

## **MATERIAL CONTRAVENTION STATEMENT**

**FOR A**

**BUILD TO RENT (BTR) RESIDENTIAL DEVELOPMENT AT 'SITE  
TO THE SOUTH OF ABINGDON, SHANGANAGH ROAD,  
DUBLIN 18.**

**PREPARED BY**



**ON BEHALF OF**

**ES Shan Limited**

**April 2020**

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## 1. INTRODUCTION

ES Shan Limited intend to apply to An Bord Pleanála for a Strategic Housing Development (SHD) at **“Site to the south of Abingdon”, Shanganagh Road, Dublin 18.**

The development is for a Strategic Housing Development which will comprise 193 Build to Rent apartments with residential amenities area, car/bicycle/motorcycle parking, open spaces, and all associated works. The development will be arranged in 4 blocks ranging in height from 5 to 8 storeys.

This report seeks to address the issue of potential material contravention in relation to Building Height, as required under SHD legislation, and outlines the justification for permitting the proposed height.

## 2. DLR BUILDING HEIGHTS POLICY

Policy UD6 of the DLRCC County Development Plan 2016-22 states that the recommendations and guidance set out within the Building Height Strategy for the County (Appendix 9 of the Development Plan) will be adhered to. The building Height Strategy includes both “*upward modifiers*” and “*downward modifiers*” which should be complied with to allow building heights increases within any proposed development.

Whilst the county is generally low-rise (2-3 storeys) the Strategy acknowledges that there are areas where greater height has been achieved. With regard to apartment developments, the strategy notes that a maximum of 3-4 storeys may be permitted in appropriate locations e.g. on large development sites or adjacent to key public transport nodes – providing they have no detrimental effect on existing character and residential amenity. The Strategy distinguishes between:

- (1) smaller infill sites within the established fabric of the built-up urban or suburban area; and
- (2) larger greenfield or brownfield sites, including Stepside, Carrickmines, Dundrum, Cherrywood, and Sandyford.

Road/public transport corridors are acknowledged in Section 3.3 of the Guidelines as one of the typical locations which have seen a greater intensity and scale of development. This would include locations proximate to DART stations such as Shankill Dart Station which the application site is located close.

The Strategy states that for new developments in suburban areas not currently designated by an LAP, SDZ or similar non-statutory plan, then the maximum height range is 3 - 4 storey at prominent corner sites, on large redevelopment sites or adjacent to key public transport nodes, providing they have no detrimental effect on existing character and residential amenity.

The Strategy also acknowledges that minor modification upwards in height (i.e. 1-2 storeys) may be considered in suitable locations on a case by case basis having regard to context, topography, urban design, character, planning gain, accessibility to public transport, site size, etc.

The proposed general height of the scheme at 5-8 storeys, would, in the main, be in excess of County Building Height Limit of 3-6 storeys (allowing for the additional “upward modifier”).

It is also noted that the Strategy goes on to state that *“this maximum height (3-4 storeys) for certain developments clearly cannot apply in every circumstance. There will be situations where a minor modification up or down in height could be considered. The factors that may allow for this are known as ‘Upward or Downward Modifiers’. There will be occasions where the criteria for Upward and Downward Modifiers overlap and could be contradictory, for instance: when in close proximity to both a DART station yet within the Coastal Fringe”*.

The strategy states, in section 4.8.2 of the Building Height Strategy, that much of the County’s *“outstanding architectural heritage is located along the coast. In particular, the high quality building stock in Booterstown, Blackrock, Monkstown, Dún Laoghaire, Dalkey and Killiney has created a unique waterfront of high architectural and historical value. Views from the Irish Sea and East Pier capture the remarkable coastline with its historic seafront developments.*

*In order to retain and protect this outstanding coastline and its distinct skyline, this Building Height Strategy sets a 500m ‘Coastal Fringe Zone’ following the coastline. Where development is proposed within this zone which would exceed the height of its immediate surroundings, an urban design study and impact assessment study may be required to demonstrate that the scheme will not harm and will protect the particular character of the coastline including, where appropriate, views from the sea/pier.”*

Despite the upward modifiers, given the heights of some of the apartment blocks which are up to 7 and 8 storeys, and the location of the site (just) outside the Coastal Fringe, the proposed development materially contravenes the above objective of the Building Heights Strategy in relation to the proposed height in the Coastal Fringe area.

MOLA’S Architectural Design Statement describes the design development of the scheme in terms of massing and design, and the intention of the development in relation to height. The intention of this development is not to create a landmark development, and the use of height is to provide visual interest, as markers of the central space within the development and also provide a small visual marker externally whilst still achieving a sustainable, and appropriate density, for this highly connected site.

### **3. MATERIAL CONTRAVENTION**

Should the Board consider this to represent a Material Contravention of the Development Plan we submit that the Board can grant permission under Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act 2016*, which states:

*“(a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or 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.”*

Section 37(2)(b) of the 2000 Act states:

*“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.”*

In this regard we submit the following under Section 5(6) of the 2016 Act:

- **Section 37(2)(b)(i) of the 2000 Act:** The proposed development is a “Strategic Housing Development”, as defined under Section 3 of the 2016 Act.
- **Section 37(2)(b)(iii) of the 2000 Act:** The Board is referred to the Section 28 Ministerial Guidelines - *Urban Development & Building Heights: Guidelines for Planning Authorities (2018)*.

Under Section 28 (1C) of the Planning and Development Act 2000 (as amended), Planning Authorities and An Bord Pleanála are **required to have regard to the guidelines and apply any specific planning policy requirements (SPPR’s) of the guidelines in carrying out their function. SPPRs, as stated in the Guidelines, take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes.**

The Guidelines emphasise the policies of the NPF to **increase levels of residential development in urban centres and increase building heights and overall density** by both facilitating and encouraging the development of increased heights and densities by Local Authorities and An Bord Pleanála. The site is a strategically located underutilised greenfield site in the centre of Shankhill with excellent connections to the Shankhill DART, buses, the M11 and M50. The proposal will create an attractive, liveable, well designed development using high quality architecture, materials and finishes, and excellent communal facilities and open spaces which will integrate with the existing and future residential communities.

We note the following compliances with the Specific Planning Policy Requirements (SPPRs) of the Urban Development and Building Heights Guidelines:

<p><b>SPPR 1</b> <i>Support increased building height and density in locations with good public transport accessibility to secure the objectives of the NPF and RSES and shall not provide for blanket numerical limitations on building height.</i></p>	<p>The site is well connected with public transport services. Dublin bus routes 7b, 45a, and 45b serves the site along Shanganagh Road (less than 200m to the west). The site is c.500m from Shankill Dart station to the south. The DLRCC Development Plan states that sites with "exceptional public transport accessibility are defined as areas within a 500m walkband on either side of the Luas corridor, a 500m walkband around the DART stations, a 500m walkband on either side of the N11 and 100m walkband on either side of the QBC."</p>
<p><b>Development Management Criteria Section 3.2:</b> <b>At the scale of relevant city/town:</b> <i>-The site is well served by public transport with high capacity, frequent service, and good links to other modes of public transport.</i></p>	
<p><b>At the scale of district/ neighbourhood/ street;</b> <i>- The proposal responds to its overall natural and built environment and makes a positive contribution.</i> <i>- The proposal is not monolithic and avoids long, uninterrupted walls of building.</i> <i>- The proposal enhances the urban design context for public spaces and key thoroughfares.</i> <i>- The proposal positively contributes to the mix of uses and/ or building/ dwelling typologies.</i></p>	<p>The surrounding area has a mixed character with predominantly 2 storey semi-detached and terraced residential developments to the east and south, while to north and east there are one off detached houses. There is no single unified character to the entire area as a whole.</p> <p>The apartment development will significantly improve the mix of residential types in the area. The provision of Build to Rent apartments in this location will provide a broader, more sustainable balance of residential tenure across the Shankill community.</p> <p>It is considered that the division of the proposal into 4 blocks, along with the variation in heights including the two focal 7 and 8 storey buildings in the centre of the site will ensure that this proposed development will make a positive architectural contribution to the character of the area and one which this large bespoke site can accommodate.</p> <p>The two buildings located on either side of the proposed open space create a welcoming, legible marker drawing people into and enclosing the new open spaces which will be created as part of the development. This is further enhanced by the provision of a pavilion in this area. These additional public facilities will provide more community facilities for the area.</p> <p>The provision of higher buildings (5-8 storeys) within the centre of the building results in the provision of more open space at the boundaries and ensure the retention of the existing trees enabling the creation of a woodland walk around the site. This would not be achievable if the proposed development were lower in height and built up to the boundaries of the site. The treelined boundary</p>

and woodland physically separates the proposed buildings from the lower buildings outside the site creating a visual break and definition to the two areas. Furthermore, the landscape design by NMP will further integrate with and provide continuity to the existing sylvan setting of the site, while also opening up the site, for the first time, to the wider public to enjoy.

The proposal is largely a car free development which results in significant public spaces dedicated to pedestrians/cyclists.

The focal buildings will provide an important urban design role, marking the centre of the scheme. It will act as an urban signpost, enabling orientation and wayfinding and will contribute to a renewed local identity and character for the area.

The apartments also provide passive surveillance to the new open spaces and woodland walk, while the introduction of new pedestrian links open the site to the wider community. The proposed development, including the centralised building height of 7 and 8 storeys, will create a sense of place and will enhance the experience of visitors and residents.

It is also worth noting that this site is not a very prominent site, given the treelined boundary around the site. This allows for just glimpses of the development through the trees, and peaking above the treeline, enabling it to integrate appropriately within its surroundings. This is demonstrated by the Verified Views by Urban 3D.

It is noted that view 8 of the Verified Views by Urban 3D demonstrates the impact that the development will have when viewed from within the coastal fringe. The development can be seen extending slightly above the trees, with a foreground setting of suburban housing. This modern intervention is considered to have minimal impact when viewed from the wider area and will not impact negatively on the coastal fringe.

The impact in terms of overshadowing or loss of light to the existing neighbours would be little or no additional impact on the surroundings due to location of the buildings away from the boundaries, within the site. This is demonstrated by the Sunlight and Daylight Report by ARC.

<p><b>At the scale of the site/building:</b> - Maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.</p>	<p>ARC engineering have assessed this proposal with regard to the impact of Sunlight and Daylight on the existing surrounding residences and have confirmed that all of the existing residences will meet the BER Criteria in terms of access to Daylight and Sunlight.</p> <p>IN2 Engineering have assessed this proposal in terms of Daylight and Sunlight within each apartment, on every floor. They have confirmed that all of the apartments will have access to adequate levels of natural daylight and sunlight.</p> <p>All of the open spaces have sufficient access to light and there are no buildings immediately surrounding the site which will be impacted excessively or detrimentally in terms of loss of light or overshadowing.</p> <p>All of the apartments have openable windows and access to private open space.</p>
<p><b>Specific Assessments:</b> -Specific impact assessment of the micro-climatic effects such measures to avoid/mitigate such micro-climatic effects and, where appropriate, shall include an assessment of the cumulative micro-climatic effects where taller buildings are clustered. -Development locations in proximity to sensitive bird/bat areas need to consider the potential interaction of the building location, materials, and artificial lighting. -Relevant environmental assessment requirements.</p>	<p>An Appropriate Assessment, Natura Impact Statement, an Ecological Impact Assessment have been completed for this site by Scott Cawley.</p> <p>The assessment, presented in the NIS, of the potential for the proposed development to impact upon the Dalkey Islands SPA, Rockabill to Dalkey SAC and all other European sites concluded that, with the implementation of the mitigation measures proposed, the proposed development does not pose a risk of adversely affecting (either directly or indirectly) the integrity of Dalkey Islands SPA, Rockabill to Dalkey SAC and all other European sites, either alone or in combination with any other plans or projects.</p> <p>The proposed development has the potential to impact on nature conservation outside of the proposed development site and will result in habitat loss within the proposed development boundary if there are no mitigation measures in place. However, the reports include a comprehensive suite of mitigation measures and stringent environmental control measures that have been incorporated into the design of the proposed development which will enable the retention of the hedgerows and treelines around the periphery of the proposed development site which will ensure that the biodiversity value of the habitats to be retained as part of the proposed development are maximised.</p> <p>All of the mitigation measures will be implemented in full and are best practice, tried and tested, and effective</p>

	<p>control measures to protect biodiversity and the receiving environment.</p> <p>The conclusion is that through the implementation of the mitigation measures to avoid or minimise the effects of the proposed development on the receiving ecological environment, no significant residual ecological effects are predicted.</p> <p>The proposed development, while taller than the surrounding buildings, and those permitted under the Development Plan are not considered to be so significant as to create a new microclimate in the area. Only two small sections of blocks B and C will be 7 and 8 storeys, however the majority of the development will be 5 storeys in height which is in accordance with the upward modifiers permitted under the development plan.</p>
<p><b>SPPR 3</b> <i>It is a specific planning policy requirement that where; 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines; then the planning authority may approve such development, even where specific objectives of the relevant development plan, local area plan or planning scheme may indicate otherwise.</i></p>	<p>This proposal is in line with National Plan Policy to make the optimal use of zoned, serviced and accessible urban land which is appropriately located in close proximity to existing facilities such as shops and community facilities and has exceptional public transport accessibility due to its proximity to the DART, several bus routes and the N11.</p>

#### 4. CONCLUSION

Given the above it is contended that the proposed development complies with the principles for taller buildings outlined in the National Building Heights Guidelines, and therefore the Board may grant permission under Section 5(6) of the 2016 Act.