

## MATERIAL CONTRAVENTION STATEMENT



PROPOSED STRATEGIC HOUSING DEVELOPMENT AT LANDS AT  
NORTHWOOD CRESCENT, SANTRY DEMESNE, DUBLIN 9



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## 1.0 INTRODUCTION

This Material Contravention Statement accompanies an application by Kategale Limited for a Strategic Housing Development with a total application site area of c. 1.3 ha, on a site located at Northwood Crescent, Santry Demesne, Dublin 9. The proposed development can be summarised as follows;

*“Kategale Limited intend to apply to An Bord Pleanála for permission for a Strategic Housing Development with a total application site area of c. 1.3 ha, on a site located at Northwood Crescent, Santry Demesne, Dublin 9. The site is bounded by Northwood Crescent to the south and south-west; The Crescent Building to the north-west; Northwood Avenue to the north; and Northwood Road to the east. The development, with a total gross floor area of c. 27,904 sqm, will consist of the construction of 268 no. Build-to-Rent apartment units arranged over 2 no. blocks ranging in height from 5 to 11 storeys (Block A will comprise 54 no. 1-bedroom units and 44 no. 2-bedroom units; Block B will comprise 70 no. 1-bedroom units and 100 no. 2-bedroom units); Residential amenity facilities including a reception, post room and building management office; lounge areas, shared workspace, multimedia/games room, meeting rooms and a single storey residents’ gym at podium level (145 sqm); ancillary uses comprising a generator room; utilities room; bin stores; water tank rooms; sprinkler tank room; bicycle stores; storage rooms and plant rooms; the provision of all private and communal open space, including balconies/terraces to be provided for each apartment; and communal open space areas including a first-floor central podium garden connecting Blocks A and B and 2 no. rooftop terraces and a single storey 295 sqm crèche with dedicated outdoor play area.*

*The development will also comprise the construction of a 3-storey office building with a total gross floor area of c.2,868 sqm, including ancillary uses comprising a reception/security area, staff amenities, bike stores, waste room and a plant room. The development will also include the provision of hard and soft landscaping, public realm improvements and amenity areas including public open space, a children’s play area and a community outdoor dining area; the provision of internal roads and pathways; 142 no. undercroft car parking spaces at ground floor level, 8 no. crèche set down spaces, and 662 no. bicycle parking spaces at ground floor level and surface level. The development will also include all associated ancillary development including 2 no. ESB switch rooms and 2 no. ESB substations; ground works and foul drainage; stormwater drainage; attenuation tank and related SUDS measures, water supply; service ducting and cabling; electric vehicle charging points; public lighting; boundary treatments; and all ancillary site development and excavation works above and below ground. Vehicular access is proposed via a new entrance on Northwood Road; Vehicular set down area for crèche with access/egress is located on Northwood Crescent. The provision of 2 no. pedestrian crossings on Northwood Crescent and Northwood Road”.*



## 1.1 Purpose of this Document

This Statement has been prepared to address matters associated with the proposed development that might be determined to materially contravene relevant provisions of the *Fingal County Development Plan 2017-2023*, as required under Strategic Housing Development legislation. An abundance of caution approach has been taken to the identification of the provisions referenced and addressed in this Statement and as set out in detail under Section 2, below. In summary these matters relate to residential development standards in respect of:

- *Floor Area Standards;*
- *Car Parking Provision;*
- *Public Open Space; and*
- *Playground Facilities*

These issues are described in greater detail below together with the grounds by which the Board may grant permission for the subject proposal, having regard to Section 37(2) of the *Planning and Development Act 2000* (as amended).

## 2.2 Legislative Context

Section 9 of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, as amended ('the 2016 Act'), confers power on An Bord Pleanála to grant permission for a development which is considered to materially contravene a Development Plan or Local Area Plan, other than in relation to the zoning of land, is as follows:

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

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

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



Section 37(2)(b) of the *Planning and Development Act 2000*, as amended, ('the 2000 Act') states:

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

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

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

In the event that the Board were to grant permission, the Board's "reasons and considerations" would have to reference the matters under Section 37(2)(b) of the 2000 Act upon which it relies to justify the granting of permission in material contravention of the Development Plan. It is apparent from section 10(1)(3)(b) of the 2016 Act that such reasons and considerations must appear in the Board decision itself. Section 10(3) provides as follows:

*"(3) A decision of the Board to grant a permission under section 9(4) shall state-*

*....*

*(b) where the Board grants a permission in accordance with section 9(6)(a), the main reasons and considerations for contravening materially the development plan or local area plan, as the case may be."*

Having regard to the analysis set out below of the compliance of the proposed development with national planning policy and section 28 guidelines, and having considered the strategic nature of the site and the proposed development, it is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the County Development Plan, by reference to sub-paragraphs (i), (ii) and (iii) of Section 37(2)(b) for the reasons set out below.

### 1.3 Site Context

The subject site, which measures 1.36 ha is located within the Northwood business campus in Santry. The subject site is situated at a strategic location on Northwood Avenue, which is within the historic Santry Demesne and together with Gulliver’s Retail Park forms part of the western section of the overall Northwood development. The site is approximately 6.5km north of Dublin City Centre and approximately 1 km south of the M50 (Junction 4).

The overall site is bound to the north by Northwood Avenue, to the east by Northwood Road, and to the south and west by Northwood Crescent. There are a number of commercial units further to the south, including offices associated with Athletics Ireland, WDA Accountants, Hickeys Pharmacy Head Office, Tifco Hotel Group, Europcar Ireland, plus others.

The site is subject to an existing permitted mixed-use development (Reg. Refs. F19A/0401 and F19A/0419). The permitted development comprises a mixed use residential and office development. The current Build-To-Rent proposal is being put forward in response to an identified market demand for this type of accommodation, as outlined in the accompanying *Market Justification Report* prepared by Liv Consult. As outlined in this statement and the supporting documentation accompanying this application, the current scheme represents a more efficient use of this valuable and well-connected site within the identified Metro Economic Corridor and will complement the emerging development context of the area through the delivery of a high-quality architectural development.

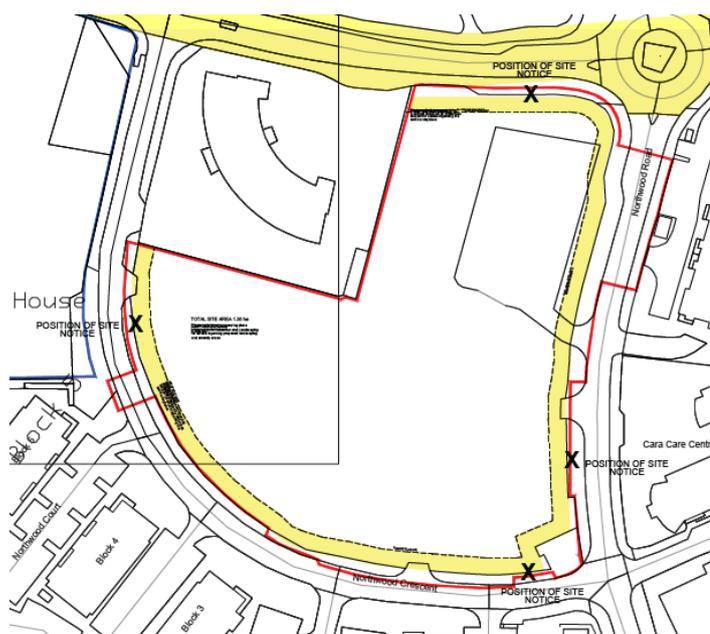


Figure 1.0: Extract of Site Location Map, prepared by MOLA Architecture. [Cropped and annotated by TPA, 2022.]



The subject lands, which are zoned as Metro Economic Corridor, will accommodate a well-designed high density residential development that will benefit from the strong locational advantages and connectivity in the area.

Thus, it is considered that given the site's locational characteristics, residential development will inherently accord with National and Regional sustainable planning principles particularly in relation to the promotion of more compact and efficient forms of urban development in appropriate locations.

## 2.0 STATEMENT IN RELATION TO MATERIAL CONTRAVENTION OF THE DEVELOPMENT PLAN

### 2.1 *Minimum Floor Area Standards*

In relation to minimum floor areas, objective DMS25 of the *Fingal County Development Plan 2017 – 2023* requires that the majority of all apartments in a proposed scheme of 100 or more apartments must exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%. The minimum gross floor areas for apartments / duplexes, as outlined in the Development Plan are outlined below:

Dwelling type	Minimum Gross Floor Area (sq m)
3 bed	90
2 bed	73
1 bed	45

Unlike the *Fingal County Development Plan* standards, Section 5 of the *Apartment Guidelines* distinguishes between build-to-sell and build-to-rent typologies and provides express guidance on the Build to Rent (BTR) development typology as proposed in the subject application - in this regard SPPR 7 of the guidance is relevant. SPPR 8 goes on to provide distinct planning criteria applicable to BTR development and in this regard SPPR 8 (iv) removes the requirement that majority of all apartments in a proposed BTR scheme should exceed the minimum floor area standards by a minimum of 10%.

In order to comply with the above objective DMS25 of the *Fingal County Development Plan*, a minimum of 135 No. units in the proposed scheme should exceed minimum floor areas by 10%. As indicated on the accompanying Housing Quality Assessment prepared by MOLA Architecture, a total of 44 No. (16.4%) of units across the scheme are 'oversized' and exceed the minimum floor areas by 10%. This is below the standard outlined in Objective DMS25 of the *Development Plan*.

SPPR8 of the *Sustainable Urban House: Design Standards for New Apartments (2020)* specifies that "the requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes". The proposed scheme has been designed to comply with the *Apartment Guidelines* and therefore falls below the minimum thresholds for minimum floor area standards as outlined in the *Fingal Development Plan* thereby potentially contravening the development plan.

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

The *Design Standards for New Apartments Guidelines for Planning Authorities 2018* contain similar provisions to the *Fingal County Development Plan 2017 – 2023*, namely the requirement that the majority of all apartments in any proposed scheme of 10 or more apartments shall exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%.

However, Build-To-Rent developments are excepted from this requirement (see SPPR 8 below with our emphasis added) as such developments are required to provide compensatory communal facilities and amenities for use by residents.

#### ***Specific Planning Policy Requirement 8***

*For proposals that qualify as specific BTR development in accordance with SPPR 7:*

*(iv) The requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes;*

It is therefore concluded that the above-mentioned justification clearly demonstrates the proposed development is consistent with national policy guidance where it clearly demonstrates that the requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes.

## **2.2 Car Parking**

The following table outlines the car parking standards as per Table 12.8 of the *Fingal County Development Plan 2017 – 2023*. Please note that this is not the entire table contained in the *Fingal County Development Plan 2017 – 2023*, and merely contains information related to the proposed development.

<i>Land Use</i>	<i>Criterion</i>	<i>Proposed</i>	<i>Notes</i>	<i>Category</i>	<i>Norm or Max</i>
Apartment, townhouse 1 bedroom	Unit	1	Plus 1 visitor space per 5 units	Residential	Norm
Apartment, townhouse 2 bedroom	Unit	1.5	Plus 1 visitor space per 5 units	Residential	Norm
Pre-school facilities/creche	Classroom	0.5		Education	Maximum
Offices – General	GFA	1 per 30	Reduce by 50% near PT, MEC, MC, TC	Employment	Maximum



The car parking standards are split into Zone 1 which allows fewer car parking spaces and Zone 2 which allows a higher number of car parking spaces. Zone 1 applies to areas which are:

- Within 1600m of DART, Metro, Luas, or BRT, (existing or proposed),
- Within 800m of a Quality Bus Corridor,
- Zoned MC, Major Town Centre, or
- Subject to a Section 49 scheme.

According to the *Development Plan*, in mixed use developments, the car parking requirement will take account of different uses having peak parking demands at different times of the day and week. One space or more per 100 spaces should be reserved for disabled parking bays. One space or more per 100 spaces should be reserved for electric vehicles with charging facilities.

The proposed development will be located within c. 650m of the proposed Northwood Metro Link station and within 800m of the Swords Quality Bus Corridor. It is therefore classed as Zone 1 which allows for a reduction in the car parking spaces provided such as that being proposed in this instance. Based on the car parking standards outlined in Table 12.8 of the Development Plan, a total of 427 No. spaces are required to serve the proposed development (Refer to Section 12.1 to 12.4 of the enclosed *Traffic and Transport Assessment*, prepared by Waterman Moylan Consulting Engineers).

It is proposed to provide 142 No. spaces on the within the ground floor undercroft car park. 90 spaces are allocated to the apartments and 52 No. space are allocated to the office (incl. 8 No. disabled and one 1 No. Car Club space parking spaces). All spaces are provided with electric vehicle charging capability. A further 8 No. setdown car parking spaces are allocated to the creche on Northwood Crescent. Parking is provided for residential use at a rate of 0.33 spaces per unit, in accordance with *Sustainable Urban Housing: Design Standards for New Apartments. Guidelines for Planning Authorities*. Due to the shortfall in car parking provision required in relation to the car parking standards as per Table 12.8, we consider this to be a potential material contravention of the Development Plan.

### **National Planning Framework**

In terms of parking provision, the National Planning Framework 2040 encourage a 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.

Outlined in National Policy Objective 13, the NPF seeks:

*“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.”*



### ***Sustainable Residential Development in Urban Areas (2009)***

The *Sustainable Residential Development in Urban Areas (2009)* encourage realistic levels of car parking standards in developments having regard to proximity to public transport, stating that 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. The Guideline specifically state:

*“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.”*

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

The Guidelines state that:

*“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.”*

#### ***1) Central and/or Accessible Urban Locations***

*In larger scale and higher density developments, comprising wholly of apartments in more central locations that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. The policies above would be particularly applicable in highly accessible areas such as in or adjoining city cores or at a confluence of public transport systems such rail and bus stations located in close proximity.*

#### ***2) Intermediate Urban Locations***

*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.*

#### ***3) Peripheral and/or Less Accessible Urban Locations***

*As a benchmark guideline for apartments in relatively peripheral or less accessible urban locations, one car parking space per unit, together with an element of visitor parking, such as one space for every 3-4 apartments, should generally be required.”*

Specific Planning Policy Requirement 8, for proposals that qualify as specific BTR development in accordance with SPPR 7 further states:

*(iii) There shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures;*



It is therefore concluded that the above-mentioned justification clearly demonstrates the proposed development is consistent with national policy guidance where it clearly demonstrates that the reduced provision of car parking spaces reflects the location of the development in relation to its connectivity and access to public transport services.

### 2.3 **Public Open Space**

Objective DMS57 of the *Fingal County Development Plan 2017 – 2023* states the following:

‘Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.’

Additionally, the Development Plan states that *‘in general the public open space shall be provided at a ratio of 75% Class 1 and 25% Class 2.’*

The proposed scheme will provide for 2,380 sqm of public open space. Due to its size being in excess of 0.2 ha, this public open space is defined as a ‘Small Park’ as per Table 12.5 of the *Development Plan*. We respectfully submit that it is not feasible in this instance to provide Class 1 Public Open Space given the size of the application site being c. 1.3 ha.

The public open space provision provided is well in excess of 10% of the total site area (1,530 sqm). Additionally, Santry Demesne Regional Park, an Urban Neighbourhood Parks (Class 1 as per Development Contribution Scheme), measuring some c. 29 ha is within 700m of the subject site. Balcurris Park is located between 400m from the site and provides a range of playing pitches, nature trails and playgrounds

In our opinion, the 10% minimum standard to provide POS in this instance is more appropriate given the need to provide a sustainable level of residential density on a site in close proximity to high quality public transport nodes in line with the NPF and RSES. It is proposed to make a payment in lieu of the public open space shortfall, allowed for under Objective DMS57B and DMS57A of the *Development Plan*.

### 2.4 **Playground Facilities**

Objective DMS75 and DMS76 of the *Fingal County Development Plan 2017 – 2023* states the following in relation to the provision of public open space:

*“Provide appropriately scaled children’s playground facilities within residential development. Playground facilities shall be provided at a rate of 4 sq.m per residential unit. All residential schemes in excess of 50 units shall incorporate playground facilities clearly delineated on the planning application drawings and demarcated and built, where feasible and appropriate, in advance of the sale of any units”.*

*“Ensure that in the instance of an equipped playground being included as part of a specific facility, it shall occupy an area of no less than 0.02 hectares. A minimum of one piece of play equipment shall be provided for every 50 sqm of playground”.*



There are 268 No. units propose as part of the proposed developed, therefore playground facilities measuring 1,072 sqm is required. The development includes a large public playground (400 sqm) as part of public open space along the western boundary. In the courtyard garden, residents have access to further playground facilities (200 sqm). A total of 600 sqm of play space is included as part of the proposed development, as shortfall of 472 sqm.

The Applicant is satisfied to accept a condition of planning which requires that all play provisions should be agreed with Planning Authority prior to commencement of the prepossessed development, should planning permission be granted.

### 3.0 CONCLUSION

The Applicant has retained a multi-disciplinary Design Team, which have designed the development to take account of the residential amenities of the area, as well as those of the proposed development. The various assessments enclosed demonstrate that the proposal will complement the surrounding land uses and contribute to the development of a vibrant residential community and neighbourhood centre in this established suburban area.

At present, the lands of the subject site are underutilised. This is not a sustainable use for the lands acknowledging the current housing crisis, and is counter the site's zoning objective, as well as national policy to provide additional housing in existing built-up urban areas.

As required in legislation, it is submitted that the above material contraventions can be justified under Section 37(2)(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 Development Plan relating to the area of the planning authority to whose decision the appeal relates. This section states that 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.*



*(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 subject development can be considered strategic in nature, as it complies with the overarching themes of the NPF by proposing a compact, well-designed, sustainable form of residential development on an underutilised suburban site, located in close proximity to a range of social and commercial facilities and public transport services. The development accords with the NPF’s aims to consolidate Dublin through the development of underutilised, infill sites in locations that benefit from high quality public transport links.

It is considered that the proposed development will inherently accord with National and Regional sustainable planning principles in respect of minimum floor areas, car parking and public open space, particularly in relation to the promotion of more compact and efficient forms of urban development on brownfield sites and increased residential densities in appropriate locations, specifically in close proximity to high quality public transport services and centres of employment.

This is in line with the:

- *National Planning Framework;*
- *Regional Spatial and Economic Strategy for the Eastern and Midland Region;*
- *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities 2009;* and
- *Design Standards for New Apartments - Guidelines for Planning Authorities 2018.*

On that basis, it is submitted that the Board can grant permission for the proposed development in respect of minimum floor areas, car parking, and amenity provision, having regard to subsection (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.”*

It is considered that this statement provides appropriate justification for the Board to grant permission for the development in accordance with national policy and guidelines.