

Material Contravention Statement

Proposed SHD

**Lands in the townland of Kilcock,
Boycetown,
Commons West
(adjoining the Brayton Park estate),
Kilcock,
Co. Kildare**

**On behalf of
Rycroft Homes Limited**

February 2020



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1 Introduction

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin, have prepared this Material Contravention Statement on behalf of **Rycroft Homes Ltd., 1a Mpo Building, Blanchardstown Business Park, Snugborough Road, Dublin 15**, for a proposed Strategic Housing Development (SHD) relating to a residential development of 345 residential units, a creche and all associated ancillary elements on a site of c. 11.56 ha, on lands **in the townlands of Boycetown, Kilcock and Commons West, Kilcock, Co. Kildare**. The lands are adjoining the Brayton Park estate, Kilcock.

The subject site is located within the administrative boundary of Co. Kildare. It is noted that the Kildare County Development Plan 2017 – 2023 and the Kilcock Local Area Plan 2015-2021 are the local statutory planning documents of relevance to the subject site.

The proposed development provides for height ranges from 2 storeys to 5 storeys and a density of c.43 units per ha nett (refer to the basis of the density calculation set out in the enclosed Architectural Design Statement prepared by C+ W O Brien Architects).

As set out herein this statement details the basis for consideration of a material contravention of the County Development Plan and the Kilcock Local Area Plan in relation to:

- building height and
- density.

This Material Contravention Statement is lodged as an accompanying report for the subject proposal and should be read in conjunction with all plans and particulars submitted as part of the overall pre-application request.

1.1 Legislative Context

This Statement has been prepared in compliance with section 8(1)(a)(iv) of the Planning and Development (Housing) and Residential Tenancies Act, 2016:

“8. (1)(a)(iv) Where the proposed development materially contravenes the said plan, other than in relation to the zoning of the land, indicating why permission should nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.”

and section 37 (2)(b) of the Planning and Development Act, 2000 (as amended) which reads as follows:

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

- (i) the proposed development is of **strategic or national importance**,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) **permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or***
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*

A full description of the development is contained within the accompanying application documentation. In summary, the proposed development comprises of 345 residential units (182 houses, 69 duplexes and 94 apartments) and creche facilities on a site which includes residential and open space zonings within the townlands of Kilcock, Boycetown and Commons West, Kilcock, Co. Kildare.

The subject site is governed by the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021. This zoning designations allows for residential development, creche facilities and associated ancillary elements as well as open space amenity.

This material contravention statement is submitted on the basis that (a) the proposal currently before An Bord Pleanála is of strategic importance; and (c) the proposal can be positively considered on the basis of Section 28 guidance published.

We now direct An Bord Pleanála to the clear justification set out in this report, which supports this position.

2 Statutory Planning Policy

The relevant provisions of the Kildare County Development Plan 2017-2023 are outlined in detail below. This is the statutory policy guidance framing the development of the site.

2.1 Core Strategy of the Kildare County Development Plan 2017-2023

The Core Strategy was adopted in 2017 as part of the adoption of the Kildare County Development Plan. This strategy sets out the medium-to-longer term quantitatively based strategy for the spatial development of Kildare and in doing so demonstrates that the Development Plan and its policies and objectives are consistent with national and regional policy.

It is important to note the Core Strategy uses the Regional Planning Guidelines for the Greater Dublin Area 2010-2022 (RPGs), which were adopted in 2010 and have now been superseded by the RSES.

Population Growth Trends

The Strategy states Kildare is one of the fastest growing counties in Ireland: *“the population of the county has increased from 186,335 in 2006 to 210,312 in 2011, representing a growth of 13%, the second highest in the State. Over a 20 year period (1991-2011), Kildare experienced a 71.5% increase in its population. The most recent increase in population can be explained by high levels of natural increase (birth rate) and a strong performance in net migration.”*

The population targets outlined in the Core Strategy conclude in 2022 at 252,640.

Settlement Hierarchy

The settlement hierarchy for County Kildare is broken into the following categories:

- Large Growth Towns
- Moderate Sustainable Growth Towns
- Small Towns with the Hinterland Area
- Villages

Under this hierarchy, it is noted that Kilcock is identified as a **Moderate Sustainable Growth Town**, of which are:

“located within both the Metropolitan and Hinterland Areas. They are at sub-county town level, with lesser levels of economic activity beyond that required to service the local population. Most of these towns are envisaged as having an interacting and supporting role to their adjacent higher order town in the Hinterland areas or as part of Dublin City within the Metropolitan area.”

Kilcock is identified as within the Metropolitan area.

Preferred Development Strategy

Section 2.7 outlines the preferred development strategy which has been informed by the RPGs and the environmental sensitivities of the county:

*“The preferred development strategy has been informed by the RPGs and the environmental sensitivities of the county. It is based on building strong urban centres while protecting the rural hinterlands. The focus is on achieving: – Critical mass in the Metropolitan urban areas (Maynooth, Leixlip, Celbridge, **Kilcock**) and in key towns and villages in the Hinterland (Naas, Newbridge, Athy, Kildare, Monasterevin and Kilcullen).”*

The subject site is located outside of Kilcock.

2.2 Settlement Strategy of the Kildare County Development Plan 2017-2023

The Settlement Strategy in Section 3 of the County Development Plan provides the strategic direction for the management of growth in line with what is outlined in the Core Strategy.

The role of Moderate Sustainable Growth Towns is further defined under this section as being:

“Moderate Sustainable Growth Towns are located both within the Metropolitan and Hinterland areas. These towns in the Metropolitan area will continue to have a strong role as commuter locations within the fabric of continued consolidation of the Metropolitan area. Future growth is related to the capacity of high quality public transport connections and the capacity of social and physical infrastructure. Connectivity to adjoining suburbs / towns and employment locations within the Metropolitan area is also a key requirement particularly focused on local bus / cycle/ pedestrian routes.

*Within the Hinterland area the overall function is for the **Moderate Sustainable Growth Towns to develop in a self-sufficient manner, reducing commuting levels and ensuring sustainable levels of housing growth, providing a full range of local services adequate to meet local needs at district level and for surrounding rural areas.** The provision of a strong social infrastructure in tandem with growth in population, particularly in relation to schools and leisure facilities is also required.*

These towns will also seek to encourage economic opportunities through the provision of high quality transport connections, good social infrastructure provision and a strong local labour market.”

2.3 Building Height

Section 17.2.1 of the Development Plan identifies that:

“In general heights should respect the local streetscape and the appropriate maximum or minimum height of any building will be determined by:

- *Prevailing Heights in the area*
- *Proximity of Existing Housing*
- *The scale of the Proposal”*

In addition it is noted that Section 17.2.1 further states that:

*“Tall buildings, defined here as buildings that **exceed five storeys and/or 15 metres**, will only be considered at areas of strategic planning importance identified in a Local Area Plan. The potential of roof top spaces in tall buildings for open space/amenity use should be considered, subject to considerations of design, relationship with surrounding properties, use and management”. (our emphasis)*

3 Material Contravention and Justification

In the event that the Board considers that the proposed development constitutes a material contravention of the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021 in terms of height and density, a justification for such a material contravention is set out below, under the relevant parts of Section 37(2)(b) of the 2000 Act.

In addition to the above section, we also refer the Board to the Statement of Consistency, submitted with this application, which outlines how the proposed development is otherwise consistent with the policies of the Development Plan and the Local Area Plan.

The matter of appropriate housing provision has been examined by the applicant and the design team as part of the design process.

3.1 Height

Having regards to the specific wording of Section 17.2.1 of the Development Plan (set out above) relating to height.

The proposal development provides for heights of 2-5 storeys. The 5 storey elements are the proposed corner apartment blocks (refer to the enclosed drawings prepared by C+W O Brien Architects.). It is submitted that this is appropriate and in line with Development Plan provisions as the site forms part of an area identified as an ‘Expansion Area’ within the Kilcock Local Area Plan. However, it is noted that the Local Area Plan does not identify specific heights for the subject site and that the existing residential heights in the area are generally 2 storey in nature. It is also noted that the existing Kilcock Primary Care Centre (in close proximity to the subject site) ranges from 2 to 3 storeys and constitutes a taller built element than the existing residential building in the vicinity of the subject site.

C+W O Brien Architects can confirm that there are appropriate separation distances maintained within the proposed development, which ensures that the heights proposed, do not have a negative impact on residential amenity within the scheme. It is in consideration of the above, that we submit the proposed heights to be appropriate at this location.

3.2 Proposed Development is of Strategic or National Importance

The proposal for 345 residential units falls within the definition of a Strategic Housing Development in accordance with the definition under Section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 as amended. On this basis we submit that the proposed development, by definition, is strategic in nature and of strategic importance.

This proposal contributes positively to the current national shortfall in housing supply. The Rebuilding Ireland Action Plan and the above 2016 Act recognise the strategic importance of larger residential developments (including those over 100 units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.

Having regard to this legislative and policy context, it is considered that this proposed Strategic Housing Development at the subject site on lands in the townland of Boycetown, Kilcock and Commons West, Kilcock, Co. Kildare, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act as amended.

In further support of this conclusion is the location of the subject site which is a greenfield zoned site outside of Kilcock within close proximity to existing transport services. The location of the subject site (which is zoned for residential use and open space) itself in relation to effective public transport, makes this area a key asset in delivering future growth. The focus of the design of the site has been to make the most of the connection to the town centre and public transport and streamline movement through, and from the site, particularly for pedestrians and cyclists. This is detailed in full in the enclosed documents which form part of this SHD planning application.

The site is appropriately zoned C - New Residential and F3 Open Space - under the Kilcock Local Area Plan 2015-2021. In addition, it is noted from the zoning map that:

- There is an indicative roads objective running through the site.
- A buffer zone is identified within the F3 Open Space zoned lands (this is denoted by the yellow line on the map extract below).
- An indicative bridge (pedestrian/cyclist) over the railway line is identified on the zoning map
- A cycle path objective is shown along the subject sites boundary with the railway line.

Having regard to the subject proposal, the applicant can and will deliver this proposal and provide much needed quality housing for the community.

As a zoned greenfield site proximate to Kilcock, the subject site is an opportune location to address the housing requirement for the County. Residents are in proximity to key towns, cities and employment areas. Employment centres such as Newbridge and Naas are c.40 and minutes or less via private car, and Dublin is c. 1 hour via public transport and via private car.

There are a number of local amenities within and proximate to the subject site, including 27% of the overall site which is allocated as open space, the adjoining Bawnogues open space area, recreational facilities as well as existing educational and health care facilities. The proposal includes the provision of extensive open spaces (c.27% of the overall site area), the design of which is detailed in separate SHD planning application documents. As such, the number of residential units proposed can be considered to be at a sustainable level for this site.

3.3 Conflicting Policies and Objectives

Table 4.2. of the Kildare County Development Plan 2017-2023 sets out the guidance for residential density appropriate to new development sites. We note specifically that a general residential density of 30-50 units per ha is envisaged for outer suburban greenfield sites.

It is noted in the Kilcock Local Area Plan 2015-2021 that table 10 entitled “Unit Potential Undevelopment Residentially Zoned Land” identifies the subject site as part of a larger land area identified as “Site ref 1” which has an area of 23ha (according to the Local Area Plan). Table 10 sets out a density of 30 units per ha for the lands referenced as Site ref 1.

There would appear a conflict in the general range of densities (30-50 per units per hectare) set out in the Development Plan and the prescriptive density set out in the Local Area Plan relating to Site ref 1 (which the subject site forms part of).

With regard to the subject site, the current proposal delivers on an appropriate residential density of c.43 units per ha, which is considered a reasonable approach for a currently underutilised greenfield site on the outskirts of kilcock.

A balance has been struck here given the urban/rural nature of the site, the County Development Plan requirements and National Policy guidance on appropriate density. Detailed discussions on residential density have taken place on this matter with An Bord Pleanala and the Local Authority and the subject proposal is a result of discussions undertaken.

An appropriate balance needs to be found between residential density requirements and the designated unit numbers for zoned land as outlined in the Core Strategy. The densities proposed by way of this planning application is considered appropriate for the subject site given its zoned nature and proximity to existing transport networks as well as detailed discussions with An Bord Pleanala and recent National Policy Guidance in this regard.

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

The following section will demonstrate how the proposed number of units is justified in the context of recent National Planning Policy and Section 28 Ministerial Guidelines, which seek to provide housing in zoned lands close to public transport corridors. These include:

- Project Ireland: National Planning Framework 2040
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2018)

Project Ireland: National Planning Framework 2040

The National Planning Framework (NPF) is the Government's high-level strategic plan for shaping the future growth and development of Ireland.

The NPF sets out, as per National Policy Objective 1b, that the Eastern and Midlands region will, by 2040, be a Region of around 2.85 million people, at least half a million more than today. It is identified that progressing the sustainable development of appropriate sites for housing and particularly those close to public transport corridors is key to enabling growth.

It is submitted that the current proposal for 345 residential units will deliver on the objectives of the NPF. It is considered that the density proposal is an appropriate level of development at this accessible site.

On foot of pre-planning discussions with An Bord Pleanála, the proposed development was specifically redesigned to increase the number of units at the subject site from 332 residential units to 345 units in the form of houses, terraced units, duplexes and apartments. The proposed redesign incorporated specific measures to include the increased density without impacting on building heights, overlooking/overshadowing and access to adequate open space. The density is increased to c.43 units per hectare in accordance with national, regional, local policy requirements and standards.

The site is zoned to accommodate residential development and can be adequately serviced to deliver on a sustainable form of development.

It is our considered view that the current proposal complies with and exceeds the vision of the National Planning Framework on the following basis:

- The site is a key greenfield site and one that is wholly appropriate for a residential development of the scale proposed by this SHD planning application. This is particularly the case given proximity to public transport nodes (the Dublin – Sligo railway line and bus routes). The site is therefore well placed in terms of exceptional public transport accessibility.
- The site is a large currently unused greenfield site proximate to Kilcock. The current site is underutilised and the development now proposed will ensure a cohesive and efficient use of a greenfield site delivering a high quality residential development and associated facilities at a sustainable location.
- The proposal has the potential to deliver 345 residential units, which will be a significant addition to the local residential market and housing offer in area. The proposal provides a wide range of accommodation types for all cohorts of the population. The units also have the potential for adaptability if so required and will go a significant way in achieving the housing targets set out by the National Planning Framework.

Having considered the above, it is submitted that the proposal for 345 new residential units and a creche facility will deliver on key objectives contained within the National Planning Framework. The site is also zoned for residential development and is serviced with appropriate infrastructure to deliver on a sustainable residential development in close proximity to Kilcock town and public transport nodes.

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

The Guidelines reinforce the need to adopt a sequential approach to the development of land and note in Section 2.3 and ‘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...’.

The subject site is predominantly zoned New Residential with the objective to “The zoning objective of this site is ‘To provide for new residential development in the Bawnogues area of the town. This zoning provides for new residential development and other services incidental to residential development.’ In addition part of the site is zoned F3 ‘Open Space’”.

The site is considered sequentially very suitable for residential development given its location in relation to the existing residential development, town centre and public transport in Kilcock. It can therefore be considered an efficient use of an appropriately zoned site.

The proposed development has been designed in the context of the above and we note the following in this regard:

- Appropriate building heights of 2 - 5 storeys are proposed.
- There are no cases of overlooking within minimum separation distances maintained. We refer An Bord Pleanála to the opinion responses prepared by Brock McClure Planning & Development Consultants and C+W O’Brien Architects for further detail on this matter.
- Overshadowing is not considered an issue given the heights of 2-3 storeys and detached, semi detached and terraced nature of the housing proposed. The apartments blocks proposed are up to 5 storeys and are designed and located in such a manner as to avoid overshadowing.
- Quality and spacious housing units are proposed throughout the development.
- Appropriate on street parking is delivered. All parking is proximate to residential units as well as the creche facility. Car parking is overlooked.
- Public open space is located to optimise access for the development and where practical utilise existing mature trees and hedgerows. The Open Space proposals on lands zoned for Open Space along the M4 boundary comply with the zoning objectives of the Kilcock Local Area Plan 2015-2021.
- A coherent and permeable network of open spaces is proposed.
- Pedestrian and cyclist access and permeability is key across the site. The applicant and the design team have given specific consideration to this and as a result the proposals incorporate an extensive pedestrian and cycle linkage network to ensure accessibility and deliver connectivity with:
 - surrounding residential developments (including the adjoining Brayton Park),
 - the services within Kilcock town and the existing train station (the applicant’s proposal provides for a land reservation area to facilitate future access to a cycle and pedestrian bridge over the railway line (to be delivered by others))
 - the nearby existing school, creche and Primary Health Care Centre,
 - the adjoining amenity open space area at Bawnogues (to the south of the site),
 - adjoining undeveloped lands which include lands zoned for educational and residential uses

- the extensive facilities within Kilcock town and the train station.

The subject site is therefore considered to be most appropriate to provide adequate housing supply in line with sustainable development practices. It is also important to reiterate the proposed development will be phased over a 10 year time period and therefore will extend beyond the 2023 lifespan of the current County Development Plan and the current Kilcock Local Area Plan.

The proposed residential density is 43 units per ha providing 345 units (refer to the enclosed Architects Design Statement for details of the density calculation). The proposed density is considered appropriate having regard to the requirements of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas as they refer to the context of this site.

4 Conclusion

In light of the foregoing, it is respectfully requested that An Bord Pleanála now have regard to the justification set out within this statement and permit the proposed contravention of the density and heights set out in the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021.

An Bord Pleanála is again directed to section 37 (2)(b) of the Planning and Development Act, 2000 (as amended) which reads as follows:

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

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*

In support of the above proposals and in line with the requirements of section 37 (2)(b) of the Planning and Development Act, 2000 (as amended) this report has clearly set out that:

- The proposed development is of strategic or national importance, that being that the proposal qualifies as a Strategic Housing Development by virtue of the nature of the definition identified under the Planning and Development (Housing) and Residential Tenancies Act, 2016.
- A proposal of 345 quality housing units in an accessible location will contribute positively to the current shortfall in housing supply for both County Kildare and Ireland and is compliant with the National Planning Framework.
- The proposed net residential density of c.43 units per hectare and the proposed heights which range from 2 storey to 5 storey provides an appropriate balance between conflicting policies for density requirements within the Kildare County Development Plan 2017-2023 and the Kilcock Local Area Plan 2015-2021.

It is on this basis that An Bord Pleanála can now favourably consider the proposal as submitted in this case. We trust that due consideration will be given to the content of this report in the assessment of this matter.