public art would be premature. Furthermore a piece of public art may be more appropriately located in the proposed Quay Street Park upgrade proposed to the north.</p> <p>A suitably worded condition requiring a special development contribution towards the provision of same may be applicable in this instance.</p>
<p><b>Objective DMS23</b>  <i>Permit up to 8 apartments per floor per individual stair/lift core within apartment schemes.</i></p>	<p>The proposed development includes up to 10 units per core, which is less than the 12 per core allowed under SPPR6 of the 2020 Apartment Guidelines for Build to Sell Apartments (and with no maximum for BTR units under SPPR8.</p>
<p><b>Objective DMS24</b>  <i>Require that new residential units comply with or exceed the minimum standards as set out in Tables 12.1, 12.2 and 12.3.</i></p>	<p>All units comply with the unit size standards outlined in the 2020 Apartment Guidelines.</p>
<p><b>Objective DMS25</b>  <i>Require that the majority of all apartments in a proposed scheme of 100 or more apartments must exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%.</i></p>	<p>Under SPPR8 of the 2020 Apartment Guidelines this standard does not apply to Build to Rent developments.</p>
<p><b>Objective DMS28</b>  <i>A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.</i></p>	<p>Please refer to the MDO Design Statement and associated drawings which demonstrate compliance with this objective.</p> <p>However, should it be considered that greater separation distances may be required given the height of the development then a Material Contravention of Objective DMS28 may occur.</p>
<p><b>Objective DMS32</b>  <i>Prohibit proposals that would create a gated community for any new residential developments.</i></p>	<p>The main access to the apartments are through the main entrances to Block A and Block B off the public street. To the south of Block A an existing laneway is retained, which is proposed to be gated to provide privacy and security to residents.</p>
<p><b>Objective DMS75</b>  <i>Provide appropriately scaled children's playground facilities within residential development. Playground facilities shall be provided at a rate of 4 sq m per residential unit. All residential schemes in excess of 50 units shall incorporate playground facilities clearly delineated on the planning application drawings and demarcated and built, where</i></p>	<p>Children's play area is designed into the central courtyard and is described in detail in the Landscape Strategy by CSR.</p> <p>However the area of playground is less than the 4sq.m per unit standard stated in Objective M</p> <p>It is noted that the development is located within 100m of an existing playground at Quay Street</p>

*feasible and appropriate, in advance of the sale of any units.*

and within 650m of the new playground at the Bandstand.

## Car Parking & Childcare Provision

### Section 7.1 & Table 12.8 Car Parking

Table 12.8 - Car Parking Standards

Land Use	Criterion	Proposed	Notes	Category	Norm or Max
House - urban/suburban 1 or 2 bedrooms	Unit	1-2	Within curtilage	Residential	Norm
House - urban/suburban 3 or more bedrooms	Unit	2	Within curtilage	Residential	Norm
House - rural	Unit	2-3	Within curtilage	Residential	Norm
Apartment, townhouse 1 bedroom	Unit	1	Plus 1 visitor space per 5 units	Residential	Norm
Apartment, townhouse 2 bedrooms	Unit	1.5	Plus 1 visitor space per 5 units	Residential	Norm
Apartment, townhouse 3+ bedrooms	Unit	2	Plus 1 visitor space per 5 units	Residential	Norm

Section 7.1 of the Development Plan states that in considering applications for developments within town centres the existing availability of parking in the area should be considered. Where appropriate, proposed residential units should have a car parking space per unit which would equate to 101 spaces in this instance.

The current proposal includes for a significantly lower parking standard than 1 per unit – a 0.25 parking ratio. However this is justified having regard to the town centre location, close to public transport and services, and also given it's a Build to Rent development which under SPPR8 of the 2020 Apartment Guidelines can provide a "default of minimal or significantly reduced car parking provision".

### **Objective PM76**

*Require as part of planning applications for new residential and commercial developments that provision be made for appropriate purpose built childcare facilities where such facilities are deemed necessary by the Planning Authority.*

A Childcare Assessment is submitted with this application which estimates a likely future private childcare requirement of only between 3 and 7 spaces. The Assessment also identifies 9 existing childcare providers operating within 1km distance (15 mins walk) of the proposed development with two other facilities just beyond the 1km. When contacted (in July 2021) most of the existing operators confirmed that they have capacity, totalling to c.37 spaces.

Given the scale and mix of the development, its central location, and the availability of existing services in the town, it is considered that an additional childcare facility is not required as part of this BTR development.

## Development within an Architectural Conservation Area

### **Objective CH32**

*Avoid the removal of structures and distinctive elements (such as boundary treatments, street furniture, paving and landscaping) that positively contribute to the character of an Architectural Conservation Area.*

We refer to the Architectural Heritage Impact Assessment prepared by Molloy & Associates, Heritage Consultants.

### **Objective CH33**

The removal of the outbuildings within the site (accessed from High Street) is required to facilitate purposeful redevelopment of the site.

<p><i>Promote the sympathetic maintenance, adaptation and re-use of the historic building stock and encourage the retention of the original fabric such as windows, doors, wall renders, roof coverings, shopfronts, pub fronts and other significant features of historic buildings, whether protected or not.</i></p>	<p>The building is not a Protected Structure, nor is it included on the National Inventory of Architectural Heritage (NIAH). The modest structure is a good, but unexceptional, example of a vernacular farm building.</p>
<p><b>Objective CH37</b> <i>Seek the retention, appreciation and appropriate revitalisation of the historic building stock and vernacular heritage of Fingal in both the towns and rural areas of the County by deterring the replacement of good quality older buildings with modern structures and by protecting (through the use of Architectural Conservation Areas and the Record of Protected Structures and in the normal course of Development Management) these buildings where they contribute to the character of an area or town and/or where they are rare examples of a structure type.</i></p>	<p>An additional consideration is that the structure has been significantly altered; the gable walls have been modified to increase the height of the upper floor and to alter the roof pitch. The roof structure and linings are modern, and the exterior has been finished with a cement-based, pebble-dashed render.</p> <p>It is considered that the building does not meet the criteria of specialist interest in any of the eight categories as set out in Section 51 (1), of the 2000 Planning and Development Act.</p>
<p><b>Objective DMS157</b> <i>Ensure that any new development or alteration of a building within or adjoining an ACA positively enhances the character of the area and is appropriate in terms of proposed design, including scale, mass, height, proportions, density, layout materials, plot ratio and building lines.</i></p>	<p>The building attached to the east elevation of this structure was constructed in the early 20th century. The ESB substation serving the former supermarket is presently housed within this latter structure, with metal doors set within the gable on High Street.</p> <p>The loss of any historic fabric is regrettable, but this must be balanced against the wider benefits of the sensitive redevelopment of the site on the ACA. If this outbuilding were to be retained, the location of the building would negatively impact the well-considered urban design rational of the proposed scheme.</p> <p>The new buildings have been aligned with the established pattern of development to positively contribute to the High Street streetscape.</p>

#### **Compliance with Local Area Plan/Masterplan/Urban Design Framework**

<p><b>Objective SS02a</b> <i>Development will be permitted in principle on lands where there is a Local Area Plan or Masterplan in place and only when these lands are substantially developed will permission be granted for the development of lands without such a framework. Should the lands identified within a LAP or Masterplan not come forward</i></p>	<p>The location of this new development within Balbriggan Town Centre accords with Objective SS02b which states:</p> <p><i>“Focus new residential development on appropriately zoned lands within the County, within appropriate locations proximate to existing settlement centre lands where infrastructural capacity is readily available, and they are along an</i></p>
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<p><i>for development in the short term, consideration will be given to other lands.</i></p>	<p><i>existing or proposed high quality public transport corridors and on appropriate infill sites in the town centres, in a phased manner alongside the delivery of appropriate physical and social infrastructure.”</i></p> <p>The site is not located in an area subject to an LAP or Masterplan subject to Objective SS02a.</p> <p>However when read alongside Objective SS02b it is evident that the proposed residential development within Balbriggan Town Centre is in accordance with the County Development Plan.</p>
<p><b>Objective PM17</b>  <i>Consider the Urban Design Framework prepared for the centre of Balbriggan to inform and guide development in this area.</i></p>	<p>The Urban Design Framework Plan (2004) is no longer publicly available (see <a href="https://www.fingal.ie/council/service/urban-framework-plan">https://www.fingal.ie/council/service/urban-framework-plan</a>).</p> <p>Furthermore the 2004 Plan has been superseded by the Our Balbriggan 2019 – 2025 Rejuvenation Plan.</p> <p>This current plan has been considered in the current proposal, as summarised in the Statement of Consistency and the Design Rationale prepared by CSR Landscape Architects</p>

Given the clear direction in national planning policy to accelerate housing delivery in order to meet the continued, significant under-provision of housing in the Dublin area it is considered that the proposed development, located on a brownfield site within the heart of Balbriggan Town Centre is in accordance with the quantitative and qualitative standards of the National Planning Framework, the Regional Spatial & Economic Strategy for the Eastern & Midland Region, and relevant Section 28 Ministerial Guidelines. The development is in accordance with the proper planning and sustainable development of the area and should be granted.

## 4. DISCRETION OF AN BORD PLEANÁLA TO GRANT PERMISSION FOR DEVELOPMENT THAT MATERIALLY CONTRAVENES THE DEVELOPMENT PLAN AND/OR LOCAL AREA PLAN

Should the Board consider that the proposed development represents a Material Contravention of the Development Plan we submit that the Board can grant permission under Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act 2016*, which states:

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

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

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

Section 37(2)(b) of the 2000 Act states:

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

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

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

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

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

In this regard we submit the following under Section 5(6) of the 2016 Act:

- **Section 37(2)(b)(i) of the 2000 Act:**

The proposed development is a “Strategic Housing Development”, as defined under Section 3 of the 2016 Act.

- **Section 37(2)(b)(iii) of the 2000 Act**

The Board is referred to the **National Planning Framework (NPF)** and the Section 28 Ministerial Guidelines, in particular, **Urban Development & Building Heights: Guidelines for Planning Authorities (2018)**, **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas**

**(2009) (And accompanying Design Manual); and Sustainable Urban Housing: Design Standards for New Apartments (2020).**

Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála are required to have regard to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function. Section 1.14 of the Building Heights Guidelines state that SPPRs take precedence over any conflicting, policies and objectives of development plan and local area plans.

**Rebuilding Ireland – the Government's Action Plan for Housing and Homelessness**, launched in 2016; and **Project Ireland 2040 National Planning Framework (NPF)**, published in 2018, set out clearly the intention of the State to promote increased housing output and accelerate the supply of residential units but to do so in a sustainable fashion such that the location of future residential growth ensures Compact Growth, Sustainable Mobility, Transition to a Low Carbon and Climate Resilient Society, and Access to Social Infrastructure.

The NPF states that activating '*strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development*' is a top priority.

**National Policy Objective 4** of the NPF states:

*Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.*

**National Policy Objective 11** states:

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

**National Policy Objective 13** states:

*In urban areas, planning, and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerances that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.*

**National Policy Objective 35** states:

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

The NPF objectives quoted above recommend increased housing output and do not seek to prescribe numerical limits on potential densities, building heights or car parking in individual developments.

The **Urban Development & Building Heights: Guidelines for Planning Authorities (2018)** incorporate the principles of the NPF, in particular to need to increase levels of residential development in urban centres and increase building heights and overall density. It identifies the need to focus planning policy on "*reusing previously developed "brownfield" land, building up urban infill sites*".

They place significant emphasis on promoting development within the existing urban footprint utilising the existing sustainable mobility corridors and networks.

*“In order to optimise the effectiveness of this investment in terms of improved and more sustainable mobility choices and enhanced opportunities and choices in access to housing, jobs, community and social infrastructure, development plans must actively plan for and bring about increased density and height of development within the footprint of our developing sustainable mobility corridors”.*

It goes on to highlight that *“the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights”.*

The following summarises the compliance of the proposed development with the Development Management Principles and Criteria for assessing increased building height outlined in Sections 3.1 and 3.2 of the Guidelines:

POLICY	EVALUATION OF CONSISTENCY
<p><i>Section 3.1 Development Management Principles</i></p> <p><i>In relation to the assessment of individual planning applications and appeals, it is <u>Government policy that building heights must be generally increased in appropriate urban locations</u>. 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. Planning authorities <u>must apply</u> the following broad principles in considering development proposals for <u>buildings taller than prevailing building heights in urban areas</u> in pursuit of these guidelines:</i></p> <ul style="list-style-type: none"> <li><i>Does the proposal positively assist in securing National Planning Framework objectives of focusing development on 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?</i></li> <li><i>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?</i></li> <li><i>Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that</i></li> </ul>	<p>The proposed development seeks to deliver a new residential development at a town centre site that is highly accessible in terms of public transport with Balbriggan train station within c.250m. The development will also benefit from the existing public bus services that operate through the town centre and connect to Dublin City Centre, Dublin airport and Drogheda. There is also excellent pedestrian links from the site to the rest of the town centre services and the Harbour.</p> <p>The site is zoned Major Town Centre, where higher plot ratios, coverages and densities are expected.</p> <p>The Fingal County Development Plan does not have a specific Building Heights Strategy for the county or individual areas/sites (notwithstanding LAPs). However, the Development Plan was varied on 29<sup>th</sup> June 2020 to align with national policy.</p> <p>Policy Objective PM42 of the Development Plan now states:  <i>“Implement the policies and objectives of the Minister in respect of ‘Urban Development and Building Heights Guidelines’ (December 2018) and Sustainable Urban Housing: Design Standards for New Apartments (March 2018) issued under section 28 of the Planning and Development Act, as amended.”</i></p>

<p><i>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?</i></p>	<p>Furthermore, the development will achieve the following principles of the Building Heights Guidelines which provide the justification for taller buildings:</p> <ul style="list-style-type: none"> <li>• The proposed development secures the NPF objective of compact urban growth within the town centre of a key settlement in Fingal, on the Dublin-Belfast Economic Corridor, and within the Core Region of the Eastern and Midlands Regional Area.</li> <li>• The proposed development will secure the redevelopment of a key brownfield site in Balbriggan town centre, delivering new homes within the heart of an established and well serviced town.</li> <li>• The development accords with National Policy Objective (NPO) 33 in delivering an appropriate scale of sustainable residential development at a highly accessible location.</li> <li>• The development accords with NPO 35 in achieving higher density through increased building height of up to 6 storeys.</li> <li>• The development accords with NPO 13 in terms of increasing building height and reducing car parking to provide a high quality and high amenity residential development that at the same time achieves increased compact growth at an accessible and designated town centre location.</li> </ul>
<p><i>Section 3.2 Development Management Criteria</i></p> <p><i>In the event of making a planning application, the applicant shall demonstrate to the satisfaction of the Planning Authority/ An Bord Pleanála, that the proposed development satisfies the following criteria:</i></p>	<p>The site is well connected with public transport services. Balbriggan train station is located c.250m north of the site with frequent services on the Northern Commuter Line between Dublin City Centre and Dundalk. Under the Dart+ Programme it is also intended that rail services will be electrified along the Northern Line as far as Drogheda which will mean increased services for Balbriggan in the near future.</p>
<p><i>At the scale of relevant city/town:</i></p> <p><i>-The site is well served by public transport with high capacity, frequent service, and good links to other modes of public transport.</i></p>	<p>In addition, the town is served by a number of bus services including the 33, 33a, 33X, 101, 101x, B1, 191 &amp; 192 offering services to Dublin City, Dublin Airport, Drogheda and locally.</p>

<p><i>At the scale of district/ neighbourhood/ street;</i></p> <ul style="list-style-type: none"> <li><i>- The proposal responds to its overall natural and built environment and makes a positive contribution.</i></li> <li><i>- The proposal is not monolithic and avoids long, uninterrupted walls of building.</i></li> <li><i>- The proposal enhances the urban design context for public spaces and key thoroughfares.</i></li> <li><i>- The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies.</i></li> </ul>	<p>The existing site, which is vacant, was formerly a small shopping centre which has been closed for some time with Balbriggan now served by a number of alternative retail locations within the town centre and at the edge of centre – including the Millfield Shopping Centre.</p> <p>The proposed development introduces a new apartment development in the heart of the town centre close to public transport and services helping to sustain a town centre residential community into the future .</p> <p>The proposed development responds very positively to its town centre context and located within the Balbriggan Historic Centre ACA by addressing High Street and Quay Street, providing a much improved streetscape and public realm.</p> <p><u>Impact on Quay Street</u></p> <p>It replaces the existing shopping centre building which is of limited architectural interest and insensitive to the historic urban environment and Quay Street streetscape.</p> <p>The proposed building in Quay Street (Block A) has been designed to reflect the fine grain of a traditional streetscape. The proposed brick and render combination proposed varies in colour and tone to subtly reinstate the visual appearance of historic urban grain.</p> <p>The window openings have been designed with a strong vertical emphasis to complement the composition of the traditional fenestration pattern. The windows sizes are naturally larger than the traditional window openings to meet expectations of modern living standards, but the ratio of solid-to-void has been duly considered to complement the existing built environment.</p> <p>Careful consideration has been given to the design of the gables of the new development, which will be highly visible on account of the single buildings adjoining the northern and eastern site boundaries. Windows have been introduced to animate the gables and are finished in high quality, self-finished materials</p>
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	<p>that harmonise with the surrounding built environs and enhance the appearance of the buildings from the public realm.</p> <p>Articulation of the recessed upper floors reduces the visual impact of the buildings as perceived at close range. The form of the building steps down towards the eastern gable of Quay Street and the upper floors have been set back to minimise the visual impact on the narrow street.</p> <p>It is considered that the proposed development will have a positive visual impact on Quay Street, adding character to the Balbriggan Historic Centre ACA and will encourage pedestrian movement from the primary street (Bridge Street) to the amenity of the nearby beach. The ground floor elevation on Quay Street includes 2 retail spaces and several entrances to create an active street front.</p> <p><u>Impact on High Street</u></p> <p>The proposed residential building on High Street (Block B) has been designed to respect the established scale of the buildings on this residential street. The entirety of the new development is designed as a single entity; a high-quality urban intervention so that there is common architectural language and coherency to the entire scheme and consequently the design of this building is similar to Block A on Quay Street, but the building form is modelled differently to respond to the specific context of High Street.</p> <p>The building sits quietly on the street to avoid competing with the prominent building at the top of the street, the Carnegie Library. The recessed balconies add depth and definition to the façade, and visually break down the scale of the building.</p> <p>Respectful distances have been maintained adjacent the boundaries to avoid encroachment on the adjacent single-storey structures.</p>
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	<p>The simple material palette has been selected to harmonise with the brick of the residences and the library on High Street.</p> <p>It is considered that the existing boundary walls are not of sufficient architectural interest to warrant their retention. The proposed elevation on High Street constitutes a well-considered scheme that positively contributes to the Balbriggan Historic Centre ACA.</p>
<p><i>At the scale of the site/building:</i></p> <p><i>- Maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.</i></p>	<p>Over 50% of the apartments across the scheme are dual aspect which is in excess of the minimum standard required for developments under the Apartment Guidelines (which allows for at least 33% dual aspect in intermediate locations within town centres).</p> <p>The communal amenity space will be compliant with the guidelines with 84% achieving at least two hours of sunlight over 50%+ on 21st March.</p> <p>In terms of Average Daylight Factors (ADF's) 97% of Living/ Dining and Bedrooms (totalling 221 of 228 rooms) assessed within the proposed development were determined to be compliant based on the following BS.8206-2: 7 standards of &gt; 1.5% for Living/ Dining Areas, and &gt; 1.0% for Bedrooms. 50% of the living spaces achieved an ADF in excess of 3%, and over 85% achieved 2.0%. This is a very high result for a brownfield town centre site.</p> <p>In terms of impact on neighbouring dwellings along Quay Street and High Street only one (on High Street) showed a minor impact in terms of Vertical Sky Component (VSC) (result was 74% just below the 80% threshold). This minor impact in the potential for daylight is offset by the wider planning benefits of redevelopment of this unsightly and vacant brownfield site and rejuvenation and animation of the street which will significantly benefit resident of said property.</p>



*Specific Assessments:*

*-Specific impact assessment of the micro-climatic effects such measures 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.*

*-Development locations in proximity to sensitive bird/bat areas need to consider the potential interaction of the building location, materials, and artificial lighting.*

*-Relevant environmental assessment requirements.*

Having regard to the town centre context of the site and adjoining building heights and street layouts, a wind study was also prepared.

The analysis determined that all balconies and terraces throughout the development were situated in zones suitable for sitting - either as "Outdoor Dining" or "Pedestrian Sitting" and are therefore well suited to their intended use as private amenity spaces. At ground level the conditions have been determined to be predominantly suitable for "Outdoor Dining" and "Pedestrian Sitting".

The site is a brownfield site with no extant ecology or habitats of sensitivity. Nevertheless an Ecological Impact Assessment has been carried out as well as a separate bat survey.

The bat report concluded that there are low levels of bat activity in the area. No bats were found to be roosting within the buildings.

Mitigations measures recommended in the Ecological Impact Assessment and the Bat Survey are incorporated into the Construction & Environmental Management Plan prepared by ORS Consulting Engineers and the Public Lighting Plan and Report prepared by Varming Consulting Engineers.

An Appropriate Assessment Screening has also been carried out. In accordance with Article 6(3) of the Habitats Directive, the relevant case law, established best practice and the precautionary principle, this AA Screening Report has examined the details of the project in relation to the relevant Natura 2000 sites within 15km of the application site. This report has analysed the potential impacts and effects of the proposed project on the Special Conservation Interests of these designated sites. It has evaluated the significance of these potential impacts and effects in view of these sites' conservation objectives.

There are no watercourses on the site, therefore there are no source-pathway-

	<p>receptor linkages between the application site and the European sites and significant effects arising from pollution during construction or operation can be ruled out.</p> <p>In view of best scientific knowledge and on the basis of objective information, it can be concluded that this application, whether individually or in combination with other plans and projects, will have no impacts upon the Natura 2000 sites. It is of the opinion of the ecologist that this application does not need to proceed to Stage II of the Appropriate Assessment process.</p>
<p><b>SPPR 3</b></p> <p><i>It is a specific planning policy requirement that where; 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise.</i></p>	<p>This proposal is considered in accordance with the NPF and associated Section 28 Guidelines, in terms of optimising the residential yield on this appropriately zoned, serviced and highly accessible brownfield site located within Balbriggan Town Centre and within short walking distance of a range of public transport options, retail and all necessary social infrastructure to serve this future residential community.</p>

## 5. CONCLUSION

As outlined above, it is submitted that there is sufficient justification for An Bord Pleanála to permit a material contravention of the Fingal County Council Development Plan 2017 – 2023 in this instance having regard to Section 37(2)(b)(i) & (iii) of the *Planning and Development Act, 2000 (as amended)*.