



Material Contravention Statement

FRANKFORT CASTLE SHD
PROPOSED STRATEGIC HOUSING DEVELOPMENT
AT OLD FRANKFORT, DUNDRUM, DUBLIN 14

PREPARED FOR:

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1.0 INTRODUCTION

Pembroke Partnership Limited¹ are applying to An Bord Pleanála for a Strategic Housing Development (SHD) at Frankfort Castle, Dublin 14.

The proposed development will consist of the: demolition of No. 97A Highfield Park and annexed structures associated with Frankfort Castle including Frankfort Lodge, the construction of a residential scheme comprising 115 no. units (45 no. one bedroom apartments and 70 no. two bedroom apartments) arranged in 3 no. blocks (Block A – a 4 storey block over 2 no. basement levels comprising 35 no. units, Block B – a 4/5 storey block comprising 54 no. units and Block C – a 3 storey block comprising 22 no. units) and within the refurbished 2 storey No. 2 Frankfort Castle (Block D- comprising 4 no. units). Vehicular access will be provided via a new access at Old Frankfort with emergency vehicle access only provided via the existing Frankfort Court access.

The development will also consist of the provision of: ancillary residential amenity areas within Block D, a crèche measuring c.80sqm at ground floor level of Block A including associated external play space, cycle parking at surface and ground floor level including sheltered and secure parking, car parking at surface and 2 no. basement levels, electric vehicle charging points, attenuation storage system, waste storage facilities, 2 no. substations, ancillary service and plant areas, hard and soft landscaping, boundary treatments, upgrades to road and pedestrian infrastructure along Old Frankfort and all other site development and drainage works above and below ground.

1.1 Purpose of Report

This report seeks to address the issue of potential material contravention in relation to car parking and unit mix, as required under SHD legislation, and outlines the justification to permit the proposed car parking ratio and unit mix provision.

Car Parking Ratio

Based on the total proposed number of units, 70 no. two bed units and 45 no. one-bed units, the standard number of car parking spaces that would be required for the scheme is 115 no. spaces as per the Dún Laoghaire-Rathdown County Council's Standards. The development proposes 77 no. car parking spaces which is below the standard car parking provision indicated in Section 8.2.4.5 of the DLRCC Development Plan 2016 – 2022.

This report, together with the enclosed Statement of Consistency, provides a rationale for the proposed car parking provision.

Unit Mix Provision

The proposed development contains a mixture of one-bed and two-bed units only. Policy RES7 of the Dun Laoghaire Rathdown Development Plan requires that a wide variety of housing types and tenures are provided across the county. The applicant acknowledges that whilst the subject scheme contributes to a greater variety of units in the wider area, it does not in and of itself consist of a wide variety of units.

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Given this, the Applicant acknowledges that there is a reasonable basis for concluding that the proposed development could potentially materially contravene Policy Res7. As such, this report seeks to provide a rationale for the proposed unit mix.

2.0 AN BORD PLEANÁLA'S POWERS AND MATERIAL CONTRAVENTIONS

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

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

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

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

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

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

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”

3.0 MATERIAL CONTRAVENTION AND THIS SITE

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

- Section 37(2)(b)(i) of the 2000 Act: The proposed development is a “Strategic Housing Development”, as defined under Section 3 of the 2016 Act.
- Section 37(2)(b)(ii) of the 2000 Act: There appear to be conflicting objectives in the development plan, the objectives of which are not clearly applied in relation to this development.

3.1 Car Parking Provision

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

Section 8.2.4.5 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 prescribes standards for the quantum of car-parking spaces that are to be provided in new developments. Those quantum depend on the land-use associated with a given development.

Table 8.2.3 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 sets out the standards for residential land-use and takes account of both resident and visitor requirements. (See below)

For apartments, the standards are based on the size of the unit in question. 1 No. car parking space is required for each 1-bedroom and 2-bedroom unit.

The standard number of car parking spaces that would be required for the proposed development is 115 no. car parking spaces as per the Dún Laoghaire-Rathdown County Development Plan (DLRCC) 2016 – 2021 Standards

Table 8.2.3: Residential Land Use - Car Parking Standards	
Land use	Standards
Residential Dwelling	1 space per 1-bed unit and per 2-bed unit 2 spaces per 3-bed unit+ (depending on design and location).
Apartments, Flats, Sheltered housing	1 space per 1-bed unit 1.5 spaces per 2-bed unit 2 spaces per 3-bed unit+ (depending on design and location)

Table 1.0: Residential Land Use – Car Parking Standards (Table 8.2.3) (Source: Pg. 189, Dún Laoghaire Rathdown County Development Plan, 2016-2022. Annotated by TPA, 2021.)

The development proposes 77 no. car parking spaces for 115 no. residential units comprising of 67 no. car spaces at basement levels and 10 no. spaces at surface level. Among these, 4 no. spaces will be easily accessible for disabled users and 2 no. spaces will be dedicated for shared car club schemes which in and of themselves have the potential to replace the journeys of up to 15 private cars. In addition 12 no. car spaces will be fitted with electric charging points and

servicing infrastructure to facilitate such points at the remainder of spaces will also be provided.

The total number of car spaces proposed equates to c. 0.67 spaces per residential unit. This is considered to be appropriate with regard to the location of the site and its proximity to public transport and local amenities. This is in line with Government Guidance regarding reducing dependence on the private motor car and increasing use of public transport/cycling.

The development proposes 77 no. car parking spaces which is below the car parking provision indicated in Section 8.2.4.5 of the DLRC Development Plan 2016 – 2022.

Notwithstanding that, it is considered that the subject site and proposed development meet the factors highlighted in Section 8.2.4.5 of the Development Plan which permit reduced parking standards. These factors and a response to each are outlined within the enclosed Statement of Consistency, prepared by TPA.

With regard to the *Apartment Guidelines*, the subject site location is classified as an 'Intermediate Urban Location', which is defined as:

*"[Locations] **generally suitable for smaller large-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."***

[Our emphasis.]

Section 4.21 of the *Apartment Guidelines* addresses car parking in the context of 'Intermediate Urban Locations'.

That section states:

"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.”

The subject lands are approximately 1km from the UCD campus and approximately 1 km from Dundrum Town Shopping Centre, which are both large employers in the area. The site is c. 800m from Dundrum and Windy Arbour Luas stops and is also proximate to a number of Dublin Bus routes which provide connections across the city. In addition, some 176 no. bicycle parking spaces (the majority of which are located in secure and sheltered locations) are provided which further encourages sustainable transport modes for future residents of the scheme.

Taking those locational factors into account, the subject site may be defined as an ‘Intermediate Urban Location’ and therefore, the proposed development may benefit from a reduced provision of car parking spaces.

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

- Section 37(2)(b)(ii) of the 2000 Act: There appear to be conflicting objectives in the development plan, the objectives of which are not clearly applied in relation to this development.

Section 8.2.4.5 of the DLRCC County Development Plan 2016-22 provides the context for the Car Parking Standards for Dun Laoghaire Rathdown County Council Area. Table 8.2.3 provides the Residential Land Use – Car Parking Standards. It is highlighted that the requirements set out in this table are considered “standard” parking provision as opposed to a “minimum”.

However, this table of “standard” provision is in conflict with the supporting text set out in Section of the DLRCC County Development Plan 2016-2022, it is recognised that;

“the principal objective of the application of car parking standards is to ensure that, in assessing development proposals, appropriate consideration is given to the accommodation of vehicles attracted to the site within the context of Smarter Travel, the Government policy aimed at promoting modal shift to more sustainable forms of transport.”

This section of the Development Plan also highlights that **“Reduced car parking standards for any development (residential and non-residential) may be acceptable dependant on:**

- *The location of the proposed development and specifically its proximity to Town Centres and District Centres and high density commercial/ business areas.*
- *The proximity of the proposed development to public transport.*
- *The precise nature and characteristics of the proposed development.*
- *Appropriate mix of land uses within and surrounding the proposed development.*
- *The availability of on-street parking controls in the immediate area.*
- *The implementation of a Travel Plan for the proposed development where a significant modal shift towards sustainable travel modes can be achieved.*
- *Other agreed special circumstances where it can be justified on sustainability grounds...*

In very limited circumstances, the Council may also consider the development of car-free housing on suitable small-scale sites which have with high levels of public transport accessibility,

have convenient and safe access to local shops and community facilities and/or are located very close to Town Centres.”

It is also noted that Section 8.2.4.5 highlights that *“The Planning Authority may require the maximum number of car parking spaces specified in Tables 8.2.3 and 8.2.4 to be further reduced where it is considered that the surrounding road network is not sufficient to cater for the volume of traffic likely to be generated by the proposed development.”*

Finally, **Policy ST3**: Development of Sustainable Travel and Transportation Policies states that *“it is Council policy to promote, facilitate and co-operate with other transport agencies in securing the implementation of the transportation strategy for the County and the wider Dublin Region as set out in Department of Transport’s ‘Smarter Travel, A Sustainable Transport Future 2009-2020’ and the NTA’s ‘Greater Dublin Area Draft Transport Strategy 2016-2035’. **Effecting a modal shift from the private car to more sustainable modes of transport will be paramount objective to be realised in the implementation of this policy.**”* (Our Emphasis)

The objective for having a “standard” requirement for residential parking as set out in Table 8.2.3, requiring this development to provide over 115 car parking spaces, is in conflict with the **Policy ST3** which is aiming for a modal shift away from private cars as well as the text within Section 8.2.4.5 which requires a reduced car parking standards for any development that is in proximity of public transport, the nature of the development, the mix of uses in the surrounding area, the availability of parking controls and the potential to implement a Travel Plan. All of which can be achieved on this site. It appears that the rigid application of Table 8.2.3 does not take into account the circumstances of the site and the circumstances where reduced car parking may be appropriate.

- **Section 37(2)(b)(iii) of the 2000 Act: The Board is referred to the Section 28 Ministerial Guidelines – Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020).**

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 Apartment Guidelines emphasise the policies of the NPF to the proportion of more compact forms of growth enabling people to be closer to employment and recreational opportunities, as well as to walk or cycle more and use the car less.

The NPF advises *“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.”*

Specific National Planning Framework policies of relevance are as follows:

<p>National Policy Objective 13 <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>This is a unique sensitive site which is within 10 minutes' walk of multiple bus routes, the green line luas, the Dundrum Town Centre and a wide range of existing community, retail, education and supports facilities.</p> <p>The proposed development and landscape design which minimises parking at surface level ensures the creation of an attractive environment within the setting of Frankfort Castle will result in a well-designed contemporary development that respects the historic nature of the site.</p>
<p>National Policy Objective 27 <i>Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.</i></p>	<p>Pedestrian entrances are proposed along the southern and eastern site boundaries ensuring that the proposed scheme is well integrated into the surrounding area and its network of existing facilities and transport options. Provision has also been made for a future pedestrian entrance at the north west of the site should future access across third party lands to Highfield Park be possible in the future.</p>
<p>National Policy Objective 64 <i>Improve air quality and help prevent people being exposed to unacceptable levels of pollution in our urban and rural areas through integrated land use and spatial planning that supports public transport, walking and cycling as more favourable modes of transport to the private car, the promotion of energy efficient buildings and homes, heating systems with zero local emissions, green infrastructure planning and innovative design solutions.</i></p>	<p>Census data indicates that despite car ownership in this area being relatively high the level of car usage in this area for commuting is low resulting in high levels of car storage. The provision of alternative transport options, including shared car services and cycle facilities, in conjunction with the removal of the provision of car storage areas, will result in a modal shift in line with these policies.</p>

In addition to the above, it should also be noted that planning precedent exists for reduced car parking provision on a site within close proximity to the subject site at Walled Garden, Gort Muire, Dundrum, Dublin 14. As with the subject site, the 'Walled Garden' site is similarly classified as an 'intermediate urban location'. An SHD development was permitted by the Board in September 2019 at this site which comprised a car parking ratio of 0.31 spaces per residential unit (ABP Ref. 304590-19). A subsequent amendment application for development on the 'Walled Garden' site was approved in October 2020 which comprised a reduced car parking ratio of 0.18 (ABP Ref. 307545).

The inspector's report prepared in relation to the latter amendment application (ABP Ref. 307545) noted that whilst there was a significant shortfall in car parking provision, the reduced car parking numbers are in line with national guidance which emphasises a need to move away from universal

parking standards to a more tailored performance based approach. The inspector further noted that the proposed car parking provision was in line with County Development Plan objectives and was also “in compliance with Policy ST3 by effecting a modal shift from the private car to more sustainable modes of transport”.

The car parking ratio of 0.67 spaces per unit proposed within the subject application represents an increased car parking provision when compared against the 2 no. above referenced permissions at the ‘Walled Garden’ site. The subject proposal will also however clearly contribute to effecting a modal shift to more sustainable modes of transport in accordance with both the Dun Laoghaire Rathdown Development Plan 2016-2022 and with wider strategic planning policy.

3.2 Unit Mix Provision

The proposed development contains 115 no. units in total comprising a mixture of 45 no. one-bed and 70 no. two-bed units.

Policy RES7 of the Dun Laoghaire Rathdown Development Plan 2016-2022 relates to overall housing mix and states the following:

It is Council policy to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the County in accordance with the provisions of the Interim Housing Strategy.”

It is acknowledged that the subject scheme does not in and of itself provide a ‘wide variety of units’ and as such the Applicant acknowledges that there may be a reasonable basis for concluding that the proposed development could potentially materially contravene Policy Res7.

Notwithstanding that the proposed development in isolation provides for a relatively limited mix of units, it is considered that the proposed unit mix is fully in accordance with broader planning policies and is appropriate given the existing unit mix in the area..

Contributing to the Unit Mix in the Wider Area

It is considered that the proposed development by providing a mixture of one and two bed apartments in an area predominately characterised by larger family size houses would indeed contribute to the variety of accommodation types and sizes in the county.

The 2016 census results demonstrate that the housing stock in the Dublin area is dominated by larger units greater in size than one and two bedrooms. Of the 530,753 permanent households recorded in the census, just 55,091 or c.10% are comprised of one and two bedroom units². Given that changing demographics are resulting in smaller household size and more single person households, demand for these smaller units is high at present and very likely to increase further in the future.

² CSO, 2016

The proposed development thus contributes to the diversity of housing types and sizes and satisfies a critical area of demand where there are significant shortfalls at present.

Supportive Planning Policy

Dun Laoghaire Rathdown Development Plan 2016-2022

Section 2.1.3.7 of the Dun Laoghaire Rathdown Development Plan 2016-2022 encourages a “good mix of house types creates neighbourhoods for people of different ages and lifestyles” and notes that encouraging good housing mix also “allows people the choice and opportunity to remain in a given area while availing of accommodation that caters to their changing needs at particular stages of their life”.

On page 36 of the Plan, it is further noted that future housing demand will be primarily for one and two person households given wider demographic shifts. The proposed development will contribute to the mix of household types and sizes in the county and thus adhere to the broad objective of the Development Plan to create neighbourhoods with a good housing mix capable of accommodating a range of demands and persons throughout different life periods.

2018 Apartment Guidelines

Section 2.20 of the Apartment Guidelines acknowledges the need for different forms of housing to be supported and highlights “*the need to facilitate a mix of apartment types that better reflects household formation and housing demand*”.

The demand for smaller housing types referenced above is reflected in *Specific Planning Policy Requirement (SPPR) 1* of the Guidelines which states the following:

Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s).

The breakdown of units in the proposed development equates to 38% one-bedroom units and 62% two bedroom units. The proposed unit mix is thus fully in compliance with the standards of the Apartment Guidelines. The proposed breakdown of units ensures that the mix of units in the area is enhanced and also ensures that current and future housing demand will be satisfied appropriately.

4.0 CONCLUSION

The proposed development which provides a car parking ratio of 0.67 spaces per unit and provides a unit breakdown consisting of 38% one bedroom and 62% two bedroom units is clearly in line with strategic planning Policy.

The subject development complies with the principles for reduced car parking outlined in the National Planning Framework and the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2020 for sites such as this which can be considered an 'Intermediate Urban Location'.

In addition, the proposed unit mix is considered wholly appropriate as it will contribute to the variety of housing types and sizes in the surrounding area and wider county and will also satisfy demand for smaller households into the future.

In consideration of the fact that the proposed development will deliver a high density residential scheme on appropriately zoned lands which are well serviced and connected, it is submitted that there is ample justification for An Bord Pleanála to permit a material contravention of the *Development Plan* and *Local Area Plan* in terms of allowable height and reduced parking standards having regard to Section 37(2)(b)(ii) and Section 37(2)(b)(iii) of the *Planning and Development Act, 2000 (as amended)*.