

**Statement of Material Contravention in respect of  
a Proposed Strategic Housing Development at the  
former Europa Garage Site, Newtown Avenue,  
Blackrock, Co Dublin**

**On behalf of Seabren Developments Ltd**

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**Doyle Kent Planning Partnership Ltd.  
71 Carysfort Avenue  
Blackrock, Co. Dublin  
[www.doylekent.com](http://www.doylekent.com)  
[info@doylekent.com](mailto:info@doylekent.com)**



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## Introduction

This Material Contravention Statement is being submitted on behalf of the applicant, Seabren Developments Ltd, and relates to a proposed Strategic Housing Development on the site of the former Europa Garage, Newtown Avenue, Blackrock, Co Dublin.

The proposed development provides for:

The construction of a residential development providing 101 residential units (GFA c.11,889 sq.m including basement) of 1-6 storeys together with residential accommodation in attic floor over (two units) in two Pavilion style buildings. The apartment units will consist of:

- 51 no. 1-bed units (c.49-61 sq.m),
- 42 no. 2-bed units (c.66-94 sq.m) and
- 8 no. 3-bed units (c.96-108 sq.m)

all with associated private balconies/terraces to the north/south/east/west elevations.

- Block A (1-4 storeys) shall provide for 47 no. apartment units (total GFA c. 3,627 sq.m);
- Block B (3-6 storeys plus attic floor) shall comprise of 54 no. apartments (total GFA c.5,041 sq.m).
- Basement level (c.3,204 sqm) shall provide for 73 no. car parking spaces (including visitor, GO-Car and mobility impaired); 194 no. bicycle spaces; plant areas; switch room; bin storage area; and surface water attenuation tank.

The development proposal shall also provide for c.1,162 sq.m of communal open space and 302 sq.m of public open space; basement ramp adjacent to north-western boundary; new pedestrian accesses off Newtown Avenue to north; 50 no. bicycle parking spaces at grade; bin holding area; ESB substation; structural works to existing western boundary wall; amendments to a portion of existing southern boundary wall reinstating it to a height of +21.380m O.D. between the front building line of number 7 Craigmole Gardens and the rear boundary of the property; all other ancillary site development works, and site services required to facilitate the proposed development.

We have set out in the *Planning Report and Statement of Consistency* that the proposed development complies with the provisions of the County Development Plan, 2016-2022, and the Blackrock LAP, 2015- 2021, in all significant respects, save in relation to building height. There is also a departure from the Development Plan standard in respect of unit mix, open space provision and green roof provision and from the LAP in relation to preservation of the existing sycamore tree. We have also shown that the proposed development complies

with national and regional policy, as expressed in the NPF, the RSES and relevant Ministerial guidelines, in particular the *Sustainable Urban Housing: Design Standards for New Apartments, 2018*, and the *Urban Development and Building Heights Guidelines for Planning Authorities, 2018*.

This statement provides a justification for a material contravention of the Blackrock Local Area Plan, 2015-2021, should the Board be of the opinion that the proposed building heights contravene Section 3.4.2 "Future Building Height" as set out in Map 12, which provides for heights of up to 4 storeys on the majority of the site, graduating down to 2 storeys in proximity to neighbouring properties and Specific Design Objectives ES7 and ES9 which provide, respectively, for retention of the mature sycamore tree and the provision of Open Space as per the County Development Plan.

This statement also provides a justification for a material contravention of the Dun Laoghaire Rathdown County Development Plan 2016-2022, should the Board be of the view that the proposed unit mix contravenes Section 8.2.3.3 (iii) and Appendix 16 'Green Roofs Guidance Document' of the Development Plan.

### Board May Materially Contravene Development Plan or LAP

The Board may decide to grant permission for a development which is a material contravention of a Development Plan or Local Area Plan (except in relation to the zoning of land) as empowered per the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, as amended. In particular, Section 9 of the Act states (in part):

*(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.*

Section 9(6) of the Act of 2016 states:

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

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

Section 37(2) of the Planning and Development Act, 2000, as amended, states:

- (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide 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.*
- (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.*
- (c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.*

In accordance with the provisions of SPPR3 of the *Building Heights Guidelines*, the Board can grant permission for the proposed development, notwithstanding any conflict with the building height provisions of the DLR County Development Plan, 2016-2022, and the Blackrock Local Area Plan 2015.

As elaborated upon in this report, and considering the subject site's location within Blackrock and close to the a District Centre and its proximity to good public transport facilities (DART and a High Quality Bus Corridor), it is submitted that the development meets the relevant development management criteria, and therefore the Board can approve the proposed development, notwithstanding the

specific height recommendations in the Blackrock LAP, which was prepared prior to the Building Height Guidelines being published in 2018. This Material Contravention Statement demonstrates consistency of the proposed building heights with the criteria as set out under SPPR3 of the Building Height Guidelines.

The Planning Report and Statement of Consistency, together with the reports accompanying this planning application, demonstrates compliance with all other relevant policies and objectives of the County Development Plan / Blackrock LAP, apart from where they are superseded by SPPR's, and it is considered that the proposed heights, deviation from open space provision and loss of tree, green roofs (60% requirement), and the unit mix are the only potential material contraventions associated with the application.

The proposed development is in accordance with the recent National Planning Framework and Government policy, as set out in the *Planning Report and Statement of Consistency*, which seek to provide for increased residential densities and building heights on appropriately zoned and serviced lands within / adjacent to city centre / town centres and high quality public transport corridors (subject site is located within 500 metres of a DART station and adjacent to a Quality Bus Corridor and therefore classifies the site as an 'Accessible' location under the *Apartment Guidelines 2018*). It is therefore submitted that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding the potential material contravention of the building height policies and open space / tree provision in the Blackrock Local Area Plan and the unit mix requirements and green roof provision of the County Development Plan, as set out herein.

## Building Heights Policy

Chapter 8 and Section 8.1.2.3 of the Dun Laoghaire Rathdown County Development Plan includes Policy UD6: Building Height Strategy, which states the following:

*"It is Council policy to adhere to the recommendations and guidance set out within the Building Height Strategy for the County. Council policy in relation to the issue of building height throughout the County will be guided by both the general principles and specific detailed recommendations detailed in the Building Height Strategy set out in Appendix 9. The Strategy will be used in establishing building heights for individual areas and emerging new urban nodes in the County through the vehicles of Local Area Plans, Urban Framework Plans and other statutory plans such as the Cherrywood SDZ Planning Scheme. The Strategy will also influence and inform the assessment of building heights proposed in individual planning applications."*

The application site is located within the area subject to the Blackrock Local Area Plan 2015-2021, which includes guidance on building heights as outlined below. The LAP was prepared prior to the Building Height Guidelines 2018.

Section 3.5 of the Blackrock LAP notes that the former Europa site is considered suitable for higher residential densities in accordance with Policy RES3: 'Residential Density' of the current County Development Plan - having regard to its proximity to Blackrock District Centre and public transport links. **Objective ES2** of the Blackrock LAP notes that any redevelopment of the former Europa site shall incorporate a compact, high quality residential development with a minimum density of 50 units per hectare. In this regard, the subject site warrants a higher density of development.

Under Section 3.4.2 of the Blackrock LAP, which relates to Future Building Height, Map 12 'Existing and Proposed Building Height' sets out the range of indicative heights for Blackrock and includes the subject site. As illustrated above, the proposed building height limit on the application site is 4 storeys. The indicative Layout Plan also indicates that the building heights should graduate to 2-storey dwellings on the western side adjacent to established residential properties at Newtown Villas and Craigmore Gardens.

Section 5 of the Building Height Strategy included within Appendix 9 of the current Dún Laoghaire-Rathdown County Development Plan sets out the principles to be taken into consideration when assessing building heights. It indicates that higher densities should be promoted through the redevelopment of

vacant or underused land. It indicates that the aim should be to provide additional housing near centres and existing public transport infrastructure, whilst preserving open space at the edge of the County. It also advises that building heights may be increased at suitable locations depending on the context of the site and the need to have regard to the character of the surrounding area and the living condition of residents.



**Fig. 1** Extract from Map 12 of the Blackrock LAP.

Policy BK05 of the Blackrock LAP notes that it is Council Policy to ensure that Building Height within future developments in Blackrock makes a positive contribution to the built form of the area and do not adversely impact on local amenity. Objective SH1 of the Blackrock LAP seeks to ensure that building height within the village is in accordance with the building height limits set out on Map 12, The Height Sensitive Areas (as identified on Map 12) and in the context of the subject site, Objective ES1 (Section 3.5.3 'Former Europa Garage Framework Strategy'). It is also an objective (SH2) to require all development proposals, including infill development, to include an analysis of the impact of building height and positioning of buildings on the following:

- The immediate & surrounding environment - streetscape, historic character;
- Adjoining structures;
- Open spaces and public realm; and,
- Views and Vistas.

**Objective ES1** of the Blackrock LAP is detailed as follows:

*'It is an objective of the Council that any redevelopment of the former Europa site on Newtown Avenue shall incorporate a range of building heights in accordance with the limits set out on Map 12. Height should graduate to a maximum of two storeys along the mutual boundary with Newtown Villas in order to protect their residential amenity and setting.'*

## **Material Contravention of Blackrock Local Area Plan 2015- 2021**

### **Building Heights**

The proposed development for the entire site provides for a range of building height that recognises the local built heritage, respects the site's proximity to existing one and two-storey dwelling houses and that enhances the overall visual character of the environs. The development has been informed by the extant permission on the site but the architectural treatment has been carefully crafted to provide high quality architectural at this important corner location which respects the immediate and surrounding environment and the historic character of the immediate area including the adjoining ACA at Newtown villas.

As indicated in the extract from Map 12 (see Figure 1 above), a maximum building height of 4 no. storeys applies to the subject site. The mapping clearly indicates that building heights should be graduated to 2 no. storeys within the western portion of the site where it has an abuttal with the existing residences on Newtown Villas. This buffer is indicatively shown on Map 12 to ensure an appropriate transition in height is provided along this interface.

The proposed residential scheme has been designed to have regard to the surrounding context of the site. It comprises two pavilion style apartment blocks with a linear form, both running north to south through the site. Block A is located within the western portion of the site and has a height which ranges from 1-4 no. storeys. The block is separated from the existing dwellings on Newtown Villas by the proposed basement ramp and an area of communal open space. On its western side, the building has a three storey building height and provides a setback of c. 11m from the western site boundary. The building then steps up to four storeys, with this portion of the building being set back c. 19.5m from this shared boundary. It is submitted that the design, height and scale of Block A is in accordance with Objective ES1 and Map 12 of the Blackrock LAP.

Block B is located within the eastern portion of the site and has a principal frontage to Newtown Avenue to the east. Block B ranges from 3 to 6 storeys, plus accommodation in an attic level, with a maximum height from ground floor level to eaves of 20.3m and to roof ridge of 25.5m, with the higher portion of the building located within the north-east corner of the site. The upper floor level of the building, which contains 2 no. apartments, is within the 'dormer' style roof profile. Although it is acknowledged that the higher portion of the building is sited away from neighbouring properties and would be the least sensitive portion of the site, the proposed building exceeds the proposed building heights prescribed in Map 12 of the Blackrock LAP.

The proposed building heights at the Europa site respond to recent Government policy supporting increased building heights in urban locations, particularly where well served by public transport. The *Urban Development and Building Heights Guidelines for Planning Authorities, 2018* include a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility in order to meet the ongoing housing crisis and residential demand, subject to a performance-based criteria assessment.

SPPR3 of the *Urban Development and Building Heights Guidelines for Planning Authorities, 2018*, provides for the granting of permission for development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise, when such development complies with site specific criteria outlined under SPPR3.

The *Building Height Guidelines* notes that in the event of making a planning application, the Applicant shall clearly demonstrate to the satisfaction of either the Planning Authority or An Bord Pleanála, that the proposed development satisfies various criteria including:

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

Of note, Specific Planning Policy Requirement (SPPR) 3 of the *Building Height Guidelines* is relevant and is included as follows:

'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.'*

We have set out, in both the *Planning Report and Statement of Consistency* and in the *Design Statement* prepared by Metropolitan Workshop, a detailed evaluation of the proposed development against the various development

management standards and development criteria as outlined in Section 3 of the *Building Height Guidelines*.

We have also reviewed recent decisions within the surrounds of the site, including the permitted residential development at St. Theresa's (ABP-303804-19), whereby the site is also subject to prescribed building heights and a site framework strategy as set out in the Blackrock LAP.

***Building Height and the Development Management Criteria***

*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 our town/city cores and in other urban locations with good public transport accessibility. Planning authorities must apply the following broad principles in considering development proposals for buildings taller than prevailing building heights in urban areas in pursuit of these guidelines:*

*Q. 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?*

The proposal is to develop new residential accommodation on brownfield land. These lands sit within the long-established neighbourhood of Blackrock and will, in effect, amount to urban intensification of zoned land. The core of Blackrock is zoned District Centre in the Dún Laoghaire Rathdown County Development Plan and supports major comparison and convenience shopping and other complementary District Centre uses. Furthermore Blackrock is identified as an area for 'Development and Regeneration' in the current County Development Plan with a vision 'To encourage the renewal of existing built-up areas through sensitive regeneration and consolidation, and to establish new urban villages in well located greenfield areas that will have their own quality 'sense of place' and community and that will be well served by existing or planned public transport networks'.

The objectives of this proposal are aligned with the principles of compact growth as it will deliver 101 units at a density of 205 units/ha on a well-connected site bounded on one side by Newtown Avenue and on the other residential properties. Generous open spaces of circa 35% of the site area will support the case for taller buildings.

*Q. 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?*

The development plan precedes the draft Guidance for Planning Authorities on Urban Development and Building Heights however the use, open space requirements, space standards etc are in line with the aspirations of the development plan.

The LAP considers this site suitable for higher density development due to its proximity to town centre facilities and two DART stations. In response to specific objectives of the LAP the proposed development provides an innovative and attractive design response.

*Q. 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*

The existing development plan pre dates the draft guidance on building heights. The DLRCC LAP considers maximum heights of up to 4 storeys and as such do not align with the objectives and policies of the National Planning Framework, and in particular the Draft Guidelines for Urban Development and Building Heights.

The site is appropriate for additional height as it will enable a higher density of residential accommodation close to public transport and local services. The subject site also marks the termination of Blackrock Main Street/ Maretimo Terrace as well as marking an important junction on the N31 as it turns towards the coast providing access from Dublin to Dun Laoghaire in the east. In this sense the site marks the termination of Blackrock as it transitions to Monkstown. This strategic location must have been an influenced the siting of the depot for the historic O'Connell Street to Dalkey tramline at this location. The urban influences on the site underpin the promotion of an high quality building in this location.

Nonetheless the proposed scheme respects the local context by proposing a lower terraced building which responds to the adjacent architectural conservation area of Newtown Villas. Increased height is promoted at the south eastern corner of the site where set-backs to existing buildings are substantial.

**At the scale of the city / town**

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

The site is located circa 450 from the Dart station at Seapoint and 800m from the Dart station at Blackrock. A Quality Bus Corridor is proposed to the immediate south of the site along Frascati Road and Temple Hill. Dublin bus operates several multi directional bus routes serving stops within a 10 minutes (800m) walk of the walk with stops along Newtown Avenue. Furthermore, a bus corridor runs along the N11 within proximity to the site. There is recently completed cycle infrastructure on the surrounding road network which links Blackrock in both directions to Sandycove and Dublin city.

- *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.*

We believe that the proposals are in keeping with the adjacent ACA in the following ways:

- The scale of building A is kept to 2 storeys against the boundary wall of Newtown Villas
- The existing boundary wall is retained preserving the amenity of the cottages on Newtown Villas.
- The form and materials of building A are derived from the materials of Newtown Villas. The formal materials of Building B are informed by the adjacent protected villa buildings.

As set out in detail in the *Planning Report and Statement of Consistency* it is considered that the site is an appropriate location for high quality buildings which will provide increased accommodation on this urban site. A landscape and visual assessment has been carried out by James Horan / Ait and is included in the planning application documentation.

- *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 proposals make a positive contribution to placemaking by following the existing set back building line of Newtown Avenue and providing improved public realm along Newtown Avenue by means of a new west facing public space. This new space will enjoy east/ west light and be well overlooked by the new residential building. It also provides a setting to replace the existing sycamore tree which is unsuitable for retention. The massing solution of twinned villas gives sufficient variety in terms of scale and form to create visual interest along the streetscape and respond to the scale of the adjacent townscape.

***At the scale of the district/neighbourhood***

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

*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 proposals avoid a monolithic appearance by clearly articulating the twinned villa typology on building B. The clearly distinguishable roof forms serve to separate distinct parts of the building avoiding uninterrupted slab blocks to the street. The villa typologies give a contextual and architectural solution to the provision of increased densities on the site.

- *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).*

*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.*

The proposed built forms help aid legibility as they act as a terminus and corner turning of the main street (the extension of main street into Maretimo Terrace) as it turns 90 degrees towards Temple Road marking the eastern end of the village.

The proposed development also provides a high quality urban design context for this prominent site.

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

The housing offer in Blackrock is made up of predominantly detached, semi - detached and terraced houses. There is little in the way of apartment accommodation available.

The villa and terrace form we are promoting allows for a variety of unit types offering more choice and options in this part of Blackrock.

***At the scale of the building.***

- *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.*

The buildings have evolved to allow light penetration into the Central courtyard and avoiding north facing single aspect apartments.

*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'.*

A daylight, sunlight and overshadowing study was carried out by IES in support of this application.

It should be noted the guidance in 'Site layout planning for daylight and sunlight: a guide to good practice' is not mandatory and the Report itself states 'although it gives numerical guidelines these should be interpreted flexibly because natural lighting is only one of many factors in site layout design.

Whilst the results shown relate to the criteria as laid out in the BRE guidance targets it is important to note that the BRE targets have been drafted primarily for use in low density suburban development and should therefore be used with flexibility and caution when dealing other types of sites. Despite the above, the site performs well in relation to the metrics considered in this report.

The daylight/ sunlight assessment prepared by IES Consulting demonstrates that the proposed development including the open spaces serving the residential

units, meet with the relevant requirements of the BRE Guidelines and do not adversely impact the amenity of adjacent residential properties. The report assesses a variety of different unit types within the development and impact of the development on surrounding properties and amenity spaces.

The proposed internal layout has been carefully considered with regard to the best possible results for daylight / sunlight levels. The orientation of the room layout has been carefully considered to ensure that high quality best amenity value is obtained for the residents.

The communal areas have also been assessed as part of this application, which achieve adequate levels of light which comply with the BRE Guidelines, to enable active use throughout the year.

The proposed development has been carefully designed as to maximise access to natural daylight, ventilation and views and to minimise overshadowing and loss of light.

Overall the results demonstrate that the proposed development performance exceeds BRE recommendations in the BRE 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' by Paul Littlefair, 2011 sometimes referred to as BRE Digest 209

### ***Specific Assessments***

The Guidelines note that to support proposals at some or all of these scales, specific assessments may be required and these may include:

*1) Specific Impact assessment of the micro-climatic effects such as down-draft. 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.*

The development is modest in height being a part 2 to part 6 storey (plus dormer roof ) located within Blackrock District Centre and well served by public transport. Having regard to the height, scale and surrounding context the design team established at an early stage in the design development process that no significant wind impacts will arise, i.e. the proposal will not lead to elevated wind speeds, and therefore the a specific wind impact assessment is not included with the planning application. We further note that this was not requested by the Board or Planning Authority as part of the pre-application consultation process.

*2) 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.*

This application is accompanied by a Bat Assessment and a AA Screening Report which demonstrates that the proposed building heights do not have the potential to adversely impact on the biodiversity of the area, primarily as there are no sensitive bird or bat areas impacted by the proposed apartment blocks, subject to the mitigation incorporated into the scheme design.

*3) An assessment that the proposal allows for the retention of important telecommunication channels, such as microwave links.*

There are no communication masts located in the immediate vicinity of the site and given that the development is modest in height being a part 2 to part 6 (plus part dormer accommodation), it is considered that the proposal does not have the potential to adversely impact on telecommunication channels. We refer to the electrical infrastructure assessment prepared by Dynamic Design consultants.

*4) An assessment that the proposal maintains safe air navigation.*

The application site is not located in proximity to any airports or airfields and as the development is modest in height ranging from part 2 to part 6 storey (plus part dormer accommodation), it is considered that the proposed development does not have the potential to impact on air navigation as a result of the height increase proposed on site.

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

As set out above, the application is accompanied by the following documentation of relevance to this requirement:

- 1) Metropolitan Workshop Design Statement
- 2) Planning Report and Statement of Consistency (including Heritage Impact Assessment)
- 3) Landscape and Visual Impact Assessment
- 4) Photomontages and Verified Views
- 5) Archaeological Impact Assessment

As outlined in the *Design Statement and Planning Report and Statement of Consistency*, the surrounding area is characterised by low density housing at a prominent location at one of the main entrances to Blackrock. The proposed development has been designed to respect and enhance the surrounding character of the area. The proposed design and layout responds to the site's

context and character, and also addressing the previous extant permission on the site in terms of impacts on adjoining residential amenity.

The Landscape and Visual Impact Assessment prepared by Ait Landscape and Urbanism concludes that where the upper floors of the development will be visible above existing built infrastructure the impact has been assessed to have a slight and negative or neutral visual impact in the medium term. The visual impact will be consistent with emerging trends.

The Architectural Heritage Assessment, included in the *Planning Report and Statement of Consistency* concludes:

*Overall, in relation to the impact of the proposed development in relation to architectural heritage, the development would not have a significant impact on the character of the Protected Structures, would not obscure their elevations, would not compromise their setting or special interest and would not conflict with the provisions of either the Development Plan or of the Local Area Plan. There would be a very moderate and neutral impact on the wider setting of the ACA. The proposed development would have a positive impact on the visual environment in the vicinity of the site, by replacing a vacant site, bounded by a palisade fence, with a high quality residential scheme and new streetscape.*

An Archaeological Assessment has been prepared by ACS Archaeology which accompanies this SHD application. The report notes that there are no recorded monuments listed within the Record of Monuments and Places for County Dublin (1998) located within the site, the east part of the site is located within the zone of archaeological potential for Castle- Unclassified (DU023-008----) that is marked as located on the east side of Newtown Avenue, The site is marked as 'Castle Byrn' on the 1836 map suggesting the location of a castle described in the Civil Survey (1654-56), this plot is currently occupied by Seapoint Manor a Protected Structure (RPS ID 289) listed within the Dun Laoghaire Rathdown Development Plan 2016-2022. While there are no protected structures located within the area to be developed, three protected structures are located within 30-50m from the site, these are houses built in the second half of the 18th century that are located on the opposite side of Newtown Avenue, and include the above mentioned Seapoint Manor; Blackrock House (RPS Id. 234) and Newtown House (RPS 254). Following a site inspection no structures or features of an archaeological nature were identified within the study area. This assessment concludes that while the site contains no Recorded monuments, the location of the site is within the zone of archaeological potential for Castle- Unclassified (DU023-008----). Examination of cartographical sources suggests that the overall landscape has the potential to contain previously unrecorded sub-surface features or deposits of an archaeological nature. It is therefore

possible that any future development of this site would have the potential to impact previously unrecorded sub-surface features and deposits of an archaeological nature. A testing programme of the site is recommended prior to any groundwork commencing to establish if any archaeological features or deposits are present within the site and in order to mitigate any potential impact on same.

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

As noted above, the application is accompanied by an AA Screening Report prepared by Openfield which demonstrates that the proposed increase in building heights does not have the potential to adversely impact on the biodiversity of the area.

Furthermore the EIA Screening Report, prepared by DKPP in association with the design team, which accompanies the application demonstrates that the proposed development does not have the potential to adversely impact on the environment.

***Specific Planning Policy Requirement 3***

Under SPPR 3 of the Building Height Guidelines, it states that where the applicant sets out compliance with the criteria for assessing building height at the scale of the relevant town / city, at the scale of district / neighbourhood / street and at the scale of a site / building that the planning authority or An Bord Pleanála may approve such development even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise. As demonstrated above, the proposed building heights are considered appropriate for the subject site and meet the requirements of the development management criteria in the Guidelines.

Having regard to the case set out above and the provisions of SPPR3, it is respectfully submitted that the Board can approve the proposed development under section 9(3) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended) as compliance has been demonstrated with the relevant development management criteria under Section 3 of the Building Height Guidelines 2018.

***Precedent SHD Applications***

In addition to the previous section of the report which addresses the specific development management criteria for increased building heights under the Building Height Guidelines, we have also reviewed recent relevant precedent

decisions issued by the Board, where permission was granted for building heights that would have (prior to the publication of the Guidelines) been considered to be contrary to the local planning policy framework in respect to building heights.

*ABP Ref-303804-19 - St Teresa's House ( Centre) and St Teresa's Lodge , Temple Hill, Blackrock, Co Dublin*

The Board granted permission for a scheme of 294 Apartments. The heights of the permitted scheme ranged from 2- 8 storeys in an area subject of the objectives and policies of the Blackrock LAP 2015- 2020 which limits building heights on these lands to between 3 -5 storeys across the site. This site is in proximity to the subject site.

*ABP Ref 305176-19 - Stillorgan Leisureplex, Old Dublin Road, Stillorgan, Co. Dublin*

The Board granted permission for a scheme of 232 no. build to rent residential units. The heights of the permitted scheme ranged from 4 to 8 storeys in an area subject to the objectives and policies of the Stillorgan LAP 2018-2024 which limit building heights to 5 storeys across the site with a requirement for a reduction to 3 storeys at the rear, adjoining 2 storey dwellings.

*ABP Ref.: 304823-19 – Churchview Road and Church Road, Killiney, Co. Dublin*

The Board granted permission for a SHD development of 210 no. units on a site at Churchview Road and Church Road, Killiney, Co. Dublin. The permitted heights range from part 3, part 4 to part 7 no. storeys.

### ***Conclusion Building Heights***

Having regard to the foregoing, it is respectfully submitted that it is appropriate for the Board to grant permission for the proposed development, notwithstanding that it exceeds the heights for the subject site as specified under the Local Area Plan, having regard to SPPR 3 of the Urban Development and Building Heights Guidelines 2019.

As set out in this statement of Material Contravention, it is considered that a similar justification in terms of national planning policy and Government guidelines applies to the subject site and provides a justification for the heights proposed.

## Tree Retention ES7

As set out in the Blackrock LAP under Design Principle (ES7)- *It is an objective of the Councils to ensure the protection of the mature sycamore tree located in the northern corner of the site. The design and layout of any redevelopment scheme, including landscaping proposals shall provide for the successful integration of the tree within the scheme and shall include complementary planting along the site's northern and eastern boundary.*

The existing Sycamore tree is experiencing ongoing deterioration of health as set out in the accompanying Arborist's report. The most sustainable and safe approach would be to replace it with a suitable specimen tree to act as a focal point for the public open space.

The Arborist's report sets out the condition of the tree and its lifespan. Retention of the sycamore tree would interfere with the delivery of this high density scheme as the root spread would require an exclusion area at both surface and basement. The landscape proposals for the public open space will seek to provide a high quality and contemporary space featuring a high quality of materiality appropriate to the character of nearby Blackrock Village and its environs. This attractive and comfortable space will act as a gateway for the approach to the village.

The Landscape report prepared by Ait Landscape and Urbanism demonstrates that the replacement of the Sycamore tree with a more suitable mature species will provide a high quality public realm at this location.

The removal of the large mature sycamore tree within the northern corner of the site has been previously accepted by the Planning Authority and the Board and the principle of its removal has been established under the extant planning permission (D17A/0137 and ABP 248456), granted since the making of both the County Development Plan and the Blackrock LAP. The Board may again grant permission for development entailing removal of this decaying tree, having regard to the provisions of Section 9(6) of the Act of 2016 and Section 37(2)(b)(iv) of the Act of 2000.

## Public Open Space – ES9

As set out in the Blackrock LAP under Design Principle ES9: It is an objective of the Council that, in the event of the redevelopment of the former Europa site, open space provision in accordance with Policy DM2 'Open Space Class 1' and Policy DM3 'Open Space Class 2' of the current County Development Plan will be required.

The Apartments Guidelines 2018 set out standards for communal amenity open space, at Appendix I:

Minimum Areas for communal amenity space

- Studio – 4sq.m
- One bedrooms – 5 sq.m
- Town bedrooms- 7 sq.m
- Three bedroom – 9sq.m

*These standards would require* a minimum provision of communal amenity space of 613 sqm in the current instance. This requirement is comfortably met in the proposed development, which includes 1,464.6 sqm of open space, made up of 302.5 sqm of public open space and 1162.1 sqm communal open space. The open space is well laid out, permeable and overlooked for security, provision is also made for play space.

The Apartment Guidelines 2018 also states "*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.*"

Within the advisory note to Section 8 of the DLR Development Plan the standards and specifications in respect of Apartment Development- as set out in Section 8.2.3.3. (viii ) which relates to Open Space provision is noted to be superseded by the Ministerial Guidelines and that the Apartment Guidelines take precedence over the Dún Laoghaire-Rathdown standards and specifications as set out in Section 8.2.3.3 of the 2016 – 2022 County Development Plan.

On the basis set out in the Development Plan, section 8.2.8.2(i) Residential / Housing Developments – Open Space requirement of 15sq.m- 20sq.m. per person, the proposed development would have a population of 167.5 persons for the purpose of calculating the open space requirement. At 15sqm per person,

this gives a requirement of 2,513 sqm or approximately half the site. At 20sqm per person, the requirement is 3,350 sqm or about two thirds of the site area. The Blackrock LAP as set out in Design Principle - ES9 states where it is an objective of the Council that, in the event of the redevelopment of the former Europa site, open space provision shall be in accordance with Policy DM2 'Open Space Class 1' and Policy DM3 'Open Space Class 2' of the current County Development Plan will be required.

As proposed, there will be a total provision of 1,464.6 sqm of open space, made up of 302.5 sqm of public open space and 1162.1 sqm communal open space. This is less than the Development Plan requirement, but nevertheless amounts to approximately 30% of the site area, or three times the absolute minimum of 10% site area.

It is likely that the open space standards set out in the DLR Development Plan ultimately derive from a model of relatively low- density housing with markedly large areas of open space.

This quantum of open space is not appropriate to serve higher density urban development, near good public transport and other facilities. As noted in the *Planning Report and Statement of Consistency*, the Europa Garage site is just c.70m north of a small park at Newtown Avenue/Temple Park Avenue and is close to Rockfield Park, Seapoint amenity area and Blackrock Park.

We also note that the applicant exceeds all private and communal open space requirements in respect to the *Apartment Guidelines 2018* as outlined above. It is submitted that the high-quality landscape and overall design of the public realm complies with the standards of the Development Plan for this residential application.

Having regard to the above, it is considered that even where the proposed Open Space provision would normally breach the open space requirement set out within a Development Plan or LAP, the provision in excess of the requirement as set out in the *Apartment Guidelines 2018* is justified under SPPR1 of the Apartment Guidelines (which were issued under section 28 of the 2000 Act), the development will not materially contravene local policy as conflicting policy provisions apply and also in terms of the advisory note to Section 8 of the Development Plan. In any case, under the provisions of Section 9(3)(b) of the Act of 2016, the Board may grant permission notwithstanding any conflict with local planning policy in respect of provision of open space.

## DLR County Development Plan 2016-2022

### Unit Mix

The local planning policy context in respect to unit mix is summarised below, with an explanation for why we have included this within the Material Contravention Statement.

Chapter 8 of the DLR County Development Plan 2016-2022 provides detailed development management standards for residential development and Section 8.2.3.3 in particular provides guidance for apartment developments. This includes the requirement to ensure the apartments accord with (i) Design Standards, (ii) Dual Aspect, (iii) Mix of Units, (iv) Separation between Blocks, (v) Internal Storage, (vi) Penthouse Development, (vii) Minimum Apartment Floor Areas (viii) Public and Private Open Space and (ix) Play Facilities.

There is an Advisory Note to Section 8 of the Plan which states the following:

*"Users of this Dún Laoghaire-Rathdown County Development Plan 2016-2022 are advised that the standards and specifications in respect of Apartment Development- as set out in Section 8.2.3.3. (i), (ii), (v), (vii) and (viii) of the Development Plan Written Statement –have been superseded by Ministerial Guidelines 'Sustainable Urban Housing – Design Standards for New Apartments' published by the Department of Environment, Community and Local Government (DoECLG) on 21st December 2015. The DoECLG Apartment Guidelines contain certain 'Specific Planning Policy Requirements' which became mandatory on foot of the Planning and Development (Amendment) Act 2015 that was signed into law by the President on 29th December 2015. The 'Specific Planning Policy Requirements' set out in the DoECLG Apartment Guidelines take precedence over the Dún Laoghaire-Rathdown standards and specifications as set out in Section 8.2.3.3 of the 2016 – 2022 County Development Plan."*

This advisory note excludes Section 8.2.3.3 (iii) which relates to Mix of Units, which units requirement has been superseded by the Apartment Guidelines 2015, which in any instance have since been superseded by the Apartment Guidelines 2018. Section 8.2.3.3 (iii) states the following:

*"Apartment developments should provide a mix of units to cater for different size households, such that larger schemes over 30 units should generally comprise of no more than 20% 1-bed units and a minimum of 20% of units over 80 sq.m. Schemes with less than 30 apartments will be assessed on a case-by-case basis according to their unit numbers, configuration and location"*

*but should generally accord to a percentage ratio of 40/40/20% mix for 1/2/3+ bedroom units respectively. Some one- bed or two-bed units could be provided on the ground floor to potentially cater for elderly people 'downsizing' from more traditional housing types and should, where possible, have direct access onto public open spaces."*

The proposed unit mix is as follows:

- 51 no. 1 beds (50%)
- 42 no. 2 beds (42%)
- 8 no. 3 beds (8%)

The proposed mix is not fully consistent with the Development Plan requirements, as the number of one bed units exceed 20%, However, the proposed mix is consistent with and would be justified in the context of the *Apartment Guidelines 2018*. Specific Planning Policy Requirement 1 (SPPR1) of the Apartment Guidelines states:

*"Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s)."*

The Apartment Guidelines 2018 also states " *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."*

As the percentage of 1 beds does not exceed 50% it is considered that the proposed unit mix is consistent with the guidance set down in SPPR1 of the Apartment Guidelines 2018. While there is no requirement for 3 bed units under SPPR 1, the proposed development includes 8 no. 3 beds.

The Planning Authority has not undertaken a Housing Need and Demand Assessment for the Blackrock area which would justify a different unit mix for this site, and it is therefore submitted that the proposed unit mix is consistent with the relevant planning policy requirement for Unit Mix. Whilst the housing mix sought in the Development Plan differs from SPPR1, SPPR1 takes precedence

over any policies of the Development Plan, as subsequently acknowledged in the LAP.

Having regard to the above, it is considered that even where the proposed unit mix development would normally breach the mix of units set out within a Development Plan or LAP, the mix is justified under SPPR1 of the Apartment Guidelines (which were issued under section 28 of the 2000 Act), the development will not materially contravene the local policy as the conflicting policy provisions apply. In any case, under the provisions of Section 9(3)(b) of the Act of 2016, the Board may grant permission, having regard to SPPR1.

### **Green Roofs Guidance**

In accordance with the current "Dún Laoghaire Rathdown County Development Plan 2016-2022 – Appendix 16: Green Roofs Guidance Document" the following is stated:

#### Section 3.1 Requirements for Various Land Uses:

A Green Roof proposal is a requirement for all Roof areas greater than 300 square metres for the following development types unless exempted or partially exempted by DLRCC Municipal Services Section following consideration of the suite of complementary or alternative "soft" SUDS (Sustainable Drainage Systems) measures being proposed:

- Apartment Developments
- Employment Developments
- Retail and Ancillary Shopping
- Leisure Developments
- Education Facilities

A Green Roof, where required, shall in all cases cover a minimum of 60% of the Roof area. The minimum soil thickness shall be 2 to 4cm for a Moss/Sedum type of Extensive Green Roof and 10 to 15 cm for a grassed type of Extensive Green Roof. \* Alternative soft SuDs measures include ponds, bioretention areas, detention basins, infiltration basins, filter strips, wetlands, swales, rain garden. (For the purpose of clarity - a proposal that relies solely on attenuation storage systems and/ or permeable paving as an alternative to the provision of a Green Roof will not be acceptable)

Due to the lack of percolation within the existing site, SuDs measures such as soakaways, swales, infiltration ponds etc have to be discounted for use as part of the scheme. Given that soil infiltration within the site is not possible, the only remaining option is to discharge the surface water from the site to the public combined sewer.

A revised proposal was submitted to Irish Water, who have responsibility for the public foul and combined sewers, proposing the attenuated discharge of surface water from the site, at a restricted rate of 2.64L/sec which has been accepted by Irish Water.

It should be noted that the development not only reduces the rate of discharge from the site, but it also reduces the volume of surface water discharge from the site. The discharge rate would be circa 8.2% of the current arrangement.

The proposed building have been the subject of ongoing consultation with DLR and Metropolitan Workshop are of the firm opinion that the proposed pitch roof arrangement is the correct architectural response to the existing context. The proposals look to move away from the prevalent strategy of continual storey set-backs to gain height and, instead, respond positively to the architecture of the area characterised by variations of articulated roof forms. The pitched roofs are an important element of the overall architectural form. This design response has in addition been favourably received by DLR County Architect in the Pre- App discussions.

The pitch of the proposed roofs do not lend themselves to the installation of a green roof to the rate of 60% as stated in the development plan. The green roofs have been maximised to a rate of 36% and have achieved this in the following areas:

- Block A: 290m<sup>2</sup> (26.9% of roof area to Block A)
- Block B: 472m<sup>2</sup> (46.1% of roof area to Block B)
- Overall: 762m<sup>2</sup> (36% of total roof area)

In conjunction with the green roof areas proposed, additional SuDs measures in the form of bioretention, permeable pavements and attenuation have all been adopted to filter, treat and ultimately discharge the surface water to the public combined sewer.

Whilst the scheme fails to achieve the desired 60% green roof area, we believe that the proposed drainage arrangements offer the best solution for the scheme taking account of the architectural and environmental constraints presented.

Whilst the quantum is less than the Development Plan requirement as set out above, to achieve a density of development on this prominent corner site requires a high quality of design that does not follow the more recent trends with stepped, flat roof profiles. We further note Policy objective BK05 of the Blackrock LAP, 2015 – 2021, states that *'it is Council Policy to ensure that Building Height within future developments in Blackrock makes a positive contribution to the built form of the area and do not adversely impact on local amenity'*.

As the site can be classified as a 'Central and/or Accessible Urban Locations' and 'is well served by public transport with high capacity, frequent service including Dart and Quality Bus Corridor therefore in principle the site is suitable for higher density development and greater building heights than exists at present in the site vicinity or provided for under the 2010 LAP.

We note that 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. There is a requirement that development proposals shall undertake a landscape and visual assessment. In addressing the above criteria, we refer the Board to the Design Statement prepared by Metropolitan Workshop, the Landscape and Visual Assessment Report prepared by Ait Landscape & Urbanism and the Photomontage images and Verified Views.

The proposed heights including Pavilion Style roof profiles have sought to respect the surrounding context, whilst providing a higher density infill development to align with current national planning policy and guidelines.

This proposal meets the criteria outlined in national planning policy and S. 28 Guidelines, particularly the *Building Height Guidelines 2018*, in terms of suitability for high density development incorporating taller buildings. Thus, there is ample justification for An Bord Pleanála to permit a material contravention of the Development Plan, should they consider the proposal a contravention of DLR Development Plan where it relates to quantum of green roof provided having regard to Section 37(2)(b)(i) and (iii) of the Planning and Development Act, 2000 (as amended).

## CONCLUSION

We have demonstrated above that the proposed development complies with the provisions of the DLR County Development Plan, 2016-2022, and the Blackrock LAP, 2015, in all significant respects, save in relation to building height. There is also a departure from the Development Plan standard in respect of unit mix and green roof provision, and from the LAP in relation to preservation of the existing sycamore tree and communal open space provision. We have also shown that the proposed development complies with national and regional policy, as expressed in the NPF, the RSES and relevant Ministerial guidelines, in particular the *Sustainable Urban Housing: Design Standards for New Apartments, 2018*, and the *Urban Development and Building Heights Guidelines for Planning Authorities, 2018*

The proposed development significantly enhances the public realm and street frontage at this location through the provision of a high-density mixed-use development of part 2 to part 6 storeys (with dormer accommodation in block B) in height. The development provides for a suitable and sustainable reuse of this vacant brownfield site.

Should the Board consider the proposed development a material contravention of the Blackrock LAP 2015-2021, this statement demonstrates that the building heights proposed are appropriate for the subject site and comply with the relevant development management criteria set out under Section 3.2 of the Building Height Guidelines 2018.

Furthermore, should the Board consider that the proposed development constitutes a material contravention of the DLR County Development Plan 2016-2022, specifically Section 8.2.3.3 (iii) Mix of Units, and green roof provision and of the Blackrock LAP (open space provision and removal of the sycamore tree) this statement demonstrates that the proposed application accords with the provisions of SPPR1 under the Apartment Guidelines 2018.

The proposed building heights are supported by National Planning Policy on the need for increased density at appropriate locations such as the subject site. The current limitation of building height as set out in the Local Area Plan is inconsistent with the Building Height Guidelines, which acknowledges that to achieve higher density, development of taller buildings is required at appropriate locations.

The proposed development meets all criteria outlined in national planning policy and S.28 Guidelines, particularly the *Apartment Guidelines 2018* and *Building Height Guidelines 2018*. We have demonstrated in this statement how the site is

suitable for high density development incorporating higher buildings and the proposed unit mix, reduced green roof provision and open space together with the removal of the sycamore tree. There is sufficient justification for the Board to permit a material contravention of the Local Area Plan and the Development Plan, should they consider it to arise, having regard to Section 37(2)(b)(i), (iii) and (iv) of the Planning and Development Act, 2000 (as amended).