

SHD Planning
Application to
An Bord
Pleanála

Material
Contravention
Statement

Proposed Strategic
Housing Development

Residential
Development adjacent
to the Grounds of
Castle Park School,
Dalkey

For Curve Devco Ltd

JANUARY 2020

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1 INTRODUCTION

This statement has been prepared by Stephen Little & Associates, Chartered Town Planners & Development Consultants, 26 / 27 Upper Pembroke Street, Dublin 2, to address matters that may be considered to be material contravene the Development Plan, in accordance with Section 8 (1)(iv)(II) of the Planning & Development (Housing) and Residential Tenancies Act 2016.

Under Section 8(1)(iv)(II) 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 indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2) (b) of the Act of 2000.

This statement, prepared by Stephen Little & Associates, addresses the possibility that the proposed development could be deemed by Dún Laoghaire-Rathdown County Council or An Bord Pleanála to represent a material contravention of the Density and Dwelling Mix objectives of the Dún Laoghaire-Rathdown County Council Development Plan 2016-2022.

However, it lies with the local Planning Authority or An Bord Pleanála to determine whether the proposed development materially contravenes the Development Plan.

2 PROPOSED DEVELOPMENT

The proposed development is described in detail in the plans and particulars that accompany this planning application, and in the planning report prepared by this office.

Briefly the development comprises 101no. residential apartment units, consisting of 11 no. Studio, 26 no. 1-bedroom and 64 no. 2-bedroom, each with balcony / terrace space; and all associated and ancillary site development, landscaping and boundary treatment works. Building height ranges from two storey houses to 4 storey over a single level basement.

Under the Development Plan the subject site has primarily been zoned Objective A, the objective of which is: -

“To protect and or improve residential amenity.”

The site abuts the Castle Park School lands to the south and east. To the north of the site residential dwellings form a street ending in a cul-de-sac known as Castle Close. To the west of Castle Close there are 2 no. apartments blocks, comprising a height of 3-4 storeys, known as Castlepark Residence. Located along the eastern boundary of the site is the side elevations of houses along Castlelands Grove, the rear gardens of houses fronting onto Hyde Park and a residential cul- de-sac known as Castlelands.

The application site is located within the grounds of Castle Park School, Castle Park Road, Dalkey, Co. Dublin. The proposed development has been shaped and designed with full regard to the existing site features and levels. It is this identification of the established site characteristics, namely the site levels, woodland character and surrounding environment which has guided the appropriate design response ensuring the proposed development responds appropriately to its unique setting. In that regard, the above attributes have been retained from that previously permitted on this site by An Bord Pleanála (An Bord Pleanála Reg. Ref. PL06D 249205)

The proposed development achieves a residential density of 79.5 units per hectare. This is on the basis that the site area of 1.27Ha with 101no. residential apartments. The site area included in the red line for the environmental services within Castle Close are excluded from that figure.

3 MATERIAL CONTRAVENTION

3.1 Dún Laoghaire-Rathdown County Council 2016 - 2022

3.1.1 Residential Density

Section 2.1.3.3 of the current Dún Laoghaire-Rathdown County Council Development Plan 2016 - 2022 identifies the desired densities for Residential Developments in Dun Laoghaire Rathdown, as follows;

“Policy RES3: Residential Density

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- *‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009).*
- *‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009).*
- *‘Quality Housing for Sustainable Communities’ (DoEHLG 2007).*
- *‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).*
- *‘National Climate Change Adaptation Framework - Building Resilience to Climate Change’ (DoECLG, 2013).”*

Section 8.2.3.2 of the County Development further outlines the density provision for Dun Laoghaire Rathdown Council for the County, as follows;

“In general the number of dwellings to be provided on a site should be determined with reference to the Government Guidelines document: ‘Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities’ (2009). As a general principle, and on the grounds of sustainability, the objective is to optimise the density of development in response to type of site, location and accessibility to public transport. However, the overriding concern should be the quality of the proposed residential environment to be created and higher densities will only be acceptable if the criteria which contribute to this environment are satisfied. Higher residential density will not be appropriate in every circumstance and qualitative built form can sometimes be a more important determinant. Higher densities should have regard to surrounding dwellings and should be achieved in tandem with the protection of the amenity of the future residents of the proposed development (Refer also to Policy RES3 in Section 2.1.3.3).

In Dún Laoghaire-Rathdown, apart from in exceptional circumstances, (e.g. where an LAP has identified sites where lower densities may be considered or in sites where mature tree coverage prevents minimum densities being achieved across the entire site) minimum residential densities should be 35 dwellings per hectare. Significant parts of the existing built-up area of the County are, however, readily accessible to public transport corridors – QBCs, Luas, DART. In these circumstances Government guidance is to provide densities at higher than 50 dwellings per hectare. The Council acknowledges the ‘Kickstart’ Incremental Development Approach as outlined in the DoECLG and the NTA study ‘Planning and Development of Large Scale, Rail Focused Residential areas in Dublin’ (2013) in relation to Sandycove, Cherrywood, Stepaside and Carrickmines. The purpose of the ‘Kickstart’ approach is not to be used to achieve lower densities in a scheme but rather to ensure eventual overall delivery of higher densities in order to support high capacity public transport modes (Refer also to Policy RES3, Section 2.1.3.3).”

3.1.2 Dwelling Mix

Section 8.2.3.3 of the County Development Plan sets out the requirements in relation the mix of units provided as part of new apartment developments, which are as follows: -

*“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.*

CSO results from the 2011 Census indicate that 55% of all private households are composed of one or two persons in the County, compared to the 53% Nationally. These 2011 results also indicated that 62% of private households in the County were residing in detached or semi-detached houses with 19.4% in a flat or apartment.”

We note in the context of these requirements that the policy document ‘*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*’ (adopted in March, 2018) contains a “*Specific Planning Policy Requirement*” in relation to dwelling mix requirements (SPPR 1), which takes precedence over any conflicting policies and objectives of Development Plans.

3.1.3 Institutional Objective

In addition to the lands being zoned for residential development, there is an “*Institutional*” objective on these residential zoned lands, including the subject lands.

There is a provision in the County Development Plan in relation Institutional Lands, whereby a Masterplan should be submitted with respect to Development on Institutional Lands as follows;

“There are still a number of large institutions in the established suburbs of the County which may be subject to redevelopment pressures in the coming years. The principal aims of any eventual redevelopment of these lands will be to achieve a sustainable amount of development while ensuring the essential setting of the lands and the integrity of the main buildings are retained. In order to promote a high standard of development a comprehensive masterplan should accompany a planning application for institutional sites. Such a masterplan must adequately take account of the built heritage and natural assets of a site and established recreational & use patterns. Public access to all or some of the lands may be required. Every planning application lodged on institutional lands shall clearly demonstrate how they conform with the agreed masterplan for the overall site. Should any proposed development deviate from the agreed masterplan then a revised masterplan shall be agreed with the Planning Authority.”

4 DISCRETION OF AN BORD PLEANÁLA TO GRANT PERMISSION FOR DEVELOPMENT THAT MATERIALLY CONTRAVENES THE DEVELOPMENT PLAN

In accordance with Section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016 the Board may grant permission for a proposed strategic housing development that materially contravenes the development plan or local area plan, other than in relation to zoning. Section 9(6)(a) states: -

“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.”

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

Section 37(2)(b) of the Act of 2000 (as amended) states that where a proposed development materially contravenes the development plan, the Board may grant permission where it considers that: -

“(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,

or

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

or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”

We set out below our interpretation of how the Section 37(2)(b) considerations relate to the proposed development, from a planning perspective: -

In the first instance we would consider that the development in question is both of strategic and of national importance. The development in question has been confirmed as being strategic housing development in line with the specific legislative provisions pertaining to Strategic Housing Development and is therefore of strategic import.

The specific provisions relating to Strategic Housing Development were introduced in order to redress the nationally significant shortfall in housing output. Therefore, we submit that the development in question is also of national importance as a result.

We note that the Board Inspectors and the Board themselves have arrived at similar conclusions with regard to other recent SHD cases (for example An Bord Pleanála Ref. ABP-304710-19).

The application site is in close proximity to existing or planned high frequency high public quality transport routes within an existing urban area, as such it is considered to be in line with the National Planning Framework – Ireland 2040. In line with Objective 3a of the NPF the proposed development represents a significant increase in proposed residential development, with a focus upon apartment type housing. There are 3 no. DART Stations within 1.4km walking distance of the site; Dalkey (950m), Glenageary (1.2km) and Sandycove & Glasthule (1.4km).

The proposals have been framed having regard to the tri-partite dialogue with An Bord Pleanála and Dun Laoghaire Rathdown County Council in which both the National Planning Framework and Ministerial Guidelines were cited as the basis for determining the appropriate density and height of development at this location. Specifically, the *'Urban Development and Building Heights – Guidelines for Planning Authorities'* and the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'* provide for Specific Planning Policy Requirements and where these conflict with Development Plan objectives that the Guidelines shall be applied.

The proposed development is considered to be consistent with the policies and intentions of current Government policy in the form of the National Planning Framework, is consistent with the RSES objectives for Dublin and is in accordance with relevant Ministerial Guidelines due to its density, height, use of an underutilised prime site and well-designed units within a compact form and should be granted permission as a result, even were it deemed a material contravention in our professional opinion.

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."

On the basis of the above, we consider that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development, notwithstanding that a material contravention of the Development Plan may occur.

This Statement provides a justification for the material contraventions of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 in relation to the following: -

- Residential Density.
- Dwelling Mix.
- Masterplan for Institutional Lands

5 JUSTIFICATION FOR MATERIAL CONTRAVENTION

5.1 Residential Density

The Dún Laoghaire-Rathdown County Council 2016 – 2022 was adopted in 2016, before the publication of the National Planning Framework 2040 (NPF) and the Regional Economic and Spatial Strategy for the Eastern & Midlands.

The NPF targets a significant proportion of future urban development on infill development sites within the built footprint of existing urban areas. Objective 11 of the NPF states: -

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

The NPF also states that that *“to avoid urban sprawl and the pressure that it puts on both the environment and infrastructure demands, increased residential densities are required in our urban areas”*. Objective 35 states that it is an objective to: -

“Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.”

Objective 33 of the NPF outlines the following in relation to residential densities: -

“Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.”

The proposed development is located in the well-established suburb of Dalkey, which provides excellent, readily available transport connections to Dublin City Centre, in an area with existing social and community infrastructure. It is therefore considered that the subject site is an appropriate location for increased density to support the objectives of the NPF.

The proposed density at c. 79.5 no. units per hectare is considered justified being compliance with Section 28 Ministerial Guidelines ('Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities, 2009'), the National Planning Framework – Ireland 2040 and the Regional Economic and Spatial Strategies for the Eastern & Midlands.

The proposed development seeks to make the most of this suburban site in order to promote increased densities and population growth in existing urban areas adjacent to city and town cores. The proposed density at c. 79.5 no. units per hectare is therefore considered to be consistent with the objectives of the NPF by utilising this strategically located land to provide for the critical mass to support the surrounding services, village centre and the high quality public transport infrastructure.

We would submit that the location of the proposed development, near the well-established village of Dalkey is capable of providing increased density as envisioned by new national and regional development guidelines.

The application site is well served by excellent transport connections. There are three DART stations near the application site: Sandycove & Glasthule, Dalkey and Glenageary. These DART Stations are approximately 1.18km, 835m and 830m distance from the site respectively as measured as the crow flies. In terms of walking and cycling to these stations using the existing network, the equivalent distances are 1.4km, 950m and 1.2km respectively. This represents a circa. 13-17 minute's walk or a 3 – 4 minute cycle.

Further public transport links include Dublin Bus. Route no. 59 which currently runs from Dun Laoghaire towards Killiney with the Breffini Rd, Castlepark Rd. bust stop only a 3 minute walk away from the site, as well as the Glasthule, Breffini Rd bus stop which is only a five minute walk away. These include Bus no. 111 (Dalkey towards Brides Glen Luas Station) and no. 7D (Dalkey towards Mountjoy Square).

It is also worth noting that the design of this proposal is centred around the already permitted built form on this site as permitted under ABP Ref. PL 06D.249205. As such, the density of development now being proposed is contained within a built envelope that is largely the same as that already permitted. One side of the building is adjusted by a few metres in places to accommodate the increased density. Details of that can be clearly seen at page 18 of the Architects Design Statement accompanying this application.

The proposed density has been arrived at by a design-led approach, which is advocated through the National Guidelines. It is considered that, given the constrained infill nature of the site, the specific wooded characteristics presented on site bounded by existing residential development to the south-west, west and north, the proposed density of c. 79.5 units per hectare generally within the permitted built form on site, represents a careful balance of preserving the natural amenities on site and achieving an appropriate residential development in accordance with new National and Regional Guidelines, which provide for increased residential density in existing built up areas.

5.2 Unit Mix

As the Dun Laoghaire Rathdown Development Plan objective on dwelling mix was adopted in 2016, it can therefore be considered to have been superseded by the requirements set out in SPPR 1 of the Apartment Guidelines, which states as follows:

*“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).”*
(SLA emphasis in bold)

The proposed development is compliant with SPPR 1 of the Apartment Guidelines, for the following reasons:

- No more than 50% of the proposed units are one-bedroom / studio type units.
- Studio units alone amount to 11% of the total, and are therefore below the 25% maximum standard set out in SPPR 1 and are in fact are the lower end of the acceptable range.
- Over 50% of the units are two bedroom units and range in size between 73 – 84m² in area thereby providing a variety of possible accommodation and are capable of catering for households ranging in size between 3 – 4 people in line with the provisions of the Apartment Guidelines 2018.

The proposed unit mix of studio, 1- and 2-bed units is supported by the guidance and SPPRs set out in the Apartment Guidelines (2018), which specify that no minimum requirement shall apply in respect of the provision of apartments with three or more bedrooms.

Notwithstanding the development’s compliance with the Apartment Guidelines, the proposed development will also enhance the variety of dwelling types available in the local area, which is predominantly characterised by low density, low-rise housing (of three bedrooms or more) in the immediate vicinity of the subject site.

Within the context of the site at Castle Park, this is located in the Dalkey-Bullock DED. According to the results contained on the CSO web site (www.cso.ie/p1map21/) the immediate area around the site has seen a fall in average household size from 2.50 persons in 2016 compared to 2.57 in 2011. This compares to a City wide average household size of 2.49 persons in 2016. This highlights the need for greater numbers of 1 and 2 bedroom units to cater for household sizes of between 1-3 people in this particular area so as to counter-balance the existing higher provision of larger dwelling sizes in this area.

According to the results contained on the CSO website, there are a total of 660 households. Under the CSO, there is direct data sheet for the number of bedrooms in an area, rather the number of rooms. The CSO defines a ‘room’ as either a Kitchen, Living room and bedroom. For the purposes of demonstrating the number of mix of unit types in the area, it is assumed that 3 rooms or less represents a 1-bed unit. A 4 room household represents a 2-bed unit, and so on.

On this basis, the total number of bedrooms for Dalkey-Bullock Electoral Division in 2016 is outlined below: -

Bedrooms	No. of Units (CSO 2016)	CSO 2016 + Castlepark scheme
1 Bed / Studio unit	73 (11%)	110 (+37) (14%)
2 Bed unit	116 (18%)	180 (+64) (24%)
3 bed unit	109 (17%)	109 (14%)
4 bed units	90 (14%)	96 (12%)
5+ bed unit	272 (41%)	272 (36%)
Total	660	761

It can be noted from the above Table that the proposed development exceeds the Development Plan requirements with regard to unit mix, and could thus be considered to constitute a material contravention. Notwithstanding this, and as stated above, the 2018 'Apartment Guidelines' contain 9no. SPPRs, which Planning Authorities and An Bord Pleanala are required to apply in carrying out their functions, and which take precedence over any conflicting policies and objectives of the relevant Development Plan.

5.2.1 Institutional Objective

It is contended that as the lands in question had been sold to the Applicant several years prior to the making of this Development Plan and that permissions had been granted on the since that occurred, that there is no necessity for a Masterplan to be prepared. Furthermore, this particular proposal seeks to utilise the permitted development envelope that has been deemed acceptable in the past in terms of its relationship with the remainder of the institutional lands.

In the previous application on the subject site, Reg. Ref. D17A/0551 ABP Ref. PL06D.249205, the issue of a Masterplan was raised. In making his recommendation the Inspector in that case had no issue with the lack of a Masterplan being prepared, as the part of the site on which the development was taking place was sold to our client by the School, as is highlighted in his report as follows: -

"The school, has engaged in the sale of the appeal site and this sale agreement has been in place for a number of years. It could reasonably be inferred that the sale of the appeal site clearly intimates that the land is not required by the school for any further development of the school in the future. In addition, the sale of the lands implies that these lands cannot be utilised by the school in any future development of the school complex. It is also noted that the school has a significant land bank remaining. These observations make the consideration of a Master Plan in this application, and the role of the appeal site therein, somewhat a futile issue when these observations are accepted."

In making the decision to Grant Permission for the development the Board accepted the overall recommendation of the Inspector in that case.

We consider precisely the same argument applies in this particular instance also.

The beneficial interest in the subject site was transferred by the school to the original purchasers in 2009. This beneficial ownership in turn was transferred to the Applicant when it signed the sub-sale contract in 2016. Since 2009, the school has held a bare legal interest in the land, which does not entitle it to exercise any control over the land or to occupy same. The school has had no ability to develop the subject lands since 2009 and any development aspirations it might have had in respect of these lands are not capable of implementation.

Therefore, the subject site is not available for use by the school and cannot be considered as part of the school landholding for future development proposals or master planning associated with the school. Recent planning applications submitted by the Castle Park School in respect of the school lands, clearly showed the application site outside the red and blue line boundary (DLRCC Ref: D16A/0280 and D17A/0016 refers).

The school's decision to sell the site is confirmation that the school considers that the application site is not required to serve the current or future needs of the school. As detailed in the enclosed legal opinion, the contracts for sale relating to the application site specifically took into account the school's needs in relation to its own expansion plans (located elsewhere on the school lands) and also restricted the manner in which the residential development has to be carried out having regard to the school's requirement.

We also confirm that the application site is not currently used by the school. In any event, the woodland nature of the site and change in levels has historically constrained the use of the site by the school. A small part of the site was used as an overflow car parking area for the school with the remainder of the site being vacant. It is our understanding that the application site was not used as active amenity space by the school, as the playing pitches and other recreational facilities are located elsewhere on the school lands.

From reviewing Dun Laoghaire-Rathdown's online planning search tool, it is our understanding that no recent planning applications have been made by the school for additional school facilities on the application site. This re-confirms that the school has not favourably considered the application site for expansion purposes.

The proposed residential development that is the subject of this application is wholly contained within the confines of the land under our client's ownership. The proposed development does not encroach on other lands under the ownership of the school that may potentially be developed for educational purposes nor does the proposed development prejudice / compromise the ability of the adjoining school lands to be developed.

As detailed in the enclosed legal opinion, the school has divested itself of any interest in the application site and, in Senior Counsel's opinion; it can no longer be regarded as an "*institutional site*" or a site in institutional use having regard to the ordinary meaning of these expressions.

The relevant Development Plan policy applicable to Institutional Lands is 'Section 2.1.3.5 Policy RES5: Institutional Lands' and 'Section 8.2.3.4 (xi) Institutional Lands'. Appendix 10 (Development Management Thresholds Information Document) of the current Development Plan is also relevant. The proposed development's compliance with these policies is set out below.

Section 2.1.3.5 Policy RES5: Institutional Lands

"Where distinct parcels of land are in institutional use (such as education, residential or other such uses) and are proposed for redevelopment, it is Council policy to retain the open character and/or recreational amenity of these lands wherever possible, subject to the context of the quantity of provision of existing open space in the general environs."

As outlined above, it is considered that the site can no longer be considered as an "*institutional site*". Notwithstanding this, the open woodland character of the site is maintained through retention of existing trees and proposed new planting while the existing rock outcrop on site has been incorporated into the proposed landscape design. A children's play area, woodland walkway and garden pavilion has been provided, together with a proposed pedestrian link between the application site, Castlelands and Castle Close. These design features are considered to improve the recreational amenity value and accessibility of the site. Approximately 33% of the site area is proposed to be set aside for public open space.

We also refer the Board to the Landscape Masterplan and the Landscape Design Report prepared by Cunnane Stratton Reynolds Landscape Architects that was submitted with the planning application, for details on public amenity open space layout and design.

We note that the application site has not historically been used as active open space by the school, as the school's active amenity space (including playing pitches) are located elsewhere on the school lands and are not compromised by the proposed development.

As we will discuss later in this section, previous proposals for residential development on the site were not considered to negatively impact on the open character of the institutional lands in the past (DLRCC Ref: D14A/0501, D07A/1117 and D05A/0830 refers).

Section 2.1.3.5 of the County Development Plan notes that: -

“It is recognised that many institutions in Dún Laoghaire-Rathdown are undergoing change for various reasons. Protecting and facilitating the open and landscaped ‘parkland’ settings and the activities of these institutions is encouraged. Where a well-established institution plans to close, rationalise or relocate, the Council will endeavour to reserve the use of the lands for other institutional uses, especially if the site has an open and landscaped setting and recreational amenities are provided. Where no demand for an alternative institutional use is evident or foreseen, the Council may permit alternative uses subject to the zoning objectives of the area and the open character of the lands being retained.”

Castle Park School will remain in situ. As detailed above, the subject site has not been available for use by the school since 2009. As a result, the existing school landholding or school facilities are not being rationalised by the proposed development. As already outlined above, the expansion plans of the school and residential development on the application site were respectively considered in the contracts of sale associated with the sale of the land. In any event, historically the use of the site by the school has been constrained by existing site features and the application site was not used as active amenity space by the school.

The proposed development seeks to retain the open woodland character of the site and to improve the recreational amenities of the site as demonstrated above. Open space standards have been exceeded, which we will come to discuss below.

Section 2.1.3.5 of the County Development Plan notes that: -

“A minimum open space provision of 25% of the total site area (or a population based provision in accordance with Section 8.2.8.2 whichever is the greater) will be required on Institutional Lands. This provision must be sufficient to maintain the open character of the site with development proposals structured around existing features and layout, particularly by reference to retention of trees, boundary walls and other features as considered necessary by the Council” (Refer also to Section 8.2.3.4(xi) and 8.2.8).

Approximately 4,192 sq.m of public open space is provided as part of the proposed development, which equates to c. 33% of the site area, which exceeds the Development Plan requirement of 25%.

Section 2.1.3.5 of the County Development Plan notes that: -

“In the development of such lands, average net densities should be in the region of 35 - 50 units p/ha. In certain instances higher densities will be allowed where it is demonstrated that they can contribute towards the objective of retaining the open character and/or recreational amenities of the lands.”

The proposed development provides for a residential density of c. 79.5 ha. The Planning Authority considered that the proposed density of c. 40 units per hectare was an acceptable overall density for the site and considered to be in accordance with the National Guidelines (2009) and the current Development Plan.

Section 2.1.3.5 of the County Development Plan notes that: -

“In cases of rationalisation of an existing institutional use, as opposed to the complete cessation of that use, the possible need for the future provision of additional facilities related to the residual retained institutional use retained on site may require to be taken into account.” (This particularly applies to schools where a portion of the site has been disposed of but a school use remains on the residual part of the site.)

We consider that this policy is directly applicable to the consideration of planning applications for development proposals on the residual school lands, rather than on land outside of the schools control. As previously highlighted, the subject site is not available for use by the school and cannot be considered as part of the school landholding for future development proposals or master planning associated with the school.

We note that in recent planning applications by Castle Park School (D16A/0280 and D17A/0016), which were assessed under the current Development Plan (2016-2022), the Council failed to seek a clarification on this policy and failed to request a masterplan for the school lands. The rationalisation of the school lands would have been evident to the Planning Authority by the blue line boundary on the Site Location Map submitted with these planning applications.

Furthermore, as already outlined above, the expansion plans of the school and residential development on the application site were respectively considered in the contracts of sale associated with the sale of the land.

Section 8.2.3.4 (xi) Institutional Lands

“Where no demand for an alternative institutional use is evident or foreseen, the Council may permit alternative uses subject to the area’s zoning objectives and the open character of the lands being retained.

There are still a number of large institutions in the established suburbs of the County which may be subject to redevelopment pressures in the coming years. The principal aims of any eventual redevelopment of these lands will be to achieve a sustainable amount of development while ensuring the essential setting of the lands and the integrity of the main buildings are retained. In order to promote a high standard of development a comprehensive masterplan should accompany a planning application for institutional sites. Such a masterplan must adequately take account of the built heritage and natural assets of a site and established recreational use patterns. Public access to all or some of the lands may be required. Every planning application lodged on institutional lands shall clearly demonstrate how they conform with the agreed masterplan for the overall site. Should any proposed development deviate from the agreed masterplan then a revised masterplan shall be agreed with the Planning Authority.”

To reiterate, it is considered that the site can no longer be considered as an “institutional site” as outlined in the enclosed legal opinion prepared by Eamon Galligan S.C, noting the application site is not in the schools control. The expansion plans of the school and residential development on the application site were respectively considered in the contracts of sale associated with the sale of the land.

We also draw the Board’s attention to the previous planning history on the application site for residential development (DLRCC Ref: D14A/0501, D07A/1117 and D05A/0830 refers). The ‘institutional’ objective applied to the site when these applications were assessed and determined and similar policies for Institutional lands were contained in the relevant Development Plans compared to the current Development Plan. In the assessment of these applications, it was not considered that the proposed development would compromise the future operation or expansion of the school as demonstrated below.

DLRCC Ref: D14A/0501

This planning application for 15 no. dwellings on the application site was considered under the previous Development Plan 2010-2016. The ‘institutional’ objective applied to the site when this application was assessed and determined and there was a requirement for a masterplan contained in Section 16.3.4(x) of the previous Development Plan (2010-2016) and the associated Development Management Thresholds Information Document.

Notwithstanding that the Planning Authority refused permission for the development, the requirement for a masterplan or the ‘institutional’ objective was not raised in the assessment of the planning application and providing a residential development on the site was accepted in principle.

This decision was not appealed to An Bord Pleanála.

DLRCC Ref: D07A/1117 (ABP Ref: PL06D.227213)

This planning application sought permission for 47 no. dwellings on the application site and was considered under the Dun Laoghaire-Rathdown County Development Plan 2004-2010

The ‘institutional’ objective applied to the site when this application was assessed and determined with Policy RES6 being of relevance, stating that *“Where lands are in institutional use, such as education, health, residential or other such uses, it is Council Policy to retain these institutions and the open character of their lands wherever possible”*. The Plan also acknowledged that many institutions are undergoing change, and that there is a need to allow for this, but to *“protect and facilitate the activities of the various institutions where the institutions demand this”*.

In DLRCC’s assessment of the application, it was noted that the application for residential development was an integral part of the school’s long term plan and essential to fund the new school facilities, etc. (D07A/1117 Planning Officers Report, p. 7), with the Planning Officer also noting:

“It is considered that the proposed development, in general, still maintains the integrity of the school site and would not materially undermine it’s future operation” (D07A/1117 Planning Officers Report, p. 8).

Following a request for Further Information, a decision to grant permission was issued by DLRCC, which was subject to an appeal to An Bord Pleanála. Notwithstanding that the Board refused permission for this development, the Direction issued by the Board confirms that the Board had no objection in principle to a residential development on this site.

DLRCC Ref: D05A/0830 (ABP Ref: PL06D.215646)

This planning application sought permission for 81 no. dwellings on the application site and was considered under the Dun Laoghaire-Rathdown County Development Plan 2004-2010

The 'institutional' objective applied to the site when this application was assessed and determined with Policy RES6 being of relevance, details of which are provided above.

In DLRCC's assessment of the application, the Planning Officer noted: -

"Having regards to the fact that the long term viability of the school is dependent on the sale and development of a portion of its land, to Council's policy to retain, protect and facilitate educational facilities, together with the fact that substantially more than 20% of the total site area is to be retained as open space, the principle of development on this site is considered to be acceptable on planning grounds" (D05A/0830 Planning Officers Report, p. 6).

Following a request for Further Information, a decision to grant permission was issued by DLRCC, which was subject to an appeal to An Bord Pleanála. Notwithstanding that the Board refused permission for this development, the Inspector and the Board had no objection in principle to a residential development on these institutional lands, with the Inspector stating: -

"The school property is designated as Institutional Lands, with Development Plan Policy RES6 seeking to retain such institutions and the open character of their lands. There appears to be no question that the existing school will be retained, particularly in the context of the proposal for its significant expansion. In addition, I am satisfied that the proposed development does not impinge unduly upon the open character of the school, which is primarily defined by its expansive front lawns. As such, in itself, I do not consider that the proposed development will impact upon the existing form and layout of the institution. I have noted the Applicant's argument that the proposed development will finance the proposed school extension."

The above planning precedent confirms that residential development is acceptable in principle on the subject site and it would not compromise the future operation or expansion of the school.

"A minimum open space provision of 25% of the total site area (or a population based provision in accordance with Section 8.2.8.2 whichever is the greater) will be required on Institutional Lands. This provision must be sufficient to maintain the open character of the site - with development proposals built around existing features and layout, particularly by reference to retention of trees, boundary walls and other features as considered necessary by the Council."

This matter has already been addressed in response to 'Section 2.1.3.5 Policy RES5: Institutional Lands' above, which demonstrates that sufficient open space has been provided and the open woodland character of the site has been retained.

"In addition to the provision of adequate open space, on Institutional Lands where existing school uses will be retained, any proposed residential development shall have regard to the future needs of the school and allow sufficient space to be retained adjacent to the school for possible future school expansion/ redevelopment."

The proposed development that is the subject of this application is wholly contained within the confines of the land under our client's ownership. The proposed development does not encroach on other lands under the ownership of the school that may potentially be developed for educational purposes nor does the proposed development prejudice / comprise the ability of the adjoining school lands to be developed.

The circumstances that prevailed in the very recent case on this site remain, and we invite the Board to come to the same conclusion again.

6 CONCLUSION

On the basis of all of the reasons and considerations set out in the report above, we consider that sufficient justification is available for An Bord Pleanála to grant permission for the proposed development, notwithstanding that a material contravention of the Development Plan may occur.