

## **MATERIAL CONTRAVENTION STATEMENT**

**FOR A**

**STRATEGIC HOUSING DEVELOPMENT AT THE FORMER  
GALLAHERS SITE, AIRTON ROAD & GREENHILLS ROAD,  
TALLAGHT, DUBLIN 24.**

**PREPARED BY**



**ON BEHALF OF**

**GREENLEAF HOMES LTD.**

**February 2020**

## TABLE OF CONTENTS

1. INTRODUCTION.....	3
2. LEGISLATIVE CONTEXT .....	3
3. POTENTIAL MATERIAL CONTRAVENTIONS .....	4
4. POTENTIAL MATERIAL CONTRAVENTIONS .....	9
5. CONCLUSION.....	12

## 1. INTRODUCTION

McGill Planning Ltd., have been instructed by the applicant Greenleaf Homes Ltd. to prepare this Material Contravention Statement to accompany this application for planning permission in respect of a proposed Strategic Housing Development (SHD) at the former Gallaher cigarette factory site, at the junction of Airton Road and Greenhills Road, Tallaght, Dublin 24.

The proposed SHD application will comprise the following:

- Demolition of existing factory/warehouse buildings on site (total floor area c.10,076.8 sqm).
- Construction of 502 no. apartments (comprising 197 no. 1-bed; 257 no. 2-bed; and 48 no. 3-bed units) within 6 no. blocks ranging in height from 4 to 8 storeys. All residential units provided with associated private balconies/terraces to the north/south/east/west elevations.
- Provision of residential amenity facilities, 3 no. retail units, creche, and services/bin store areas (total non-residential floor area c.1,838 sq.m).
- A total of 202 no. car parking spaces (at basement and undercroft levels) and 584 no. bicycle parking spaces.
- Vehicular/pedestrian/cyclist accesses from Greenhills Road and Airton Road. Provision of road improvements and pedestrian crossings.
- All associated site development works, open spaces, landscaping, boundary treatments, plant areas, pv panels (at roof level), waste management areas, and services provision (including ESB substations).

## 2. LEGISLATIVE CONTEXT

The Planning and Development (Housing) and Residential Tenancies Act, 2016 outlines how the Board may grant permission for a development which materially contravenes a Development Plan or Local Area Plan:

Section 9(6) of the Act 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.”*

It is noted that Section 9(6) of the 2016 Act does not require The Board to have regard to a **draft** Local Area Plan. This is different to a planning application made under Section 34 of the Planning & Development Act, 2000 (as amended) wherein, under Section 18(3)(a) of said Act, the Board may have regard to the provisions of a Draft LAP.

At the time of lodging this SHD application, the Tallaght Town Centre Local Area Plan, 2020-26, is still in draft. Whilst the LAP may be adopted during the adjudication of this SHD it is not clear what the exact final policies, objectives and development standards will be.

It is therefore assumed for this exercise that the Draft LAP (including potential amendments outlined in the Chief Executive’s Report on public submissions to the Draft LAP (dated December 2019)), will be carried through to the final adopted LAP and these are assessed below.

### **3. POTENTIAL MATERIAL CONTRAVENTIONS**

A number of potential contraventions of the SDCC County Development Plan and (draft) Tallaght Town Centre Local Area Plan are noted as follows:

Topic	Policy	Potential Contravention in the Proposed Development
<p><b>Building Height</b></p>	<p>Housing Policy 9 Objective 4 of the SDCC County Development Plan states the following:</p> <p><i>‘it is the policy of the Council to support varied building heights across residential and mixed use areas in South Dublin County’ with a specific objective to ‘direct tall buildings <b>that exceed five storeys in height</b> to strategic and landmark locations in Town Centres, Mixed Use zones and Strategic Development Zones and subject to an approved Local Area Plan or Planning Scheme.’</i></p> <p>However, this rudimentary height limit would appear to conflict with other policies in the Development Plan as follows:</p> <ul style="list-style-type: none"> <li>• <i>“Housing Policy 9 Residential Building Heights: It is the policy of the Council to support varied building heights across residential and mixed use areas in South Dublin County.”</i></li> <li>• <i>“H9 Objective 1: To encourage varied building heights in new residential developments to support compact urban form, sense of place, urban legibility and visual diversity.”</i></li> </ul>	<p>The proposed development comprises 6 blocks ranging in height from 4 to a maximum of 8 storeys.</p>
	<p>The Tallaght LAP identifies building heights of between 4 and 7 storeys residential (with the potential for an additional top storey recessed) at the subject site on the basis of Greenhills Road being a Primary Route and Airton Road being a Secondary Route (as per Figure 2.1 of the Draft LAP and the Broomhill Development Table on page 47.) However, Figures 2.4 and 3.13 also indicate that the building height range for the site is only 4-6 storeys.</p> <p>It is also noted that the recent Chief Executive’s Report on the submissions to the Draft LAP has proposed an amendment to the LAP policy to allow for additional building height at certain key locations:</p> <p><i>“To reflect the importance of placemaking at key public transport stops and key public spaces, flexibility in relation to the plot ratio range and the potential for higher buildings (2-4 storey increase on typical levels set in the LAP) may be considered at certain locations which are</i></p>	

	<p><i>considered to be key or landmark sites, subject to exceptional design which creates a feature of architectural interest, a significant contribution to the public realm at these locations and mixed uses at ground floor level. These requirements are subject to criteria for taller buildings set out in Section 2.6.2. This provision may apply where the site is directly adjacent to the following: • High capacity public transport stops (i.e. a Luas stop or high frequency bus stop (i.e. 10- minute peak hour frequency) on a dedicated bus lane)."</i></p>	
<b>Density /Plot Ratio</b>	<p>The Draft LAP indicates a maximum plot ratio of 1:1 for the subject site. This is considered unreasonably low for a key site that has the potential to accommodate a significant development of scale and bearing in mind that that the Development Plan only requires 10% minimum public open space. The recent Chief Executive’s Report recommends that the plot ratio range be increased to 1.5 where sites are close to high capacity public transport.</p> <p>Again, these plot ratio prescriptions would appear to conflict with the general residential density policies in the County Development Plan. The following are noted:</p> <ul style="list-style-type: none"> <li>• <i>H8 Objective 1: To ensure that the density of residential development makes efficient use of zoned lands and maximises the value of existing and planned infrastructure and services, including public transport, physical and social infrastructure, in accordance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009).</i></li> <li>• <i>H8 Objective 2: To consider higher residential densities at appropriate locations that are close to Town, District and Local Centres and high capacity public transport corridors in accordance with the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009).</i></li> </ul>	<p>The current proposal is at a plot ratio of 1.8 which is considered appropriate having regard to the national policies outlined in the Statement of Consistency.</p>
<b>Residential Mix</b>	<p>Section 5.2.1 of the Draft LAP states that a <u>minimum</u> 30% of new residential developments should be 3-beds. This draft policy is in conflict with SPPR 1 of the national Apartment Guidelines 2018 which set no minimum requirement for the number of 3+ bedroom units in any apartment development.</p>	<p>The proposed development comprises 39% 1-beds, 51% 2-beds, and 10% 3-beds. This mix is in accordance with SPPR 1 of the Apartment Guidelines 2018 which states that there shall be no minimum requirement for apartments with 3 or more bedrooms.</p>

<p><b>Occupancy</b></p>	<p>Section 5.2.2 of the Draft LAP states that a minimum of 30% of dwelling units in any new scheme should be for private sale and that a maximum of 60% shall be for rent.</p> <p>This policy is also considered contrary to national policy which does not seek to apply specific restrictions of whether permitted private apartment schemes are for sale, rent or a combination of the two.</p>	<p>The current proposal is for a private apartment development designed in accordance with the Apartment Guidelines 2018 for standard apartments that are not specifically Built to Rent (for planning).</p> <p>The developed apartments may ultimately be sold individually or rented, or a combination of both.</p>
<p><b>Open Space</b></p>	<p>Section 8.4.5 of the LAP states an objective for a linear park along Airton Road “<i>between new building frontage and existing road.</i>” The recent Chief Executive’s Report suggests that the park can be provided by retaining the existing building line set back along the southern side of Airton Road.</p> <p>This would appear to conflict with the general urban design principles outlined elsewhere in the LAP:</p> <ul style="list-style-type: none"> <li>• <i>Section 2.6.2: Development across the Plan lands should present strong building frontages close to street edges. Setbacks from the street edge should therefore be minimised. Buildings should not be set back from the street or space where commercial uses are proposed at ground floor particularly along primary and secondary frontages.</i></li> </ul> <p>In addition, we contend that the imposition of a linear park objective along the southern side of Airton Road, based on existing building lines, is unreasonable and contrary to good urban design and streetscape. There is no consistent existing building line along Airton Road to the south whilst the areas between the buildings (which are in active use) and the public road are currently used in a variety of ways including extensive surface car parking.</p> <p>Enforcing a linear park of significant depth alongside the very straight Airton Road will result in a poor building height to street width ratio, and poor urban edge definition. It is also arguably contrary to DMURS. The amenity benefits of the park, north of the future residential areas of Broomhill and</p>	<p>The proposed development provides a strong urban edge to Airton Road (and to Greenhills Road being the CPO line for the future Bus Connects).</p>

	<p>alongside a busy commercial road trafficked by a wide range of industrial and commercial uses to the north is also questionable.</p> <p>A more attractive linear urban park could be provided south of a new building line established along the southern side of Airton Road which would allow pedestrians and cyclists to travel east-west completely separate from the vehicular road, as is presented in the current application (and supporting masterplan).</p> <p>Overall, it is considered that the proposed development is in broad accordance with the Draft LAP, with the exception of certain objectives and standards which are considered contrary to Section 28 national planning guidelines, and which the Board are encouraged to give precedence to.</p>	
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

#### 4. POTENTIAL MATERIAL CONTRAVENTIONS

With reference to Section 9(6)(c) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, we hereby set out the criteria in Section 37(2)(b) of the 2000 Act (as amended) under which the Board can grant a material contravention:

- ***Section 37(2)(b)(i) - the proposed development is of strategic or national importance***

The proposed development is a “Strategic Housing Development”, as defined under Section 3 of the 2016 Act.

- ***Section 37(2)(b)(ii) - there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned***

The conflicting objectives within the development plan and draft local area plan with regard to height, density, residential mix and open space are noted in Section 3 above.

or

- ***Section 37(2)(b)(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***

In relation to Building Height 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.

We note the following compliances with the Specific Planning Policy Requirements (SPPRs) of the Guidelines:

<b>SPR1</b>	<i>Support increased building height and density in locations with good public transport accessibility</i>	The proposed development ranges in height from 4 to 8 storeys, with the increased height placed strategically within the development. The site is located on the Greenhills Road and has access to a range of high frequency bus
-------------	------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		services and also is in walking distance of the LUAS.
<b>At the scale of the town</b>	<i>Site is well served by public transport with high capacity, frequent service and good links to other modes of transport</i>	There are a number of Dublin Bus services operating in the vicinity of the site including nos. 27, 54a, 65, 75, 75a, 76, 76a, 77a, and 175 are all within 5 minutes' walk of the site.  The no. 27 that operates directly past the site runs services every ten minutes until at least 7pm Monday to Saturday and every 15 minutes on Sundays.
	<i>Successfully integrates into/enhances the character and public realm of the area, having regard to topography, its cultural context, setting of key landmarks, protection of key views.</i>	The proposed development will make optimum use of a large vacant, and high profile brownfield site that is zoned for REGEN in a highly accessible area which is undergoing significant regeneration and change. There is well-established social infrastructure within walking distance of the site.
	<i>Make a positive contribution to place-making</i>	It is wholly appropriate for redevelopment to higher density mixed use residential use within this urban setting, creating a new urban quarter, providing access to services in the wider area. It will create a new focal point for the area with a variety of open spaces and pedestrian connections through the development.
<b>At the scale of the neighbourhood</b>	<i>Responds to its overall natural and built environment and makes a positive contribution to the urban neighbourhood and streetscape.</i>	The proposed development responds to the natural environment by providing new attractive routes and public spaces within the development. The aim is to retain as many of the existing trees as possible within the development to the south along the river.  A series of open spaces and streets are created within the scheme. The development will act as a local nodal development at a strategic junction.
	<i>The proposal is not monolithic and avoids long, uninterrupted walls of building.</i>	The proposed apartment blocks are provided at a variety of heights, set backs and finishes making for a visually interesting residential development.
	<i>Enhances the urban design context for public spaces and key thoroughfares</i>	The proposed development will provide a series of public spaces that will be accessible to all, will provide through-access and will be overlooked by the proposed apartment

		blocks. Overall this will enhance the public realm in the area.
	<i>Makes a positive contribution to the improvement of legibility through the site or wider urban area within which the development is situated and integrates in a cohesive manner.</i>	The new streets through the site will be overlooked by the apartment blocks. People will be able to navigate through the development to get to local retail and health services, public parks and recreational areas. This will ensure that the development integrates well with and enhances its existing environment.
	<i>Positively contributes to the mix of uses and/or building typologies available in the neighbourhood.</i>	The scheme contributes to an overall sustainable mix of residential types in the area by introducing a significant apartment development.
<b>At the scale of the site/building</b>	<i>Form, massing and height should be modulated to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light</i>	The form, massing and height have been designed to optimise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.
	<i>Regard should be taken of quantitative performance approaches to daylight provision</i>	A daylight/ sunlight assessment was carried out by IN2 Engineers to ensure daylight is optimised throughout the site. The layout and design of the scheme will enable sufficient sunlight and daylight into the apartments, communal open space and public open spaces.
<b>Specific Assessment</b>	<i>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.</i>	The height and orientation of the proposed blocks indicates that the development is unlikely to create negative local wind microclimate impacts. This has been confirmed by the Microclimatic Wind Analysis and Pedestrian Comfort Report submitted.
	<i>Development locations in proximity to sensitive bird/bat areas need to consider the potential interaction of the building location, materials and artificial lighting.</i>	The site and location have been assessed from an ecological perspective and in relation to potential impact on European sites, bats, birds and other fauna. We refer to the submitted EIAR Summary submitted with this application.
	<i>Relevant environmental assessment requirements.</i>	

## 5. CONCLUSION

Given the above it is contended that the proposed SHD scheme at the junction of Airton Road and Greenhills Road, Tallaght, Dublin 24, complies with the national Building Heights Guidelines, and therefore the Board may grant permission under Section 9(6) of the 2016 Act.