

STRATEGIC HOUSING DEVELOPMENT
PLANNING APPLICATION
MATERIAL CONTRAVENTION
STATEMENT

ALTERATIONS TO PERMITTED DEVELOPMENT

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**Brady Shipman
Martin**

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Making
**Built
Environment**

CLIENT

Phibsborough Shopping Centre Ltd.

DATE

7th December 2020

PHIBSBOROUGH SHOPPING CENTRE ALTERATIONS

Material Contravention Statement

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1 INTRODUCTION

This document seeks to address the issue of material contravention of the Development Plan as required under SHD legislation. This Statement provides a justification for the material contravention of the Dublin City Council Development Plan 2016 – 2022 (Development Plan) in relation to height.

The subject application site (hereafter called ‘the site’) is located at Phibsborough Shopping Centre, Phibsborough Road and 345-349 North Circular Road, Dublin 7. It is a site of approx. 0.969 hectares.

Section 16.7.2 of the current Development Plan identifies building heights for the city and identifies a building height cap of 24m for residential development in this location. However it is submitted that the rationale for increased height at this location goes beyond the specific height limits set out in the Development Plan and should be considered in the context of specific nature and location of the site.

It should be noted that, the adoption of *Urban Development and Building Heights – Guidelines for Planning Authorities* in December 2018, has resulted in a lack of clarity as to whether the Guidelines supersede policies within statutory *Development Plans*, and therefore, until such a time as clarity is forthcoming or a Development Plan is varied to align with the requirements of the *Guidelines*, a material contravention is considered to have occurred.

It is considered, as put forward in this report and the supporting planning application documentation, that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development notwithstanding the proposed material contravention of the Development Plan.

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

Under Section 8(1)(iv) of the Planning and Development (Housing) and Residential Tenancies Act 2016, where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the SHD application must include a statement:

- “(I) *setting out how the proposal will be consistent with the objectives of the relevant development plan or local area plan, and*

- (II) *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”

Section 9 (6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 confirms that An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan, other than in relation to the zoning of land as follows:

(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.

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

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

The proposed material contravention relates only to building height, as the Z4 zoning of the site permits residential development and identifies as a key objective to ‘establish significant residential population bases with diversity in unit types and tenures capable of establishing long-term integrated communities’.

3 PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

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

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

(a) ‘Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed

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development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

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

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

It follows from the foregoing that it must be established that the proposed development is of “strategic” or “national importance” and that one of the other criteria under (ii), (iii) or (iv) are met. By its very definition, “strategic housing development” is of “strategic... importance”. The applicability of the other criteria will be addressed further in the report.

The Urban Development and Building Heights Guidelines for Planning Authorities (December 2018) take precedence over the Development Plan. In particular, SPPR 1 of the Guidelines notes that blanket numerical limitations on building height shall not be provided for through statutory plans therefore the imposition of a restriction at the subject site would be contrary to SPPR 1.

As set out in the following sections of this Statement the proposed scheme is considered in light of the Urban Development and Building Heights Guidelines and is considered to comply with the requirements of both the Guidelines and Section 37 (2) of the Planning and Development Act 2000, and as such An Bord Pleanála should grant permission even though a material contravention has occurred.

4 SITE CONTEXT

The subject site comprises an area of approximately 0.969 ha, located at Phibsborough Road, Dublin 7. The site is located in the centre of Phibsborough Village and is bordered on the west by Dalymount Park, Connaught St to the north, Phibsborough Rd to the East and North Circular Road to the South.

The Phibsborough Shopping Centre has fallen into poor condition in recent years as a result of the economic downturn impacting on the delivery of previous redevelopment proposals. In 2018 both Dublin City Council and An Bord Pleanála granted permission for the redevelopment of the subject site.

5 JUSTIFICATION FOR MATERIAL CONTRAVENTION

5.1 Proposed Material Contravention

The development as proposed is considered to materially contravene the Dublin City Development Plan 2016-2022 in respect of height.

As this Statement demonstrates, the proposed development at this location is consistent with the relevant national planning policies, regional spatial and economic strategy and section 28 guidelines, including the National Planning Framework and the Urban Development & Building Height Guidelines.

As outlined above, the Development Plan Height Strategy identifies a building height cap of 24m for development in this location. However it is submitted that the rationale for increased height at this location goes beyond the specific height limits set out in the Development Plan and should be considered in the context of the wider height policies of the Development Plan and the site context. The *Urban Development & Building Heights Guidelines* establish the principle for the re-examination of height limits and should now be considered over the Development Plan height limits on a site specific contextual basis.

The *Urban Development & Building Heights Guidelines* identify that as reflected in *'the National Planning Framework that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas'* and that *'securing compact and sustainable urban growth means focusing on reusing previously developed 'brownfield' land, building up infill sites (which may not have been built on before) and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities'*.

The Guidelines reference NPO 13 (from the NPF) which states that *'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*

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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 NPF recognises that in meeting the challenge set out above, new approaches to urban planning and development are required and that securing an effective mix of uses within urban centres is critical. To bring about this increased density and increased residential development in urban centres, the Guidelines state that *‘significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels’.*

The Dublin City Development Plan 2016-2022 re-categorised Phibsborough as a ‘low rise area’ and as such subject to the general provisions of the Development Plan. Given its location less than 500m (in walkability terms) from the Phibsborough Luas stop the maximum height permissible is therefore 24m under the Development Plan (proximity to rail hubs).

Further the Development Plan states that *‘Phibsborough will remain a low rise area with the exception of allowing for (i) up to a max of 19m in the centre of the Smurfit site and immediately adjoining the proposed railway station at Cross Guns Bridge; and (ii) the addition of one additional storey of 4m will be considered in relation to any proposals to re-clad the existing ‘tower’ at the Phibsboro Shopping Centre’.*

As part of the permitted development, proposals were included to re-clad and enclose the top of the existing tower which increased the height of the office tower in line with the specific provision in the Development Plan.

The Development Plan, in Section 16.7.2, also states that where a site has a pre-existing height a building of the same number of storeys may be permitted, subject to assessment against the standards set out in Chapter 16 in the Development Plan and the submission of an urban design statement outlining:

- *The context with a site and area analysis which includes an appraisal of the character of the area adjoining the site;*
- *The design principles which have been applied and how these will be translated to the development in terms of response to local character, layout, density, scale, landscape, visual appearance and impact on amenities, including sunlight; and*
- *Drawings, perspectives and photomontages to demonstrate how the approach has been applied.*

Additionally the Guidelines identify that areas that should be considered for increased height include:

- *Proximity to high quality public transport connectivity, particularly key public transport interchanges or nodes;*
- *The potential contribution of locations to the development of new homes, economic growth and regeneration in line with the compact urban growth principles as set out in the National Planning Framework and Project Ireland- 2040;*
- *The resilience of locations from a public access and egress perspective in the event of major weather or emergency or other incidents;*
- *The ecological and environmental sensitivities of the receiving environment; and*
- *The visual, functional, environmental and cumulative impacts of increased building height.*

The permitted scheme on this site is within the permitted 24m height limit and the proposed alterations are for the most part, within this 24m height designation also. However, the proposed alterations raise the ground floor level and provide for minor increases in floor to ceiling heights and as such the building has increased in height over and above the permitted height to the rear of the site up to c.26m. This is as a result of the removal of the basement and a subsequently the finished floor levels of the buildings were lifted and the ground plane has been graded slightly in order to integrate with the levels of the surrounding areas. This also ensures compliance with Condition 4 of An Bord Pleanála's grant of permission. No additional floors are proposed above what is permitted under this minor increase in height.

While the Development Plan identifies a building height limit of 24m for development in this location, it is submitted that the rationale for increased height at this location goes beyond the specific height limits set out in the Development Plan, and should be considered in the context of specific site parameters. *The Urban Development and Building Height Guidelines for Planning Authorities* (2018) establish the principle for the re-examination of height limits and these now take precedence over the Development Plan height limits on a site specific contextual basis.

In this instance it is considered that the design rationale for the limited area of increased height on the proposed buildings, which relates to raised ground floor levels and minor increase in floor to ceiling height of 150mm per floor and a subsequent improvement in the permitted civic plaza through the removal of the need for slopes and steps is considered minor in nature. It is considered that the *Urban Development & Building Height Guidelines*, allows Dublin City Council and An Bord Pleanála greater flexibility in considering this site specific response.

5.2 Context for Proposed Material Contraventions

5.2.1 National Planning Framework

The National Planning Framework (NPF) identifies that by 2040 it is expected that an additional one million people will live in Ireland, and an additional two-thirds of a million people will work here. These are huge increases: more people will be travelling to work, school and universities, more buildings will be needed to accommodate them, clean water will be needed for homes, farms and industry, more and better care facilities will be required for the elderly.

One of the key objectives of the NPF relates to compact growth. The NPF seeks to carefully manage the sustainable growth of compact cities, towns and villages and to add value and create more attractive places in which people can live and work. The NPF identifies that activating *'strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development'* as a top priority.

With regards to Dublin the NPF identifies that the city needs to *'accommodate a greater proportion of the growth it generates within its metropolitan boundaries and to offer improved housing choice'*.

National Policy Objective 4 in this regards states:

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

National Policy Objective 11 in this regards states:

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

National Policy Objective 13 in this regards 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 NPF requires homes to be located in places that can support sustainable development. This includes places that are accessible to a range of local services,

can encourage the use of public transport, walking and cycling, and help tackle climate change. The proposed shared accommodation is responding to the existing demand in the area and in a location that is highly accessible to both existing local facilities and public transport routes within the built up area of Dublin City.

5.2.2 Urban Development & Building Height Guidelines for Planning Authorities (2018)

The Urban Development & Building Height Guidelines identify that as reflected in 'the National Planning Framework ... that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas' and that 'securing compact and sustainable urban growth means focusing on reusing previously developed 'brownfield' land, building up infill sites (which may not have been built on before) and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities'.

The Guidelines reference NPO 13 (from the NPF) which states that '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'.

It recognises that in meeting the challenge set out above, new approaches to urban planning and development are required and that securing an effective mix of uses within urban centres is critical. To bring about this increased density and increased residential development in urban centres, the Guidelines state that 'significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels'.

As such the proposed scheme, as set out in this SHD Application, has set out to deliver proposed alterations to the permitted development resulting in heights which are slightly above those already permitted under the Development Plan. The site's suitability for this approach is further set out below, as considered against the Guidelines and in its design approach as set out in the Donnelly Turpin Architecture Design Report that accompanies this application.

SPPR3 of the Building Height Guidelines sets out that:

'It is a specific planning policy requirement that where;

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- (a) 1. *an applicant for planning permission sets out how a development proposal complies with the criteria [below]; and*
2. *the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.'*

This is considered with regards to the specific site below.

Site Location

The Guidelines identify that *'locations with the potential for comprehensive urban development or redevelopment (e.g. brownfield former industrial districts, dockland locations, etc) should be identified ...'*

Additionally, the Guidelines identify that areas that should be considered include:

- *Proximity to high quality public transport connectivity, particularly key public transport interchanges or nodes;*
- *The potential contribution of locations to the development of new homes, economic growth and regeneration in line with the compact urban growth principles as set out in the National Planning Framework and Project Ireland- 2040;*
- *The resilience of locations from a public access and egress perspective in the event of major weather or emergency or other incidents;*
- *The ecological and environmental sensitivities of the receiving environment; and*
- *The visual, functional, environmental and cumulative impacts of increased building height.*

The scheme is located at the heart of Phibsborough District Centre and sits on a site which has been a key redevelopment objective for many years. The immediate area has many shops and businesses which provide key local employment. In addition, the Mater Private Hospital and The Mater Misericordiae University Hospital (both identified CSO Workzones) in addition to Mountjoy Prison and TUD Grangegorman are all within 800m and are significant employment centres in the city. TU Dublin, Grangegorman is also a significant employer in the area located within 500m of the subject site.

The scheme is located both in walking and cycling distance of the City Centre and also proximate to the Luas Cross-City Phibsborough and Cabra stops which provides direct access to the City Centre. The scheme is also located on a primary bus corridor with various high frequency bus routes stopping in front of the site on the Phibsborough Road, and on the North Circular Road both of which form part of the reorganised Bus Connect routes which are being finalised by the National Transport Authority.

Section 3.0 of the *Urban Development & Building Height Guidelines* provide guidance for Planning Authorities/An Bord Pleanala in considering development proposals for buildings taller than prevailing building heights in pursuit of the Guidelines. These are considered, in relation to Phibsborough, as follows:

Phibsborough Proposed Scheme	
Principles	
Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?	Yes, the permitted scheme provides for residential accommodation and wider mixed use development on an existing district centre site proximate to the City Centre. This application seeks to alter the permitted scheme to swap shared accommodation for permitted student accommodation. This will equally contribute to the regeneration of this underutilised site.
Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?	While the proposed scheme marginally exceeds the maximum heights set out in the current Development Plan, this Plan was prepared prior to the publication of these Guidelines.
Where the relevant development plan, local area plan or planning scheme pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework	Yes, the current Development Plan, for the most part sets numerical height caps now removed by these Guidelines. However the subject site is located within a District Centre, as designated by the Development Plan, which is an area identified for intensification and growth but is restricted currently in relation to height.
Criteria	
City/Town Scale	
The site is well served by public transport with high capacity, frequent service and good links to other modes of public transport	The scheme is located both in walking and cycling distance of the City Centre and also proximate to the Luas Cross-City Phibsborough and Cabra stops which provide direct access to the City Centre. The scheme is also located on a primary bus corridor with various high frequency bus routes stopping in front of the site on the Phibsborough Road, and on the North Circular Road both of which form part of the reorganised Bus Connect routes which are being finalised by the National Transport Authority.
Development proposals incorporating increased building height, including	The approach to height on this proposed scheme has been to work within the

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<p>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, and 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.</p>	<p>Development Plan requirements as per the permitted scheme. However the proposed alterations as a result of the omission of the permitted basement and the raising of the ground level and minor increase in floor to ceiling heights in the permitted civic plaza has resulted in a minor increase in building height. Photomontages of the permitted scheme and the proposed alterations are included with the application.</p>
<p>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.</p>	<p>As outlined above the approach to height both responds to the existing and permitted context. This approach is achievable on this site due to the nature and adjacencies of Dalymount Park. It integrates with both existing lower and medium height contexts and acts as a reference point to the permitted new civic plaza.</p>
District/ Neighbourhood/ Street Scale	
<p>The proposal responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape</p>	<p>Yes, it is considered that this permitted scheme contributes in placemaking to the wider neighbourhood of Phibsborough. The permitted scheme provides for a centralised civic plaza, removed from the busy adjacent streets and provides for a new focal point for Phibsborough while allowing for future integration with the future proposed redevelopment of Dalymount Stadium.</p>
<p>The proposal is not monolithic and avoids long, uninterrupted walls of building in the form of slab blocks with materials / building fabric well considered.</p>	<p>The scheme as permitted and proposed to be altered provides for 2 blocks of shared living accommodation, positioned over the existing Phibsborough Shopping Centre. The blocks are varied in height from Phibsborough Road rising towards the rear of the site at Dalymount, complementing the existing 6-storey tower on the shopping centre site. The positioning of the 'finger blocks' ensures a visual connection to adjacent streets. The proposed materials align with those previously permitted and ensure an attractive and diverse facade treatment.</p>
<p>The proposal enhances the urban design context for public spaces and key thoroughfares and inland waterway/ marine frontage, thereby enabling</p>	<p>Yes, it is considered that this permitted scheme contributes in both placemaking and to the wider neighbourhood of Phibsborough. The permitted scheme</p>

<p>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).</p>	<p>provides for a centralised civic plaza, removed from the busy adjacent streets and provides for a new focal point for Phibsborough while allowing for future integration with the redevelopment of Dalymount Stadium. The alterations include SUDS proposals in line with the permitted development.</p>
<p>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.</p>	<p>The potential for permeability and connectivity through the site is a key driver of the design of the proposed development. By providing for a new civic plaza it facilitates the permeability by pedestrians and cyclists from Phibsborough Rd to North Circular Rd away from the busy Doyle’s Corner. Future permeability along the back of the site adjacent the future redeveloped Dalymount Park to Connaught St is continued to be provided for.</p>
<p>The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies available in the neighbourhood.</p>	<p>In keeping with the permitted development for the site it is proposed to provide for a meaningful mixed use scheme given the site’s location. The scheme provides for an alternative accommodation type not currently directly available in the immediate area. It provides a residential use to an existing site where there is no residential use.</p>
<p>Site/Building Scale</p>	
<p>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.</p>	<p>As outlined previously the permitted buildings, Block A and Block B, range in height from 6 to 8 storeys in order to both provide for increased density and height to meet existing context and to ensure minimal impact on daylight or sunlight quality of adjoining properties. The proposed alterations are also set at 6 to 8 storeys.</p>
<p>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’.</p>	<p>A Daylight and Sunlight Report, prepared by Brady Shipman Martin, is included in this Planning Application.</p>

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Specific Assessments	
Specific impact assessment of the micro-climatic effects such as downdraft. Such assessments shall include measures to avoid/ mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered.	A Pedestrian Comfort Report, prepared by K8T, is included in this Planning Application. It has been prepared as an iterative process throughout the design process of the proposed alterations identifying where any problem areas may exist and what mitigation is required to address them. Any required mitigation has been incorporated into the architectural and landscape design as submitted.
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.	As part of the permitted development application process, the sensitivity of the site for protected species including bats and birds was appraised. No relevant species were identified on or connected to the site.
An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.	It is not considered that the proposed scheme will impact any telecommunication channels. A telecommunications report was included as part of the permitted development with regards to existing telecommunications equipment on the existing tower on the site.
An assessment that the proposal maintains safe air navigation.	As the site is not located within any flight paths, it is considered that safe air navigation is maintained.
An urban design statement including, as appropriate, impact on the historic built environment	This was considered in in the permitted development in respect of the built environment but is also addressed in the Architects Design Report in regards to proposed built form and materials taking account of the historic fabric on the North Circular Road.
Relevant environmental assessment requirements, including SEA, EIA, AA and Ecological Impact Assessment, as appropriate.	An EIA Information for Screening Report and AA Screening Report is included in the planning documentation.

The Guidelines in relation to these state that:

Where the relevant planning authority or An Bord Pleanála considers that such criteria are appropriately incorporated into development proposals, the relevant authority shall apply the following Strategic Planning Policy Requirement under Section 28 (1C) of the Planning and Development Act 2000 (as amended).

SPPR 3 in this regard states:

It is a specific planning policy requirement that where;

- 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and*
- 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise.*

As is outlined in this report and the other documentation accompanying this alteration planning application, it is proposed to replace the existing 6-8 storey student accommodation block with 6-8 storey shared accommodation blocks with a minor height increase as a result of a raised ground level. It is considered that the Guidelines give An Bord Pleanála the scope to permit this minor alteration.

5.2.3 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018)

The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities were published in 2018 and sought to build on the content of the 2015 apartment guidance, much of which remained valid, particularly with regard to design quality safeguards.

The key updates to the 2015 Guidelines sought to:

- Enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas;
- Make better provision for building refurbishment and small-scale urban infill schemes;
- **Address the emerging ‘build to rent’ and ‘shared accommodation’ sectors; and**
- Remove requirements for car-parking in certain circumstances where there are better mobility solutions and to reduce costs.

As stated in Section 1.11 of the Introduction *‘these Guidelines apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease. They also apply to housing developments that include apartments that are built specifically for rental purposes’.*

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Further Section 1.21 states *'accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements'*.

The City Development Plan was adopted before the publication of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* (2018).

Therefore, the principal justification for the Board in contravening the Development Plan standards relating to minor increases in height above the Development Plan limits, where this is considered a material contravention, would be to ensure that a planning permission to deliver the regeneration of a key district centre site in compliance with local and national policy is achieved.

5.2.4 Dublin City Development Plan 2016-2022

The Core Strategy of the Development Plan promotes the intensification and consolidation of Dublin City.

Z4 areas are referred to as District Centres and Phibsborough is designated as a Key District Centre (KDC) within the Dublin City context which *'represent the top-tier of urban centres outside the city centre..... Each of the 8 KDCs underpin a wider area and act as strong spatial hubs providing a comprehensive range of commercial and community services to the surrounding populations'*.

The objectives for District Centres is as follows:

To maintain their role as district centres, new development should enhance their attractiveness and safety for pedestrians and a diversity of uses should be promoted to maintain their vitality throughout the day and evening. In this regard, opportunity should be taken to use the levels above ground level for additional commercial/retail/services or residential use with appropriate social facilities. Higher densities will be permitted in district centres, particularly where they are well served by public transport. The district centre can provide a focal point for the delivery of integrated services and the designated key district centres have, or will have in the future, the capacity to deliver on a range of requirements.

Both the permitted residential and proposed altered residential use provide the basis for the redevelopment of the Phibsborough Shopping Centre. The altered residential use, with a minor increase in height above the permitted development and the Development Plan limits, will enable the wider regeneration of the Shopping Centre environs by drawing further activity to the area ensuring its

vitality throughout the day. This can be done in a sustainable way as a result of the highly accessible location.

6 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN

In this case, regarding height, while the majority of the proposed development is within the range of the 24m height limit, the proposed development includes for an element of the proposed building which at its highest point is c. 26m, and is in excess of the blanket restriction of 24m applied by DCC in its current Development Plan pertaining to this area. In this regard, it is set out in this application that the subject site is capable of readily accommodating the minor additional height, over and above the permitted development, proposed here without giving rise to any significant adverse planning impacts in terms of daylight, sunlight, overlooking or visual impact.

Notwithstanding this, it is noted that the exceedance of the Development Plan height parameters constitutes a material contravention of the current Development Plan. As required in legislation, it is submitted that this can be justified under Section 37(2)(b)(ii) and (iii) of the Planning and Development Act 2000 (as amended) where the Board may determine under this section, to grant a permission even if the proposed development contravenes materially the Development Plan relating to the area of the planning authority to whose decision the appeal relates.

This section states that 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*

The subject site is considered of strategic importance due to:

- Designated as a Key District Centre and subject to an existing permission for development.
- Is identified as Strategic Housing Development
- Contributes to the objectives of the National Planning Framework by providing much needed residential development in urban areas.

As the site is considered to be within the parameters for Strategic Housing Development Applications and the site is located on a Key District Centre site of Dublin City the site is considered to be 'strategic'.

(iii) *permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local*

PHIBSBOROUGH SHOPPING CENTRE ALTERATIONS

Material Contravention Statement

authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government.”

- (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.*

As set out in Section 5.1.1 the subject site is a Key District Centre site and the permitted scheme for this site, is within the permitted 24m height limit and the proposed alterations are for the most part, within this 24m height designation also. However, the proposed alterations raise the ground floor level and as such the building has increased in height over and above the permitted height to the rear of the site up to c.26m. This is as a result of the removal of the basement and a subsequently the finished floor levels of the buildings were lifted and the ground plane has been graded slightly in order to integrate with the levels of the surrounding areas. This also ensures compliance with Condition 4 of An Bord Pleanála’s grant of permission. No additional floors are proposed above what is permitted under this minor increase in height.

As such Section 37(2) (b) (iii) or (iv) is open to An Bord Pleanala to grant the material contravention on this basis.

Having regard to sections 37(2)(b)(i),(iii) and (iv) of the Planning and Development Act 2000 (as amended) and the following objectives with County, Regional and National guidance:

- *The objectives of Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016,*
- *The National Planning Framework,*
- *Guidelines for Sustainable Residential Developments in Urban Areas issued in 2009*
- *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018*
- *Guidelines for Planning Authorities on Urban Development and Building Height issued in December 2018,*
- *The Regional Social and Economic Strategy for the Eastern and Midlands Region 2019-2031, and*
- *Dublin City Council Development Plan 2016-2022*

The proposed development is in line with the *National Planning Framework*, the *Sustainable Urban Housing: Design Standards for New Apartments*, *Guidelines for Planning Authorities* and the *Urban Development & Building Height Guidelines*. The realisation of the objectives of this national guidance necessitates facilitating residential development to a height greater than 24m in appropriate locations and residential development with standards compliant with *Sustainable Urban Housing: Design Standards for New Apartments*. On the basis of the above

provisions, we submit that the Board can grant permission for the alterations to the permitted development with the minor increase in height as proposed.