



**ARMSTRONG  
FENTON**  
ASSOCIATES

**PROJECT:** Strategic Housing Development

**MATERIAL CONTRAVENTION STATEMENT:**

for proposed residential development at  
Boherboy, Saggart, Co. Dublin

**CLIENTS:** Durkan Estates Ireland Ltd & Kelland Homes Ltd

**DATE:** March 2022

**Planning &  
Development  
Consultants**



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## 1.0. Purpose of Report

1.1. This Material Contravention Statement has been prepared by Armstrong Fenton Associates, Planning & Development Consultants, on behalf of Durkan Estates Ireland Ltd & Kelland Homes Ltd (the applicants) to accompany the application for Strategic Housing Development submitted to An Bord Pleanála in respect of a site measuring c. 18 hectares located at Boherboy, Saggart, Co. Dublin.

1.2 The subject application comprises a Strategic Housing Development as defined within Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (hereafter 'Act of 2016') and has been prepared in accordance with the requirements of the Planning and Development Regulations 2001 (as amended).

1.3 Section 4 of the Act of 2016, provides that an application for a strategic housing development must be in the prescribed form. The relevant form is Form no. 14 under the 2001 Regulations pursuant to which the applicant is directed to submit a statement indicating why permission should be granted in cases where a proposed development may materially contravene the relevant development plans and/or local area plan other than in relation to the zoning of the land. This Material Contravention Statement is submitted to An Bord Pleanála in accordance with same.

1.4 In accordance with Section 9(6) of the Act of 2016, An Board Pleanála (hereafter 'the Board') may grant permission for a proposed strategic housing development that materially contravenes the development plan and/or local area plan, other than in relation to zoning, i.e. *"(6)(a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned."*

1.5 Furthermore, Section 9(6)(c) of the Act of 2016 states the Board may only grant permission for a development that materially contravenes a development plan (other than in relation to the zoning of the land) where it considers that, if Section 37(2)(b) of the Planning and Development Act 2000 (as amended) (hereafter 'Act of 2000') were to apply, it would grant permission for the proposed development.

1.6 Section 37(2)(b) of the Act of 2000 states that where a proposed development materially contravenes the development plan / local area 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"*

1.7 This Material Contravention Statement has been prepared in order to address a matter which may be deemed by the Board to materially contravene the provisions of the existing 2016-2022 South Dublin County



Development Plan (hereafter “CDP”) and the 2012 Fortunestown Local Area Plan (hereafter “LAP”), in accordance with the Act of 2016. In the context of Section 37(2)(b) of the Act of 2000, it is considered that the proposed development can be granted permission by the Board notwithstanding the material contravention of the existing CDP and LAP as detailed in Section 3 of this statement - the following subsections detail the justification for same.

## 2.0 Proposed Development

2.1. The subject application for Strategic Housing Development is detailed in full below, as per the public notices:

**Kelland Homes Ltd and Durkan Estates Ireland Ltd are applying to An Bord Pleanála for permission for a strategic housing development at a site at Boherboy, Saggart, County Dublin. To the immediate north of the site is the Carrigmore residential estate, to the west are agricultural lands and a single dwelling, to the east is the Corbally residential estate while to the south is the Boherboy Road. The proposed application represents the development of the entire Boherboy Neighbourhood as identified in the Fortunestown Local Area Plan (2012).**

The development will consist of 655 no. dwellings, comprised of 257 no. 2, 3 & 4 bed, 2 & 3 storey detached, semi-detached & terraced houses, 152 no. 1, 2 & 3 bed duplex units in 17 no. 2-3, 3-4 & 4 storey blocks, and 246 no. 1, 2 & 3 bed apartments in 9 no. buildings ranging in height from 2, 2-5, 4-5 & 5 storeys, and a 2 storey crèche (693m<sup>2</sup>).

Access to the development will be via one no. vehicular access point from the Boherboy Road, along with proposed upgrade works to Boherboy Road to include the provision of a roadside footpath along the front of the site at the Boherboy Road, continuing eastwards to the junction with the N81 Blessington Road (for an overall distance of c.370m). The proposed development also provides for pedestrian and cyclist connectivity to the adjoining Carrigmore Park to the north-east, and vehicular, pedestrian and cyclist connections to adjoining developments at Corbally Heath to the east and Carrigmore Green to the north.

The proposed development provides for (i) all associated site development works above and below ground, including surface water attenuation & an underground foul sewerage pumping station at the northern end of the site, (ii) public open spaces (c. 3Ha), including alongside the Corbally Stream, which will accommodate the provision of pedestrian / cyclist links to Carrigmore Park to the north-east, (iii) communal open spaces (c. 6,392m<sup>2</sup>), (iv) hard and soft landscaping and boundary treatments, (v) undercroft, basement & surface car parking (914 no. car parking spaces, including EV parking), (vi) bicycle parking (797 no. bicycle parking spaces), (vii) bin & bicycle storage, (viii) public lighting, and (ix), plant (M&E), utility services & 5 no. ESB sub-stations, all on an overall application site area of 18.3ha. In accordance with the Fortunestown Local Area Plan (2012) an area of approx. 1.4Ha within the site is reserved as a future school site.



### 3.0 Material Contravention

3.1 In the context of Section 9(6) of the Act of 2016, the proposed development may be deemed by the Board to represent a material contravention of the LAP in relation to:

**A. Density:**

**LAP:**

Table 5.3 “Recommended Densities & Uses”, Table 6.1 “Neighbourhood Functions” & section 6.4 “Framework 4: Boherboy Neighbourhood” of the LAP.

**B. Building Height:**

**LAP:**

Sections 5.5.4 “Building Height” and 6.4.5 “Built Form”.

**C. Average Floor Area:**

**LAP:**

Sections 5.4.6 “Dwelling Mix” & 6.4.3 “Density & Land Use”.

**D. Unit Mix:**

**LAP:**

Section 5.4.6 “Dwelling Mix” & Objective BN4a.

**E. Community Building**

**LAP:**

Sections 7.2.5 “Community Facilities” & 8.0 “Phasing”.

**F. Phasing / Quantum of Development**

**LAP:**

Section 8.0 “Phasing”.

3.2 In the context of Section 9(6) of the Act of 2016, the proposed development may be deemed by the Board to represent a material contravention of the CDP in relation to:

**G. Car Parking**

These potential material contraventions are detailed overleaf.



### 3.3 Density

Table 8.1 of the LAP sets out the phasing and distribution of residential development for each of the five neighbourhoods identified in the LAP. The Boherboy Neighbourhood is identified as accommodating 556 no. dwellings, with a total of 3,300 no. dwellings to be delivered across all five neighbourhoods.

The strategy of the LAP in terms of density is set out in section 5.4 of same whereby it is stated that the LAP's "density strategy allows for the provision of lower densities in limited cases and to facilitate a choice of housing types even within urban areas provided that average densities within a neighbourhood or district as a whole comply with prescribed densities".

The LAP aims to facilitate the provision of own door housing, and as such "net residential densities of 30-50 dwellings per hectare shall apply to the Plan lands. Densities shall be at the higher end of this range within 5 minutes walk of Luas stops in accordance with Development Plan policy and National Guidance and at the lower end of this range at the extremities of the Plan Lands".

Table 5.3 "Recommended Densities & Uses" of the LAP sets out the recommended densities and uses for each of the neighbourhoods within the LAP area and identifies the Boherboy Neighbourhood as having a primary residential use with a net residential density of circa 30 units per hectare.

*Table 5.3 Recommended Densities & Uses*

Neighbourhood	Primary Use	Net Residential Density
Fortunestown Centre	Mixed	Circa 50 per Ha.
Saggart-Cooldown Commons	Residential	Circa 40 per Ha.
Boherboy	Residential	Circa 30 per Ha.
Cheeverstown	Employment & Residential	Circa 50 per Ha.
Citywest Road	Residential	Circa 40 per Ha.

Fig. 1 – Extract of "Table 5.3" from Fortunestown LAP 2012

Section 6.4 "Framework 4: Boherboy Neighbourhood" of the LAP states "in order to incorporate the valuable heritage features that occupy Boherboy and respond to the rural character of the surrounding area, development of the Boherboy Neighbourhood will largely take the form of low density housing set amongst green corridors and parkland" (emphasis added).

Section 6.4.3 "Density and Land Use" states: "Having regard to the provision for more compact development close to the Fortunestown Centre and around the four Luas stops within the Plan Lands and having regard to the need to protect important heritage features in Boherboy while responding to the rural character of the surrounding area with an appropriate transition, it is proposed to provide for lower density housing across the Boherboy Neighbourhood" (emphasis added).

**Objective BN4** (page 39) of the LAP states: "Densities at the upper end of the scale shall only be located in the northern areas of the Boherboy Neighbourhood subject to the achievement of vehicular access through the Carrigmore Estate and pedestrian access through the District Park and District Centre. The lower densities shall be implemented in the southern areas of the neighbourhood".

Section 6.4.5 "Built Form" of the LAP states that "Development across the Boherboy District will take the form of low density and low rise housing in a manner that incorporates elements of heritage value and views of elements of heritage value" (emphasis added).



The proposed development caters for a net density of 43 units per hectare across the entire site / neighbourhood, with a net density of 51 units per hectare proposed in the northern “half” of the site i.e. within a 1km walking distance of the nearest Luas passenger stop at Fortunestown to the north. In the southern “half” of the site, (beyond the 1km walking distance of the nearest Luas passenger stop) a net density of 35.5 units per hectare is proposed. All of the foregoing provides for a higher net density of development than the recommended net density of 30 units per hectare for the Boherboy Neighbourhood.

The proposed development site can be described as an Outer Suburban / Greenfield Site in accordance with section 5.11 of the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, which define such sites as “as open lands on the periphery of cities or larger towns”. The guidelines state that “the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares”.

The proposed development provides for 655 no. dwellings on a gross site area (i.e. the area of the red line of application) of 18.3Ha, which includes the proposed upgrade works to the Boherboy Road, i.e. an area equating to 5,888m<sup>2</sup> / 0.6Ha. The area of the two fields that will accommodate the proposed residential development is 17.69Ha. A school site of 1.42Ha is reserved in the north-western portion of the site, in accordance with the requirements of the Fortunestown LAP. In addition, a green corridor / significant landscape buffer along the eastern boundary of the site is proposed, which will also act as open space for the wider area, this “Riverside Park” equates to c.1Ha. Therefore, in accordance with Appendix A of the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, the area for the school site has been discounted from the gross development area, as has the “Riverside Park”. The area catering for the proposed upgrade works to the Boherboy Road, which is located outside of the subject site, has also been discounted from the gross area of the red line of application. Taking the three aforementioned discounted areas into consideration, it produces a net development area of 15.28Ha which in turn produces a net density of 43 units per hectare across the entire site, which accords with section 5.11 of the aforementioned guidelines.

The site has been measured in terms of walking distance to a light rail stop and we confirm that the 1km walking distance from the Fortunestown Luas passenger stop brings one to “Streets 2 and 10” within the proposed development. South of these streets is beyond the 1km walking distance from the Luas stop. (Please refer to Fig. 1 over for illustration). Therefore, north of Streets 2 and 10, within the development site is where the higher density of development is proposed to be provided within the overall scheme, and this part of the subject occupies a net area of 7.4Ha, and excludes an area of 1.42Ha that has been reserved for a school site, in accordance with the 2012 Fortunestown LAP and (b) 0.61ha of open space/landscape buffer in the “Riverside Park” along the eastern boundary, both of which have been discounted for net density purposes. This northern half of the site accommodates 374 no. dwellings which represents a net density of 51 no. dwellings per hectare, which accords with section 5.8 of the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.

The proposed density, i.e. 43 units per hectare net across the entire site and 51 units per hectare net across the portion of the site that is within 1km walking distance of the Fortunestown Luas stop to the north-east, is supported by the provisions of the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)* (i.e. section 5.8) which refer to providing net residential densities in the general range of 35-50 dwellings per hectare, minimum net densities of 50 dwellings per hectare within 1km of a light rail stop and encourage development at a sufficiently high density to provide for an efficiency in serviceable land usage.

We also note, that more generally, the National Planning Framework contains objectives to encourage development that can accommodate more people in existing settlements (no. 11) and increased densities of development there (no. 35), both of which would support the density proposed in this case. There is also an objective to prioritise alternative modes of travel to the car (no. 27) which would support the current proposal to



accommodate more people in walking distance of a Luas stop.



Fig. 1 -

1km walking distance from Fortunestown Luas stop to proposed development.

--- represents the 1km threshold line on the site

The remainder of the proposed development site, beyond the 1km threshold line, occupies a net developable area of 7.9Ha, and does not include the remainder of the proposed open space/landscape buffer in the “Riverside Park” along the eastern boundary (i.e. 0.38Ha). It is proposed to accommodate 281 no. dwellings in this part of the site which produces a net density of 35.5 units per hectare, which exceeds the discouraged net density of “less than 30 dwellings per hectare”, of the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.





### 3.4 Building Height

Section 5.5.4 “Building Height” contained in the LAP states that *“there shall be a maximum height limit of three storeys, with exceptions justifiable only in limited exceptional circumstances. Residential development should create a strong built edge along main streets subject to the protection of residential amenity especially access to sun/day light. Development immediately adjoining areas of existing one, two and three storey housing should seek to ensure a gradual change in building heights with no significant marked increase in height within transitional areas. Development backing on to existing buildings must respect existing context building heights”*.

In addition, section 6.4.5 “Built Form” of the LAP states that *“development across the Boherboy District will take the form of low density and low rise housing in a manner that incorporates elements of heritage value and views of elements of heritage value. Housing should be no more than two storeys in height”*.

The proposed development includes building heights ranging from 4, 4-5 and 5 storeys which exceed LAP guidance (refer to Fig. 2 on page 11 of this report).

### 3.5 Average Floor Area

Section 5.4.6 “Dwelling Mix” of the LAP contains the following objective:

**Objective LUD 10:** *“Ensure that a minimum of 85% of all dwellings be provided as own door houses on their own site and that a maximum of 15% of all dwellings across the Plan Lands be provided as apartments/duplexes with such dwellings limited to appropriate areas or particular locations such as Luas stops and landmark junctions and sensitively designed to contribute to the broader aesthetics of the area including the nearby mountains. The minimum average floor area of all developments throughout the Plan Lands shall be 110 sq.metres”* (emphasis added).

**Objective BN4a** contained in the LAP states: *“A minimum of 85% of all dwellings be provided as own door houses on their own site and that a maximum of 15% of all dwellings across the Plan Lands be provided as apartments/duplexes with such dwellings limited to appropriate areas or particular locations such as Luas stops and landmark junctions and sensitively designed to contribute to the broader aesthetics of the area including the nearby mountains. The minimum average floor area of all developments throughout the Plan Lands shall be 110 sq. metres”* (emphasis added).

The average floor area of the proposed 655 no. dwelling units is 101.16sq.m. which is just slightly below the required standard.



### 3.6 Unit Mix

Section 5.4.6 of the LAP states that “In the context of its outer suburban location, the provision of further apartments/duplexes on the Plan Lands will be restricted in order to improve the range and choice of residential units”. It goes on to state: “It is therefore an objective of the Local Area Plan to:

- Restrict apartments/duplexes only to areas of the Plan Lands that are generally located within 5 minutes walking distance of a Luas station or landmark junction and to require all applicants, at planning application stage, to demonstrate how such walking distances will or can be achieved. (**Objective LUD7**)”.

Section 5.4.6 of the LAP also includes **Objective LUD 10**: “Ensure that a minimum of 85% of all dwellings be provided as own door houses on their own site and that a maximum of 15% of all dwellings across the Plan Lands be provided as apartments/duplexes with such dwellings limited to appropriate areas or particular locations such as Luas stops and landmark junctions and sensitively designed to contribute to the broader aesthetics of the area including the nearby mountains. The minimum average floor area of all developments throughout the Plan Lands shall be 110 sq. metres”.

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The proposed development includes the following own door units:

- 257 no. houses;
- 136 no. duplex units;
- 20 no. apartments
- Total = 413 no. own door units, which equates to 63% of the proposed dwellings being own-door units.

The proposed development provides a higher density of development than envisaged within the LAP (i.e. 30 units per hectare net across the entire Boherboy lands as per Table 5.3 “Recommended Densities & Uses” contained in the LAP) resulting in a higher proportion of duplex and apartment units, a lower average floor area and increased building heights.

Dwelling Type	1 bed	2 bed	3 bed	4 bed	Total	Percentage %
Houses	0	8	168	81	257	39%
Apartments	62	177	7	0	246	38%
Duplex	4	72	76	0	152	23%
<b>Total</b>	66	257	251	81	655	100%
<b>Percentage %</b>	10%	39%	39%	12%	100%	-

**Table 1: Overall Proposed Dwelling Mix**





### 3.7 Provision of Community Floorspace

Section 7.2.5 “Community Facilities” of the LAP states that “Community facilities shall be distributed across the Plan Lands at a rate of 300 sq.m per 1,000 dwellings. Such facilities shall be located close to parks and schools and should encourage complementary day and night time parking”.

Section 8.0 “Phasing” of the LAP details the phasing and timing of development within the Plan lands in a manner that seeks to ensure that infrastructure and amenities are delivered in conjunction with residential and commercial development. The LAP states that “the purpose of phasing is to avoid a shortage of community facilities and amenities for residential communities and to ensure that such facilities and amenities are provided in a timely manner rather than at the latter stages of residential development or after such development has taken place”. Section 8.0 goes on to state that “residential and/or commercial development across the Plan Lands in each phase shall not proceed until such time as the required community and parkland facilities and amenities have been constructed”.

Section 8.0 also states that: “With the exception of Phase One, development may progress to the next phase in each neighbourhood where there is stagnation in one or more other neighbourhood provided that key objectives identified under the previous phases that can be applied to the neighbourhood that is progressing and/or alternative outcomes that are acceptable to the Planning Authority have been achieved and development allowable under previous phases for that neighbourhood is also nearing completion”.

Section 8.2 of the LAP sets out details for Phase 2 of the development of the Plan lands and contained in Table 8.3 of same, one of the “Key Outcomes Required before the Next Phase” is that “Circa 780 sq.m of community floorspace” is to be provided.

It should be noted that the location of a community facility on the Plan lands is not specifically identified in the LAP. Furthermore, the Plan Lands are in a number of separate ownerships and are not in the control of one developer / landowner. Section 8.0 of the LAP states that development of the Plan Lands “shall be managed through the careful consideration of planning applications”, with each application being assessed on its own merits and consideration should be paid to the fact that a particular proposed development can be carried out independently and in its entirety.

Section 8.0 of the LAP states that the distribution of dwellings for construction in each neighbourhood under each phase is based upon a pro-rata distribution for the entire Plan Lands and is “therefore indicative”. The LAP sets out key outcomes to be delivered in each phase but the LAP (Section 8.0) also states that key outcomes are “not mandatory in all cases”. It goes onto state that in certain circumstances “the Planning Authority may take a considered view that further development should be allowed to proceed with regard to where housing is being delivered. This may occur where:

- There are phasing requirements on lands that are outside of the control of a particular applicant/landowner;
- The developer/landowner of lands that are outside the control of a particular applicant/landowner is either not developing or is proceeding at a significantly slower rate than the particular applicant / landowner;
- The phasing requirements in question are considered not to directly serve the further quantum of development that the particular applicant/landowner wishes to proceed with;
- If required to directly serve the further quantum of development that the particular applicant/landowner wishes to proceed with, an alternative may be considered on the particular applicant/landowners own landholding;





- *The particular applicant/landowner who wishes to further develop has satisfactorily and substantially completed a quantum of development already permitted and any directly associated phasing requirement(s)*”.

## Phase 2:

The phasing requirements / key outcomes set out in the LAP for Phase 2 of development of the Plan lands include:

- a) The provision of a secondary school site;
- b) Circa 780sq.m community floorspace;
- c) Completion of a neighbourhood park at Saggart – Cooldown Commons Neighbourhood;
- d) Construction of Citywest Avenue extension to the west of the N82 to link with Fortunestown Lane. (emphasis added).

While the LAP is not specific as to where 780sq.m of community floorspace is to be provided, the proposed development does not propose to provide a community facility. As set out in the following section (3.7 Phasing / Quantum of Development) and in section 4.4.2 of the submitted Statement of Consistency, given the quantum of development either delivered or permitted to date on the Plan lands, it is considered that the development of the Boherboy Neighbourhood, as currently proposed, equates to the fourth/final phase of the LAP.

Taking into consideration the aforementioned provisions of sections 7.2.5 “Community Facilities”, 8.0 “Phasing”, 8.2 “Phase 2” and “Table 8.3” as set out in the LAP, along with our understanding that a community facility of 780sq.m has not been provided/permitted on the Plan lands to date, it is considered that therefore, the proposed development may be deemed to materially contravene the LAP.

Notwithstanding the foregoing, it may also be considered, in accordance with Section 8.0 “Phasing” of the LAP, that the requirement for 780sq.m of community floorspace is not expedient for the purposes of this proposed development. Nonetheless, we note that permissions have been granted for development on the Plan lands, with conditions attached requiring community floorspace. Furthermore, it should be noted that discussions have taken place with the Planning Authority and we understand that they are currently considering how best to deliver one overall facility in conjunction with all of the relevant stakeholders / landowners in the Plan lands and our clients have no objection to same in principle. The Planning Authority has also confirmed to us that they are not requiring a community facility to be proposed or delivered by the applicants on the lands in the Boherboy Neighbourhood, and this is confirmed in their email to us dated 15<sup>th</sup> May 2020 – refer to the Appendix.

### 3.8 Phasing / Quantum of Development

Section 8 of the LAP provides details of the phasing and timing for development within the Plan lands. The submitted Statement of Consistency (section 4.4.2 / page 86) sets out in detail how the proposed development is considered to comply with the phasing strategy of the LAP.

The phasing strategy of the LAP, namely Table 8.1 (page 50 of the LAP) identifies that the Boherboy Neighbourhood will cater for 556 no. dwellings across four phases. This, however, is based upon the LAP’s recommended density requirement for the Boherboy Neighbourhood being c. 30 units per hectare net, as per Table 5.3 of the LAP. The area of the two fields that form the application site is approx. 17.6Ha and if that was to be developed at c. 30 units per hectare, it would produce a gross density of 528 no. dwellings. We also note Fig. 6.20 “Boherboy Land Use & Density Framework” of the LAP (page 40) which illustrates densities of 30-40 units per hectare across the Boherboy Neighbourhood. As outlined in the submitted Planning Statement, there are a number of requirements specific to the proposed development including *inter alia* the need to reserve a school site (1.4Ha), creation of “Riverside Park” (c. 1Ha), as well as other factors that reduce the developable area of the site e.g. flood risk zone, no development above the 150m metre contour, wayleaves traversing the site etc. Taking



these into account, and the LAP’s prescribed density of c. 30-40 units per hectare, it is reasonable to assume that the Boherboy Neighbourhood could accommodate 556 no. dwellings.

*Table 5.3 Recommended Densities & Uses*

Neighbourhood	Primary Use	Net Residential Density
Fortunestown Centre	Mixed	Circa 50 per Ha.
Saggart-Cooldown Commons	Residential	Circa 40 per Ha.
Boherboy	Residential	Circa 30 per Ha.
Cheeverstown	Employment & Residential	Circa 50 per Ha.
Citywest Road	Residential	Circa 40 per Ha.

Fig. 3 – Extract of “Table 5.3” from Fortunestown LAP 2012

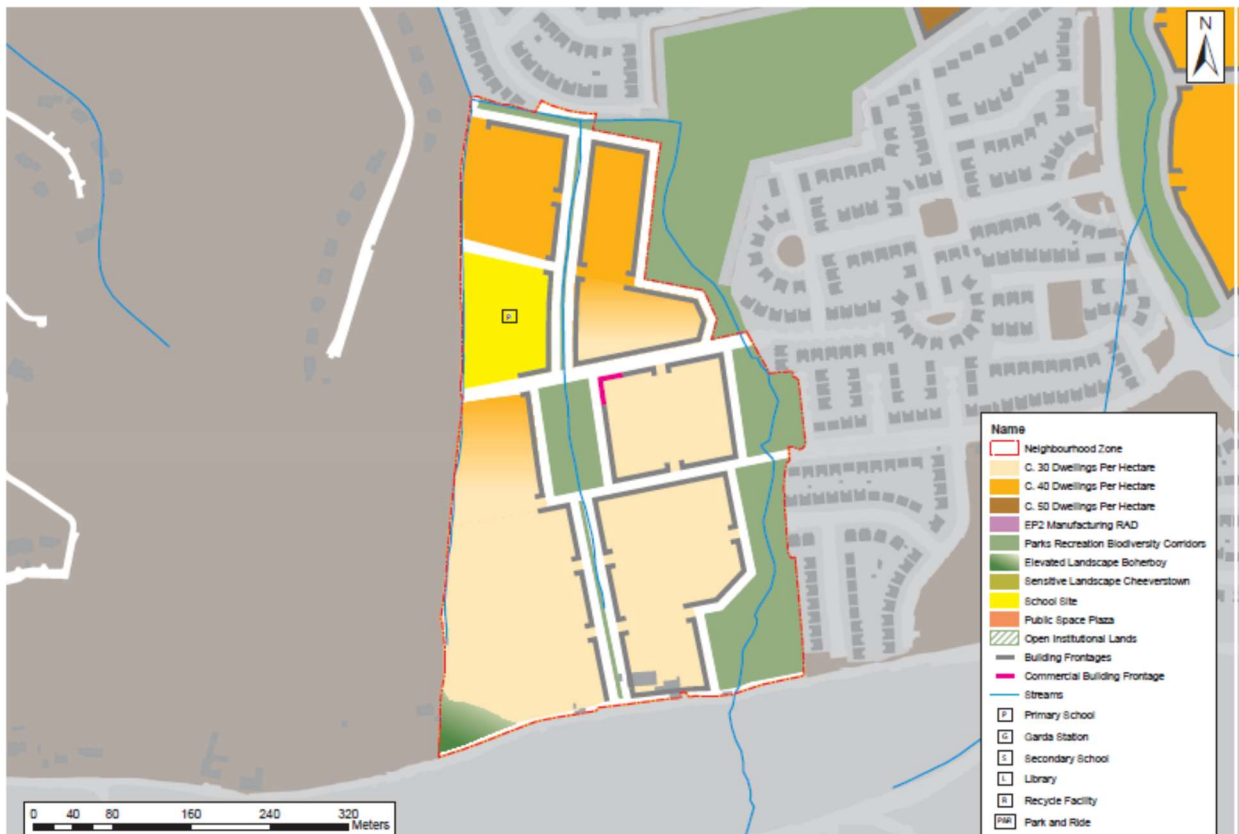


Fig. 4 – Extract of “Fig. 6.20 - Boherboy Land Use & Density Framework” from Fortunestown LAP 2012

The effect of the proposed development of 655 no. dwellings (which produces a net density of 43 units per hectare) is that the proposed development can be considered to materially contravene the phasing of the LAP whereby the quantum of development on the Boherboy Neighbourhood i.e. 655 no. dwellings exceeds that envisaged in the LAP i.e. 556 no. dwellings.

It should also be noted that, as set out in section 4.4.2 of the submitted Statement of Consistency (i.e. Table 1 on page 41), it is evident that the permissions granted to date on the Plan lands exceed the quantum of development envisaged in the LAP. To date, it is our understanding that permission has been granted for c.3,892 no. dwellings across the Plan lands which exceeds that set out in Table 8.1 of the LAP with a total figure of 3,300 no. dwellings envisaged to be accommodated under the Fortunestown LAP.



Neighbourhoods	Phase				
	1	2	3	4	Phases 1- 4 Total
<b>Total per Phase</b>	<b>400</b>	<b>600</b>	<b>800</b>	<b>1,500</b>	<b>3,300</b>
<b>Fortunestown Centre</b>					
Dwellings	66	100	133	277	<b>576</b>
<b>Saggart - Cooldown Commons</b>					
Dwellings	136	204	273	573	<b>1,186</b>
<b>Boherboy</b>					
Dwellings	56	83	111	306	<b>556</b>
<b>Cheeverstown</b>					
Dwellings	94	141	188	194	<b>617</b>
<b>Citywest Road</b>					
Dwellings	48	71	95	156	<b>370</b>

Note: Figures and calculations are based on 40 dwelling houses per hectare. Some areas, such as the Boherboy lands will attract a lower number of houses (predominantly 30 dwellings per hectare) whilst other areas, such as Cheeverstown will attract a higher number of dwellings (predominantly 50 dwelling houses per hectare).

**Fig. 5 – Extract of Table 8.1 in Fortunestown LAP:  
“Phasing and Distribution of Residential Development per Neighbourhood”**

It is considered that, to date, the quantum of permitted dwellings already exceeds that catered for under the LAP and therefore materially contravenes the LAP. Should the current proposal for 655 no. dwellings be permitted, it would result in the LAP lands catering for c.4,547 no. dwellings.

### 3.9 Car Parking

Under Section 11.4.2 of the CDP, it is stated that Table 11.24 sets out the Maximum Parking rates for residential development. The CDP states that parking rates are divided into two main categories:

- **Zone 1:** General rate applicable throughout the County.
- **Zone 2 (Residential):** More restrictive rates for application within town and village centres, within 400 metres of a high quality public transport service 5 (includes a train station, Luas station or bus stop with a high quality service)'.

Table 11.24 Maximum Parking Rates (Residential Development) is as follows:

DWELLING TYPE	NO. OF BEDROOMS	ZONE 1	ZONE 2
<b>Apartment</b>	1 Bed	1 space	0.75 space
	<b>Duplex</b>		
	2 bed	1.25 space	1 space
	3 bed+	1.5 spaces	1.25 space
<b>House</b>	1 Bed	1 space	1 space
	2 Bed	1.5 space	1.25
	3+ bed	2 space	1.5



The proposed development may be considered to materially contravene the CDP in terms of the proposed car parking provided for the apartments and duplex units.

(NOTE: it is not considered that the proposed car parking provision for the houses (i.e. 500 no. car parking spaces) is a material contravention of the CDP, as the standards set out in Table 11.24 are “maximum” standards. The proposed 257 no. houses require a maximum of 510 no. car parking spaces in accordance with the CDP, with the proposed development catering for 500 no. car parking spaces for the houses only).

The CDP requires that 208 no. car parking spaces be provided for the proposed 152 no. duplex units and 244 no. car parking spaces for the 246 no. apartments. The proposed development provides the following no. of car parking spaces for the duplex units and the apartments:

- Duplex units – 190 no. car parking spaces;
- Apartments – 208 no. car parking spaces.

**Details of the car parking requirements are clearly set out in the submitted Traffic and Transport Assessment (hereafter “TTA”) prepared by Pinnacle Consulting Engineers – section 3.4 of same, so please refer to same for further details.**

#### 4.0 Material Contravention Justification

4.1. Section 37(2)(b) of the Act of 2000 states that where a proposed development materially contravenes the development plan and/or local area 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”.*

For the reasons set out below and having regard to Section 37(2)(b) of the Act of 2000, it is considered that the proposed development can be granted permission by the Board by reference to the sub-paragraphs (i) and (iii) above, notwithstanding the material contravention of the existing LAP detailed in Section 3 of this statement. The following subsections detail the justification for same.



## 4.2 The Proposed Development is of Strategic or National Importance

### 4.2.1 National Planning Framework (NPF)

The strategic goals of the Government in relation to delivering new residential development, and their national importance, are also reflected in the policies and objectives of the National Planning Framework (hereafter 'NPF'). The NPF is the Government's high level strategic plan to cater for the extra one million people that will be living in Ireland, the additional two thirds of a million people working in Ireland, and the half a million extra homes needed in Ireland, by the year 2040.

The NPF sets out the importance of delivering new developments within existing urban areas by: *"making better use of under-utilised land and buildings, including 'infill', 'brownfield' and publicly owned sites and vacant and under-occupied buildings, with higher housing and jobs densities, better serviced by existing facilities and public transport."*

National Policy Objective 3a of the NPF states that it is national policy to: *"Deliver at least 40% of all new homes nationally within the built up envelope of existing urban settlements."*

The subject site is an underutilised, greenfield site, zoned for residential land use. Approximately the northern "half" of the subject site is within a 1km walking distance of a Luas passenger stop, as well as the District Centre for the LAP area where a range of services and facilities are located. The proposed development caters for an average net density of 43 dwellings per hectare across the entire site and a net density of 51 units per hectare within the 1km walking distance of public transport infrastructure i.e. Luas. It is therefore considered that the proposed development fully complies with National Policy Objective 3a of the NPF.

In accordance with the NPF's strategy of compact growth, it is proposed to develop new homes which will provide a continuous built form adjacent to the existing built up area. In addition, and in accordance with National Policy Objective 33, new homes will be provided at a sustainable location, with access to existing services and facilities, including (Luas within 1km of the northern "half" of the site) as well as Dublin Bus services within walking distance of the site, with proposed enhanced pedestrian connections to same forming part of the overall development proposal, therefore, in accordance with National Policy Objective 35, the proposed development will increase residential density within an existing settlement.

National Policy Objective 11 of the NPF states that: *"In meeting urban development requirements, there will be a presumption in favour of development that encourages more people, jobs and activity within existing urban areas, subject to development meeting appropriate planning standards and achieving targeted growth."*

The proposed development provides for a medium to high density residential development in an existing suburban area, that opens up these lands to an efficient land use, improved connectivity and accessibility, creation of green infrastructure links and a wide range of housing typologies. The subject site is well served by both existing public transport infrastructure. The subject application is accompanied by a number of documents which demonstrate how the proposed development meets appropriate planning standards and supports the targeted growth figures for Dublin. It is therefore considered that the proposed development fully complies with National Policy Objective 11 of the NPF.

A key priority of the NPF is the need to move away from rigid planning standards to a more flexible, performance based, design standards. 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 tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected."*



The proposed development is located in a suburban area that is well served by good public transport infrastructure. The subject site is a greenfield site which is greatly underutilised given the locational context of same and the availability of existing infrastructure in the vicinity. It is considered that the site presents an ideal opportunity for development to a more efficient use, in compliance with national policy objectives. The proposed building heights range from 2 to 5 no. storeys with the proposed average net density across the entire site being c. 43 dwellings per hectare. The proposed building heights and density are wholly appropriate given the contextual location of the subject site and the availability of public transport facilities in the area, and it is considered that the site can readily support same without any detriment to existing residential amenity in the area. It is therefore considered that the proposed development is in fully in accordance with the aforementioned guidance of the NPF and complies with National Policy Objective 13.

The NPF also states that: *“To avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas.”*

The above guidance is reflected in National Policy Objective 35 which states that it is an objective to: *“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 proposed residential development, on an underutilised greenfield site, represents an ideal opportunity to provide for increased densities and increased heights in accordance with the NPF objectives, without detriment to existing residential amenity in the area. The NPF places a strong emphasis on the need to increase building heights in appropriate locations, within existing urban centres and along public transport corridors. Given the contextual location of the subject site, it is considered that the proposed development, being located within the existing suburban environs of Fortunestown, and within walking distance of public transport routes, is wholly appropriate in terms of height and density and ought to be granted permission as it supports the national policy objectives of the NPF.

#### **4.2.2 Rebuilding Ireland – Action Plan for Housing and Homelessness**

The strategic housing development application process was introduced as part of the Government’s Rebuilding Ireland programme to accelerate delivery of larger housing proposals to alleviate the pressures on housing supply in the country. The delivery of new homes in appropriate locations across the country is a fundamental principle of Rebuilding Ireland, with the programme setting out a range of measures to facilitate the construction of new homes and an increase of social housing.

Rebuilding Ireland was launched in 2016 with the objective to double the annual level of residential construction to 25,000 homes and deliver 47,000 units of social housing in the period to 2021, while at the same time making the best use of the existing stock and laying the foundation for a more vibrant and responsive private rented sector.

Rebuilding Ireland is set around 5 no. pillars of proposed actions. *Pillar 3 seeks to – Build More Homes: Increase the output of private housing to meet demand at affordable prices.*

The increased height and density put forward as part of this application for permission will deliver much needed housing within the Dublin Metropolitan Area in accordance with the aims of Rebuilding Ireland, and in particular Pillar 3, which seeks to build more homes – *“to increase the output of private housing to meet demand at affordable prices.”* It is considered that the proposed development fully supports the policies of Rebuilding Ireland by delivering 655 no. new homes in an existing urban area, with 133 no. of the proposed dwellings to be delivered for social and affordable housing in compliance with the requirements of Section 96 of Part V of the Act of 2000 (as amended). As such, it is considered that the proposed development is of strategic importance in delivering the national objectives of Rebuilding Ireland programme.





#### **4.2.3 Conclusion of Criterion of Strategic or National Importance – Section 37(2)(b)(i) of the Planning & Development Act, 2000 (as amended).**

On the basis of all the above, it is considered reasonable to conclude that the proposed strategic housing development is clearly of both strategic and national importance, supports the national planning policy and objectives of both Rebuilding Ireland and the NPF, and therefore fulfils the criterion under Section 37(2)(b)(i) of the Planning & Development Act, 2000 (as amended).

#### **4.3 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.**

##### **4.3.1 Regional Economic and Spatial Strategy 2019**

The Regional Economic and Spatial Strategy (RSES) notes that the preferred spatial strategy for the East and Midlands is the consolidation of Dublin plus the Regional Growth Centres of Athlone, Dundalk and Drogheda, supported by planned focussed growth of a limited number of self-sustaining settlements.

Fortunestown is identified on the strategic South Western Corridor in the RSES, and it is noted that there is further capacity to *“create new residential communities at Fortunestown near to the emerging town of Saggart/Citywest, served by the LUAS redline.”*

The proposed development will deliver a high-quality residential development located close to a public transport corridor (within 1km of a LUAS stop) with nearby bus services on e.g. Citywest Road, in proximity to local retail, employment opportunities (Citywest Business Campus) and services as well as employment centres. The development of the lands at a sustainable density is in accordance with national strategic guidance and in accordance with the proper planning and sustainable development of the area.

The RSES EMRA states that the new district at Fortunestown near the emerging town of Saggart/Citywest has a short term population capacity of 45,000 and a medium term capacity giving a total capacity of 66,000 persons. Having regard to the evolving role and function of Citywest, it is important to ensure that appropriate and sustainable densities are promoted particularly in locations such as the subject site in close proximity to the Luas and Dublin Bus routes.

The development of strategic residential sites, such as the subject site, should ensure that higher densities are delivered. Restrictions on allowable building heights, density and unit mix such as is provided by the *Fortunestown LAP*, are clearly in conflict with objectives for higher density development, in proximity to a high-quality public transport corridor.



### 4.3.2 Section 28 Ministerial Guidelines

#### JUSTIFICATION FOR PROPOSED DENSITY

##### 4.3.2.1 Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, 2009.

The role of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas is to ensure the sustainable delivery of new development throughout the country.

The guidelines provide guidance on the core principles of urban design when creating places of high quality and distinct identity. The guidelines also recommend that planning authorities should promote high quality design in their policy documents and in their development management process. In this regard, the guidelines are accompanied by an Urban Design Manual which demonstrates how design principles can be applied in the design and layout of new residential developments, at a variety of scales of development and in various settings.

The guidelines support a plan-led approach to development as provided for in the Act of 2000. Section 2.1 of the guidelines note that: *“the scale, location and nature of major new residential development will be determined by the development plan, including both the settlement strategy and the housing strategy.”*

The guidelines reinforce the need to adopt a sequential approach to the development of land and note in Section 2.3 that: *“the sequential approach as set out in the Departments Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities...”*

Taking the above into consideration, the subject site is a greenfield site zoned RES-N in the existing CDP, which caters for new residential development. The CDP has adopted a sequential approach when zoning the land for development, therefore the location of the site and the land use zoning objective attached to same is appropriate for the proposed development.

Section 5.8 of the same guidelines recommend that *“increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station”*. This section of the guidelines also states that *“in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes”*.

The proposed development site can be described as an Outer Suburban / Greenfield Site in accordance with section 5.11 of these guidelines, which define such sites as *“as open lands on the periphery of cities or larger towns”*. The guidelines state that *“the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares”*.

It is considered that these standards set in the guidelines are the most relevant for the purposes of assessing the appropriateness of a proposed density, with the guidelines also referenced in SPPR 4 of the 2018 Urban Development and Building Heights Guidelines for Planning Authorities.

As set out in the accompanying Planning Statement, the net developable area of the subject site is 15.28Ha which produces a net density of 43 units per hectare across the entire site, thus according with the guidance set out in Section 5.11 of these guidelines.



The northern part of the site that lies within the 1km walking distance of the Fortunestown Luas passenger stop, occupies a net area of 7.4Ha, and excludes (a) an area of 1.42Ha that has been reserved for a school site, in accordance with the 2012 Fortunestown LAP and (b) 0.61Ha of open space/landscape buffer in the “Riverside Park” along the eastern boundary, both of which have been discounted for net density purposes. This northern half of the site accommodates 374 no. dwellings which represents a net density of 51 no. dwellings per hectare, which accords with section 5.8 of the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.

The remainder of the proposed development site, beyond the 1km threshold line, occupies a net developable area of 7.9ha, which discounts the remainder of the proposed open space/landscape buffer in the “Riverside Park” along the eastern boundary. It is proposed to accommodate 281 no. dwellings in this part of the site which produces a net density of 35.5 units per hectare, which complies with section 5.11 of the guidelines and is over and above the discouraged net density of “*less than 30 dwellings per hectare*”, as also set out in section 5.11 of the guidelines, but also meets the recommended minimum net density of 35 units per hectare i.e. as per section 5.11.

Taking the locational context of the subject site into consideration, and the proposed density of development, which exceeds the density set out in the LAP, but complies with the density guidance set out sections 5.8 and 5.11 of these guidelines, it is considered that the proposed development and its associated density is appropriate. The northern “half” of the subject site is located within a 1km walking distance of an existing Luas passenger stop, within an existing urban area, and therefore has the capacity to achieve higher densities to complement the surrounding services and reflect emerging patterns of permitted and proposed similar type developments. The proposed density is therefore considered appropriate due to the location of the proposed development close to high quality public transport provision, the existing urban environment and the locational context of the site.

#### **4.3.2.2 The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2020.**

The 2020 Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (hereafter ‘Apartment Guidelines’) were adopted in consideration of the policies and objectives of both Rebuilding Ireland and the NPF, and in response to the growing demand for apartment living in the State.

The Apartment Guidelines reiterate that to meet housing demand in the country it is necessary to significantly increase supply, stating that: “*increased housing supply **must include a dramatic increase in the provision of apartment development.***” (our emphasis added).

Section 2.4 of the Apartment Guidelines identifies the types of location in cities and towns that may be suitable for apartment development. In this context, the subject site can be classified as a ‘Central and/or Accessible Urban Location’. The Apartments Guidelines state in relation to same, that:

“Such locations are generally suitable for small- to large-scale (will vary subject to location) and higher density development (will also vary), that may wholly comprise apartments, including:

- Sites within walking distance (i.e. up to 15 minutes or 1,000-1,500m), of principal city centres, or significant employment locations, that may include hospitals and third-level institutions;
- Sites within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m) to/from high capacity urban public transport stops (such as DART or Luas); and
- Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) to/from high frequency (i.e. min 10 minute peak hour frequency) urban bus services.”



Most of the northern “half” of the subject site is within a 1km walking distance of the Fortunestown Luas passenger stop to the north. The site is also well served by existing bus services. Details of the site’s proximity to public transport services are set out in section 2 of the submitted Traffic and Transport Assessment (TTA) and on the following submitted drawings, all prepared by Pinnacle Engineering:

- P200107-PIN-XX-DR-D-0020-S3 “Site Location Permeability Catchment”
- P200107-PIN-XX-DR-D-0021-S1 “Site Location Plan Accessibility Catchment”

In light of same, it is considered that the proposed development is within easy walking distance to/from high frequency public transport services and, therefore, the proposed density and building heights are justified in the context of the Section 28 Apartments Guidelines. The proposed development will deliver increased urban density, in the form of a mix of duplex and apartment development, on an underutilised greenfield site located next to existing public transport infrastructure, and therefore supports national policy contained in the Apartment Guidelines.

On the basis of all the above, it is considered reasonable to conclude that the proposed density of development as set out in this application for permission for a strategic housing development clearly complies with the policies and objectives of the above named Section 28 Guidelines, which put forward national policy objectives, and therefore can be granted permission by the Board under the provisions of Section 37(2)(b)(iii) of the Act of 2000.

## **JUSTIFICATION FOR PROPOSED BUILDING HEIGHT**

### **4.3.2.3 The Urban Development and Building Heights Guidelines for Planning Authorities, 2018.**

The 2018 Urban Development and Building Heights Guidelines for Planning Authorities (hereafter ‘Building Height Guidelines’) set out national planning policy guidelines on building heights in urban areas and carry forward the National Policy Objectives of the NPF in relation to securing more compact forms of development. In summary, the Building Height Guidelines seek to reinforce the need to consolidate and strengthen existing built-up areas, move away from blanket limitations on building height, increase densities within existing urban areas, and promote increased building height in locations with good public transport services.

As Section 28 Guidelines, the Building Height Guidelines clearly state, 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 city and town cores and in other urban locations with good public transport accessibility.

The Building Height Guidelines also clearly state that Planning Authorities and An Bord Pleanála are required to have regard to, and apply, any specific planning policy requirements (SPPRs) of the Building Height Guidelines, in carrying out their functions, and that the SPPRs stated in the Building Height Guidelines take precedence over any conflicting policies and objectives of development plans, local area plans and strategic development zone planning schemes. In this regard, Section 9(3) of the Act of 2016 provides as follows:

*“(3)(a) When making its decision in relation to an application under this section, the Board shall apply, where relevant, specific planning policy requirements of guidelines issued by the Minister under section 28 of the Act of 2000.*

*(b) Where specific planning policy requirements of guidelines referred to in paragraph (a) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan.*



*(c) In this subsection “specific planning policy requirements” means such policy requirements identified in guidelines issued by the Minister to support the consistent application of Government or national policy and principles by planning authorities, including the Board, in securing overall proper planning and sustainable development.”*

Therefore, SPPRs as stated in the Building Height Guidelines take precedence over any conflicting, policies and objectives of development plans / local areas plans. Where such conflicts arise, Section 9(3)(b) of the Act of 2016 provides that to the extent that they differ from the provisions of the development plan / local area plan, the provisions of SPPRs must be applied instead.

The Building Height Guidelines also state that the implementation of the NPF requires increased density, scale, and height of development in town and city cores with an appropriate mix of uses.

In relation to building height in suburban / edge locations (City and Town) section 3.4 of the Building Height Guidelines state that: *“Newer housing developments outside city and town centres and inner suburbs, i.e. the suburban edges of towns and cities, typically now include town-houses (2-3 storeys), duplexes (3-4 storeys) and apartments (4 storeys upwards). Such developments deliver medium densities, in the range of 35-50 dwellings per hectare net. Such developments also address the need for more 1 and 2 bedroom units in line with wider demographic and household formation trends, while at the same time providing for the larger 3, 4 or more bedroom homes across a variety of building typology and tenure options, enabling households to meet changing accommodation requirements over longer periods of time without necessitating relocation”.*

The Building Height Guidelines go onto state that: *“Development should include an effective mix of 2, 3 and 4-storey development which integrates well into existing and historical neighbourhoods and 4 storeys or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets. Such development patterns are generally appropriate outside city centres and inner suburbs, i.e. the suburban edges of towns and cities, for both infill and greenfield development and should not be subject to specific height restrictions”.*

The Building Height Guidelines further states that *“the preparation of development plans, local area 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**”.* (our emphasis added).

It is considered that the proposed development fully supports the aforementioned objectives of the Building Height Guidelines. The proposed development will efficiently develop an underutilised greenfield site, contiguous to the built up area, with the proposed development providing for a level of density and building heights that are capable of being supported by the site. The proposed development provides for a childcare facility, new links to the surrounding area, which will enable connectivity to local services and employment opportunities, and includes for an appropriate mix of housing options which will increase variety in the area.

As previously noted, the Building Height Guidelines clearly state that Planning Authorities and An Bord Pleanála are required to have regard to, and apply, any SPPRs of the Building Height Guidelines in carrying out their functions, and that the SPPRs stated in the Building Height Guidelines take precedence over any conflicting policies and objectives of development plans, local area plans and strategic development zone planning schemes. The Building Height Guidelines contains the SPPRs which are discussed in the following sub-sections, together with the proposed development’s compliance with same.





SPPR 3 of the Building Height Guidelines is as follows:

### SPPR 3

*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 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 or local area plan may indicate otherwise.*

*(B) In the case of an adopted planning scheme the Development Agency in conjunction with the relevant planning authority ( where different) shall, upon the coming into force of these guidelines, undertake a review of the planning scheme, utilising the relevant mechanisms as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme*

*(C) In respect of planning schemes approved after the coming into force of these guidelines these are not required to be reviewed.*

The criteria referenced in part (A)(1) of SPPR 3 refers to assessment at 3 no. scales, being:

- At the scale of the relevant city/town;
- At the scale of district/ neighbourhood/ street;
- At the scale of the site/building.

It is noted that specific assessments may also be required at some or all the above scales to support development proposals at some or all of these scales.

The criteria for assessment of developments at the scale of the relevant city / town are addressed below:

***“The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.”***

The subject site is located within walking distance of a Luas passenger stop (i.e. the Fortunestown Luas stop to the north), and six existing bus services. Measured from the centre of the site, the nearest stop is located approximately 670m (c. 9 mins walk time) and 1.46km (c. 19 mins walk time) from the site. It should also be noted that the subject site is easily accessibility to the N82 Citywest Road, N81 Blessington Road/Tallaght Bypass. The subject site is also easily accessibility to the M50/M7 motorways, providing wider connectivity to other public transport options in the city. The site is considered to be very well served by high capacity,



frequent, public transport services, with excellent links to the wider Dublin area and therefore compliant with the above criteria.

***“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 a landscape and visual assessment, by a suitably qualified practitioner such as a chartered landscape architect.”***

The proposed development has been designed with careful consideration to the surrounding environs of the site, as well as its topography. The tallest element of the scheme (5 storeys - Blocks A & C) are located at the northern end, lowest part of the site, closest to public transport infrastructure. The locational context of Blocks A & C, adjacent to existing roads and open space, create an ideal opportunity for increased heights which will not be detrimental any existing residential amenity in the vicinity.

Block B is centrally located within the site to create a strong urban edge to the adjacent main north-south avenue through the scheme and is also positioned adjacent to the centrally located large area of open space in order to provide an adequate sense of enclosure.

Along the central access avenue that runs north-south through the site, a variety of heights, i.e. 2, 3 and 4 storeys address same, creating an urban street edge.

At the southern end of the site, buildings that address the Boherboy Road area mix of 3 and 4 storeys, and announce the entrance to the scheme, whilst also crating an appropriate edge to this access road.

A Landscape and Visual Impact Assessment (LVIA) has been prepared by Ronan MacDiarmada & Associates, Landscape Architects and is submitted as part Environmental Impact Assessment Report which accompanies the application – please refer to same (i.e. Chapter 14 – The Landscape) for full details. The LVIA considers that the proposed development will make a significant and positive contribution to the new emerging townscape of wider area and the future context of the surrounding lands. The LVIA also considers the proposed network of open spaces will make a significant and positive contribution to the emerging landscape character, biodiversity, amenity and recreational opportunities of the area.

Furthermore, CGI's and verified views have been prepared by Digital Dimensions and are also submitted with the application – please refer to same for an understanding of how the proposed buildings positively contribute to the area. The CGI's and verified views are considered to fully demonstrate that the proposed building heights will positively contribute to the area, appropriately addressing the locational context of the site and its environs whilst also protecting key views. The submitted site layout plans are also fully dimensioned which provides details of the separation distances of the proposed buildings to existing buildings on neighbouring lands – please refer to same to understand that there will be no negative impacts on existing residential amenity / daylight/sunlight/overshadowing etc. from the proposed development on neighbouring properties.

It is considered that the proposed development will make a positive contribution to the public realm / character of the area, improving the existing scenario by transforming an undeveloped site into a high quality, residential development, which will improve the visual attractiveness of the area, and contribute to the housing stock of the area. It is therefore considered that the proposed development is compliant with the above criteria.



***“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.”***

The proposed development has been designed to create a new residential neighbourhood on the Boherboy lands, as envisaged in the Fortunestown LAP. The main design characteristics include:

- i. The creation of a new vehicular access from the Boherboy Road, which runs northwards to a proposed connection into Carrigmore, acting as the primary vehicular route through the lands, running parallel to the existing central hedgerow, thus providing for the retention of same, in so far as possible;
- ii. Creation of a clearly defined hierarchy of streets to the east and west of the main central avenue;
- iii. Creation of strong, urban building frontage onto the main avenue with a retained and augmented green feature created by the existing hedgerow to the east;
- iv. In response to topography and context varied building heights are proposed across the site;
- v. A strong mix of residential typologies are proposed to ensure visual interest and dwellings for a range of end users;
- vi. Creation of a linear park along the eastern boundary which protects and incorporates elements of the Corbally Stream and respects the required 10m biodiversity strip.
- vii. Retention of the existing hedgerow and trees to the western boundary;
- viii. Provision of a pedestrian and cyclist link along the eastern boundary green link from the Boherboy Road to Carrigmore Park and beyond to the District Centre and Luas.

There are nine character areas within the scheme, each of which has been designed to have its own identity and will be visually different to neighbouring areas in a number of aspects. Building typology, materials and finishes, individual unit design and proportion, and open space design are all used to develop an individual sense of place for each separate character area, the details of which are set out in the submitted Architectural Design Rationale.

The proposed development is bisected by the proposed north-south link avenue that separates the site into two distinct architectural zones, with these two zones further broken down into their respective individual character areas.

The varied heights in units begins at 3/4 storey typologies which front onto Boherboy Road and the main north-south central Avenue which creates a strong building edge and then graduates down to two and three storeys, including houses, duplexes and apartments, as one moves from south to north through the site.

Further north into the centre of the scheme, and also at the northern most part of the site, 4/5 storey apartment buildings are provided, which provide definition to their adjoining open spaces and the streetscapes that they address, whilst also having their own distinctiveness. The higher buildings are situated in the lower parts of the site which is suitable for this type of building typology within the development. The apartment buildings are also designed to offer overlooking and surveillance of adjoining open spaces, streets and the reserved school site.

The central portion of the site graduates down from the 4/5 storey apartment buildings (Blocks A & C) to feature Block B at 4/5 storeys also, but the majority of the building heights are in the form of 2 and 3 storeys, with a mix of duplex units facing the school site on the western side and a two storey creche and terraced housing facing open space to the east, both offering a strong building edge to form the entrance to the central portion of the site.



The southern portion of the site is characterised by a mix of 2 and 3 storeys in a mix of houses, duplex and apartment typologies, that sit behind the taller housing typologies (3/4 storeys) the directly address the main north-south avenue. In light of all of the foregoing, it is considered that the proposed development is compliant with the above criteria.

The criteria for assessment of developments at the scale of district / neighbourhood / street are addressed below:

***“The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.”***

The proposed development caters for buildings which range in height from 2 to 5 storeys. The range in building heights takes into account both the site’s topography and receiving environs. The tallest buildings are appropriately located in the lower parts of the development, sufficiently separated from existing development. The tall buildings of Blocks A and C are further separated by the main north-south avenue, which also allow for a differentiation in terms of architectural style and distinctiveness.

Block B (4-5 storeys) is centrally located within the site to create variety and help form another set entrance piece of the development announcing a different building and height typology. This building adds definition to its location in terms of height by enclosing the large area of open space to its south and creating a strong urban streetscape as it addresses the central avenue to its immediate west.

The duplex Block A at the southern part of the site is 4 storeys, as is the neighbouring duplex Block F, with both buildings flanking either side of the main entrance to the scheme from Boherboy Road, acting as focal points. These buildings are set into the landscape, but announce the entrance to the development from the Boherboy Road, creating a new urban edge to Boherboy Road.

All of the tall buildings within the scheme have been carefully positioned to assimilate appropriately into the topography of the site, act as a focal points and create a strong urban streetscape, while also being designed to offer overlooking and surveillance of adjoining spaces.

It is considered that the proposed development, through its layout and design caters for the creation of distinct character areas and a sense of place which will make a positive contribution to the existing urban neighbourhood and environs, and is therefore considered to be compliant with the above criteria.

***“The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.”***

The overall proposed development consists of a good variety in housing typologies in the form of houses, duplexes and apartments. In addition, the housing typologies are further broken down into distinct unit types, offering a variety in design and building height. The proposed layout has been informed by the nature of the sites topography and locational context, in addition to the preservation of existing vegetation on site. A variety of open spaces in type, size, function and location are also provided for throughout the development. Consideration has been paid to the need to cater for adequate access to daylight and sunlight for units and associated open spaces whereby the proposed layout allows for an ample provision of public and communal open space allowing for a sense of openness and space to be created between the blocks.

The proposed development caters for an appropriate range in building heights put forward in response to the surrounding environs, as previously detailed. The variation in the building heights provides for visual interest and avoids a monolithic visual appearance. The proposed materials and finishes are considered to ensure a high architectural standard is put forward, in addition to the creation of distinctiveness. The proposed material



are consistent with the surrounding developments and material pallet in the locality. Given all the foregoing, It is considered that the proposed development is compliant with the above criteria.

***“The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/marine frontage, thereby enabling additional height in 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).”***

It is considered that the proposed development enhances the urban design context for public spaces by catering for new public and communal open spaces in accordance with the required standards of the existing CDP and the relevant Section 28 Ministerial Guidelines. Public and communal open space, and indeed the proposed development layout, has been strategically designed to allow for maximum residential amenity, integration with adjoining developments and open spaces, creating a greater sense of openness at an appropriate scale. The proposed “Riverside Park” i.e. the public open space proposed along the eastern boundary of the development allows for easy navigation to / from Carrigmore Park to the north-east.

It is considered that the development further contributes to enhancing the overall character and quality of the public realm by catering for a more efficient use of the site and opening up the lands to residential use, connectivity, and creation of open spaces and adding to the local green infrastructure network.

The proposed development has been subject to a Site Specific Flood Risk Assessment in line with the requirements of “The Planning System and Flood Risk Management – Guidelines for Planning Authorities” (2009).” The Site Specific Flood Risk Assessment has been prepared by Kilgallen & Partners Consulting Engineers and is enclosed with the application as a separate document – please refer to same for further details. Given all the foregoing, It is considered that the proposed development is compliant with the above criteria.

***“The proposal makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.”***

In its existing state, the site is in agricultural use and is currently fenced off from the public, with access only from the Boherboy Road. It is considered that the proposed development will significantly enhance the existing public realm and street frontage by opening up to the site for new residential development. The creation of new linkages to adjoining lands, and new open spaces for recreation as well as new homes bring a new vibrancy to the site. The development also significantly improves pedestrian/cyclist quality in the area.

The proposed buildings are laid out in manner that address the streets, creating new urban edges, both at the periphery at Boherboy Road and along the internal streets. The proposed internal road network is DMURS compliant and the proposal seeks to open up the lands to connectivity to adjoining lands to the east and north. Pedestrians / cyclists will easily navigate their way from the development to Carrigmore Park and beyond to public transport services and the District Centre, as well as existing educational and employment facilities to the north-east. The proposed pedestrian/cyclist routes through the site will create new connections for the residents which promote more sustainable modes of transport such as walking and cycling. Given all the foregoing, it is considered that the proposed development is compliant with the above criteria.





***“The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.”***

The proposed development provides for residential use with a childcare facility in line with the land use zoning objective attached to the site. In addition, a wide range of housing typologies are proposed in the form of houses, apartments and duplexes as well as 1, 2, 3 and 4 bedroom dwellings proposed.

Paragraph 3.6 of the Building Height Guidelines states that *“development should include an effective mix of 2, 3 and 4 storey development which integrates well into existing and historical neighbourhoods and 4 storeys or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage and along wider streets”*.

The proposed development provides for a range of building heights from 2 to 5 storeys, within walking distance of a large district park, i.e. Carrigmore Park. Careful consideration has been paid to the pattern of development in the area, in terms of long established housing and the emerging new residential development in the Fortunestown LAP area. In addition, cognisance has been paid to the topography of the site and its locational context in terms of the dispersion of building height throughout the site, and it is therefore considered that the proposed development will integrate into its surroundings in an appropriate manner. The proposed development is therefore considered to be in accordance with the parameters for achieving 4 no. storeys or more in accordance with paragraph 3.6 above of the Building Height Guidelines. Given all the foregoing, it is considered that the proposed development is compliant with the above criteria.

The criteria for assessment of developments at the scale of site / building are addressed below:

***“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.”***

A daylight / sunlight assessment for the proposed development has been prepared by Digital Dimensions and is submitted as part of the application as a separate document – for further details please refer to same, including details of the appropriate guidance documents used for this assessment. The enclosed assessment addresses the availability, quality, and receipt of light within the development, including access to adequate sunlight / daylight within the proposed open spaces. Initial designs of the proposed development were altered to appropriately accommodate required changes as recommended by initial feedback received from the daylight / sunlight assessment. It is considered that, given the surrounding context and orientation of the site, overshadowing and loss of light to existing residential amenity will be negligible. Given all the foregoing, it is considered that the proposed development is compliant with the above criteria.

***“Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment’s ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’.”***

**&**

***“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 or an effective urban design and streetscape solution.”***



A daylight / sunlight assessment has been prepared by Digital Dimensions and is submitted the application as a separate document – for further details please refer to same. Section 2 of the aforementioned assessment outlines the methodology applied to the assessment stating: *“this Daylight and Sunlight Assessment demonstrates compliance with the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) and BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’. This in accordance with the most relevant S.28 Ministerial Guidelines including Section 6.6 of the Sustainable Urban Housing: Design Standards for New Apartments (2020), and Section 3.2 of the Urban Development and Building Heights Guidelines for Planning Authorities (2018). Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020) directs planning authorities to have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or British Standard BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’. The standards for daylight and sunlight access in buildings (and the methodologies for assessment of same) suggested in both of these documents have been referenced in this Sunlight and Daylight Access Analysis. The former standard BS 8206-2 was read in conjunction with BRE BR209 Site layout planning for daylight and sunlight and CIBSE LG10 as guidance only, but the launch of BS EN 17037 directly impacts on the recommendations of these other technical documents due to the withdrawal of BS8206-2:2008. The new standard can no longer be interpreted as guidance and cannot be incorporated into BR209 but BR209 continues to reference a standard that no longer exists. The updated 3rd Edition of the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ intends to address this and is due to be published in spring 2022”.*

The submitted daylight/sunlight assessment also states that *“EN 17037 is a unified daylighting standard published by the European Committee for Standardization (CEN) in 2018 (CEN 17037:2018). It is applicable across all countries within the EU including Ireland with the Irish edition IS EN17037:2018. The assessment is carried out in addition to the assessment of the Average Daylight Factor as specified in the BRE guidelines and BS8206 Part 2:2008 Lighting for Buildings, Code of Practice for Daylighting. The EN17037:2018 Standard was enacted prior to the publication of Sustainable Urban Housing: Design Standards for New Apartments in 2020 which has no reference to the new standard. Additionally to date it is not referenced in any planning guidance document by any local authority”.*

The submitted daylight/sunlight assessment assessed daylight in the proposed development (section 2.6) and states that the *“rooms are assessed for Average Daylight Factor (ADF) and compliance with EN 17037 (2018)”*. Table 3 of same sets out the proposed development’s compliance with EN 17037 – please refer to same (page 5).

Table 5 of the submitted daylight/sunlight assessment sets out a summary of room compliance with EN 17037 with a complete set of results provided in Appendix B of the assessment. The assessment concludes (section 4.5) that *“All the rooms assessed in the proposed development exceed the Minimum Illuminance values for EN17037:2018 daylight provision. The majority of the rooms to the units in the development meet the Target Illuminance values for EN17037:2018. All the Living Kitchen Dining (LKD)rooms meet the Target Illuminance value in proposed development. The daylight provision to the proposed development achieves good natural daylighting levels throughout”.*

This report confirms that in terms of the sunlight available to habitable rooms, the design and layout of the apartment blocks is optimised to receive the available sunlight. 86% of the units exceed the target values set out for sunlight and therefore the proposed development meets the recommendations of the BRE guidelines for sunlight.

For sunlight to gardens and open spaces, the enclosed report states (section 6.2) that *“the site has a variety of public & communal amenity spaces designed into the scheme. The BRE recommends that 50% of the area receive in excess of 2 hours of sunlight on the 21st March. Over 98% of the public and communal amenity space exceeds the BRE recommendation. The area designated S11 has sun on the ground over 38% of its*



area. This is a small area, representing 1.9% of the total amenity area". The assessment concludes that "the proposed development meets and exceeds the criteria set out in the BRE guidelines for sunlight to gardens and open spaces".

Digital Dimensions have been involved in the design process since the beginning of the project. A number of design changes were made throughout the design process to ensure that all of the proposed units and public / communal open spaces achieve acceptable level of daylight / sunlight. Given all the foregoing, it is considered that the proposed development is compliant with the above criteria.

The criteria for specific assessments at some or all of the scales are addressed below:

***"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."***

Two separate bat surveys were undertaken on the subject site on 25<sup>th</sup> June 2020 and on 9<sup>th</sup> July 2020. Details of the bat surveys and results are set out under section 5.4.3.4 of the submitted EIAR. Under section 5.6 of the EIAR, the potential impacts of the proposed development on bats at construction and operational stages of the development are set out, while section 5.9 of the EIAR provides details of proposed mitigation measures in relation to bats.

Section 5.6 "Potential Impacts of the Proposed Development" (and namely section 5.6.2.3) of Chapter 5 of the submitted EIAR refers to the impacts of lighting on bats during the operational stage of the proposed development and states that "light spill will originate both from the installation of public lighting in the residential areas as well as from the residential properties themselves (e.g. incidental light pollution from house windows). The increase in light spill will be minor, as the development site suffers from some light spill from the adjacent public road and adjoining properties, and commuting and foraging areas i.e. treelines and hedgerows along the boundaries, are located away from any potential light spill areas".

Under mitigation measures set out in Chapter 5, the following is stated: "Any light spill affecting bat use of habitats outside of the proposed development boundary will be avoided, particularly along the boundaries of the site, and along the central boundary. Light levels during construction and operation in these areas will be maintained at baseline levels where possible. This will be achieved through sensitive siting and design of the lighting elements. This will include careful consideration of light placement on buildings, column heights and luminaire design. Luminaires have been selected which do not emit UV light (e.g. metal halide and fluorescent light sources should be avoided), and luminaries are designed using full cut off to ensure there is no direct upward light. The threshold increment is included in the lighting calculations to that luminaries are not a glare source, with the lighting designed to dim by 25% from 00:00 to 06:00. Monitoring of light levels along the treelines and hedgerows will be undertaken pre-construction, during-construction and post-construction to identify any areas where light spill is affecting background levels during construction or operation. Where monitoring detects light spill is affecting these habitat areas, remedial measures will be implemented to ensure that background light levels are maintained. Reporting on the monitoring will be forwarded to the local authority for their review and any remediation required agreed between them and the applicant".

Please refer to the aforementioned sections of the EIAR for further specific details.

Chapter 5 of the submitted EIAR (section 5.4.3 Fauna (Birds)) states that the "proposed development is not on any known migrating routes of wintering bird species or located on any flight path for ex-situ SCI species".



***“An assessment that the proposal maintains safe air navigation.”***

Prior to submitting this application for permission, the Department of Defence were contacted and details of the proposed development including provision of the site location map and the site layout plan which identified the tallest buildings on the site and their height in metres relative to Ordnance Datum. Their response to / comments on same were invited in terms of their satisfaction with the proposed building heights in relation to Casement/Baldonnel Aerodrome. Please refer to the correspondence set out in Appendix B of the submitted Planning Statement.

As directed by An Bord Pleanála in their Notice of Pre-Application Consultation Opinion both the Irish Aviation Authority and the Department of Defence, have been sent a copy of the application for their consideration. If a favourable decision is received from An Bord Pleanála the applicant will consult directly with the Irish Aviation Authority and / or the Department of Defence regarding the utilisation of cranes to ensure safe air navigation. Given all the foregoing, it is considered that the proposed development is compliant with the above criteria.

***“An urban design statement including, as appropriate, impact on the historic built environment.”***

An Architectural Design Rationale has been prepared by the project architects McCrossan O'Rourke Manning and Davey & Smith and is enclosed with the application as separate document – please refer to same for further details. Given all the foregoing, it is considered that the proposed development is compliant with the above criteria. Please also refer to the submitted Statement of Consistency (section 4.2.1) which outlines the compliance of the proposed development with the 12 urban design criteria set out in the Urban Design Manual.

***“Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.”***

The proposed development has been subject to an AA Screening prepared by Scott Cawley Ecological Consultants. The AA screening concludes that upon the examination, analysis and evaluation of the relevant information and applying the precautionary principle, that, on the basis of objective information; the possibility **may be excluded** that the proposed development will have a significant effect on any of the European sites listed above. Accordingly, a Stage 2 Appropriate Assessment (NIS) is not required to be carried out in relation to the Proposed Development.

The proposed development has also been subject to a comprehensive Environmental Impact Assessment Report (EIAR). The EIAR has considered the likely, significant, and adverse effects of the proposed project on the receiving environment. Mitigation measures are included for to reduce impacts on the environment where considered necessary. These mitigation measures have been incorporated into the design of the proposed development to avoid or reduce the effects on the environment, as appropriate. For full details please refer to the EIAR which accompanies the application. Given all the foregoing, it is considered that the proposed development is compliant with the above criteria.

SPPR 4 of the Building Height Guidelines is as follows:



**SPPR 4**

***It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure:***

- 1. the minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled “Sustainable Residential Development in Urban Areas (2007)” or any amending or replacement Guidelines;***
- 2. a greater mix of building heights and typologies in planning for the future development of suburban locations; and***
- 3. avoid mono-type building typologies (e.g. two storey or own-door houses only), particularly, but not exclusively so in any one development of 100 units or more.***

In the context of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) the application site can be considered as an Outer Suburban / Greenfield Site in accordance with section 5.11 of the aforementioned guidelines, which define such sites as “as open lands on the periphery of cities or larger towns”. The guidelines state that “the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares”.

In addition, section 5.8 of the same guidelines recommend that “increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station” This section of the guidelines also states that “in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes”.

The proposed development caters for 655 no. dwellings on an overall application site measuring c. 18.3 hectares. The average net density across the entire site is 43 dwellings per hectare, however, the part of the development site that is located within the 1km walking distance of the Luas passenger stop at Fortunestown to the north, is proposed to be developed at a net density of 51 units per hectare, and therefore secures the minimum densities required for such a site as detailed in aforementioned guidelines. The proposed development also secures an appropriate mix of building heights and avoids mono-type building typologies.

On the basis of all the above, it is considered reasonable to conclude that the proposed strategic housing development clearly complies with the policies, objectives, and SPPRs of the Building Height Guidelines and therefore can be granted permission by the Board under the provisions of Section 37(2)(b)(iii) of the Act of 2000.





#### 4.3.2.4 Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities 2009

It is considered that national policy seeks to promote increased densities on zoned lands close to public transport corridors. Achieving this increased density in a sustainable manner requires increased building heights to make the most of the zoned lands available. As such, in order to sustainably deliver increased densities for residential development within existing urban areas, without increasing urban sprawl then increased heights must be considered in appropriate locations.

Section 5.8 of the Sustainable Residential Development in Urban Areas Guidelines recommend that *“increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station”*. This section of the guidelines also states that *“in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes”*.

The proposed development site can be described as an Outer Suburban / Greenfield Site in accordance with section 5.11 of these guidelines, which define such sites as *“as open lands on the periphery of cities or larger towns”*. The guidelines state that *“the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares”*.

It is considered that these standards set in the guidelines are the most relevant for the purposes of assessing the appropriateness of a proposed density, with these guidelines also referenced in SPPR 4 of the 2018 Urban Development and Building Heights Guidelines for Planning Authorities.

As set out in the accompanying Planning Statement, the net developable area of the subject site is 15.28Ha which produces a net density of 43 units per hectare across the entire site, thus according with the guidance set out in Section 5.11 of these guidelines.

The northern part of the site that lies within the 1km walking distance of the Fortunestown Luas passenger stop, occupies a net area of 7.4Ha, and excludes (a) an area of 1.42Ha that has been reserved for a school site, in accordance with the 2012 Fortunestown LAP and (b) 0.61Ha of open space/landscape buffer in the “Riverside Park” along the eastern boundary, both of which have been discounted for net density purposes. This northern half of the site accommodates 374 no. dwellings which represents a net density of 51 no. dwellings per hectare, which accords with section 5.8 of the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.

The remainder of the proposed development site, beyond the 1km threshold line, occupies a net developable area of 7.9ha, which discounts the remainder of the proposed open space/landscape buffer in the “Riverside Park” along the eastern boundary. It is proposed to accommodate 281 no. dwellings in this part of the site which produces a net density of 35.5 units per hectare, which complies with section 5.11 of the guidelines and is over and above the discouraged net density of *“less than 30 dwellings per hectare”*, as also set out in section 5.11 of the guidelines, but also meets the recommended minimum net density of 35 units per hectare i.e. as per section 5.11.

In response to the Sustainable Residential Development in Urban Areas Guidelines, the proposed development provides for an average net density of 43 dwellings per hectare which can only be achieved through the provision of increased building heights. It is considered that if the proposed development ought to comply with the national policies for increased densities in close proximity to public transport nodes, then



increased heights are required. As such, it is considered that the proposed building heights, which range from 2 to 5 storeys, are appropriate for the subject site and are compliant with national planning guidance and policy.

The existing LAP sets out a maximum building height limit of “*three storeys, with exceptions justifiable only in limited exceptional circumstances*”; however, given the context of the proposed development in urban design terms and the location of the site within an existing urban area and close to quality public transport services, the proposed heights are considered appropriate. Therefore, it is considered that the proposed increase in height is in accordance with national policy guidance and is appropriate given the locational context of the subject site

### **JUSTIFICATION FOR PROPOSED AVERAGE FLOOR AREA**

#### **4.3.2.5 The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2020.**

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

The Apartment Guidelines include *Specific Planning Policy Requirement 3*, which sets out the following “Minimum Apartment Floor Areas”:

- Studio apartment (1 person) 37 sq.m;
- 1-bedroom apartment (2 persons) 45 sq.m;
- 2-bedroom apartment (4 persons) 73 sq.m;
- 3-bedroom apartment (5 persons) 90 sq.m.

Accordingly, in line with national policy guidance, the proposed apartments either meet or exceed the standards set out in SPPR 3 of the Apartment Guidelines. Furthermore, this is clearly demonstrated in the submitted Quality Housing Assessment – please refer to same. Details of the proposed floor areas of the units are also set in section 5.7 of the submitted Planning Statement. It is considered that the proposed development caters for a good mix in housing typology with an overall average floor area of the proposed dwellings being 101.45sq.m. Notwithstanding the requirements of Fortunestown LAP to provide an average floor area of 110sqm, SPPR 3 requires minimum apartment sizes as outlined above and the subject proposal meets these requirements.

### **JUSTIFICATION FOR PROPOSED UNIT MIX**

#### **4.3.2.6 Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) and its companion document Urban Design Manual**

The role of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas is to ensure the sustainable delivery of new development throughout the country. The guidelines provide guidance on the core principles of urban design when creating places of high quality and distinct identity. The guidelines are accompanied by an Urban Design Manual which demonstrates how design principles can be applied in the design and layout of new residential developments, including key criteria such as context,



connections, variety and distinctiveness.

Section 5.8 of the same guidelines recommend that *“increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station”*. This section of the guidelines also states that *“in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes”*.

The proposed development site can be described as an Outer Suburban / Greenfield Site in accordance with section 5.11 of these guidelines, which define such sites as *“as open lands on the periphery of cities or larger towns”*. The guidelines state that *“the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares”*.

It is considered that these standards set in the guidelines are the most relevant for the purposes of assessing the appropriateness of the proposed unit mix. Taking this into account, the net developable area of the subject site is 15.28Ha which produces a net density of 43 units per hectare across the entire site, thus according with the guidance set out in Section 5.11 of these guidelines.

The northern part of the site that lies within the 1km walking distance of the Fortunestown Luas passenger stop, occupies a net area of 7.4Ha, and excludes (a) an area of 1.42Ha that has been reserved for a school site, in accordance with the 2012 Fortunestown LAP and (b) 0.61Ha of open space/landscape buffer in the “Riverside Park” along the eastern boundary, both of which have been discounted for net density purposes. This northern half of the site accommodates 374 no. dwellings which represents a net density of 51 no. dwellings per hectare, which accords with section 5.8 of the 2009 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.

The remainder of the proposed development site, beyond the 1km threshold line, occupies a net developable area of 7.9ha, which discounts the remainder of the proposed open space/landscape buffer in the “Riverside Park” along the eastern boundary. It is proposed to accommodate 281 no. dwellings in this part of the site which produces a net density of 35.5 units per hectare, which complies with section 5.11 of the guidelines and is over and above the discouraged net density of *“less than 30 dwellings per hectare”*, as also set out in section 5.11 of the guidelines, but also meets the recommended minimum net density of 35 units per hectare i.e. as per section 5.11.

Taking the locational context of the subject site into consideration, and the proposed density of development, which exceeds the density set out in the LAP, but complies with the density guidance set out sections 5.8 and 5.11 of these guidelines, it is considered that the proposed development and its associated density is appropriate. The northern “half” of the subject site is located within a 1km walking distance of an existing Luas passenger stop, within an existing urban area, and therefore has the capacity to achieve higher densities to complement the surrounding services and reflect emerging patterns of permitted and proposed similar type developments. The proposed density is therefore considered appropriate due to the location of the proposed development close to high quality public transport provision, the existing urban environment and the locational context of the site.

We note the requirement of the Fortunestown LAP to provide 85% own door dwellings and 15% apartments. The proposed scheme includes 409 no. own dwellings in the form of houses (257 no.) and duplexes (152 no.) which equates to 62% of the proposed dwellings. However, given the location of the site, the proposed mix of apartments and houses proposed on site is considered to be in line with national policy guidance for a site located close to an identified transport corridor.



#### 4.3.2.7 The Urban Development and Building Heights Guidelines for Planning Authorities, 2018.

The current proposal ensures a greater choice of tenure and unit mix within the LAP area and accords with SPPRs 3 and 4 of the *Urban Development and Building Heights Guidelines for Planning Authorities 2018* which states that planning authorities in assessing applications for housing suburban areas must secure the minimum densities set out in the 2009 Guidelines and a greater mix of building heights and typologies in suburban locations and avoid mono-type building typologies (e.g. two storey or own-door houses only).

It should be noted that as there are two separate developers applying for permission, the proposed development provides for variations on the house types such that character areas and consumer choice are provided for. In dealing with houses only, there are 16 no. different house types proposed, with further slight variations in same in terms of end units / mid terrace units etc. all of which illustrated on the enclosed (MCORM) drawing no. PL06 "Site Layout Plan – Unit Mix" and on Fig. 6 over. This is in addition to the duplex units and apartments. Table 2 provides a summary of the housing mix across the overall proposed development:

**Table 2: Overall Proposed Dwelling Mix**

Dwelling Type	1 bed	2 bed	3 bed	4 bed	Total	Percentage %
Houses	0	8	168	81	257	39%
Apartments	62	177	7	0	246	38%
Duplex	4	72	76	0	152	23%
<b>Total</b>	66	257	251	81	655	100%
<b>Percentage %</b>	10%	39%	39%	12%	100%	-





Fig. 6 – Proposed Dwelling Types





**JUSTIFICATION FOR PROPOSED CAR PARKING**

**4.3.2.8 The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2020.**

The 2020 Sustainable Urban Housing – Design Standards for New Apartments Guidelines sets out alternative standards for apartments. Under these Guidelines *‘the quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.’* Therefore, the car parking provision for the site seeks to balance to maximum requirements, as described in the CDP, and what is sustainable based on the criteria outlined in the Apartment Guidelines. This approach has been adopted for both the apartments and duplexes in the proposed development.

The Apartments Guidelines sets out alternative criteria for the provision of car parking spaces based on the link between the proposed development, access to local amenities and access to public transport. The duplex blocks are located in Zone 1. A comparison between development plan standards and the Apartment Guidelines is illustrated in the following tables 3 and 4 (and also Tables 7 & 8 in the submitted TTA):

Car Parking Standards – Duplex			
Land Use		Standards	
		Development Plan Standards (Zone 1)	‘Sustainable Urban Housing – Design Standards for New Apartments’ DoECLG (2020)
Duplex	1 Bed	1 space	Depends on Design & Location
	2 Bed	1.25 space	
	3 Bed	1.5 spaces	
Visitors		-	1 space per 4 units

**Table 3: Parking Standards**



Car Parking Provision - Duplex			
No. of Units		Standards	
		Development Plan Standard	'Sustainable Urban Housing – Design Standards for New Apartments' DoECLG (2020)
1 Bed	4	3	152
2 Bed	72	90	
3 Bed	76	114	
Visitor		-	38
<b>Total</b>		<b>208</b>	<b>190</b>

**Table 4: Parking Provision – Duplexes**

A total of 190 spaces for the duplexes will be provided in this development. This equates to c. 1 spaces per unit and 38 no. visitor spaces.

In relation to the proposed apartments, car parking provision for same is proposed in accordance with the Apartments. Given the location of the apartment blocks relative to the Luas stop at Fortunestown, the submitted TTA assumes (Section 3.4.5) that the apartment blocks are located in Zone 1. A comparison between development plan standards and the new apartment guidelines is illustrated in Tables 5 & 6 as follows (and also Tables 9 & 10 in the submitted TTA):

General Parking Standards			
Land Use		Standards	
		Z1	Z2
Apartment/Duplex	1 bed	1 space	0.75 spaces
	2 bed	1.25 spaces	1 space
	3 bed+	1.5 spaces	1.25 spaces

**Table 5: Parking Standards**



Car Parking Provision - Apartment				
Type	No.	Standards		
		Zone		DoECLG (2020)
		Z1	Z2	
1 Bed	62	18	33	184
2 Bed	177	33	151	
3 Bed	7	2	8	
Visitor		-		24
Sub Total		52	192	208
<b>Total</b>		<b>244</b>		<b>208</b>

Table 6: Parking Provision – Apartments

It is proposed to provide 208 spaces for the apartment element of the proposed development. This equates to c. 0.85 spaces per unit.

Section 3.4.6 of the submitted TTA sets out a justification for the proposed car parking based upon the guidance outlined in the Apartment Guidelines and states that car parking spaces will be provided for the apartments and duplexes on the following basis:

General Car Parking Spaces - Apartments	184 No.
General Car Parking Spaces - Duplex	152 No.
Visitor	62 No.
<b>Total</b>	<b>398 No.</b>

The Apartment Guidelines determines the car parking requirements 'having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria' based on the following designations:

- Central and/or Accessible Urban Locations;
- Intermediate Urban Locations; and
- Peripheral and/or Less Accessible Urban Locations.

A Central and/or Accessible Urban Locations are defined by larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport where the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances.

Intermediate Urban Locations are defined as suburban/urban locations that are served by public transport or close to town centres or employment areas and particularly for housing schemes with more than 45 dwellings per hectare net (18 per acre). In such instances planning authorities are encouraged



to consider a reduced overall car parking standard and apply an appropriate maximum car parking standard.

Peripheral and/or Less Accessible Urban Location are defined by locations that are peripheral or less accessible urban locations where one car parking space per unit, together with an element of visitor parking, such as one space for every 3-4 apartments, should generally be required.

For the purpose of this application, the development is considered as Central and/or Accessible Urban Locations given its proximity to Citywest Business Campus and 10 minute walking distance to the Luas stop located on Fortunestown Lane.

### **Public Transport**

Fortunestown Lane Luas passenger stop is located c. 10 minutes walking distance from the development through Carrigmore Estate.

### **Density**

The proposed development comprises 655 houses, apartments and duplex providing a net density of 43 dwelling units per hectare.

### **Site Classification**

For the purpose of this application, the development is considered as a Intermediate Urban Location. As apartment and duplex elements of this development are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as this as it is at confluence of public transport systems i.e. Luas.

The development is c. 15 minutes walking distance of centrally located employment locations i.e. Citywest Business Campus. It is also c. 10 minutes walking distance of a Luas stops.

Therefore, it is justified to provide 398 car parking spaces for the proposed 398 no. apartments and duplex units and this is reiterated in the conclusion of Section 3.4.6 of the submitted TTA - please refer to same.

**4.3.3 Conclusion of Criterion of 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 -- Section 37(2)(b)(ii) & (iii) of the Planning & Development Act, 2000 (as amended).**

On the basis of all the above, it is considered reasonable to conclude that the proposed strategic housing development complies with the provisions and guidance of the current regional spatial and economic strategy for the area and is clearly in compliance with the aforementioned Section 28 guidelines, and therefore fulfils the criterion under Section 37(2)(b)(ii) & (iii) of the Planning & Development Act, 2000 (as amended).



#### **4.4 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.**

##### **4.4.1 Building Height & Density**

The subject site is located on lands zoned 'Objective RES-N' for new residential communities. The proposed built form is entirely appropriate for the area and will integrate seamlessly with the receiving environs having regard to the existing pattern of development in the area, as well as permitted developments on the Plan lands.

The proposed density and scale of the scheme is in keeping with the existing and emerging scale of development in the area. We note the approval of the following residential developments on the LAP/Plan lands with the following permitted building heights and density:

- Ref. 302398-18 - Approval for construction of 459 no. dwellings including building heights of 4-6 storeys (and associated density of 83 units per Ha);
- Ref. 305556-19 - Approval for construction of 290 no. dwellings including building heights of 4-7 storeys (and associated density of 39 units per Ha);
- Ref. 306602-20 - Approval for construction of 463 no. dwellings including building heights of 6-7 storeys (and associated density of 93 units per Ha);
- Ref. 308088-20 - Approval for construction of 224 no. dwellings including building heights of 5-8 storeys (and associated density of 190 units per Ha);
- Ref. 310570-21 - Approval for construction of 421 no. dwellings including building heights of up to 13 storeys (and associated density of 124 units per Ha).

##### **4.4.2 Community Floorspace**

In relation to the provision of community floorspace, we note that Section 7.2.5 "Community Facilities" of the LAP states that "*Community facilities shall be distributed across the Plan Lands at a rate of 300 sq.m per 1,000 dwellings. Such facilities shall be located close to parks and schools and should encourage complementary day and night time parking*".

Section 8.0 "Phasing" of the LAP details the phasing and timing of development within the Plan lands with Section 8.2 setting out details for Phase 2 of the development of the Plan lands and contained in Table 8.3 of same, one of the "Key Outcomes Required before the Next Phase" is that "*Circa 780 sq.m of community floorspace*" is to be provided.

The LAP is not specific as to where 780sq.m of community floorspace is to be provided. Notwithstanding this, we note that permissions have been granted for development on the Plan lands since the adoption of the Development Plan and LAP, with conditions attached requiring that community floorspace be provided as part of the relevant development as per the following planning permissions:

- Ref. SD16A/0210 (& as extended under Ref. SD16A/0210/EP) – 48.3m<sup>2</sup>;
- Ref. SD18A/0014 - 51.6m<sup>2</sup>;
- Ref. SD16A/0078 – 90m<sup>2</sup> (this permission was subsequently superseded by Ref. ABP-310570-21 which does not provide for community floorspace).

Permission was also granted under Ref. ABP-306602-20 for 463 no. dwellings including a community building / pavilion to the south of Block 5. The pavilion is 141m<sup>2</sup> and includes a multipurpose room and associated facilities.





It has also been established through the granting of the permission under Ref. ABP-310570-21 that 646m<sup>2</sup> of community floorspace has been granted in the area, which would leave a shortfall of 134m<sup>2</sup> to be delivered across the Plan lands, in accordance with the Section 7.2.5 of the LAP. (The submitted Social and Community Infrastructure Assessment also confirms the provision of existing community floorspace, including 7 no. local facilities (section 7.5 of same). The shortfall of 134m<sup>2</sup> community floorspace does not include school hall floor spaces that could serve as a community use, and if these were included the floor space rises to excess of 1,000 sqm, as accepted in the assessment of the planning application under Ref. ABP-310570-21.

It should be noted that discussions have taken place with the Planning Authority and we understand that they are currently considering how best to deliver one overall facility in conjunction with all of the relevant stakeholders / landowners in the Plan lands and our clients have no objection to same in principle. The Planning Authority has also confirmed to us that they are not requiring a community facility to be proposed or delivered by the applicants on the lands in the Boherboy Neighbourhood, and this is confirmed in their email to us dated 15<sup>th</sup> May 2020 – refer to the Appendix.

#### **4.4.3 Phasing / Quantum of Development**

The LAP (Table 8.1 “Phasing and Distribution of Residential Development per Neighbourhood”) sets out that a total figure of 3,300 no. dwellings are to be accommodated on the lands subject to the Fortunestown LAP. However, to date, permission has been granted for the development of 3,892 no. dwellings, albeit to be delivered on a phased basis in accordance with the conditions attached to the relevant permissions. Taking the quantum of permitted development into consideration (i.e. 3,892 no. dwellings), as well as that currently proposed i.e. 655 no. dwellings, the LAP lands would be catering for 4,547 no. dwellings.

The proposed development represents a c.20% exceedance (655 no. units above the envisaged 3,330 units) of the total quantum of dwelling units. It is considered that this exceedance may not be considered as a material contravention as the overall quantum of units is not stated as a maximum figure that cannot be exceeded.

Within Section 8.0 of the LAP and underneath Table 8.1, the note referenced with that table that indicates that the figures and calculations contained therein are based on a density of 40 units per Ha, and that a density range has been used between 30 and 50 units per Ha. It is also noted that “Some areas, such as the Boherboy lands will attract a lower number of houses (predominantly 30 dwellings per hectare)”. It is also stated in Section 8.0 that “*the distribution of dwellings for construction in each neighbourhood under each phase is set out under Table 8.1, which is based on a pro-rata distribution of a global figure for the entire Plan Lands according to land area and is therefore indicative*” and further that “*it should be noted that key outcomes are not mandatory in all cases. In determining planning applications across the overall Plan lands, the Planning Authority may take a considered view that further development should be allowed to proceed with regard to where housing is being delivered*”.

It is therefore considered that the number of units in Table 8.1 are an estimated figure based on general density ranges for different neighbourhoods and yielding an indicative total number of units for the LAP lands. There is no specific objective in the LAP that states the number of units in each neighbourhood and/ or the final combined total in Table 8.1 is a definitive maximum that cannot be exceeded. This assertion is evidenced by the quantum of permitted development to date across the Plan lands since the adoption of the Development Plan / LAP.



#### **4.4.4 Conclusion of Criterion of Permission for the proposed development having regard to the pattern of development, and permissions granted, in the area since the making of the development plan – Section 37(2)(b)(iv) of the Planning & Development Act, 2000 (as amended).**

On the basis of all the above, it is considered reasonable to conclude that the proposed strategic housing development is clearly of both strategic and national importance, supports the national planning policy and objectives of both Rebuilding Ireland and the NPF, and therefore fulfils the criterion under Section 37(2)(b)(i) of the Planning & Development Act, 2000 (as amended).

It is concluded that, with reference to the provisions of Section 37(2)(b) (iv) of the Planning & Development Act, 2000 which states that where a proposed development materially contravenes the development plan and/or local area plan, the Board may grant permission where it considers 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”*.

As required in legislation, it is submitted that the proposed building heights, density, provision of community floorspace and the overall quantum of development can be justified under Section 37(2)(b)(iv) of the Act of 2000 where the Board may determine under this section, to grant a permission, even if the proposed development contravenes materially the LAP.



## 5.0 Conclusion

**5.1** In summary, it is submitted that the proposed development can be granted permission, notwithstanding that An Bord Pleanála may consider the proposed development to be a material contravention of the 2012 Fortunestown Local Area Plan, and its objectives in relation to density, building height, average floor area, unit mix and the phasing requirements i.e. the overall quantum of units envisaged for the Plan lands. It is also submitted that An Bord Pleanála can grant permission for the proposed development where it may consider the proposed development to be a material contravention of the current South Dublin County Development Plan, 2016-2022 in relation to car parking standards.

**5.2** It is considered that under Section 37(2)(b)(i) of the Planning & Development Act 2000 (as amended) that the Board can grant permission for the proposed development having regard to the strategic national important of delivering new housing on sites in appropriate locations.

**5.3** It is also considered that under Section 37(2)(b)(iii) of the Planning & Development Act 2000 (as amended) that the Board can grant permission for the proposed development having regard to the proposed development's compliance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), the Urban Development and Building Heights Guidelines for Planning Authorities (2018) and the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020), and by reference to the policies of the government stated at objectives 3a, 11, 13 and 35 of the National Planning Framework. It is considered that the density, building height, average floor area, unit mix and car parking are in keeping with the proper planning and sustainable development of the area and can therefore be granted permission.

**5.4** Having regard to Section 37(2)(b)(iv) of the Act of 2000, which states that where a proposed development materially contravenes the development plan and/or local area plan, the Board may grant permission where it considers 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"*, it is considered that given (a) the quantum of permitted dwellings (i.e. 3,892 no.) since the adoption of the LAP now exceeds the quantum envisaged by the LAP, (i.e. 3,300 no.), and (b) the permitted quantum of community floorspace on the Plan lands, that An Bord Pleanála can grant permission for the proposed development of 655 no. dwellings and creche (and without the a community facility) having regard to the pattern of development and permissions granted in the area.



## APPENDIX

### Correspondence with SDCC re provision of Community Facility



## Tracy Armstrong

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**From:** Jason Frehill <jfrehill@SDUBLINCOCO.ie>  
**Sent:** Friday 15 May 2020 15:07  
**To:** Tracy Armstrong  
**Cc:** Deirdre Kirwan; Eoin Burke  
**Subject:** RE: Lands at Boherboy

Tracy,

We are satisfied in this instance for you not to provide a small community space as you have done previously however we would advocate that if an apartment block is being delivered that you look at the feasibility of providing some internal communal space where residents can meet if necessary.

Many thanks.

Kind Regards,  
Jason

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**From:** Tracy Armstrong <t.armstrong@fenton.ie>  
**Sent:** 15 May 2020 15:01  
**To:** Jason Frehill <jfrehill@SDUBLINCOCO.ie>  
**Subject:** RE: Lands at Boherboy

**CAUTION:** [EXTERNAL EMAIL] Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Jason,

When you get a chance, you might give me an update regarding this please?

Many thanks

Kind regards,

**Tracy Armstrong**, BA, MRUP, MIPI, MRTPI  
Senior Planner,

**Armstrong Fenton Associates**,  
Planning & Development Consultants,  
Unit 13 The Seapoint Building,  
44-45 Clontarf Road,  
Dublin 3, D03 A0H3.

Tel: 01-4793140  
Mob: 087-2807144  
Email: [t.armstrong@fenton.ie](mailto:t.armstrong@fenton.ie)





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**From:** Jason Frehill <[jfrehill@SDUBLINCOCO.ie](mailto:jfrehill@SDUBLINCOCO.ie)>  
**Sent:** Thursday 7 May 2020 10:52  
**To:** Tracy Armstrong <[t.armstrong@fenton.ie](mailto:t.armstrong@fenton.ie)>

**Cc:** Deirdre Kirwan <[dkirwan@SDUBLINCOCO.ie](mailto:dkirwan@SDUBLINCOCO.ie)>; Barry Coughlan <[barrycoughlan@SDUBLINCOCO.ie](mailto:barrycoughlan@SDUBLINCOCO.ie)>  
**Subject:** RE: Lands at Boherboy

Hi Tracy,

Thanks for your email, I understand your position and have previously discussed this matter with Eoin.

Leave this with me and I will come back to you either tomorrow or else early next week with a definitive answer on the questions you have raised, which will allow you to proceed with the SHD application.

Kind Regards,  
Jason

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**From:** Tracy Armstrong <[t.armstrong@fenton.ie](mailto:t.armstrong@fenton.ie)>  
**Sent:** Wednesday 6 May 2020 15:41  
**To:** Jason Frehill <[jfrehill@SDUBLINCOCO.ie](mailto:jfrehill@SDUBLINCOCO.ie)>  
**Subject:** Lands at Boherboy

**CAUTION:** [EXTERNAL EMAIL] Do not click links or open attachments unless you recognise the sender and know the content is safe.

To Jason,

How are you – hope all's well in the current circumstances.

I am representing Kelland Homes Ltd & Durkan Estates Ireland Ltd who are landowner of two adjoining fields on the Boherboy Road near Saggart. The lands are zoned for residential land use and form the Boherboy Neighbourhood, as per the Fortunestown LAP.

We are currently preparing a SHD application for c.690 dwellings on the lands and had our S.247 meeting last week with Eoin Burke & Jim Johnston (Ref. SHD1SPP006/20). We are now proceeding with working up a proposal to have pre-application consultation with An Bord Pleanála.

One of the items raised last week by SDCC was the issue of community infrastructure. Obviously the LAP requires 780sq.m of community floorspace but it is not further defined than that, i.e. location, who provides it etc. I know to date that some permissions granted by SDCC in the LAP area have been conditioned to omit a residential unit in lieu of community floorspace.

Eoin contacted me late last year to discuss this as I also represent Davy Hickey Properties who are carrying out the Citywest Village and Citywest Demesne developments in the area and they too have had similar conditions attached to their permissions. My understanding from my conversation with Eoin in late 2019 is that SDCC are looking at the possibility of getting one community facility for the entire area as opposed to having a number of smaller units that may never be used which is of no benefit to any party.

That said, since the adoption of the LAP in 2012 and the introduction of the SHD process, obviously the permitted numbers of units have gone beyond what was originally envisaged by the LAP/SDCC. We have been asked by SDCC to address the provision / need for community infrastructure as part of our application on the Boherboy lands. Eoin suggested I contact you so any feedback regarding same and/or what is SDCC's intentions at present for the provision of community infrastructure in the LAP area would be welcome. I have to say though, that my clients, Durkan Estates Ireland, were required to provide a community facility in a previous development of theirs at The Belfry, to the east, c. 20 years ago, and that unit has never been taken over by SDCC and has always remained vacant, so they and Kelland Homes do not want a similar situation to occur at Boherboy. If they are to provide a unit, my clients want assurances that SDCC would take the unit and operate it and that no such unit would be left vacant after the expense of building one.



In addition, the lands at Boherboy are required to provide a site for a primary school site as per the LAP. My clients are liaising with the Dept. Education & Skills and are waiting on confirmation from them as to whether they need this site for the provision of a school. We will continue to liaise with them but until such time as their confirmation is provided, a site of c. 1.28ha remains reserved on the lands for the provision of a site to accommodate a school.

I would appreciate it if you could come back to me on the above, as we want to be able to adequately address the subject of community infrastructure as part of our proposal to ABP for the SHD pre-application consultation.

I look forward to hearing back from you. In the meantime, I attach an OS map and details that we submitted last week for the S.247 meeting.

Thanks

#### **Armstrong Fenton Associates – COVID-19 NOTICE**

AFA are committed to complying strictly with all the advice from the Public Health Authorities. We are giving priority to ensuring the greatest possible protection to our staff while maintaining the best possible service to all our clients. AFA have put measures in place which will maintain social distance, these include holding meetings online, remote working and having all of our data available to staff online. We would ask our clients to assist us in this regard. AFA are monitoring [info@fenton.ie](mailto:info@fenton.ie) throughout normal working hours – please email us with your contact number and we will call you back as soon as possible.

Kind regards,

**Tracy Armstrong**, BA, MRUP, MIPI, MRTPI  
Senior Planner,

**Armstrong Fenton Associates,**  
Planning & Development Consultants,  
Unit 13 The Seapoint Building,  
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Email: [t.armstrong@fenton.ie](mailto:t.armstrong@fenton.ie)

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