

**Statement of Material Contravention of the
Kildare Town Local Area Plan 2012-2018**

In respect of

**Proposed Residential and Neighbourhood Centre
Development at Former Magee Barracks Site,
Hospital Street (R445), Kildare Town, Co Kildare**

Prepared by

John Spain Associates

On behalf of

Ballymount Properties Limited

26th July 2019



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

1.0 INTRODUCTION

- 1.1 On behalf of the applicant, Ballymount Properties Limited, we hereby submit this Material Contravention Statement to accompany this application for a proposed SHD at the Former Magee Barracks Site, Hospital Street (R445), Kildare Town, Co Kildare. This statement provides a justification for a potential material contravention of the Kildare Town Local Area Plan 2012-2018 in relation to the specified quantum of residential units that may be potentially accommodated within the Magee Barracks site.
- 1.2 The proposed development which is the subject of this planning application proposes 375 no. units on the subject site providing a net residential density of 39.42 units per hectare.
- 1.3 We note that the Kildare County Council Pre-Application Opinion states *inter alia* that, having regard to the number of dwelling units on the site in the absence of significant other land uses on the regeneration site, that '*the proposed development would materially contravene the provisions of the Kildare Town Local Area Plan 2012-2018 for failure to adhere to the provisions set out for the regeneration of a strategic site*'.
- 1.4 While it can be argued that the proposed development is not a material contravention of the Kildare Town Local Area Plan 2012-2018, (having regard to relevant Section 28 Guidelines including the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) and the assessment of the Board on the previous SHD on the subject site which concluded that the proposal was not a material contravention of local policy and was in accordance with the provisions of the National Planning Framework with regards to the sustainable development of such regeneration sites), it is a matter for An Bord Pleanála to determine if the proposed development (providing 375 no. residential units) is a material contravention of the Local Area Plan.
- 1.5 The issues raised by the Planning Authority are addressed in detail within the Statement of Response documentation and the Statement of Consistency submitted herewith. Following a thorough assessment of the local planning policy context, comprising the County Development Plan and the Kildare Town LAP, it has been ascertained that the only identified potential material contravention of local planning policy associated with the development is the number of units proposed on the former Magee Barracks site.
- 1.6 It is respectfully requested therefore that An Bord Pleanála have regard to the following justification for a potential material contravention of the Kildare Town Local Area Plan 2012-2018 (as it relates to the specified unit quantum for Magee Barracks), having regard to the fact that the proposed development is by definition 'of strategic importance', and having regard to the compliance of the proposed development with national planning policy and section 28 Guidelines as outlined herein, including the National Planning Framework (hereinafter referred to as the NPF) – Ireland 2040 and the Urban Development and Building Heights Guidelines 2018, which fully support and reinforce the need for urban infill residential development at appropriate densities on sites in close proximity to public transport and within existing urban areas.
- 1.7 We note that the decision of the Board to refuse planning permission for the previous SHD on the subject site, partly due to concern that the residential density was not sufficiently high to provide for an acceptable level of efficiency in the use of serviced lands. The design team have also noted the Board's recommendation in their pre-application opinion for further consideration of the documentation relating to the residential density of the proposed development. The site area for the calculation of

the net residential density has been revised having regard to the requirements outlined by ABP and in accordance with Appendix A of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.

Legislative Context

- 1.8 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'.

- 1.9 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'.

- 1.10 It is submitted that recent national planning policy, as set out in the Statement of Consistency / Planning Report, provides for increased residential densities and unit quantum on appropriately zoned and serviced lands adjacent to town centres and high quality public transport. It is therefore considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development notwithstanding the potential material contravention of the Local Area Plan, as set out herein.

2.0 KILDARE TOWN LOCAL AREA PLAN 2012-2018

2.1 The subject site is zoned 'Z - Regeneration of Magee Barracks' in the Kildare Town Local Area Plan 2012-2018, The aim of this Zoning Objective is listed as follows in the LAP:

'To facilitate a wide range of uses to allow for the flexibility in the regeneration of the former Magee Barracks site in a sustainable manner. This zoning allows for the development of the site for a mix of employment, educational, community and residential uses in accordance with the design brief set out in section 7.6 of this plan'.

2.2 The LAP provides a table of estimated unit numbers to be accommodated on the Magee lands in accordance with the indicative framework plan provided in the LAP. This table indicates a total of 161 residential units on the lands.

2.3 The indicative recommendation of 161 no. residential units on the Magee Lands is qualified / clarified by the following paragraph of the LAP:

*'The table below estimates the potential numbers of residential units that may be accommodated within the proposed design brief. **The actual final numbers of residential units will only be determined following detailed design and planning considerations for the development of each phase**' (emphasis added).*

2.4 The LAP also states, '*the indicative framework plan is provided for illustration purposes only, demonstrating how the site organisation can be used to create a new street pattern, sympathetic to the pattern of the historic core using a mix of building uses and types to create a vibrant new area*'.

2.5 The proposed development includes 375 no. units on the subject site providing a variety of unit types and sizes including apartments.

2.6 The proposed layout design includes the formal arrangement of the open spaces and surrounding buildings, which pay homage to the building footprints and formal spaces which formed the Magee Barracks layout, as discussed in RKDs Sense of Place/Site Heritage document.

2.7 The Statement of Consistency submitted herewith sets out in detail how the proposed development complies with the Kildare County Development Plan (which came into force in 2017). The LAP for Kildare town has not been updated to be consistent with the current development plan.

3.0 JUSTIFICATION FOR MATERIAL CONTRAVENTION

3.1 In the event that the Board considers that the proposed development constitutes a material contravention of the LAP by virtue of the number of units proposed on the subject site, a justification for such a material contravention is set out below, under the relevant parts of section 37(2)(b) of the 2000 Act.

Part (i) - Proposed Development is of Strategic or National Importance

3.2 The proposed development comprises of inter alia the provision of 375 residential units, a neighbourhood centre, and a childcare facility on a site of c. 11.35 hectares. The proposed development requires mandatory preparation of an EIAR, which is submitted along with this application.

- 3.3 The proposed development falls within the definition of a Strategic Housing Development in accordance with the definition of same provided under section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. On this basis it is submitted that the proposed development is, by definition, strategic in nature and of strategic importance.
- 3.4 The long title of the Planning and Development (Housing) and Residential Tenancies Act 2016 is as follows:
- “An Act to facilitate the implementation of the document entitled “Rebuilding Ireland - Action Plan for Housing and Homelessness” that was published by the Government on 19 July 2016, and for that and other purposes to amend the Planning and Development Acts 2000 to 2015, the Residential Tenancies Acts 2004 to 2015 and the Housing Finance Agency Act 1981, to amend the Local Government Act 1998 in relation to the Local Government Fund and to provide for connected matters.”***
- 3.5 The Rebuilding Ireland Action Plan, and consequently the 2016 Act, recognise the strategic importance of larger residential developments (including developments of over 100 residential units) in addressing the ongoing housing and homelessness crisis, in an effort to increase housing supply.
- 3.6 In relation to the arrangements to be put in place for Strategic Housing Developments, the Rebuilding Ireland Action Plan states:
- “Such arrangements would draw on procedures already in place in respect of strategic infrastructure development projects under the Planning and Development (Strategic Infrastructure) Act 2006 and should speed up the planning decision-making process in respect of such developments, while also providing greater certainty for developers in terms of timeframes within which such developments can be determined in the planning system.”***
- 3.7 Due to the strategic importance of larger housing developments designated as SHDs, the Government moved to introduce legislation under the 2016 Act, which would see such developments assessed in a similar manner to Strategic Infrastructure Developments.
- 3.8 Having regard to this legislative and policy context, it is considered that the proposed significant Strategic Housing Development at the Former Magee Barracks is, by definition, of strategic importance for the purposes of section 37(2)(b) of the 2000 Act.
- 3.9 Furthermore, it is considered that the location and nature of the subject site, as the largest available primarily brownfield site in Kildare town, which is recognised as a ‘strategic brownfield site’ within the Kildare Town LAP (for example page 25 refers). It is submitted that, on this basis, the redevelopment of this site which is expressly recognised as a ‘strategic site’ is of strategic importance for the purposes of section 37(2)(b) of the 2000 Act.

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

- 3.10 The proposed development comprises *inter alia* the delivery of 375 no. residential units on the former Magee Barracks site. A previous SHD application (under Reg. Ref.: ABP-301371-18) on the subject site, providing for *inter alia* 264 no. residential units, was subject to a decision to refuse permission by the Board. The Board's second reason for refusal expressly stated that the development did not provide for an "*acceptable level of efficiency in the use of serviced lands*" having regard to the location of the site in close proximity to the town centre and to public transport, and its proximity to social and educational facilities. On this basis, the Board found that the previous proposal would be contrary to the section 28 Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.
- 3.11 Having regard to this previous reason for refusal, the Board have clearly established a precedent that the development of a number of residential units on the subject site which would not contravene the quantum indicated within the LAP (which provides an indicative number of 162 no. units), would not be in accordance with the provisions of national planning policy. The current SHD proposal seeks to address the previous reasons for refusal on the subject site, with an increased level of residential density, improved unit mix, and carefully considered design.
- 3.12 The following section shall demonstrate how the proposed height is justified in the context of recent National Planning Policy and Section 28 Government Guidelines, which seek to increase residential densities on zoned services lands adjacent to public transport corridors. These include:
- Project Ireland: National Planning Framework 2040;
 - Urban Development and Building Heights, Guidelines for Planning Authorities (2018);
 - Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009).

Project Ireland: National Planning Framework 2040

- 3.13 The NPF seeks to increase densities and building heights in appropriate urban locations to consolidate urban sprawl, increase the sustainability of public transport networks and meet the housing needs of our growing population.
- 3.14 In relation to residential development the plan states;
- 'A major new policy emphasis on renewing and developing existing settlements will be required, rather than continual expansion and sprawl of cities and towns out into the countryside, at the expense of town centres and smaller villages. The target is for at least 40% of all new housing to be delivered within the existing built up areas of cities, towns and villages on infill and/or brownfield sites'*** (emphasis added).
- 3.15 National Policy Objective 3a formalises the above as it seeks to '*Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements*'. National Policy Objective 3c seeks to: '*Deliver at least 30% of all new homes that are*

targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints’.

- 3.16 National Policy Objective 6 states that: *‘Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area’.*
- 3.17 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’* (emphasis added).
- 3.18 The proposed development will deliver a good housing mix including apartments within the built-up footprint of Kildare Town and will regenerate an unused and inaccessible brownfield site to provide employment, retail and neighbourhood facilities and high quality public open space, in compliance with NPF objectives 3a, 3c, 6 and 11 listed above.
- 3.19 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’.*
- 3.20 National Policy Objective 35 seeks 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’.*
- 3.21 The revised proposal provides a higher density and an increased quantum of duplexes/apartments close to the centre of Kildare Town and its social, retail and community facilities. The proposed residential density now stands at 39.42 units per hectare (providing 375 no. units on the subject site, an increase of 77 no. units on the pre-application proposals of 298 no. units), on lands zoned for regeneration, in compliance with NPF objectives 33 and 35 listed above.
- 3.22 It is considered therefore that the LAP indicative proposal of 161 units on the subject site would not provide for an acceptable efficiency in serviceable land usage on a site close to the town centre of Kildare and its services and facilities, including public transport facilities, and would therefore be contrary to the objectives set out in the NPF.
- 3.23 In summary the NPF shows broad policy support for development as proposed in an existing settlement area which avoids further sprawl and ensures efficient use of zoned land.

Urban Development and Building Heights Guidelines for Planning Authorities 2018

- 3.24 The Urban Development and Building Height Guidelines 2018 are intended to set out national planning policy guidelines on building heights in urban areas in response to specific policy objectives set out in the National Planning Framework and Project Ireland 2040. Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála will be required to have regard

to the guidelines and apply any specific planning policy requirements (SPPR's) of the guidelines in carrying out their function.

- 3.25 The Guidelines emphasise the policies of the NPF to greatly increase levels of residential development in urban centres and to increase building heights and overall density, and to ensure that the transition towards increased heights and densities are not only facilitated but actively sought out and brought forward by the planning process and particularly at Local Authority level and An Bord Pleanála level.
- 3.26 The Guidelines state that *'the preparation of development plans, local areas plans, and Strategic Development Zone Planning Schemes and their implementation in the city, metropolitan and wider urban areas must therefore become more proactive and **more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**'* (emphasis added).
- 3.27 The Guidelines also state that *'the preparation of development plans, local area plans and Strategic Development Zone (SDZ) Planning Schemes and their implementation in city, metropolitan and wider urban areas **must therefore become more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights**, while also being mindful of the quality of development and balancing amenity and environmental considerations'* (emphasis added).
- 3.28 The guidelines state that *'implementation of the National Planning Framework requires **increased density, scale and height of development in our town and city cores, including an appropriate mix of both the living, working, social and recreational space we need in our urban areas**'*,

and;

*'to meet the needs of a growing population without growing out urban areas outwards requires more focus in planning policy and implementation term on **reusing previously developed "brownfield" land, building up urban infill sites** (which may not have been built on before) and either reusing or redeveloping existing sites and buildings that may not be in the optimal usage or format taking into account contemporary and future requirements'*.

- 3.29 The proposed development is located within 500 metres of the centre of Kildare Town, and within easy walking distance of Kildare Train Station, with regular services to Heuston Station in Dublin, Galway City, Cork City and Limerick City. A Bus Eireann stop is located adjacent to the site on Hospital Road (R445) opposite to the existing service station thereon. Services from this stop operate to Dublin City, University College Dublin, Naas and Monestarevin. The proposed development therefore represents an opportunity to provide for increased densities and a range of heights in accordance with national planning policy.
- 3.30 The proposal provides an increased density of 39.42 units per hectare and a compact urban form on a disused brownfield site in Kildare Town proximate to public transport. The site is well placed to absorb a high density development which is appropriately scaled and designed in the context of its urban surroundings, at a highly accessible location surrounded by schools, parks and community services. As stated previously the unit quantum and design framework set out for Magee Barracks in the Kildare Town Local Area Plan 2012-2018 is considered to be conservative and an inefficient use of zoned land and is considered not to be in compliance with the objectives of the Urban Development and Building Height Guidelines 2018.

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

- 3.31 The Guidelines reinforce the need to adopt a sequential approach to the development of land and note in Section 2.3 and *'the sequential approach as set out in the Departments Development Plan Guidelines (DoEHLG, 2007) specifies that zoning shall extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference, encouraging infill opportunities...'*
- 3.32 Having regard to the above, the subject site is zoned 'Z – Regeneration of Magee Barracks' within the Kildare Town Local Area Plan 2012 – 2018 with the objective to *'facilitate a wide range of uses to allow for the flexibility in the regeneration of the former Magee Barracks site in a sustainable manner'*. The subject undeveloped brownfield site is considered to be sequentially very suitable for residential development given its location in relation to the town centre and train station. The proposed development is therefore making efficient use of zoned lands, providing for high density residential development in an existing urban area well served by existing public transport and local services. The proposed development is therefore compliant with the guidelines in terms of the sequential development approach.
- 3.33 Chapter 5 of the Guidelines set out guidance in respect to density. The subject site could be classified as 'brownfield' or 'inner suburban / infill'. For brownfield sites the guidelines state that: *'the opportunity for their re-development to higher densities, subject to the safeguards expressed above or in accordance with local area plans, should be promoted'*.
- 3.34 For inner suburban/ infill the guidelines recommend that: *'the local area plan should set out the planning authority's views with regard to the range of densities acceptable within the area'*.
- 3.35 The Guidelines note that densities may be informed by local area plans. It is noted that the Kildare Local Area Plan does not specify a density range for Magee Barracks.
- 3.36 We note the decision of the Board to refuse planning permission for the previous SHD on the subject site, partly due to concern that the residential density was not sufficiently high to provide for an acceptable level of efficiency in the use of serviced lands. The design team have also noted the Board's recommendation in their pre-application opinion for further consideration of the documentation relating to the residential density of the proposed development. The site area for the calculation of the net residential density has been revised having regard to the requirements outlined by ABP and in accordance with Appendix A of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas.
- 3.37 The proposed residential density now stands at 39.42 units per hectare providing 375 no. units on the subject site, an increase of 77 no. units on the pre-application proposals of 298 no. units. The proposed density is considered appropriate having regard to the requirements of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas as they refer to brownfield and inner suburban sites.

4.0 CONCLUSION

- 4.1 It is respectfully submitted that should An Bord Pleanála consider the proposed development a material contravention of the Kildare Town LAP, 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 within an existing serviced urban area proximate to public transport.
- 4.2 The revised proposal provides for a high density residential development proximate to the centre of Kildare Town and its social, retail and community facilities. The proposed residential density now stands at 39.42 units per hectare (providing 375 no. units on the subject site, an increase of 77 no. units on the pre-application proposals of 298 no. units), on lands zoned for regeneration, in compliance with national planning policy.
- 4.3 It is considered that the LAP indicative proposal of 161 units on the subject site would not provide for an acceptable efficiency in serviceable land usage on a site close to the town centre of Kildare and its services and facilities, including public transport facilities, and would therefore be contrary to the objectives set out in the NPF and other national planning policy discussed herein.
- 4.4 It is considered that there is ample justification for An Bord Pleanála to permit a material contravention (if considered such) of the Local Area Plan having regard to the policies outlined in the NFP, the Urban Development and Building Heights and the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009), and having regard to Section 37(2)(b)(i) and (iii) of the Planning and Development Act, 2000 (as amended).
- 4.5 It is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement for a potential material contravention of the Kildare Town LAP and permit the proposed development, notwithstanding the potential that the proposal is a material contravention of the Kildare Town Local Area Plan 2012-2018, as it relates to the specified unit quantum for Magee Barracks.