

STRATEGIC HOUSING DEVELOPMENT  
PLANNING APPLICATION  
**MATERIAL CONTRAVENTION**  
**STATEMENT**  
FOR LANDS AT DEVOY BARRACKS, NAAS,  
CO.KILDARE

**BSM**

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1968

**Brady Shipman  
Martin**

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CLIENT  
Land Development Agency

DATE  
13 April 2021

## DEVOY BARRACKS SHD

### 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 Kildare County Development Plan 2017-2023 and the Naas Town Development Plan 2011-2017 (as extended) in relation to car parking standards in respect of apartments/duplexes and plot ratio.

The subject application site known as the Devoy Barracks Site (hereafter called 'the site') is located at Devoy Road, Naas, Co. Kildare. The site extends to approximately 4.14 ha. It is located to the southwest of Naas Town Centre, and immediately to the west of Kildare County Council's Head Offices and associated surface car parking area.

The lands are predominantly zoned Objective C- 'New Residential Development' with a small element of the eastern part of the site being zoned Objective A – 'Town Centre' in the Naas Town Development Plan 2011-2017 (as extended). As such the use of these lands for residential purposes is provided for.

While the Naas Town Development Plan 2011-2017 (as extended) is the primary planning policy for the site, reference is also given to the Kildare County Development Plan 2017-2023 given that it is the more recent of the two plans. It must also be noted that the Naas Town Development Plan 2011-2017 (as extended) and the Kildare County Development Plan 2017-2023 has conflicting objectives insofar as the proposed development is concerned and as such both are considered.

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 relevant Development Plans.

## 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 parking standards for apartment/duplex units and plot ratio, as the zoning of the site permits residential development.

### 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*

*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 [Our Emphasis],*
- 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 [Our Emphasis]*
- 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 (i) “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.

As set out in the following sections of this Statement the proposed scheme is considered in light of the more up to date National Planning Policy and Section 28 Guidelines and as such An Bord Pleanála should grant permission even though a material contravention has occurred.

## 4 SITE CONTEXT

The subject lands are undeveloped and while it is green in nature it is located in a suburban context surrounded by urban, Kildare County Council Head Offices, and suburban development, adjacent residential development. The subject site is located to the southwest of Naas Town Centre in County Kildare. It is approximately 4.14 ha in size.

Access to the site is from the roundabout on John Devoy Road on the southern boundary of the site. John Devoy Road links southward from the Newbridge Road (connecting to Main Street) to the Naas Southern Relief Road.

The subject site is currently an undeveloped site, falling generally from north to south. The site is located c. 750 metres to the south east of Naas town centre.

The site is bounded to the north-west by the rear gardens of a number of existing residential properties at Devoy Terrace. An existing cul-de-sac, St Patrick's Terrace, connects to the Newbridge Road adjacent to the north-east corner of the site. There are several active industrial and commercial units located at the southern end of this road.

East of the site is the surface car parking serving Kildare County Council Head Offices. Immediately east is the MERITS (Mid-Eastern Region Innovation Think Space) building, which is currently under construction and lands identified for future MERITS buildings. The Kildare Civil Defence Building is located to the south-east.

Arconagh, a residential estate of large detached houses, lies to the west. The Arconagh open space abuts the western boundary of the site, and rear gardens back onto its south-west boundary. Yeomanstown Stream is located along the southern boundary, running from the roundabout at John Devoy road to the southernmost tip of the site boundary. The stream continues south through the construction site for the new Jigginstown/Elsmore development by Cairn Developments.

## 5 JUSTIFICATION FOR MATERIAL CONTRAVENTION

The development as proposed is considered to materially contravene the Kildare County Development Plan 2017-2023 and the Naas Town Development Plan 2011-2017 (as extended) in the following instances:

1. Plot Ratio Standards
2. Car Parking Provision in respect of apartments/duplex units

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.

### 5.1.1 Plot Ratio

Both the Kildare Development Plan and the Naas Town Development Plan states that the plot ratio for sites located within an *'Inner Suburban'* area shall be *'0.5 - 1.0'*.

The proposed development will contain a plot ratio of 0.45 and it is considered that this could be considered to be a material contravention of both Development Plans. It is considered that while this is below the Development

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Plan levels it is submitted that Plot Ratio is only one measurement for assessment of a proposed scheme. The consideration of a proposed scheme on plot ratio solely is inappropriate and a wider review of the scheme as its' proposed development parameters such as density, open space, height etc. is a more considered approach.

This plot ratio is considered in the context of the proposed density, 55.7 units per hectare, the extent of open space proposed at 15.5% of site area and the need for the proposed development heights to respond to both the existing residential and commercial context across the site, and as such a plot ratio of just below what the Kildare Development Plan and the Naas Town Development Plan set out is considered to be appropriate.

#### 5.1.2 Car Parking Standards

The National Planning Framework and the Urban Development and Building Height Guidelines seek to minimise car-parking in accessible locations and to maximise a modal shift to public transport due to proximity to public transport routes.

The proposed development shall include a total of 235 car parking spaces associated with the 221 no. residential units. The crèche staff parking and drop off parking is provided at surface level adjacent the creche with a total of 12 spaces provided.

See Cronin & Sutton Consulting Engineers Traffic Impact Assessment Report which accompanies this Application for further details.

While the proposed parking provision for both houses and crèche unit is compliant with the relevant Development Plan standards it is acknowledged that the development's proposed car parking provision, in respect of apartment and duplex units, is lower than that derived from the Naas Town Development Plan 2011-2017 or the Kildare County Development Plan 2017–2023 (as set out in detail in the Traffic Impact Assessment prepared by Cronin & Sutton Consulting Engineers).

However it is considered that the proposition of 0.82 no. car parking spaces per apartment/duplex unit provides a balanced approach to this development site given the proximity of the development to Naas Town Centre (850m/10 minute walk), the availability of nearby public transport bus facilities (500m/6 minute walk), proximity to Sallins & Naas Rail Station (15 min cycle) and national objectives to reduce reliance on the private car as the primary mode of transport in line with the National Planning Framework and the Urban Housing: Design Standards for New Apartments 2020.

In addition, high-quality cycle parking and associated facilities are provided in the proposed development with a total of 520 cycle parking spaces provided (406 for residents, 106 for apartment/duplex visitors, and 8 for the crèche). Residents parking is provided in secure locations in addition to visitor spaces located throughout the landscaped open space in the scheme providing easy access for visitors.

The development's proposed bicycle parking provision significantly exceeds the standard requirements of both the Naas Town Development Plan 2011–2017 and the Kildare County Development Plan 2017–2023, providing ample cycle parking facilities to support a high modal share for cycling among development residents and visitors. This is in keeping with the approach taken to avoid excessive car parking provision.

Further, we note the draft Naas Local Area Plan 2021-2027, as currently on public consultation, includes objective MTO 4.1 which states that the Council intends to *'Apply the parking standards in the Kildare County Development Plan, and relevant Section 28 Guidelines, to all applications for planning permission in Naas'*.

The proposed residential development will promote sustainable travel patterns due to its location, layout, design and proximity to the public transport and cycle networks. This is considered in greater detail in the Residential Travel Plan prepared by Cronin & Sutton Consulting Engineers.

The proposed residential development is designed to minimise any traffic impact on the existing residential development in the area. The access and internal layout is designed in accordance with DMURS and includes for good permeability and will promote and facilitate sustainable travel patterns as part of the overall development.

The reduction in car parking provision for apartments and duplexes is consistent with recent precedent Strategic Housing Development approvals by An Bord Pleanála on similarly located sites.

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.

## 5.2 Context for Proposed Material Contraventions

### 5.2.1 Project Ireland 2040 – National Development Plan 2018-2027

The subject development's proposed quantum of car parking provision aligns with measures outlined within the 'Project Ireland 2040 – National Development Plan 2018-2027' policy document which aims to encourage a significant modal shift away from private car usage and towards more active and sustainable modes such as walking, cycling, and public transport.

Total compliance costs for missed 2020 emission targets are estimated to be between €70 million to €125 million. The first piece of legislation in the new Government's arsenal to decarbonise the economy, the Climate Action Bill, has been passed by the Dáil and Seanad in July 2020. The Climate Action Bill enshrines the 7 per cent target in law and carbon neutrality by 2050, while the new Climate Action Council would set out how this can be achieved.

The Climate Action Council has targeted a low-carbon road mapping process which will be guided by a long-term vision of low-carbon transition based on an aggregate reduction in carbon dioxide (CO<sub>2</sub>) emissions of at least 80% (compared to 1990 levels) by 2050 across the electricity generation, built environment and transport sectors.

### 5.2.2 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.

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. [Our emphasis]*

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 residential scheme is responding to the existing demand in the area and in a location that is accessible to both existing local facilities and public transport routes to the wider Kildare and Dublin.

### 5.2.3 Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)

*The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* were published in 2020 and sought to build on the content of the 2015 and 2018 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’.*

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’.*

Both the Kildare County Development Plan and the Naas Town Development Plan were adopted before the publication of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)*. Therefore, the principal justification for the Board in contravening the Development Plan standards relating to reduced car parking provision on accessible urban sites.

Similarly, while the proposed plot ratio is just below what both the Kildare County Development Plan and the Naas Town Development Plan states should be achieved, it is considered that the scheme in all other relevant criteria achieve a balanced and sustainable residential development compliant with the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* (2020).

#### 5.2.4 Urban Development & Building Height Guidelines for Planning Authorities (2020)

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'***[Our emphasis]..

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'* [Our emphasis].

As such the proposed scheme, as set out in this Strategic Housing Development Application, has set out to deliver high quality residential development, at an appropriate density and height, and with adequate parking provision, for the sites context both in terms of existing and permitted residential development and accessibility.

#### 5.2.5 Sustainable Residential Development in Urban Areas (2009)

The aim of these guidelines is to set out the key planning principles which should guide the delivery of residential development in urban areas. The Guidelines provide guidance on the core principles of urban design when creating places of high quality and distinct identity. The Guidelines recommend that planning authorities should promote high quality design in their policy documents and in their development management process. In this regard, the Guidelines are accompanied by a Design Manual discussed in the section below which demonstrates how design principles can be applied in the design and layout of

new residential developments, at a variety of scales of development and in various settings.

The Guidelines reinforce that planning authorities '*should promote increased residential densities in appropriate locations, including city and larger town centres*' and that '*firm emphasis must be placed by planning authorities on the importance of qualitative standards in relation to design and layout in order to ensure that the highest quality of residential environment is achieved*'.

It should be noted that the national planning guidelines Sustainable Residential Development in Urban Areas (2009) suggest that parking numbers may be reduced within brownfield sites close to town centres and at sites within walking distance of public transport facilities such as bus and rail.

## 6 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN

In the case of plot ratio, the proposed development will contain a plot ratio of 0.45 and it is considered that this could be considered to be a material contravention of both Development Plans. It is considered that while this is below the Development Plan levels it is submitted that Plot Ratio is only one measurement for assessment of a proposed scheme. This plot ratio is considered in the context of the proposed density, 55.7 units per hectare, and the extent of open space proposed, 15.5% of site area, and as such is felt to be appropriate. The scheme as proposed achieves a high quality residential development, at an appropriate density and height, and with adequate parking provision, for the sites context both in terms of existing and permitted residential development and accessibility in compliance with more recent National Planning Policy and Section 28 Guidelines.

In respect of car parking provision notwithstanding that the scheme is compliant with both the Kildare County Development Plan and the Naas Town Development Plan in respect of houses and crèche parameters, it is noted the exceedance of both plans in respect of car parking parameters for apartments/duplex units constitutes a material contravention of the current Development Plans. It is considered that in the context of National Planning Policy and Section 28 Guidelines the reduction in parking can be justified given the sites location in Naas and proximity to public transport.

As required in legislation, it is submitted that both of these material contraventions 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.

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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:

- Zoned as 'New Residential' in its context of the urban centre of Naas and provide for housing to be delivered by the Land Development Agency.
- 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 development site as identified by Kildare County Council 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 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 this report the scheme provides an appropriate balance of density, at 55.7 units per ha, an appropriate level of height, from 2-5 storeys and the delivery of 221 residential units given the sites context with Naas and the adjacent residential development, both existing and permitted.

It is considered that based upon the National Planning Policy and Section 28 Guidelines discussed in Section 5 of this report the development meets all the objectives of sustainable development and proper planning in providing much needed quality housing by the Land Development Agency.

As such Section 37(2) (b) (iii) or (iv) is open to An Bord Pleanála 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 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 2020*

- *Guidelines for Planning Authorities on Urban Development and Building Height issued in December 2018,*

The proposed development is in line with the above listed standards and guidance.

The realisation of the objectives of this national guidance necessitates facilitating residential development with a slightly below plot ratio than the relevant Development Plans and a reduction in parking provision relating to apartments and duplex units than set out in the relevant Development Plans. On the basis of the above provisions, we submit that the Board can grant permission for the proposed development.