



MATERIAL CONTRAVENTION STATEMENT

With Kilkenny County Development Plan 2014 - 2020

Margaret's Fields Strategic Housing Development (SHD)

Application at Margaret's Fields, Callan Road, Kilkenny, County Kilkenny

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ON BEHALF OF:

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Table of Contents

1.0	Introduction	3
1.1	Description of Development	3
2.0	An Bord Pleanála’s Powers and Material Contraventions	4
3.0	Potential Material Contravention Issues	6
3.1	Car Parking Standards - Kilkenny County Development Plan (KCDP) 2014-2020.....	6
4.0	Justification for Material Contravention.....	6
4.1	Development of Strategic or National Importance	7
4.2	Conflicting Development Plan Objectives.....	8
4.3	Compliance with Section 28 Government Guidelines	10
5.0	Conclusion.....	14



1.0 Introduction

Prior to submitting this application, the applicant had to consider whether the proposed development materially contravened the Kilkenny County Development Plan 2014 -2021 or the Kilkenny City Development Plan 2014 – 2020 in order to comply with the requirement under Section 8 of the Planning Development (Housing) and Residential Tenancies Act 201 ('the 2016 Act') that the statutory newspaper notice state:

“where the proposed development materially contravenes the said plan other than in relation to 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,...”

The Applicant has identified one aspect of the proposed development that raises the issue of Material contravention which is that:

The development proposes 274 no. car parking spaces for Phase 2 and Phase 3 development, which is below the standard car parking provision indicated in Section 11.7.9 of the Kilkenny County Development Plan 2014-2020.

The standard number of car parking spaces that would be required for the scheme is 215.25 no. spaces for Phase 3 (6 no. four bed houses, 37 no. three bed houses, 14 no. two bed houses, 15 no. three bed duplex, 1 no. three bed apartment, 27 no. two bed apartment and 15 no. one bed apartments = 215.25 spaces required) and 142.5 for part of Phase 2 (46 no. five bed houses and 26 no. three bed duplex = 142.5) as per the Kilkenny County Council's Standards.

This report seeks to address the issue of a material contravention in relation to Car Parking, as required under SHD legislation, and outlines the justification to permit the proposed car parking ratio.

1.1 Description of Development

Denis Treacy Construction Limited, intend to apply for Planning Permission for a strategic housing development on a site of c. 3.2 ha at Margaret's Fields, Callan Road, Kilkenny, Co. Kilkenny. The development will consist of:

- Construction of 115 no. residential units in total including 6 no. four bed houses, 37 no. three bed houses, 14 no. two bed houses, 15 no. 3 bed duplex houses, 15 no. one bed apartments and 27 no. two bed apartments and 1 no. three bed apartments.
- Building Type 1 is a 4 storey duplex/apartment block which comprises 12 no. units. Balconies/terraces are provided on all elevations.



- Building Type 2 is a 3 storey duplex/apartment block which comprises 8 no. units. Balconies/terraces are provided on all elevations.
- Building Type 3 is a 3 - 4 storey duplex/apartment block which comprises 30 no. units. Balconies/terraces are provided on all elevations.
- Building Type 4 is 3 storey duplex block which comprises 8 no. units. Terraces are provided along the south eastern elevation.
- The proposed development includes the partial reconfiguration and redesign of the permitted Phase 2 development on the site, which is partially complete (Kilkenny County Council, Reg. Ref. 06/1089).
- The scheme provides for a total of c. 5,164 sqm of public open space including a Main Open Space measuring 2,942 sqm, a Pocket Park measuring 483 sqm and a Linear Open Space which measures 1,739sqm. 450 sqm of communal open space is also provided.
- Provision of 117 no. long term and 29 no. visitor bicycle parking spaces.
- A total of 274 no. car parking spaces will be provided for Phases 2 and 3.
- A garage is proposed to be demolished on the site which measures 41 sqm.
- The vehicular access to the site will be from Seville Grove.
- A new ramped pedestrian route is proposed from the development directly onto the Callan Road.
- All other ancillary site development works to facilitate construction, site services, piped infrastructure, plant, public lighting, bin stores, bike stores, boundary treatments and hard and soft landscaping.

2.0 An Bord Pleanála's Powers and Material Contraventions

This statement outlines the justification for the proposed residential development which is considered to materially contravene the Kilkenny County Development Plan. Should the Bord consider this to represent a Material Contravention of the Development Plan, we respectfully submit that the Bord can grant permission under Section 9(6) of the *Planning and Development (Housing) and Residential Tenancies Act 2016*, which states:

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



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

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

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

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

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*



3.0 Potential Material Contravention Issues

3.1 Car Parking Standards - Kilkenny County Development Plan (KCDP) 2014-2020

The *Kilkenny County Development Plan 2014-2020* outlines the car parking requirements for dwelling houses and apartments under Table 11.2 of Chapter 11.

The standards for dwelling houses state that each unit is to be provided with 2 car spaces, and an additional 0.25 spaces per unit for visitor parking. For apartment units the requirements are higher where 1.25 spaces are to be provided per apartment unit, with an additional 0.25 spaces per unit for visitor parking.

The subject development scheme proposes a total of 274 no. car parking spaces for 187 no. residential units for Phase 2 and Phase 3 development. This is less than the requirement of the *Kilkenny County Development Plan 2014-2020*.

4.0 Justification for Material Contravention

It is respectfully requested that An Bord Pleanála have regard to the following justification for a material contravention of the Development Plan based on three criteria as outlined below, namely, the development is of Strategic and National Importance, there are conflicting objectives in the Development Plan and permission should be granted based on the policies and objectives stated in the Section 28 of the Planning and Development Act 2000 (as amended) Government Guidelines.

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

'(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'



4.1 Development of Strategic or National Importance

The proposed development was considered on foot of pre-application meetings with An Bord Pleanála and Kilkenny County Council, to meet the legislative definition of strategic housing development. It can therefore be deemed of strategic importance with respect to the delivery of urban housing and implementation of the current Government's Action Plan for Housing and Homelessness – 'Rebuilding Ireland'.

The significant shortfall in housing output to address current and projected demand is a national problem, and this is particularly evident in Kilkenny. The proposed development site measures 3.2ha and proposes 115 new dwelling units, supplied with a mix of dwelling houses, apartments and duplex which could help alleviate the demand for housing within the county. We would therefore submit that the proposed development is of strategic and national importance.

The proposed development is considered to be in accordance with Objective 3c of the National Planning Framework, which states the aim to;

"Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints¹."

(Our Emphasis)

Furthermore, NPO 36 states:

*"New statutory guidelines, supported by wider methodologies and data source, will be put in place under **Section 28 of the Planning and Development Act** to improve the **evidence base, effectiveness and consistency of the planning process** for housing provision at regional, metropolitan and local authority levels. This will be supported by the provision of standardised requirements by regulation for the recording of planning and housing data by local authorities in order to provide a **consistent and robust evidence base for housing policy formulation**"*

(Our Emphasis)

It is hoped that this National Policy Objective will allow for the housing provision to meet varying housing needs at regional, metropolitan and local authority levels.

¹ On the basis of National Policy Objective 2a, this effectively targets 15% of all new homes nationally. Individual or scheme homes delivered outside the CSO defined urban settlement boundary are classed as greenfield.



Whilst noting that the statutory requirement is for the development to be of either strategic or of national importance and the points made above, it is our professional opinion that the project in question should be considered to be of both strategic and national importance.

4.2 Conflicting Development Plan Objectives

There are currently conflicting objectives and a lack of clarity in objectives within the Kilkenny County Development Plan (KDP) 2014-2020 in relation to car parking provisions and the promotion of sustainable modes of transport.

Kilkenny County Development Plan (KDP) 2014 -2020	
<p>Section 11.1.1</p> <p><i>“In line with Smarter Travel, the Plan will promote cycling and walking as efficient, fast and relatively inexpensive forms of transport. The design and location of residential development can minimise the need for car journeys and by encouraging walking and cycling. Providing a network of safe, well-lit and convenient footpaths and cycleways within new residential areas with links to schools, local neighbourhood centres, public transport stops and workplaces will encourage walking and cycling.”</i></p> <p style="text-align: right;"><i>(Our Emphasis)</i></p>	<p>Under Section 11.1.1, the KDP aims to promote cycling as a mode of transport due to its efficiency and inexpensiveness. It is further identified that the design and location of residential development can lead to minimised need for car journeys.</p> <p>Therefore, it can be determined that the Council supports a minimised need for car journeys as long as the development is located and designed appropriately while providing quality pedestrian and cycle routes.</p> <p>However, there is no clear emphasis or guidance on how a minimised need for car journeys might be reflected on the car parking provision standards outlined under Section 11.7.9 of the KDP.</p>
<p>Section 11.3.2</p> <p><i>“In areas of low to medium population, bus-based public transport can offer the most flexible means of providing services both for urban and inter-urban travel and can be introduced within a short time frame and at relatively low cost. Bus Éireann and a number of private operators operate services throughout County Kilkenny.”</i></p> <p style="text-align: right;"><i>(Our Emphasis)</i></p>	<p>Section 11.3.2 also outlines the promotion of alternative modes of transport such as bus services for urban and inter-urban travel due to its feasibility.</p> <p>Similarly, there is no indication or guidance within the KDP on how increased access to public transport services should reflect on the car parking provisions in urban and inter-urban locations.</p>
<p>Section 11.7.7</p> <p><i>“Development proposals may generate significant trips/travel, including road traffic,</i></p>	<p>From this section it is understood that the Traffic and Transport Assessment (TTA) serves the purpose of ensuring that the roads, junctions</p>



<p><i>with potentially significant implications for national and non-national roads. Traffic and Transport Assessment is a methodology used to assess the transport impacts of a proposed development, incorporating any subsequent measures necessary to ensure roads and junctions and other transport infrastructure in the vicinity of the development remain fit for purpose and encourage a shift towards sustainable travel modes.</i></p>	<p>and other transport infrastructure in the vicinity of the development remain fit for the purpose. Additionally, the TAA also serves the purpose of encouraging a shift towards sustainable travel modes.</p> <p>However, the current standards outlined in Section 11.7.9 of the KDP do not specify any guidance on how the development car parking provisions might be altered in the event that the TTA proposes a shift toward sustainable travel modes.</p>
<p>Section 11.7.9</p> <p><i>“In assessing development proposals the Planning Authority will use the standards set out in the Table below. Such facilities shall cater for the immediate and anticipated future demands of the development, and where car parking provision on site is not possible, or desirable for other valid reasons, the Council may consider the payment of a financial contribution in lieu.”</i></p> <p>Relevant Standards from Table 11.2 from the KDP:</p> <p>Dwelling House</p> <p><i>2 car parking spaces per unit</i></p> <p><i>0.25 spaces per unit for visitor parking</i></p> <p>Apartments</p> <p><i>1.25 spaces per unit</i></p> <p><i>0.25 spaces per unit for visitor parking</i></p>	<p>The car parking standards outlined for dwelling houses and apartments, currently aim to accommodate a high number of car parking spaces for residential units. Further, it does not specify area based standards for car parking provision within Kilkenny.</p> <p>However, the KDP Chapter on Transport aims to encourage alternative modes of travel as outlined in the sections discussed above.</p> <p>Additionally, both the SUHDS and NPF support reduced car parking standards depending on the ‘performance criteria’, i.e. in terms of location and proximity to the city, accessibility to public transport, etc.</p> <p>Therefore, these provision requirements are unclear and contradictory to the national objectives and also contradicts KDP’s own objective to support and encourage alternate sustainable modes of transport.</p>



4.3 Compliance with Section 28 Government Guidelines

The Kilkenny County Development Plan (KCDP) 2014-2020 outlines set car parking space requirements for several land-use types. The parking space requirements listed for land use types ‘Dwelling House’ and ‘Apartments’ are most relevant to the subject development.

According to the KCDP 2014-2020 car parking standards from Table 11.2 of the Development Plan, ‘dwelling houses’ are required to be provided with 2 car parking spaces per unit with an additional 0.25 spaces per unit. Whereas, ‘apartments’ are required to be provided with 1.25 car parking spaces per ‘unit’ with an additional 0.25 spaces per unit.

However, this requirement standard would accommodate a significant excess in the number of car parking spaces to be provided, which contradicts the objectives and policies of the National Planning Framework and the Sustainable Urban Housing Design Standards for New Apartments (SUHDS).

The following tables highlight compliance of the subject development with the National Planning Framework and the Sustainable Urban Housing Design Standards for New Apartments.

National Planning Framework (NPF) - Project Ireland 2040	
<p>National Policy Objective 13</p> <p><i>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.</i></p> <p style="text-align: right;"><i>(Our Emphasis)</i></p> <p>The NPF further states that,</p> <p><i>In particular, general restrictions on building height or universal standards for car parking or garden size may not be applicable in all circumstances in urban areas and should be replaced by performance-based criteria appropriate to general location, e.g. city/town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc.</i></p>	<p>The subject site for the development proposal is located in Kilkenny City. The RSES for Southern Regions recognises Kilkenny City as a ‘key town’ within the region, and is “the second largest settlement in the South-East and fourth largest settlement in the Southern Region.” Further according to the Settlement Typology Table 3.2 from the RSES for Southern Regions, Kilkenny County is classified as a Key Town having ‘large population scale urban centre’ functioning as a ‘self-sustaining’ regional driver.</p> <p>The above information on Kilkenny makes it possible to conclude that Kilkenny City is to be considered an urban location.</p> <p>Due to the close proximity of the site to the City Centre as demonstrated by the Mobility Management Plan, the site can also be considered to be located within an urban/intermediate urban location. Therefore, policy relating to urban/intermediate urban locations with sufficient connectivity is deemed to be most relevant for the subject development</p>



<p><i>(Our Emphasis)</i></p>	<p>application.</p> <p>However, it is also recognised within the NPF that universal standards may not be applicable in all urban areas and hence must be replaced by ‘performance criteria’, e.g ‘city/town centre, public transport hub, inner suburban, public transport corridor, outer suburban, town, village etc.’</p> <p>It is determined that the subject site performs well under the above mentioned criteria as concluded within the Mobility Management Plan (MMP) prepared by Roadplan. The MMP highlights the site’s access to public transport such as bus and rail services located at a distance ranging from a minimum of 1 km (i.e. 14 minute walking distance) to the nearest bus stop and 2.9 km to the train station. In addition to this, it is determined that the site offers good pedestrian and cycle connectivity to the City Centre through existing cycle and pedestrian links.</p>
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Sustainable Urban Housing: Design Standards for New Apartments (SUHDS) (December 2020)	
<p>Section 4.18</p> <p><i>The quantum of car parking or the requirement for any such provision for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.</i></p> <p style="text-align: right;"><i>(Our Emphasis)</i></p>	<p>The Sustainable Urban Housing: Design Standards for New Apartments recognises a need for varied parking provision depending on certain factors like the location of the subject development. This also falls in line with the NPF NPO 13 mentioned above, that supports varied parking provision.</p>



<p>Section 4.21</p> <p>2) Intermediate Urban Locations</p> <p><i>In suburban/urban locations served by public transport or close to town centres or employment areas and particularly for housing schemes with more than 45 dwellings per hectare net (18 per acre), planning authorities must consider a reduced overall car parking standard and apply an appropriate maximum car parking standard.</i></p> <p style="text-align: right;"><i>(Our Emphasis)</i></p>	<p>The subject development is located within an urban/suburban location served by public transport and in close proximity to Kilkenny City Centre and employment areas.</p> <p>Hence, it is appropriate for the subject development to consider reduced overall car parking provision.</p>
<p>Section 4.16</p> <p><i>Cycling provides a flexible, efficient and attractive transport option for urban living and these guidelines require that this transport mode is fully integrated into the design and operation of all new apartment development schemes. In particular, planning authorities must ensure that new development proposals in central urban and public transport accessible locations and which otherwise feature appropriate reductions in car parking provision are at the same time comprehensively equipped with high quality cycle parking and storage facilities for residents and visitors.</i></p> <p style="text-align: right;"><i>(Our Emphasis)</i></p>	<p>Due to the location of the subject development close to the City Centre and its accessibility to public transport services (as proved within the accompanying Mobility Management Plan prepared by Roadplan), according to the SUHDS it is important to consider and promote cycling as a mode of transport.</p> <p>The proposed Site Layout has been prepared to maximize connectivity for residents by recognising the attractiveness of cycling as an alternative transport option and provides fully integrated bicycle routes and parking facilities across the development. The proposed bicycle routes are proposed to connect to the existing cycle and pedestrian links within the City and thereby extend pedestrian linkages in the area.</p> <p>Bicycle storage spaces have been provided following the SUHDS location requirements, at strategic points directly accessible from public roads, avoiding unnecessarily long access routes with poor passive security or slopes that can become hazardous during winter weather.</p> <p>The quantum of bicycle parking provision has also been determined according to the SUHDS requirements, at the rate of 1 cycle storage space per bed space along with 1 visitor parking space for every 2 residential units. Therefore a total of 117 no. parking spaces have been provided for apartment and duplex residents along with 29 no. parking spaces for visitors. This</p>



	<p>provision is in excess of the requirements stated within the KDP and encourages sustainable modes of transport such as cycling to and from the subject development.</p>
<p>Section 4.23</p> <p><i>For all types of location, where it is sought to eliminate or reduce car parking provision, it is necessary to ensure, where possible, the provision of an appropriate number of drop off, service, visitor parking spaces and parking for the mobility impaired. Provision is also to be made for alternative mobility solutions including facilities for car sharing club vehicles and cycle parking and secure storage. It is also a requirement to demonstrate specific measures that enable car parking provision to be reduced or avoided.</i></p> <p style="text-align: right;"><i>(Our Emphasis)</i></p>	<p>The proposed Site Layout Plan follows the universal design requirements for development and accommodates a number of parking provisions at most accessible locations for the mobility impaired.</p> <p>Alternative mobility solutions are also provided including 146 bicycle parking spaces and 1 no. sheltered storage facility within the Bin & Bike Store Type 1. The Bin & Bike Store (Type 1) from drawing number 1966-P-500A prepared by Brian Dunlop Architects, demonstrates the layout for the sheltered bicycle parking unit proposed, which meets the requirement within the SUHDS to provide sheltered bicycle parking storage facilities.</p> <p>The existing accessibility to public transport services from the site and the enhanced pedestrian and cycle connectivity to and from the site through the proposed pedestrian and cycle routes, enable the reduction for car parking provision within the subject development.</p>



5.0 Conclusion

As set out in Section 37(2)(b), An Bord Pleanála may materially contravene a Development Plan or Local Area Plan where national planning policy objectives take precedence, where there are conflicting objectives in the Development Plan or where the development is of Strategic or National importance. It is respectfully submitted that the justification set out within this statement clearly demonstrates that the proposed parking standards should be considered appropriate for the subject site.

It is considered that given the site's locational characteristics proximate to pedestrian/cycle routes, bus services and Kilkenny City Centre, the proposed development will inherently accord with National and Regional sustainable planning principles particularly in relation to the promotion of sustainable modes of transport. This is in line with the *National Planning Framework, Sustainable Urban Housing: Design Standards for New Apartments (SUHDS)*, and *Regional Economic and Spatial Strategy*. These national documents supercede the regional development plans, and therefore the proposed development conforms.

As such it is respectfully requested that An Bord Pleanála have regard to the justification set out within this statement and permit a deviation from the parking standards of the Kilkenny County Development Plan 2014 – 2020.

Yours sincerely

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