

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

BSM

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**Brady Shipman
Martin**

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CLIENT
The Land Development Agency

DATE
April 2022

DEVOY BARRACKS SHD

Material Contravention Statement

DOCUMENT CONTROL SHEET

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1 INTRODUCTION

This document seeks to address the issue of material contravention of the Development Plan as required under SHD legislation. This Statement provides a justification for the material contravention of the Kildare County Development Plan 2017-2023 in relation to car parking standards in respect of apartments/duplexes, plot ratio and height, and the Naas Local Area Plan (LAP) 2021-2027 in relation permeability (PERM 68).

The subject application site known as the Devoy Barracks Site (hereafter called 'the site') is located at Devoy Road, Naas, Co. Kildare. The site extends to approximately 4.11 ha. It is located to the southwest of Naas Town Centre, and immediately to the west of Kildare County Council's Head Offices and associated surface car parking area.

Under the LAP the subject site is zoned C (2) New Residential and A1 (4) 'Town Centre' and highlighted as a 'Key Development Area'. The stated objective being: *'To provide for new residential development'* with a reference to a Specific Objective - Key Development Area - Devoy Barracks.

While the Kildare County Development Plan 2017-2023 is the primary planning policy for the site, in respect of development management standards, the Naas Local Area Plan also contains specific policies and objectives for the subject site.

Section 9 (6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 confirms that An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan or Local Area Plan, other than in relation to the zoning of land having regard to the considerations specified in section 37(2)(b) of the Act of 2000.

This Statement provides a justification for the potential material contraventions of the above referenced statutory planning documents.

It is considered therefore, as is set out in this report and the supporting planning application documentation, that sufficient justification exists for An Bord Pleanála to grant permission for the proposed development notwithstanding the proposed material contraventions of the Development Plan in relation to plot ratio, car parking and height having regard to the considerations specified in section 37(2)(b) of the Act of 2000.

2 PROPOSED MATERIAL CONTRAVENTIONS

The development as proposed is considered to potentially materially contravene the Kildare County Development Plan 2017-2023 in the following instances:

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

The development as proposed is considered to materially contravene the Naas Local Area Plan 2021-2027 in respect of:

4. Permeability Objectives (PERM 68).

As the Statement of Consistency accompanying this application demonstrates, the proposed development is consistent with the relevant national planning policies, regional spatial and economic strategy and Section 28 guidelines, including the National Planning Framework (2018), the Urban Development & Building Height Guidelines (December, 2018), the Sustainable Urban Housing, Design Standards for New Apartments (2020) and the Naas Local Area Plan 2021-2027, except where identified in this Statement.

As required in legislation, any material contravention must be justified under Section 37(2) (b) (i), (ii), (iii) and (iv) of the Planning and Development Act 2000 (as amended) where the Board may determine under this section, to grant a permission even if the proposed development contravenes materially the LAP / Development Plan relating to the area of the planning authority to whose decision the appeal relates.

(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 planning guidelines for the area,*

- guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- iv. *permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.’ [Our Emphasis]*

It follows from the foregoing that it must be first established that the proposed development is of “strategic” or “national importance” and that one of the other criteria under (ii), (iii) or (iv) are met for each potential material contravention.

The specific justification for each of the potential material contraventions, which are set out and justified in this report, in respect of Section 37 (2) (b) are set out below:

Material Contravention	Section 37 (2) (b)	Rationale
Kildare County Dev Plan 2017-2023		
Plot Ratio Standards	(iii)	Proposed development is in line with national policy in respect of density.
	(ii)	There is a conflict in the Development Plan between competing objectives in respect of plot ratio, density, open space.
Car Parking Provision in respect of apartments/duplex units	(iii)	Proposed car parking level for apartments and duplexes is in line with Section 28 Guidelines to reduce car parking provision.
	(iv)	Proposed car parking level for apartments and duplexes is in line with adjacent permissions.
Height	(ii)	Height is in line with the LAP but there is conflicting/non-aligning terminology between the Development Plan and LAP.
Naas Local Area Plan 2021-2027		
PERM 68	(ii)	The LAP indicates a route is required between the site and Newbridge road however the link provided differs from the route on the map which is indicative only.
	(iv)	The pattern of development in the area, in particular the legal land ownerships, prevents the delivery of the route, as per the Map in the LAP.

Section 6 of this report identifies each of the potential material contraventions in detail as well as the justification for each of them under Section 37 (2).

3 PLANNING AND DEVELOPMENT (HOUSING) AND RESIDENTIAL TENANCIES ACT, 2016 (AS AMENDED)

Under Section 8(1)(iv) of the Planning and Development (Housing) and Residential Tenancies Act 2016, where a proposed development is considered to materially contravene the relevant Development Plan or Local Area Plan (other than in relation to the zoning of the land), then the SHD application must include a statement:

- “(I) setting out how the proposal will be consistent with the objectives of the relevant development plan or local area plan, and*
- (II) where the proposed development materially contravenes the said plan other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000”*

Section 9 (6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016 confirms that An Bord Pleanála may grant permission for a development which materially contravenes a Development Plan or Local Area Plan, other than in relation to the zoning of land as follows:

(6) (a) Subject to paragraph (b), the Board may decide to grant a permission for a proposed strategic housing development in respect of an application under section 4 even where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned.

(b) The Board shall not grant permission under paragraph (a) where the proposed development, or a part of it, contravenes materially the development plan or local area plan relating to the area concerned, in relation to the zoning of the land.

(c) Where the proposed strategic housing development would materially contravene the development plan or local area plan, as the case may be, other than in relation to the zoning of the land, then the Board may only grant permission in accordance with paragraph (a) where it considers that, if section 37(2) (b) of the Act of 2000 were to apply, it would grant permission for the proposed development [Our Emphasis]

The proposed material contravention of the Development Plan relates only to parking standards for apartment/duplex units, plot ratio and height.

4 PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

As outlined in Section 2 above, the Planning and Development (Housing) and Residential Tenancies Act, 2016 (as amended) sets out in that *‘where the proposed strategic housing development would materially contravene the development plan...then the Board may only grant permission where it considers that, if section 37(2)(b) of the Act of 2000 were to apply’*.

Section 37 (2) of the Planning and Development Act 2000 (as amended) states the following in relation to material contravention:

(a) ‘Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

- i. the proposed development is of strategic or national importance*
- ii. there are conflicting objectives in the Development Plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- iii. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- 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.’*

It follows from the foregoing that it must be established that the proposed development is of (i) “strategic” or “national importance” and that one of the other criteria under (ii), (iii) or (iv) are met. It is considered, in the case of this development that the scheme can be considered under Criteria (i), (ii), (iii) and (iv).

As set out in the following sections of this Statement, the proposed site is considered in light of relevant National Policy and Section 28 Guidelines and is considered to comply with the requirements of both the Guidelines and Section

37 (2) of the Planning and Development Act 2000, and as such An Bord Pleanála should grant permission even if it is of the view that a material contravention has occurred.

5 SITE CONTEXT

The subject site is undeveloped and while it is green in nature it is located in an urban context c. 750 metres to the southwest of Naas Town Centre in Co. Kildare. It is located immediately adjacent to Kildare County Council Head Offices, and adjacent residential development, of a more sub-urban nature. It is approximately 4.11 ha in size.

Access to the site is from the roundabout on John Devoy Road on the southern boundary of the site. John Devoy Road links southward from the Newbridge Road (connecting to Main Street) to the Naas Southern Relief Road. The subject site is currently an undeveloped site, falling generally from north to south.

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

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

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

6 JUSTIFICATION FOR MATERIAL CONTRAVENTION

6.1 Proposed Material Contraventions

The development as proposed is considered to materially contravene the Kildare County Development Plan 2017-2023 in the following instances:

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

3. Height

The development as proposed is considered to materially contravene the Naas Local Area Plan 2021-2027 in respect of:

4. Permeability Objectives (PERM 68).

As the Statement of Consistency demonstrates, the proposed development is consistent with the relevant national planning policies, regional spatial and economic strategy and Section 28 Guidelines, including the National Planning Framework (2018), the Urban Development & Building Height Guidelines (December, 2018), the Sustainable Urban Housing, Design Standards for New Apartments (2020) and the Naas Local Area Plan 2021-2027.

6.1.1 Plot Ratio

The issue of plot ratio as a potential material contravention is considered in the context of Section 37(2) (b) (ii) and (iii) as it is considered that *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.*

The Kildare Development Plan states that the plot ratio for sites located within an 'Inner Suburban' area shall be '0.5 -1.0'.

The proposed development will contain a plot ratio of 0.45 and this could be considered to be a material contravention of the Development Plan. While this is below the Development Plan levels it is submitted that Plot Ratio is only one measurement for assessment of a proposed scheme. The consideration of a proposed scheme on plot ratio solely is inappropriate and a wider review of the scheme and proposed development parameters such as density, open space, height etc. is a more considered approach.

This plot ratio is considered in the context of the proposed density, which at 55.2 units per hectare is compliant with Inner Suburban sites as per Development Plan standards; the extent of open space proposed at 15% of site area meets Development Plan standards; and the need for the proposed development heights (2-5 storeys) to respond to both the existing residential and commercial context in the vicinity of the site; and as such a plot ratio of just below what the Kildare Development Plan sets out is considered to be appropriate.

It is considered that conflicting objectives are contained in the Development Plan in relation to development standards.

We note on the previously refused application An Bord Pleanála considered that the lower plot ratio of 0.45 was justified having regard to:

A case is made for the proposed plot ratio in the context of national policy and on the basis that plot ratio is only one measure for assessment. I concur with this view and would also note that there is a conflict between the set plot ratio standard which is relatively low and the residential density provisions for inner suburban / infill sites (Table 4.2) which allows for site specific densities at such locations. Having regard to the provisions of Section 37 (2) (b) of the Planning and Development Act (as amended), and based on the assessment above in relation to quantum of development, I consider that a grant of permission, that may be considered to material contravene the Development Plan with regard to plot ratio, would be justified in this instance under sub sections (i) (ii) and (iii) of the Act.

6.1.2 Car Parking Standards

The issue of car parking provision for apartments and duplex units as a potential material contravention is considered in the context of Section 37(2) (b) (iii) and (iv) as it is considered that:

- III. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- 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.'*

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

A more balanced and sustainable pattern of development, with a greater focus on addressing employment creation, local infrastructure needs and addressing the legacy of rapid growth, must be prioritised. This means that housing development should be primarily based on employment growth, accessibility by sustainable transport modes and quality of life, rather than unsustainable commuting patterns.

National Policy Objective 4 in this regards states:

Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

National Policy Objective 11 in this regards 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.

National Policy Objective 13 in this regards states:

In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

It is also noted that objective MTO 4.1 of the Naas Local Area Plan 2021-2027 states that the Council intends to:

“Apply the parking standards in the Kildare County Development Plan, and relevant Section 28 Guidelines, to all applications for planning permission in Naas. Dispensations will only be considered in exceptional circumstances and having regard to location, proximity to key public transport routes, heritage and urban design context.”

The number of parking spaces has been increased from the previous planning application (ABP-309954-21) from 235 no. to a total parking provision of 314 no. spaces. 84 no. car parking spaces are assigned to houses; 216 no. car parking spaces assigned to duplex/apartment; 14 no. crèche spaces (6 no. for crèche staff and 8 no. set down spaces for the crèche). This reflects an overall increase of 79 no. parking spaces (from the previously refused permission); providing a parking ratio of 2 no. car parking spaces per house, and 1.22 no. car parking spaces per duplex and apartment unit.

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

While the proposed parking provision for both houses and crèche unit is compliant with the relevant Development Plan standards, it is acknowledged that the development's proposed car parking provision, in respect of apartment and duplex units, is lower than that derived from the Kildare County Development Plan 2017–2023. Under the Development Plan requirements, a total of 310 no. spaces would be required, where 216 no. are provided, which represents a shortfall of 94 no. spaces.

However, it is considered that the proposition of 1.22 no. car parking spaces per apartment/duplex unit provides a balanced approach to this development site given the proximity of the development to Naas Town Centre (750m/10 minute walk), the availability of nearby public transport bus facilities (500m/6 minute walk), proximity to Sallins & Naas Rail Station (20 min cycle via cycle route along the Canal) and national objectives to reduce reliance on the private car as the primary mode of transport in line with the National Planning Framework and the Urban Housing: Design Standards for New Apartments 2020.

The subject site is located approx. 750m from the town centre and within walking distance of a number of reasonably frequent bus routes, to both Dublin and to local towns. There are two bus stops within 500 metres of the site on Newbridge Road, and a further two c. 800 metres from the site. These stops are served by routes 125, 126, 826, 726 and 846 which connect to the local towns in the surrounding area and to Dublin city and airport. Destination and frequency of these routes are identified below.

Naas is also served by Naas & Sallins railway station on the Dublin to Cork/Limerick rail line, with commuter trains serving the station at intervals of approximately 20 minutes at peak times. The station is just over 3km from the town centre.

Local public transport information, within a 10 min walk of the site, is provided as follows:

Route No.	Operator	Destinations	Weekday	Peak Interval
125	Go-Ahead	Newbridge / UCD	2	-
126 ²	Go-Ahead	Rathangan / Dublin	35	20 min
717	Avalen	Clonmel / Dublin Airport	2	-
726	Dublin Coach	Portlaoise / Dublin Airport	24	60 min
736	Kenneally's	Tramore / Dublin Airport	3	-
826	Kyanitedale	Monasterevin / Naas	9	60 min
846	Kenneally's	Clane / Naas	10	30 min

¹ Average number of services per day in each direction, Monday-Friday

² Including route variants a,b,d,e,n,t,u

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3no. further bus routes serve stops within a 20-minute walk of the subject development. Details of these are given as follows:

Route No.	Operator	Destinations	Weekday	Peak Interval
130/a	Go-Ahead	Athy / Dublin	5	120 min
139	JJ Kavanagh	Corduff / Naas	9	120 min
737	JJ Kavanagh	Naas / Dublin Airport	12	30 min

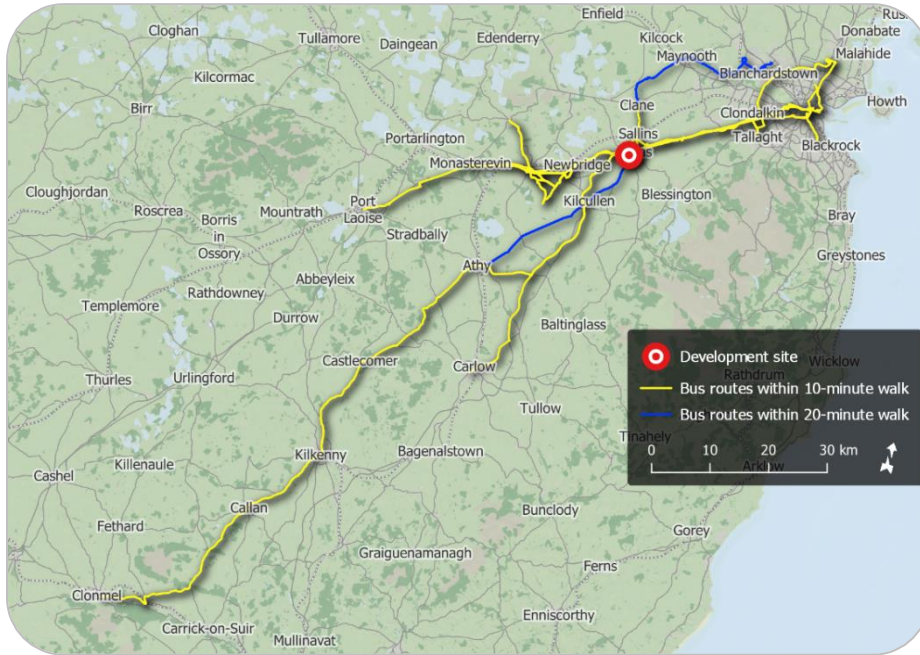


Fig 6.1 Bus routes in proximity to development site

In addition, high-quality cycle parking and associated facilities are provided in the proposed development with a total of 482 no. cycle parking spaces provided (84 no. for house residents, 298 no. for apartment/duplex residents, 90 no. for apartment/duplex visitors, and 10 no. for the crèche). Residents parking is provided in secure locations in addition to visitor spaces located throughout the landscaped open space in the scheme providing easy access for visitors.

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

Land Use Type	Cycle Parking Standard	Quantum	Standard Provision	Proposed Provision
Apartments	1 [resident's] space per unit	177 units	177 spaces	298 spaces
	1 visitor space per 2 units	177 units	89 spaces	90 spaces
Houses	n/a	42 units	n/a	84 spaces
Crèche	1 space per 5 staff members + 1 space per 10 children	11 staff members + 59 children	8 spaces	10 spaces
Total			274 spaces	482 spaces

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

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

The reduction in car parking provision for apartments and duplexes is in excess of the recent precedent Strategic Housing Development (SHD ABP Ref: PL09 .307258) approval by An Bord Pleanála on adjacent sites by providing 1.22 no. spaces per unit compared to 1.16 no. spaces per unit in the adjacent permitted scheme. It is considered that is relevant to An Bord Pleanála considering this potential contravention under Section 37(2) (b) (iv).

As this Statement demonstrates, the proposed development at this location is consistent with the relevant national planning policies, regional spatial and economic strategy and Section 28 guidelines, including the National Planning Framework and the Urban Development & Building Height Guidelines, which it is considered allows An Bord Pleanála to justify this potential contravention under Section 37(2) (b) (iii).

6.1.3 Height

The issue of height as a potential material contravention is considered in the context of Section 37(2) (b) (ii) as it is considered that *'there are conflicting objectives in the Development Plan or the objectives are not clearly stated, insofar as the proposed development is concerned'*.

The Kildare County Development Plan 2017-2023 identifies that tall buildings are only to be considered on sites of strategic planning importance identified in a Local Area Plan, while the Naas Local Area Plan 2021-2027 identifies the site as a 'Key Development Area' with focal buildings identified on the site. The proposed development at 2-5 storeys is considered to be consistent with these policies which allow for the heights identified, however, for the avoidance of doubt, as the wording in the Development Plan and the Local Area Plan is not fully consistent and aligned (as discussed below), height as a potential material contravention has been set out for An Bord Pleanála's consideration.

The Kildare County Development Plan 2017-2023, in Section 17.2.1, states that *'heights should respect the local streetscape. In towns, varied building heights are supported across residential, mixed use and town centre areas to support consolidation and to create a sense of place, urban legibility and visual diversity. Development proposals that include building heights that are greater than the prevailing building height in the area should be supported by a strong urban design rationale (as part of a Design Statement)'* and further *'Tall buildings, defined here as buildings that exceed five storeys and/or 15 metres, will only be considered at areas of strategic planning importance identified in a Local Area Plan'*.

As previously set out, the Local Area Plan identifies this site as a 'Key Development Area', which confirms its significance in the Naas context. Additionally, it goes further to identify where a focal building can be located, which is translated into this proposed development.

A single 5 storey building is proposed as a focal building, as identified in the Local Area Plan, at the entrance to the site fronting John Devoy Road.

The Development Plan extract in respect of tall buildings, as quoted above is considered, in detail, as follows:

'Tall buildings, defined here as buildings that exceed five storeys and/or 15 metres....'

The proposed building heights range from 2 to 5 storeys. As set out in the Architects' Design Statement, the lower 2-3 storey buildings are located to the north, west and south of the site where it adjoins existing two storey residential buildings. The 5 storey crèche/apartment building is located at the south-eastern corner, cranked to set back from the roundabout, framing the entrance to the site and connecting to the linear open space. Other 4 storey buildings are located throughout the scheme at key corners and adjacent open spaces to provide a varying streetscape and act as markers in the development.

In their consideration of the issue in the refused application previously referenced, An Bord Pleanála determined that, the proposed 4 storey building at 15.6m was a contravention of the Development Plan, but not material, and the 5

storey building at c.17.8 metres was considered a Material Contravention of the Development Plan due to the absence of the Local Area Plan at the time.



Fig 6.2: Extract from the Architects Design Statement showing proposed building heights (with focal building identified) and Figure 10.22 from the Naas Local Area Plan identifying indicative site strategy.

'...will only be considered at areas of strategic planning importance identified in a Local Area Plan'

The subject site is identified as a 'Key Development Area' in the Naas Local Area Plan 2021-2027 and the location of the proposed 5 storey building is located on the subject site as a 'focal building' on Figure 10.22 (shown in Fig. 6.2 above), Devoy Barracks Key Development Area Urban Design Framework. As such it is considered that this site is an 'areas of strategic planning importance identified in a Local Area Plan'.

The Local Area Plan then follows, in Section 4.4, by noting the following:

The guidelines titled Urban Development and Building Heights: Guidelines for Planning Authorities (DHPLG, 2018) contain a number of mandatory Specific Planning Policy Requirements (SPPRs) which local authorities are obliged to provide for when making their statutory plans. Of particular relevance to this Plan is SPPR 1 which requires local authorities to explicitly identify areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development and that such plans shall not provide for blanket numerical limitations on building height.

*Having regard to the requirements outlined, **this Plan does not propose to place any height limitations on new development in Naas. Also, in keeping with the provisions set out in SPPR 1 the town centre has been identified for the possible location of taller buildings.*** [Our emphasis].

As identified in Fig 6.1 above, Figure 10.22 of the Local Area Plan, Devoy Barracks Key Development Area Urban Design Framework, identifies a focal building on the southern corner of the site at the entry point on Devoy Rd. However as there is no reference to what constitutes the height of a focal building in the LAP, nor is there consistent wording between the Development Plan and LAP, it is set out as a potential material contravention for consideration by An Bord Pleanála.

As identified above in their consideration of the issue in the refused application, An Bord Pleanála determined that, the proposed 4 storey building at 15.6m was a contravention of the Development Plan, but not material, and the 5 storey building at c.17.8 metres was considered a Material Contravention of the Development Plan due to the absence of the Local Area Plan at the time.

It is not considered that a material contravention occurs now due to the adoption of the Local Area Plan. However, given the inconsistencies between the wording of the Development Plan and the Local Area Plan, in respect of height, it is considered in this Material Contravention Statement and justification under of Section 37(2) (b) (ii) is set out.

6.1.4 Permeability Objective- PERM 68

The issue compliance with Objective PERM 68 as a potential material contravention is considered in the context of Section 37(2) (b) (ii) and (iv).

The Movement & Transport Pedestrian Measures Map, included in Appendix 1- Maps to the Naas Local Area Plan 2021-2027 identifies a new pedestrian/cycle route through the Devoy Barracks Site to the Newbridge Road.

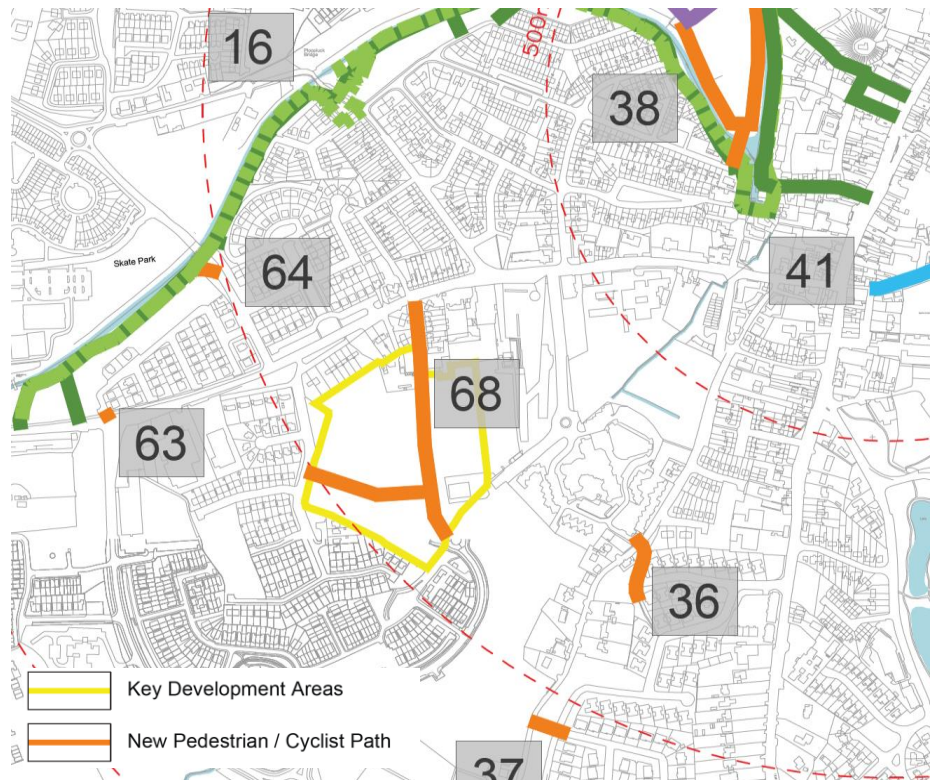


Fig 6.3- Extract from Movement & Transport Pedestrian Measures Map of the Naas Local Area
Plan 2021-2027

The objective is also referenced in Section 11.2 Infrastructure Delivery Schedule of the LAP which states as follows:

Devoy Barracks KDA		
Infrastructure	Delivery Schedule	Funding Sources
Roads and Transportation		
PERM 68 - Permeability link between Devoy Barracks site and Newbridge Road	On-going - To be delivered in tandem with new development, prior to the occupation of the dwellings.	Developer, State, KCC

It is considered that the proposed development provides for permeability through the site to Newbridge Rd, as set out in PERM 68, it does however differ from the indicative line on the relevant map. As such it is set out in this Material Contravention Statement for consideration by An Bord Pleanala.

DEVOY BARRACKS SHD

Material Contravention Statement

Vehicular access is proposed to the site via the John Devoy Road as envisaged, with a pedestrian and cycle connection provided to the east to the adjoining Merits Building, which is completed and due to be occupied in early 2022. The exact details of this layout will be agreed with Kildare County Council post grant of planning. This route, which is delivered in conjunction with Kildare County Council through lands under their control, provides for a link between the Devoy Barracks Site and Newbridge Road as required under PERM 68. It is however in a different location to that identified on the LAP map, and is considered to be more aligned with both existing and proposed development.

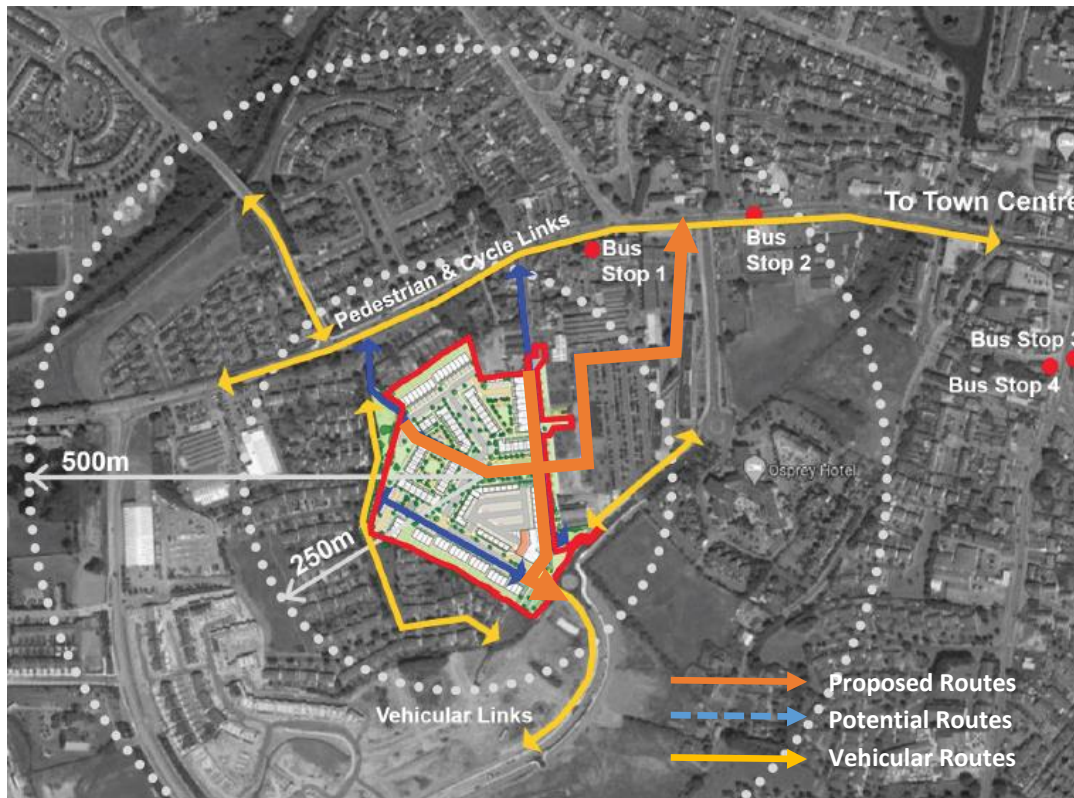


Fig 6.4- Proposed and Potential Pedestrian/Cycle Connections of Proposed Scheme

The scheme is designed to seamlessly provide for future connectivity to the west to Arconagh and the north via St. Patrick's Terrace, which aligns to the indicative route on the LAP map.

This connectivity is not, however, fully realised by this application as the lands are outside the application boundary and the applicant's control, and is not in the ownership of the applicant, and as such cannot be provided for. The applicant has engaged extensively with Kildare County Council in respect of the delivery of these links. However, due to legal uncertainty over the ownership of the required parcels of land it has not been possible to provide for them at this time.

6.2 Context for Proposed Material Contraventions

The following sections set out the context for the justification of the scheme in terms of meeting the requirements of Section 37 (2) (b) (i) and (ii), (iii) and (iv) by considering the proposed scheme in the context of both National and Local Planning Policy and Guidelines.

6.2.1 Section 37 (2) (b) (i) - Strategic/ National Importance

As outlined in the following sections, the development is considered to be of strategic importance pursuant to Section 37(2) (b)(i) of the Planning Acts.

Housing For All

Housing for All, published in September 2021, is the Government's new housing plan to 2030. It provides an overview of the existing housing scenario as follows:

- There are not enough houses to buy or rent in the private sector.
- There are not enough houses being built by the State for those who need social housing.
- Housing has become increasingly unaffordable for the 'squeezed middle' who would once have expected to be able to purchase their own home.
- Too many people are experiencing homelessness or are unable to access appropriate housing.
- The cost of building housing is too high.
- Too much vacant housing stock remains unused.
- Our housing stock needs to be more environmentally friendly.'

The overarching aim of the Housing for All plan is that "Everyone in the State should have access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life" (p. 17). With a view to achieving this aim, the plan sets out four overarching housing policy objectives as follows:

1. Supporting homeownership and increasing affordability;
2. Eradicating homelessness, increasing social housing delivery and supporting social inclusion;
3. Increasing new housing supply; and
4. Addressing vacancy and efficient use of existing stock.

A suite of actions are set out under the four above-listed headings. The Housing for All plan allocates a housing budget of in excess of €20 bn through the Exchequer, the Land Development Agency (LDA) and the Housing Finance Agency over the next five years. According to the plan, this constitutes the largest housing budget in the history of the State.

The plan provides for the following key targets / actions, among others:

- Increased supply of new housing overall, up to an average of at least 33,000 per year to 2030
- An average of 6,000 affordable homes to be made available every year for purchase or for rent
- Provision of more than 10,000 social homes each year, with an average 9,500 new-build Social Housing Homes to 2026
- Increased contribution by developers under Part V, up from 10% to 20%, to include affordable housing and cost rental housing

The estimates of housing demand which form the basis of the Housing for All plan's targets have been developed by the Department of Housing, Local Government and Heritage (DHLGH)'s Housing Need and Demand Assessment (HNDA) model, which has been adapted from the Scottish HNDA. The plan seeks to ensure that new housing is delivered in an environmentally sustainable manner, with a greater proportion of residential development in the existing built-up footprint of towns and cities, and all new homes being built to Nearly Zero Energy Building (NZEB) standards, as well as a policy of retrofitting existing housing stock.

With a view to supporting sustainable communities ("places where people want to live and work"), the plan states a commitment "to continuing the policy of having mixed-tenure communities, including through the mechanism of Part V of the Planning and Development Act 2000, to ensure that social and affordable housing are part of the mix across housing developments" (p. 122).

It is noted that the plan sets out the Government's intention to replace the SHD process with new planning arrangements for large-scale residential developments (LSRD) of 100+ homes (or 200+ student accommodation bed spaces) with a view to maintaining the efficiency of decision-making for developments of this nature, while returning decision-making to the local level and securing associated benefits in terms of public participation. This change in process came into effect from the 17th December 2021. This application is in line with transition arrangements and is made under the Strategic Housing Development process.

The proposed project is consistent with the Government's new Housing for All plan. It will provide 219 new, high-quality homes on lands zoned for residential development by the Land Development Agency. In accordance with Government housing policy, the units will be of a range of tenure and housing types, including social housing and affordable housing distributed throughout the proposed development.

The proposed site is an important site for the LDA in delivering cost rental housing by LDA, on lands in the ownership of the Housing Agency and as such can be considered strategic under Section 37 (2) (b) (i).

Project Ireland 2040 – National Development Plan 2018-2027

Project Ireland 2040 is the Government's plan to, 're-imagine' Ireland and prepare for the future. Project Ireland 2040 seeks to achieve ten strategic outcomes (common to both Plans), building around the overarching themes of wellbeing, equality and opportunity, including:

1. Compact Growth
2. Enhanced Regional Accessibility
3. Strengthened Rural Economies and Communities
4. Sustainable Mobility
5. A Strong Economy, supported by Enterprise, Innovation and Skills
6. High-Quality International Connectivity
7. Enhanced Amenity and Heritage
8. Transition to a Low Carbon and Climate Resilient Society
9. Sustainable Management of Water and other Environmental Resources
10. Access to Quality Childcare, Education and Health Services

Project Ireland 2040 contains two key plans: the National Planning Framework (NPF); and the National Development Plan Framework (NDP) which, in tandem, set out infrastructure priorities and plan regional development for the country. The NPF is the Government's high-level strategic plan for shaping the future growth and development of our country out to the year 2040.

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

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

The Climate Action Council has targeted a low-carbon road mapping process which will be guided by a long-term vision of low-carbon transition based on an aggregate reduction in carbon dioxide (CO₂) emissions of at least 80% (compared to 1990 levels) by 2050 across the electricity generation, built environment and transport sectors.

As such the scheme can be considered strategic under Section 37 (2) (b) (i).

6.2.2 Section 37 (2) (b) (ii) – Conflicting Objectives

Section 37 (2) (b) (ii) of the Planning Acts is the consideration that 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. For the following reason, the scheme is considered to be justified for potential material contraventions under Section 37 (2) (b) (ii).

Naas Local Area Plan 2021-2027

The Naas Local Area Plan 2021 - 2027 came into effect on 1st December 2021. This plan replaced Naas Town Development Plan 2011-2017.

In respect of parking levels Objective MTO 4.1 of the Naas Local Area Plan 2021-2027 states that the Council intends to:

“Apply the parking standards in the Kildare County Development Plan, and relevant Section 28 Guidelines, to all applications for planning permission in Naas. Dispensations will only be considered in exceptional circumstances and having regard to location, proximity to key public transport routes, heritage and urban design context.”

It is considered that there is a conflict between the Development Plan and the Section 28 Guidelines, in respect of the car parking standards for apartments and duplexes.

In respect of height the LAP Plan states that *‘The guidelines titled Urban Development and Building Heights: Guidelines for Planning Authorities (DHPLG, 2018) contain a number of mandatory Specific Planning Policy Requirements (SPPRs) which local authorities are obliged to provide for when making their statutory plans. Of particular relevance to this Plan is SPPR 1 which requires local authorities to explicitly identify areas where increased building height will be actively pursued for both redevelopment, regeneration and infill development and that such plans shall not provide for blanket numerical limitations on building height. Having regard to the requirements outlined, this Plan does not propose to place any height limitations on new development in Naas. Also, in keeping with the provisions set out in SPPR 1 the town centre has been identified for the possible location of taller buildings.’*

As identified above in their consideration of the issue in the refused application, An Bord Pleanála determined that the proposed 4 storey building at 15.6m was a contravention of the Development Plan, but not material, and the 5 storey building at c.17.8 metres was considered a Material Contravention of the Development Plan due to the absence of the Local Area Plan at the time. It is not

considered a material contravention occurs now due to the adoption of the Local Area Plan (and the fact that the Local Area Plan does not place a limit on height for new development as set out above). However given the inconsistencies between the wording of the Development Plan and the Local Area Plan, in respect of height, it is considered in this Material Contravention Statement and justification under of Section 37(2) (b) (ii) is set out.

6.2.3 Section 37 (2) (b) (iii)-Has regard to National and Regional Planning Policy and Section 28 Guidelines

Section 37 (2) (b) (iii) of the Planning Acts is the consideration that 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. For the following reasons, the scheme is considered to provide justification for potential material contraventions under Section 37 (2) (b) (iii).

National Planning Framework

As noted above Project Ireland 2040 contains two key plans: the National Planning Framework (NPF); and the National Development Plan Framework (NDP) which, in tandem, set out infrastructure priorities and plan regional development for the country. The NPF is the Government's high-level strategic plan for shaping the future growth and development of our country out to the year 2040.

The plan identifies that by 2040 it is expected that an additional one million people will live in Ireland, an additional two-thirds of a million people will work here. These are huge increases: more people will be travelling to work, school and universities, more buildings will be needed to accommodate them, clean water will be needed for homes, farms and industry, more and better care facilities will be required for the elderly.

One of the key objectives of the NPF relates to compact growth. The plan seeks to carefully manage the sustainable growth of compact cities, towns and villages and to add value and create more attractive places in which people can live and work. The NPF identifies that activating '*strategic areas and achieving effective density and consolidation, rather than more sprawl of urban development*' as a top priority.

With regards to Kildare the NPF states that due to its strategic location proximate to Dublin City it has resulted in a region dominated by Dublin and managing the challenges of future growth is critical to this regional area. Further the NPF states that:

A more balanced and sustainable pattern of development, with a greater focus on addressing employment creation, local infrastructure needs and addressing the legacy of rapid growth, must be prioritised. This means that housing development should be primarily based on employment growth, accessibility by sustainable transport modes and quality of life, rather than unsustainable commuting patterns.

National Policy Objective 4 in this regards states:

Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

National Policy Objective 11 in this regards 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.

National Policy Objective 13 in this regards states:

In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

Considering the above development on the subject site is fully supported by the NPF given its proximity to Naas Town Centre, an existing town, with its own local employment and services.

The National Planning Framework identifies the creation of the State-Led Strategic Land Development Agency to ensure strategically that the State must take a stronger role in proactively managing and enhancing the development potential of its own lands, to deliver on wider public policy and to ensure that overall development needs are met. While referred to in the NPF as the Regeneration and Development Agency, the agency has ultimately become the Land Development Agency. As such the proposed scheme is a direct objective of the NPF in delivering housing on state owned lands.

The NPF requires homes to be located in places that can support sustainable development. This includes places that are accessible to a range of local services, can encourage the use of public transport, walking and cycling, and help tackle

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

As such the scheme is considered to provide justification for potential material contraventions under Section 37 (2) (b) (iii).

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

The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities were published in 2020 and sought to build on the content of the 2015 and 2018 apartment guidance, much of which remained valid, particularly with regard to design quality safeguards.

The key updates to the 2015 Guidelines sought to:

- Enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas;
- Make better provision for building refurbishment and small-scale urban infill schemes;
- Address the emerging ‘build to rent’ and ‘shared accommodation’ sectors; and
- **Remove requirements for car-parking in certain circumstances where there are better mobility solutions and to reduce costs.** [Our emphasis]

As stated in Section 1.11 of the Introduction ‘*these Guidelines apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease. They also apply to housing developments that include apartments that are built specifically for rental purposes*’.

Further Section 1.21 states ‘*accordingly, where SPPRs are stated in this document, they take precedence over any conflicting, policies and objectives of development plans, local area plans and strategic development zone planning schemes. Where such conflicts arise, such plans should be amended by the relevant planning authority to reflect the content of these guidelines and properly inform the public of the relevant SPPR requirements*’.

The Kildare County Development Plan was adopted before the publication of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* (2020).

The Guidelines identify Intermediate Urban Locations are suited to higher or medium density developments as a result of its location within an ‘Intermediate

Urban Location’. When local considerations such as the existing adjacent context are taken into account, it is considered that the site may be considered to be categorised as an ‘Intermediate Urban Location’, as defined by the 2020 Design Standards for New Apartments. In respect of Intermediate Urban Locations, and their definition, the Guidelines states:

*Such locations are generally suitable for smaller-scale (will vary subject to location), higher density development that may wholly comprise apartments, or alternatively, **medium-high density residential development of any scale that includes apartments to some extent** (will also vary, **but broadly >45 dwellings per hectare net**), including:*

- *Sites within or close to i.e. within reasonable walking distance (i.e. up to 10 minutes or 800-1,000m), **of principal town or suburban centres** or employment locations, that may include hospitals and third level institutions;*
- *Sites within walking distance (i.e. between 10-15 minutes or 1,000-1,500m) of high capacity urban public transport stops (such as DART, commuter rail or Luas) or within reasonable walking distance (i.e. between 5-10 minutes or up to 1,000m) of high frequency (i.e. min 10 minute peak hour frequency) urban bus services or where such services can be provided;*
- *Sites within easy walking distance (i.e. up to 5 minutes or 400-500m) of reasonably frequent (min 15 minute peak hour frequency) urban bus services.*

The range of locations is not exhaustive and will require local assessment that further considers these and other relevant planning factors. [Our emphasis]

As noted above this list is not exhaustive however it is considered, notwithstanding both KCC and An Bord Pleanala’s consideration of this in the refused application noting that the An Bord Pleanala Inspector’s Report on the previous application stating ‘*The site meets the definition of an ‘Intermediate Urban Location’ given its proximity to Naas town centre (<1000 m)*’, it is submitted that the site is located within walking distance of Naas, a principal town, with extensive employment zones, and within walking distance of urban bus services, set out in Section 6.1.2, which has approx. 20 min frequency.

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

As such the scheme is considered to provide justification for potential material contraventions under Section 37 (2) (b) (iii).

Urban Development & Building Height Guidelines for Planning Authorities (2018)

The Urban Development & Building Height Guidelines identify that as reflected in *'the National Planning Framework that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas'* and that *'securing compact and sustainable urban growth means focusing on reusing previously developed 'brownfield' land, building up infill sites (which may not have been built on before) and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities'*.

The Guidelines reference NPO 13 (from the NPF) which states that *'in urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected'*.

It recognises that in meeting the challenge set out above new approaches to urban planning and development are required and that securing an effective mix of uses within urban centres is critical. To bring about this increased density and increased residential development in urban centres the Guidelines state that *'significant increases in the building heights and overall density of development is not only facilitated but actively sought out and brought forward by our planning processes and particularly so at local authority and An Bord Pleanála levels'*.

The Urban Development and Building Height Guidelines identify that *'Newer housing developments outside city and town centres and inner suburbs, i.e. the suburban edges of towns and cities, typically now include town-houses (2-3 storeys), duplexes (3-4 storeys) and apartments (4 storeys upwards). Such developments deliver medium densities, in the range of 35-50 dwellings per hectare net. Such developments also address the need for more 1 and 2 bedroom units in line with wider demographic and household formation trends, while at the same time providing for the larger 3, 4 or more bedroom homes across a variety of building typology and tenure options, enabling households to meet changing accommodation requirements over longer periods of time without necessitating relocation'*. The Guidelines identify that development proposals for more mixed heights can provide for a more attractive streetscape and should move away from 2 storey dominated approaches.

SPPR 4 in this regard states:

It is a specific planning policy requirement that in planning the future development of greenfield or edge of city/town locations for housing purposes, planning authorities must secure:

- 1. the minimum densities for such locations set out in the Guidelines issued by the Minister under Section 28 of the Planning and Development Act 2000 (as amended), titled “Sustainable Residential Development in Urban Areas (2007)” or any amending or replacement Guidelines;*
- 2. a greater mix of building heights and typologies in planning for the future development of suburban locations; and*
- 3. avoid mono-type building typologies (e.g. two storey or own-door houses only), particularly, but not exclusively so in any one development of 100 units or more.*

The scheme as provided is considered to be consistent with SPPR4 as it:

- applies densities in line with the *Sustainable Residential Development in Urban Areas (2007)* and site specific density in line with the requirements of the *Kildare Development Plan* and the *Naas Local Area Plan*,
- Provides for a mix of typologies, including 1, 2 and 3 bed apartments and duplex units, as well as 2 & 3 bed houses, with varying heights ranging from 2-5 storeys.
- The varied heights, which are taller at the eastern side of the site, and lower adjacent to existing residential housing, provides for a varied and interesting design and layout.

As such the scheme is considered to provide justification for potential material contraventions under Section 37 (2) (b) (iii).

Sustainable Residential Development in Urban Areas (2009)

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

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

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

Naas Local Area Plan 2021-2027

The Naas Local Area Plan 2021 - 2027 came into effect on 1st December 2021. This plan replaced Naas Town Development Plan 2011-2017.

In respect of parking levels Objective MTO 4.1 of the Naas Local Area Plan 2021-2027 states that the Council intends to:

“Apply the parking standards in the Kildare County Development Plan, and relevant Section 28 Guidelines, to all applications for planning permission in Naas. Dispensations will only be considered in exceptional circumstances and having regard to location, proximity to key public transport routes, heritage and urban design context.”

It is considered that there is a conflict between the Development Plan and the Section 28 Guidelines, in respect of the car parking standards for apartments and duplexes, however the proposed development is compliant with the Section 28 Guidelines and as such is considered in this report.

6.2.4 Section 37 (2) (b) (iv)-Has regard to Pattern of Development

Section 37 (2) (b) (iv) of the Planning Acts is the consideration that 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. For the following reason, the scheme is considered to be justified for potential material contraventions under Section 37 (2) (b) (iv).

In terms of car parking standards we note that the adjacent Devoy Quarter Strategic Housing Development (ABP-307258-20) which was granted by An Bord Pleanála in September 2020, had car parking for apartments permitted at 1.16 spaces per unit. It is considered that this proposed scheme is compliant in terms of parking for houses, and parking for apartments/duplexes is provided on a similar basis to the adjacent scheme at 1.22 spaces per unit.

In respect of height, the adjacent Devoy Quarter included for buildings fronting the Devoy Road at 5 storeys similar to this proposed scheme.

In respect of PERM 68 it is considered that the proposed development provides for permeability through the site to Newbridge Rd, as set out in the text objective PERM 68, it does however differ from the indicative line on the relevant map. It

is submitted that the applicant has sought to provide the maximum permeability possible within its control. The scheme has been designed to integrate with identified additional permeable routes to adjacent lands should these be delivered in the future.

The required lands are outside the application boundary and the applicant's control, and is not in the ownership of the applicant, and as such cannot be provided for. The applicant has engaged extensively with Kildare County Council in respect of the delivery of these links. However, due to legal uncertainty over the ownership of the required parcels of land it has not been possible to provide for them at this time.

As such the proposed development is consistent with the pattern of development, and permissions granted in the area since the making of the Development Plan and is justified pursuant to Section 37(2)(b)(iv) of the Planning Acts.

7 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN

1. Plot Ratio

In the case of plot ratio, the proposed development will contain a plot ratio of 0.45 and it is considered that this could be considered to be a material contravention of the Development Plan. While this is below the Development Plan levels it is submitted that Plot Ratio is only one measurement for assessment of a proposed scheme. This plot ratio is considered in the context of the proposed density, 55.2 units per hectare, and the extent of open space proposed, 15% of site area, and as such is considered to be appropriate. The scheme as proposed achieves a high quality residential development, at an appropriate density and height, and with adequate parking provision, for the site's context both in terms of existing and permitted residential development and accessibility in compliance with more recent National Planning Policy and Section 28 Guidelines.

2. Car Parking Provision

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

3. Height

In respect of height, the proposed heights are only slightly above the Development Plan standards, at 4 and 5 storeys both of which are above the 15m

maximum referenced in the Development Plan. While the Development Plan identifies that Local Area Plans will identify locations for taller buildings above this, the definition in the Local Area Plan for ‘focal building’ is unspecified. It is considered that the height of the buildings in the proposed development is justified with regards to the Urban Development & Building Height Guidelines, the pattern of development on adjacent lands, and the intent for the site under the Naas Local Area Plan.

4. PERM 68

In respect of PERM 68 it is considered that permeability is provided from the Devoy site to the Newbridge Road, however it is acknowledged this differs from the LAP Map identifying this route. It is submitted that the applicant has sought to provide the maximum permeability possible within its control. The scheme has been designed to integrate with identified additional permeable routes to adjacent lands should these be delivered in the future.

As required in legislation, it is submitted that all of these potential material contraventions can be justified under Section 37(2) (b) (i), (ii) and (iii) of the Planning and Development Act 2000 (as amended) where the Board may determine under this section, to grant a permission even if the proposed development contravenes materially the LAP / Development Plan relating to the area of the planning authority to whose decision the appeal relates.

(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 planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- 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.'

It follows from the foregoing that it must be established that the proposed development is of "strategic" or "national importance" and that one of the other criteria under (ii), (iii) or (iv) are met. It is considered, in the case of this development that the scheme is considered strategic due to:

- Zoned as 'New Residential' in its context of the urban centre of Naas and identified as a Key Development Area in the Naas Local Area Plan 2021-2027
- Contributes to the objectives of the National Planning Framework by providing much needed cost rental residential development in urban areas.
- Site is to be developed by the Land Development Agency, on lands in the ownership of the Housing Agency, and as such is considered to be strategic given the importance placed by the Government in the role of these two agencies in delivering much needed housing.

Having established that the scheme is strategic the following criteria are considered:

- (ii) *there are conflicting objectives in the Development Plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) *permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (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.*

The specific justification for each of the potential Material Contraventions, in respect of Section 37 (2) (b) are set out below:

Material Contravention	Section 37 (2) (b)	Rationale
Kildare County Dev Plan 2017-2023		
Plot Ratio Standards	(iii)	Proposed development is in line with national policy in respect of density.
	(ii)	There is a conflict in the Development Plan between competing objectives in respect of plot ratio, density, open space.
Car Parking Provision in respect of apartments/duplex units	(iii)	Proposed car parking level for apartments and duplexes is in line with Section 28 Guidelines to reduce car parking provision.
	(iv)	Proposed car parking level for apartments and duplexes is in line with adjacent permissions.
Height	(ii)	Height is in line with the LAP but there is conflicting/non-aligning terminology between the Development Plan and LAP.
Naas Local Area Plan 2021-2027		
PERM 68	(ii)	The LAP indicates a route is required between the site and Newbridge road however the link provided differs from the indicative route on the map.
	(iv)	The pattern of development in the area, in particular the legal land ownerships, prevents the delivery of the route, as per the Map in the LAP.

As set out in this report the scheme provides an appropriate scale of development with a density of 55.2 units per ha, an appropriate level of height, from 2-5 storeys and the delivery of 219 no. residential units, given the sites context with Naas and the adjacent residential development, both existing and permitted.

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

Having regard to sections 37(2)(b) (i) and, (ii) (iii) and (iv) of the Planning and Development Act 2000 (as amended) and the following objectives with County, Regional and National guidance:

- *The objectives of Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, inc. the remit of the Land Development Agency.*
- *Objectives 3a, 3b, 10, 11 and 35 of the National Planning Framework,*
- *Section 5.8 of the 2009 Guidelines for Sustainable Residential Developments in Urban Areas issued in 2009*

- *Section 2.4 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in December 2020.*
- *SPPR1 and SPPR4 and of the Guidelines for Planning Authorities on Urban Development and Building Height issued in December 2018,*
- *Objective RPO 5.1, 5.2, 5.3, 5.4, 5.5 of the Regional Social and Economic Strategy for the Eastern and Midlands Region 2019-2031, and*
- *Objective MTO 4.1 and Figure 10.22 of the Naas Local Area Plan 2021-2027*

All of above support the proposed residential development. It is submitted that despite potential contraventions of certain objectives of the Development Plan and the Local Area Plan, the proposed development is consistent with the ultimate aims and objectives of the Development Plan, the Local Area Plan and wider region and national strategies and guidelines.

On the basis of the above provisions, we submit that the Board can grant permission for the subject development even if they consider that Material Contraventions have occurred.