

Statement of Material Contravention

In respect of

A Proposed Strategic Housing Development

at

Southgate North, Dublin Road, Drogheda, Co Meath

Prepared by

John Spain Associates

On behalf of

Rockmill Ltd

August 2021



39 Fitzwilliam Place, Dublin 2
Telephone: (01) 662 5803
E-mail info@johnspainassociates.com

1.0 INTRODUCTION

- 1.1 On behalf of the applicant, Rockmill Ltd, we hereby submit this Material Contravention Statement to accompany this application to An Bord Pleanála in relation to a proposed Strategic Housing Development site on lands at Southgate North, Dublin Road, Drogheda, Co Meath. The application site is located on lands to the immediate north of the Southgate Shopping Centre.
- 1.2 The proposed development which is the subject of this application comprises 201 no. units on the subject site, consisting of 53 no. one bed apartment units, 132 no. two bed apartments units and 16 no. three bed apartment units.
- 1.3 This statement provides a justification for a material contravention of the Meath County Development Plan 2013-2019 should the Board be of the view that the proposed car parking provision contravenes Section 11.2.2.7 and Section 11.9 of the Development Plan.
- 1.4 Under section 8(1)(a)(iv)(II) of the Planning and Development (Housing) and Residential Tenancies Act 2016, where a proposed strategic housing development materially contravenes 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 considerations specified in section 37(2) (b) of the Planning and Development Act of 2000 ("the 2000 Act"). On behalf of the applicant, Rockmill Ltd, this Statement on Material Contravention is submitted in accordance with section 8(1)(a)(iv) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

Legislative Context

- 1.5 The Planning and Development (Housing) and Residential Tenancies Act, 2016, states the way in which An Bord Pleanála may grant permission for a development which is considered to materially contravene a Development Plan or Local Area Plan, other than in relation to the zoning of land, is 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 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'.

- 1.6 Section 37(2)(b) of the Planning and Development Act 2000 states:

'(2) (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’.**

- 1.7 The test for determining whether a contravention is material was set out in the High Court decision in *Roughan v. Clare County Council*¹ and has been recently approved by the High Court in *Byrnes v. Dublin City Council*² and *Heather Hill Management Company CLG Anor. v An Bord Pleanála*³:

“What is material depends upon the grounds upon which the proposed development is being, or might reasonably be expected to be, opposed by local interests. If there are no real or substantial grounds in the context of planning law for opposing the development, then it is unlikely to be a material contravention.”

- 1.8 This report provides a concise justification for the proposed development under each of the criteria set out under section 37(2)(b) of the Act. Where relevant, this report refers to other accompanying documentation submitted as part of the application, in particular the Statement of Consistency and Planning Report.

¹ Unreported, High Court, Barron J., December 18, 1996

² [2017] IEHC 19

³ [2019] IEHC 450

2.0 MEATH COUNTY DEVELOPMENT PLAN 2013-2019 (INCORPORATING CERTAIN POLICIES & OBJECTIVES OF THE DROGHEDA SOUTHERN ENVIRONS LAP)

- 2.1 The local planning context in respect of car parking provision is summarised below, with an explanation for why this Material Contravention Statement is included with the subject application.
- 2.2 Chapter 11 of the Meath County Development Plan 2013-2019 provides development management guidelines and standards for residential development. Section 11.2.2.7 states that '*car parking should be provided in accordance with the standards set out in 11.9*'. Section 11.9 sets out the following Car Parking Standards for flats / apartments:
- 1.25 per 1 & 2 bedroom unit
 - 2 per 3-4 bedroom units
 - In all cases, 1 visitor space per 4 apartments
- 2.3 Under this SHD application, the proposed mix is as follows:
- 53 no. one bed units
 - 132 no. two bed units
 - 16 no. three bed units
- 2.4 Based on the proposed mix and the car parking standards set out in Section 11.9, this results in a requirement of 313 no. car parking spaces.
- 2.5 The subject site is located within the Local Area Plan for the Southern Environs of Drogheda. Following the adoption of Variation No. 2 of the County Development Plan, the LAP for the Southern Environs of Drogheda was also amended, to bring it into line with the County Development Plan (as varied). In relation to parking, the LAP states '*car parking spaces shall be provided in accordance with the Meath County Development Plan*'.
- 2.6 It is recognised that the proposed 181 no. car parking spaces would not be consistent with the Development Plan requirements, however the proposed parking provision is considered justified in the context of the 2020 Apartment Guidelines and based on the parking analysis of the adjoining Southgate Centre, which is a mixed use development with a significant commercial retail area and includes office space and residential units.
- 2.7 We refer to the Parking Strategy prepared by DBFL for further details, however in summary the analysis demonstrates the proposed car parking ratio of 0.9 spaces per unit (181 car parking spaces) is considered justified having regard to the pattern of the adjoining Southgate Shopping Centre, where the existing apartments have a typical parking demand of 0.7 car parking spaces per unit. This also reflects the commuting patterns as identified in the 2016 Census SAPMAP. These existing apartments benefit from the same public transport accessibility levels and general demographics, and therefore provide a reasonable representation of the likely parking demand within the proposed development. Furthermore, visitors to the proposed development will also be able to avail of the surplus car parking spaces available within the Southgate Shopping Centre.
- 2.8 Furthermore, the proposed parking provision is consistent with and considered to be justified in the context of the Apartment Guidelines 2020, which sets out a reduced overall parking standard must be considered. The Guidelines state:

'4.18 The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.'

2.9 And;

'Intermediate Urban Locations:

4.21 In suburban/urban locations served by public transport or close to town centres or employment areas and particularly for housing schemes with more than 45 dwellings per hectare net (18 per acre), planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum car parking standard.'

- 2.10 The subject site is considered an 'Intermediate Urban Location' given the location of the proposed development in a mixed use neighbourhood centre setting, adjacent to employment uses, and based on the density of the development which is well in excess of 45 units per hectare. On this basis, it is considered that the proposed development is appropriate to accommodate reduced parking requirements. Therefore, a total of 181 car parking spaces are provided (a ratio of c. 0.9 spaces per unit). It should be noted that this represents a reduction in car parking provision when compared to the scheme as submitted for pre-application consultation. The reduction has regard to the comments of the Board in relation to car parking, and above mentioned detailed analysis undertaken by DBFL Consulting Engineers in the context of the existing car parking provision in the adjacent Southgate Centre.
- 2.11 It is noted that the Apartment Guidelines 2020 states that *'these guidelines have been issued by the Minister for Housing, Planning and Local Government under Section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines and are also required to apply any specific planning policy requirements (SPPRs) of the guidelines, within the meaning of Section 28 (1C) of the Planning and Development Act 2000 (as amended) in carrying out their functions.'*
- 2.12 Having regard to the above, it is considered that the proposed car parking is justified and would not materially contravene the local policy having regard to the existing parking availability within the Southgate Shopping Centre, and in the context of the Apartment Guidelines. However, without prejudice to the foregoing, a justification is set out below in the event that the Board consider that a material contravention does arise.

3.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION

3.1 In the event that the Board considers that the proposed development constitutes a material contravention of Sections 11.2.2.7 and 11.9 of the Development Plan by virtue of the proposed parking provision, a justification for the material contravention of the County Development Plan is set out below, under the relevant parts of section 37(2)(b) of the 2000 Act.

3.2 As outlined above in Section 2, Section 9(6)(c) of the 2016 Act empowers the Board to grant permission for a proposed strategic housing 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 sets out 4 no. grounds on which the Board may grant permission for a development that materially contravene a development plan. In circumstances where there is no material contravention of any policy or objective of the Development Plan in relation to the zoning of land, it is considered that that permission for the proposed development may be granted on one or more of the following grounds set out within this statement.

Part (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

3.3 The following section demonstrate how the proposed parking provision is justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which outline that that universal standards for car parking may not be applicable in all circumstances in urban areas and should be replaced by performance-based criteria appropriate to general location, and which have been published since the adoption of the Meath County Development Plan 2013-2019. These include:

- Project Ireland: National Planning Framework 2040 (NPF)
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guidelines 2020)

Project Ireland: National Planning Framework 2040

3.4 The NPF seeks to increase densities and building heights in appropriate urban locations to consolidate combat sprawl, increase the sustainability and viability of public transport networks and meet the housing needs of our growing population.

3.5 The NPF plans for growth of 490,000 to 500,000 people in the Eastern and Midlands region.

3.6 The NPF, under National Policy Objective 9, recognises that there is potential in each Regional Assembly Area for significant growth in some settlements (i.e. 30% or more above 2016 population levels), subject to criteria including the provision of adequate infrastructure and amenities to support such growth, and concurrent employment provision.

3.7 The NPF identifies Drogheda as a regional centre and recognises its strategic location on the Dublin-Belfast economic corridor and the cross border network of Drogheda-Dundalk-Newry.

- 3.8 The proposed development also accords with and supports the delivery of several key objectives of the NPF, including the following:

“National Policy Objective 2b: The regional roles of Athlone in the Midlands, Sligo and Letterkenny in the North-West and the Letterkenny-Derry and Drogheda-Dundalk-Newry cross-border networks will be identified and supported in the relevant Regional Spatial and Economic Strategy.”

National Policy Objective 2c: Accessibility from the north-west of Ireland and between centres of scale separate from Dublin will be significantly improved, focused on cities and larger regionally distributed centres and on key east-west and north-south routes”.

“National Policy Objective 7: Strengthening Ireland’s overall urban structure, particularly in Northern and Western and Midland Regions, to include the regional centres of Sligo and Letterkenny in the North-West, Athlone in the Midlands and cross border networks focussed on the Letterkenny-Derry North-West Gateway Initiative and Drogheda-Dundalk-Newry on the Dublin-Belfast corridor”.

National Policy Objective 11: states that ‘in meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth’.

“National Policy Objective 13: In 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.”

National Policy Objective 33 seeks to ‘Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location’.

- 3.9 In summary, the NPF supports the provision for planned growth at locations which are equipped to sustain such development. The NPF favours compact development within urban areas and the proposed development constitutes an efficient use of lands which are zoned for residential development at Drogheda, a town which accommodates strong physical and social infrastructure to support growth and is designated a regional growth centre.
- 3.10 In relation to parking provision, the supporting text to National Policy Objective 33 states that *‘In particular, general restrictions on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance-based criteria appropriate to general location, e.g. city/town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc.’*
- 3.11 It continues that *‘A more dynamic performance-based approach appropriate to urban location type will also enable the level of public transport service to improve as more development occurs and vice-versa.’*

- 3.12 It is clear from the NPF there is a move towards a more dynamic approach in relation to car parking provision, particularly in urban areas. The proposed development implements the policies and objectives of the NPF and the proposed parking provision is considered reflective of the site's urban location.

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

- 3.13 The Design Standards for New Apartments, Guidelines for Planning Authorities (Apartment Guideline 2020) build upon the provisions of the NPF and are Ministerial guidelines issued under s.28 of the Planning and Development Act 2000.

- 3.14 Full details on consistency with the Apartment Guidelines 2020 are set out in the Planning Report / Statement of Consistency and the OMP HQA submitted with the application. However, having regard to the above and proposed parking provision, the following is directly relevant:

'4.18 The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.'

- 3.15 And;

'Intermediate Urban Locations:

4.21 In suburban/urban locations served by public transport or close to town centres or employment areas and particularly for housing schemes with more than 45 dwellings per hectare net (18 per acre), planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum car parking standard.'

- 3.16 Given the location of the proposed development in a mixed use neighbourhood centre setting, adjacent to employment uses, and based on the density of the development which is well in excess of 45 units per hectare, it is considered that the proposed development is appropriate to accommodate reduced parking requirements. Therefore, a total of 181 car parking spaces are provided (a ratio of c. 0.9 spaces per unit). This is a reduction in car parking provision when compared to the scheme as submitted for pre-application consultation. The reduction has regard to the comments of the Board in relation to car parking, and further detailed analysis undertaken by DBFL Consulting Engineers in the context of the existing car parking provision in the adjacent Southgate Centre. We refer to the Parking Strategy prepared by DBFL for a full justification.
- 3.17 As demonstrated above, the application documentation has demonstrated that the proposed parking is consistent with the Apartment Guidelines 2020 and are appropriate for the subject site / location.
- 3.18 Having regard to the above, it is respectfully submitted that permission for the proposed development should be granted having regard to national policy and guidelines under section 28.

Part (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.

- 3.19 The pattern of development in the area of the subject site is a key consideration in the rationale for the current Strategic Housing Development proposal. In particular, the pattern of development in the immediately adjoining Southgate Shopping Centre is of relevance to the current development proposal.
- 3.20 As set out in Section 2 above, we refer to the Parking Strategy prepared by DBFL provides a detailed justification for the proposed parking provision, in the context of the Apartment Guidelines 2020 (as discussed above), and also provides an assessment of the parking provision within the Southgate Shopping Centre.
- 3.21 Within the shopping centre complex, there are approximately 64 apartment units which have designated car parking areas. Residential parking surveys were undertaken in July 2019, with a total of 78 no. car parking spaces available for residents, split into two parking areas. This equates to a parking allocation ratio of c. 1.2 spaces per unit. The survey identified that at the highest occupancy level in the evening at 9pm (which is assumed would represent the maximum occupancy), the occupancy level reached 60%, with 31 no. parking spaces vacant. Applying the occupancy rates to the number of available units, this results in a car parking demand of c. 0.7 parking spaces per apartment unit.
- 3.22 The Parking Strategy also reviews the 2016 CSO Small Areas Map (SAPMAP) for the area to determine the main commuting trend within the Southgate complex. This demonstrated that 51% of residents use their vehicles to drive to work, with 37% using other modes of travel such as walking, public transport and car passenger. The remaining percentage either work from home or are not staged. This correlates with the residential parking survey, with c. 40% (31 no. car parking spaces) not utilised by residents.
- 3.23 This demonstrates that the proposed car parking ration of 0.9 spaces per unit is considered appropriate having regard to the pattern of car use within the existing Southgate complex.
- 3.24 The Parking Strategy also provides analysis demonstrating that the public parking spaces contained within the Southgate Shopping Centre provide additional parking spaces that the proposed development could avail of for visitor parking. Car parking surveys for the public car park areas 1 and 2 were undertaken in June 2019.
- 3.25 In public parking area 1, there are 89 spaces in total, however, at the time of the survey a number of spaces were block off, therefore only 79 spaces were surveyed. The survey demonstrated that there was a high steady occupancy throughout the day for parking area 1, peaking at 3pm with 69 vehicles.
- 3.26 In public parking area 2, there are 370 spaces available, and the results of the survey demonstrate that the level of occupancy within this area is low to medium, with a typical spare capacity of 157 no. spaces available throughout the day. It is noted that a total of 11 parking spaces are being removed from the Public Parking Area 2 as part of the proposed development, therefore reducing the typical space capacity to 146 no. spaces. Therefore, it is envisaged that visitor car parking for the proposed development can be accommodated within the Public Parking Area 2 due to the adequate spare capacity and the proximity of the Southgate shopping centre to the subject site.

- 3.27 Overall, the Parking Strategy demonstrates the proposed car parking ratio of 0.9 spaces per unit (181 car parking spaces) is considered justified having regard to the pattern of the adjoining Southgate Shopping Centre, where the existing apartments have a typical parking demand of 0.7 car parking spaces per unit. This also reflects the commuting patterns as identified in the 2016 Census SAPMAP. These existing apartments benefit from the same public transport accessibility levels and general demographics, and therefore provide a reasonable representation of the likely parking demand within the proposed development. Furthermore, visitors to the proposed development will also be able to avail of the surplus car parking spaces available within the Southgate Shopping Centre.
- 3.28 On the basis of the detailed parking analysis of the adjoining Southgate complex (as set out in the Parking Strategy), it is respectfully submitted that the proposed development is wholly appropriate.

4.0 CONCLUSION

- 4.1 In conclusion, it is considered that the proposed car parking is justified and would not materially contravene the local policy having regard to the existing parking availability within the Southgate Shopping Centre, and in the context of the Apartment Guidelines.
- 4.2 However, in the event that An Bord Pleanála concludes that the proposed development would represent a material contravention of the Meath County Development Plan 2013-2019, an appropriate justification is set out within this statement demonstrating that the proposed development should be considered, having regard to the consistency of the proposed development with national planning policy, the zoning objective of the subject site and the site's location contiguous to the built up area of Drogheda, which is identified as a major node for planned growth, and proximate to public transport. The material contravention identified is not one in relation to the zoning of the land but rather in relation to the proposed level of parking and therefore is permissible under s.9 of the 2016 Act.⁴
- 4.3 It is considered that there is ample justification for An Bord Pleanála to permit a material contravention (if considered such) of the Development Plan having regard to the policies outlined in the NFP, and other Ministerial and Government policies, and having regard to Section 37(2)(b) (iii), and (iv) of the Planning and Development Act, 2000 (as amended).
- 4.4 It is requested that An Bord Pleanála has regard to the justification set out within this statement for a potential material contravention of the Meath County Development Plan and permit the proposed development, notwithstanding the potential that the proposal is a material contravention of the Development Plan.
- 1.9 It is further submitted that the Board carefully consider the criteria under section 37(2)(b)(iii), and (iv) and the justification provided herein as part of any decision granting permission for the proposed development and expressly identify in its decision the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be, as required by s.10(3)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016. The Board should also clearly identify which criterion or criteria in s.37(2)(b) of the Planning and Development Act 2000 that that it thinks applies (having regard to this Statement of Material Contravention),
- 4.5

⁴ See the judgment in *Highlands Residents Association v An Bord Pleanála* [2020] IEHC 622.