



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

Our Ref: AD-025-22

06 April 2022

Mr. Peter Burke TD

Minister for Local Government and Planning

Department of Housing, Local Government and Heritage

Custom House

Dublin 1

D01 W6X0

BY HAND AND BY EMAIL

**Re: Notice Pursuant to section 31AM(8) of the Planning and Development Act
2000 (as amended) – Dún Laoghaire-Rathdown County Development Plan
2022-2028**

A chara,

I am writing to you in relation to the recent adoption by the elected members of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 (the 'Development Plan').

In particular, I am writing to you in the context of the statutory duty of the Office of the Planning Regulator ('the Office') pursuant to section 31AM(8) of the Planning and Development Act 2000, as amended, ('the Act') to issue a Notice (pursuant to powers under section 31AM(8) of the Act) to you on the basis that, having considered the Development Plan, the Office is of the opinion that:

- a) the Development Plan has not been made in a manner consistent with recommendations of the Office, which required specific changes to the Development Plan to ensure consistency with the NPO 3b of the National Planning Framework (NPF), with RPO 3.2 of the RSES, and with Specific Planning Policy Requirement 8(i) contained in the '*Sustainable Urban*

Housing: Design Standards for New Apartments Guidelines for Planning Authorities(2020) published by the Minister under Section 28 of the Act, and to have regard to the Section 28 '*Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages)*' (2009).

Specifically the Development Plan:

- i. includes the 0/0 zone objective and associated provisions for significant parts of Killiney and Dalkey where no increase in the number of buildings will normally be permitted, thereby restricting infill development and increased residential density along the DART railway corridor over and above restrictions that are reasonably applied to protect the heritage, character and amenity of the county; and
 - ii. introduces restrictions on dwelling mix by specifying the number of 3-bedroom units for build-to-rent development
- b) the Development Plan has not been made in a manner consistent with recommendations of the Office, which required specific changes to the Development Plan to ensure consistency with national policy objectives (NPOs) of *Project Ireland 2040*, *National Planning Framework* (the NPF) and the regional policy objectives (RPOs) of the *Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy* (the RSES), SPPR 8(i) of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*' (2020), and to have regard to the Section 28 '*Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages)*' (2009).
- c) as a consequence of the above matters, the development plan made by Dún Laoghaire-Rathdown County Council ("the Council") fails to set out an overall strategy for the proper planning and sustainable development of the area concerned, contrary to the requirements of Section 10(1) of the Act; and
- d) the use by you of your function to issue a direction under section 31 of the Act would be merited.

The reasons for the Opinion of the Office are set out in further detail in section 2 of this Notice letter.

1. Background

The draft Dún Laoghaire-Rathdown County Development Plan 2022 – 2028 (the draft Plan) was on public display from 12th January 2021 to 16th April 2021.

The Office made a submission on the draft Plan dated 16th April 2021 containing nine (9) recommendations and two (2) observations.

Recommendation 4, related to the O/O zone objective indicated on the land use zoning maps and referenced under sections 4.3.1 and 12.3.8.8 of the draft Plan. Recommendation 4 required the planning authority to omit O/O zone objective from the Plan having regard to NPO 3b and RPO 3.2 compact growth and to the *‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages)’* (2009), which provides for increased residential density along public transport corridors, including in the interest of maximizing the return on public transport investment.

The elected members, having considered the draft Plan and the ‘Chief Executive’s report on Draft Plan Consultation’ (the CE report on the draft Plan consultation) (received July 2021), rejected the Chief Executive’s recommendation to omit the provisions of the draft Plan necessary to comply with Recommendation 4.

The Office received a notice under section 12(5)(aa) of the decision of the planning authority not to comply with Recommendation 4 of the Office’s submission on 17th November 2021.

The material alterations to the draft Plan were on public display from 11th November 2021 to 17th January 2022. The period for public consultation was extended due to an omission of certain amendments from the publication.

Extensive amendments were proposed which constituted material alterations of the draft Plan, including the following:

- MA 160 inserted by the elected members following after the first paragraph of Section 12.3.3 *‘Quantitative Standards for All Residential Development’* (page 232): *“That the requirement for certain percentages of 3-bed units in*

apartments shall apply to Build To Rent developments to accord with mix on page 233.”

- MA 296, proposed by the chief executive as one part of the response to Recommendation 4 of the Office’s submission, but proposed by the elected members in isolation, inserted the following new SLO 130 (page 325) at Killiney, which related to the 0/0 zone objective provisions of the draft Plan: *“To ensure that development in this area does not (i) have a significant negative impact on the environmental sensitivities in the area including those identified in the SEA Environmental Report, and/or (ii) does not significantly detract from the character of the area either visually or by generating traffic volumes which would necessitate road widening or other significant improvements.”*

The Office made a submission on 24th December 2021 to the material alterations to the draft Plan containing two (2) recommendations and two (2) observations.

The Office’s submission letter either welcomed and/or otherwise accepted the proposed material amendments as having sufficiently addressed Recommendations 1-3 and 5-9 of the Office’s submission on the draft Plan, subject to minor modifications. A recommendation concerning flood risk management (MA Recommendation 2) issued in the Office’s submission to the material alterations to the draft Plan in respect of the response to Recommendation 9 of the Office’s submission to the draft Plan.

In respect of Recommendation 4 and the section 12(5)(aa) letter concerning the decision of the planning authority not to comply with that recommendation, the Office stated in the submission to the material alterations to the draft Plan:

‘The Office notes the decision of the members not to accept the omission of the zero/zero zoning objective recommended by the chief executive in response to Recommendation 4 of the Office’s submission. While the Office appreciates the desire to protect these areas from unacceptable forms of development, much of the area concerned has been designated as an Architectural Conservation Area and further controls have been introduced by SLO 130 (MA 296). The Office remains of the view that the heritage and amenity of these areas is fully protected by these, and other objectives, within the draft Plan and that the limitations on further residential development by

way of the zero/zero zoning objective is not consistent with providing homes for people in well serviced areas.'

In respect of MA 160, the Office included MA Recommendation 1, which required the planning authority to make the plan without the subject material amendment on the grounds that it is inconsistent with SPPR 8(i) of the '*Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities*' (DHLGH, 2020) which states, in respect of build-to-rent development, 'i) *No restrictions on dwelling mix ... shall apply...*'.

The Chief Executive's Report on the proposed material amendments recommended that MA 160 be omitted to give effect to MA Recommendation 1.

As there was no proposed amendment to the 0/0 zone objective (following the earlier rejection of Recommendation 4), the Chief Executive's Report on the proposed material amendments stated that its omission could not be revisited at that stage of the process.

The elected members of Dún Laoghaire-Rathdown County Council resolved to make the Dún Laoghaire-Rathdown County Development Plan 2022 – 2028 at their Special Meeting of the Council held on 10th March 2022.

Subsequently, the Chief Executive sent a notice letter under Section 31(AM)(6) of the Act dated 21st March 2022 to the Office advising of the making of the Development Plan, specifying the recommendations of the Office not complied with - Recommendation 4 and MA Recommendation 1.

It also stated the reasons of the planning authority for its decision in relation to Recommendation 4 and MA Recommendation 1, which are detailed below.



Having reviewed the chief executive's reports on the draft Plan and material alterations to the draft Plan, the notice of the making of the Development Plan and the reasons in the notice letter, the Office has concluded that, with the exception of the below, the recommendations of the Office have been responded to in the reports and/or notice and have been addressed to the satisfaction of the Office, or are otherwise considered satisfactory within the legislative and policy context.

1.1 0/0 zone objective - Recommendation 4

Recommendation 4 of the Office's submission on the draft Plan stated:

Having regard to the national and regional policy objectives to implement compact growth within Dublin city and suburbs, including NPO 3b and RPO 3.2, and to the Sustainable Residential Development Guidelines which provide for increased residential density along public transport corridors, including in the interest of maximising the return on public transport investment, the planning authority is required to omit 0/0 zone objective from the plan as an unnecessary restriction on sustainable development.

The 0/0 zone objective provisions comprise, as follow:

- (i) A spatially determined objective on maps 3, 4, 7 and 10, indicated by the symbol , referred to as the '0/0' zone and delineated by a red-dashed 'boundary of local objective' , which the map legend (on maps 1-14) states refers to 'No increase in the number of buildings permissible [sic]' (see excerpt from Map 7 of the draft Plan, Figure 5, attached as Appendix A);
- (ii) Section 4.3.1 'Notable Character Area Exclusions':

There are significant parts of Dalkey and Killiney characterised by low density development. Some of these areas have been identified as areas where no increase in the number of residential buildings will normally be permitted (i.e. the '0/0' zone). However, much of this area lies close to the DART line where higher densities would, in normal circumstances, be encouraged. Sensitive infill development will, however, be considered on suitable sites as determined by the Planning Authority. Such sites should:

- *Be located within a 10 minute walk of a DART station (refer to Car Parking Zone 2 Area, Map T2). [see maps Figures 2-4, attached as Appendix A]*
- *Development shall not detract from the unique character of the area either visually or by generating traffic volumes which would necessitate road widening or other significant improvements (refer also to Section 12.3.8.8).*

(iii) Section 12.3.8.8 0/0 Zone:

‘Locations have been identified on the Development Plan maps where no increase in the number of buildings will normally be permitted. Such locations include areas in the vicinity of the coastline, where density controls are considered appropriate in the interests of preserving their special amenity. Many of these locations are however, within close proximity of the DART line where higher densities would normally be permitted and promoted. Small scale, sensitive infill development may be considered in these areas on suitable sites where such development would not detract from the character of the area either visually or by generating traffic volumes that would cause potential congestion issues which would, in turn, necessitate road widening or other significant improvements.

Aspects such as site coverage and proximity to boundaries, impacts on drainage, loss of landscaping, the existing pattern of developments, density and excavation impacts will also be critically assessed in determining applications for residential development in the 0/0 Zone.’

In response to Recommendation 4 of the Office’s submission, the CE’s report recommended to omit the 0/0 zone objective from maps 3, 4, 7 and 8 and the associated provisions in the map legend from maps 1-14, and the 0/0 zone objective provisions from the written statement, section 4.3.1 Notable Character Area Exclusions and section 12.3.8.8 0/0 Zone, and to insert a new specific local objective:

“To ensure that development in this area does not (i) have a significant negative impact on the environmental sensitivities in the area including those identified in the SEA Environmental Report, and/or (ii) does not significantly detract from the character of the area either visually or by generating traffic volumes which would necessitate road widening or other significant improvements.”

The elected members rejected the recommendations of the chief executive concerning Recommendation 4, except that they agreed to insert the aforementioned new specific local objective (as SLO 130 under MA 296).

The reasons given by the elected members for not complying with the recommendation detailed in the section 12(5)(aa) notice letter, and repeated in the notice under section 31AM(6) are stated as follows:

- *There is a clear conflict between the O/O objective which looks to protect the area and the national objective to increase densities.*
- *Planning Authority would uphold the proposed new SLO but cannot imagine that ABP would uphold the SLO over Regional and National policy.*
- *Ministerial Circular from September 2021 (NRUP 02/2021) remarks that “towns and their contexts are clearly not all the same, and planning policy and guidance are intended to facilitate proportionate and tailored approaches to residential development”.*
- *Therefore, it is reasonable to require the highest level of protection to a very small area.*
- *Current Plan has not protected the area.*
- *Useful to retain the O/O objective.*

The Office acknowledges the intent expressed by elected members to effectively protect the character and amenities of the area, and the provisions of circular NRUP 02/2021, which reiterates the provisions of the ‘*Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities*’ (2009) concerning the need ‘*to facilitate proportionate and tailored approaches to residential development*’ having regard to context.

However, there are already extensive and reasonable provisions in the Development Plan to protect the amenities of the existing residential area and the established character of the surrounding area, including objectives PHP18: Residential Density, PHP19: Existing Housing Stock – Adaptation and PHP20: Protection of Existing Residential Amenity. Other objectives relating to the development of institutional lands and to mews lane development, which may apply to this area, include protections under PH21: Development on Institutional Lands and PHP22: Mews Lane Housing.

In addition, the Development Plan recognises and provides for the protection of the area concerned through:

- the designation of the Killiney Architectural Conservation Area (ACA), Vico Road – Sorrento Point ACA, and Sandycove Point (ACA);

- the objectives for the preservation of the character of architectural conservation areas, in accordance with section 10(2)(g) of the Act, including HER13 Architectural Conservation Areas; HER14: Demolition within an ACA; HER16: Public Realm and Public Utility works within an ACA.
- the inclusion of a record of protected structures in accordance with section 51(1) of the Act, which includes a significant number of properties within the 0/0 zone;
- the objectives for the protection of structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, in accordance with section 10(2)(f) of the Act, including HER8: Work to Protected Structures;
- the objectives to protect buildings and other structures, which may not be subject of formal protections under the Act, including through objectives HER19 Protection of Buildings in Council Ownership; HER21: Nineteenth and Twentieth Century Buildings, Estates and Features; HER22: Protection of Historic Street Furniture and Public Realm,
- the objectives to protect coastal heritage and amenities including HER24: Protection of Coastline Heritage.
- the inclusion of specific local objectives ‘to protect trees and woodlands’ under section 12.8.11 Existing Trees and Woodlands.

A spatial representation of the 0/0 zone objective from maps 3, 4, 7 and 10 of the Development Plan is attached to this Notice as Appendix A. This shows the location of the 0/0 zone objective together with the objectives for, *inter alia*, protected structures, ACAs, trees and woodlands protection, and the DART rail line and stations, and the car parking zones from the Development Plan (*Car Parking Zone 2 Area, Map T2*, refers).

Sections 4.3.1 and 12.3.8.8 provide limited exceptions to the 0/0 zone objective by indicating that “small scale, sensitive infill development” may be considered on “suitable sites”, however such provisions are vague and subject to an overall approach that no additional buildings will normally be permitted.

The plan as made is therefore internally inconsistent between, on the one hand, an objective that there would be no net increase of buildings in significant areas and, on the other hand, that infill development may be permitted on suitable sites.

Accordingly, it is not clear what the Plan actually proposes in the relevant areas. If unchallenged, the Plan as made inclusive of the 0/0 zone objective may well present difficulties for decision-makers in relation to development management functions and could set a precedent for other development plans also.

In addition, retaining the 0/0 zone objective could also have un-intended consequences for considering the proper planning and sustainable development of the area into the future such as in relation to legitimate prospects to deliver additional housing, including public housing, on sites that may present opportunities for infill/redevelopment in an area highly accessible with excellent public transport, community facilities and environmental amenities. It is not clear how the plan as made would reconcile such opportunities with the objective of no net increase in the number of buildings.

As the maps attached at Appendix A¹ show, the majority of the 0/0 zone objective lands within Killiney and much of the 0/0 zone objective lands within Dalkey are within 10 minute walking distance from existing DART stations (as defined by *Car Parking Zone 2 Area, Map T2* of the Development Plan). The majority of the lands concerned are also estimated to be within 1km of the railway corridor and much of the land is within 500m of a bus stop.

In this respect, the Office notes that the strategy statement for the core strategy of the Development Plan seeks:

‘to support the overarching Development Plan Vision and supports the transition to a low carbon and climate resilient County through the implementation of a compact growth agenda, increased integration between land-use and transportation, increased sustainable mobility and, the sustainable management of our environmental resources.’

¹ The maps attached at Appendix A provide a composite of relevant objectives from the adopted Plan's land use zoning maps and the Car Parking Zone 2 Area (Map T2) which shows the area within a 10 minute walking distance from the DART stations.

Consistent with this strategy statement, the Development Plan contains objectives to achieve compact growth (Objective CS11), infill/ brownfield development (Objective PHP18), and the alignment of land use and zoning with high quality public transport systems (Objective T1).

These objectives and core strategy are consistent with national and regional policy in respect of compact growth (NPO 3b of the NPF and RPO 3.2 of the RSES) and the consolidation and intensification of infill/brownfield sites within existing built up areas of cities and suburbs (NPO 11 and NPO 35 of the NPF, and RPO 4.3 of the RSES).

The Office further notes that the section 28 '*Guidelines for Planning Authorities on Sustainable Residential Development (Cities, Towns & Villages)*' (2009) provide for increased residential density in existing urban areas and along public transport corridors (sections 5.8 (c) *Public transport corridors* and 5.9 (d) *Inner suburban / infill* of the guidelines, respectively).

Having regard to the considerations outlined above, the Office considers that the heritage and amenity of these parts of Killiney and Dalkey are fully protected by the aforementioned objectives within the Development Plan and that the limitations on further residential development by way of the O/O zone objective is not necessary to meet the elected member's stated purpose and is unreasonably restrictive.

The objectives of the Development Plan are therefore not consistent with national (NPO 3b, 11, and 35 of the NPF) and regional (RPO 3.2 and 4.3 of the RSES) policy, contrary to s. 10(1A) of the 2000 Act. The objective would undermine the Development Plan core strategy and other objectives that promote compact and sustainable growth (Objectives CS11, PHP18, and T1 of the Development Plan).

1.2 Build-to-rent – MA Recommendation 1

MA Recommendation 1 of the Office's submission on the material alterations to the draft Plan required the planning authority to omit MA 160 which introduced a requirement for certain percentages of 3-bed apartment units in Build To Rent (BTR) developments.

MA Recommendation 1 stated:

In accordance with the requirements of sections 12(18) and 28(1C) of the Planning and Development Act 2000, as amended, the planning authority is required to make the Plan without amendment MA 160 which is inconsistent with SPPR 8(i) of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DHLGH, 2020).

In response to the recommendation, the CE report on the material alterations considered the provisions of SPPR 8(i) to be clear, and noted the requirement under section 28(1C) of the Act that planning authorities and An Bord Pleanála must apply the SPPRs set out in the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020)* in the carrying out of their functions.

The CE report on the material alterations also referred to the obligation under section 12(18) of the Act to ensure the development plan is consistent with the SPPRs specified in guidelines under subsection (1) of section 28.

The CE report on the material alterations recommended that amendment 160 be omitted.

The section 31AM(6) notice received from the planning authority indicates that the elected members resolved to make the Plan with MA 160, rejecting the recommendation of the Chief Executive. The detailed reasons given by the elected members for not complying with the recommendation, detailed in the section 31AM(6) notice, are summarised as follows, under the headings set out by the elected members:

1. Key legislative and policy provisions

- Section 94(1) of the Act requires local authorities have a strategy to provide for the housing of the existing and future population of the area;
- The Act requires the mix of house types and sizes reasonably match the requirements of households;
- Policy Objective PHP26 Housing Mix – *‘It is a Policy Objective to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided throughout the County in accordance with the*

provisions of the Housing Strategy and Housing Need Demand Assessment (HNDA)';

- The policy states that schemes should contain an acceptable proportion of larger flexible housing units to ensure that such developments provide suitable and viable long term adaptable options for families, which is considered a sound policy, that takes a long term view, driven by the fundamental importance of community, neighbourhood and placemaking;
 - How can this policy be delivered if there is can be no requirement for 3 bed units under SPPR 8, irrespective of the outcome of the HNDA?
 - SPPR 8 cannot be treated as warranting cast iron, inflexible application.
2. The function of Build to Rent as a stream of housing provision, and specifically in Dún Laoghaire-Rathdown administrative area
- Build to Rent was conceived as one narrow, targeted strand of overall housing provision in 2015 for very specific areas of the city for a target market of young professionals;
 - Build to Rent apartment blocks now proliferate across the county, all with either no 3-bed units or a token few, in locations not linked to areas of high tech employment or any employment node.
3. The data concerning housing need in our County
- The HNDA sets out that the demography up to 2032 support a need for a mix of housing unit sizes, which underpins the development plan requirements for a quantum of 3-bed units in new apartment developments;
 - As the HNDA is silent on tenure for 3-bed units, the data for 3-beds for build to sell apartments equally supports a similar requirement for apartments to rent;
 - Those renting have the same need and entitlement to choice and sustainable communities as those who can buy.

4. Our duty as elected representatives for the residents and the communities in this county, is to take a long view of housing supply

- With so few 3-bed units, young professionals will be forced to move away as their needs change;
- After 15 years Build to Rent apartments will become available for sale, but with no family homes;
- There is a huge shortage of the alternative to 3-bed apartments, secondhand homes, for sale in the county and the BTR is by far the preferred investment vehicle for the market (IT 9/3/2022);
- Rigid, national one size fits all directives are not plan-led;
- The Office is urged to use the discretion under the Act to apply flexibility to respond to local need.

The Office acknowledges the intent expressed by elected members to provide for the varied housing needs of the population of the county within the context of the statutory Housing Strategy prepared under section 94(1) of the Act and the HDNA.

In this regard, the Office notes the statement of the Housing Strategy and Interim HNDA that *'it would appear that the supply of 3 to 4-bedroom dwellings (5 to 6 rooms) is considerably lower than elsewhere in the Dublin region (with the exception of Dublin City) and State.'*² The Strategy also reports that *'a lower percentage of dwellings built in Dún Laoghaire-Rathdown between 2011 and 2016 have 5-6 rooms than elsewhere in Dublin (with the exception of Dublin City) and State.'*³

The Strategy noted the requirement for the Development Plan to be consistent with the Specific Planning Policy Requirements (SPPRs) specified in the guidelines made under section 28 of the Act. The Strategy had regard to the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities* (2020), in particular SPPR 1, which states:

Housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as

² P.46, Appendix 2 of the Development Plan.

³ P.45, Appendix 3 of the Development Plan.

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)⁴, that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s).

In its evaluation and assessment of the draft Plan, the Office accepted the housing mix requirement for residential schemes, set out in Policy Objective PHP26 Housing Mix and the development management standards under section 12.3.3.1 Residential Size and Mix and Table 12.1 Apartment Mix Requirements, as it was supported by a detailed evidence-based Housing Strategy and HNDA consistent with SPPR 1.

The draft Plan had also provided for BTR development under Policy Objective PHP27 Build to Rent and Shared Accommodation, in accordance with the ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ (2020). No requirement for a specific housing mix for BTR development was included in the draft Plan.

Material amendment MA 160, however, inserted the following requirement after the first paragraph of Section 12.3.3 ‘Quantitative Standards for All Residential Development’ (page 232):

“That the requirement for certain percentages of 3-bed units in apartments shall apply to Build To Rent developments to accord with mix on page 233.”

The apartment mix requirements are set out in table 12.1 on page 233 of the Development Plan. This requires a minimum provision of 3 bedroom units, ranging from 20% in the existing built up area to 40% in ‘Sandyford Urban Framework Plan’ and in ‘New Residential Community’ areas. ‘New Residential Community’ areas (as indicated in Core Strategy Map 2.9) comprise all new development areas on the periphery of the existing built-up area of the county, including Ballyogan and Environs, Kiltiernan-Glenamuck, Rathmichael, Old Connaught and Woodbrook-Shanganagh.

⁴ Underlining, our emphasis.

Section 5.0 of the *‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’* (2020) recognise the potential of BTR *‘to accelerate the delivery of new housing at a significantly greater scale than at present’* and *‘make a significant contribution to the required increase in housing supply nationally’*⁵. It introduces two specific planning policy requirements, SPPR 7 and SPPR 8, to facilitate such development. SPPR 8(i) is relevant to the Office’s recommendation to the Minister.

SPPR 8(i) states:

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

(i) No restrictions on dwelling mix and all other requirements of these guidelines shall apply, unless specified otherwise;’

By introducing the restriction on dwelling mix (*ie* the provision of 3 bedroom units), the Development Plan is contrary to SPPR 8(i) of the *‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’* (2020).

2. Opinion of the Office and Reasons

Having considered the adopted Development Plan under section 31 AM(7) of the Act, the Office is of the opinion that the said Development Plan has not been made in a manner consistent with the recommendations made by the Office.

Further, the Office considers that the reasons given for not implementing Recommendation 4 of the Office’s submission to the draft Plan in the notice dated 17th November 2021 (under section 12(5)(aa) of the Act) and dated 21st March (under section 31AM(6) of the Act), do not adequately justify the decision of the planning authority. Nor do the reasons explain how the Development Plan as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

⁵ P.27

The Office also considers that the reasons given for not implementing MA Recommendation 1 of the Office's submission to the material alterations in the notice dated 21st March (under section 31AM(6) of the Act), do not adequately justify the decision of the planning authority. Nor do the reasons explain how the Development Plan as adopted sets out an overall strategy for the proper planning and sustainable development of the area.

As you will be aware, under section 31AM(1) of the Act, the Office has a statutory duty to evaluate and assess local authority development plans.

The following provisions of the Act are relevant in terms of the evaluation and assessment of local authority development plans, such as the Dún Laoghaire-Rathdown County Development Plan 2022-2028:

- The provisions of section 31AM(2) .
- Under section 31 AM(3)(a), the Office shall make such recommendations in relation to the Office's evaluation and assessments to those authorities as it considers necessary in order to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions.
- In performing its functions, the Office must, under section 31P(3) of the Act, take account of the objective for contributing to proper planning and sustainable development and the optimal functioning of planning under the Act.
- Under section 31S, the Office must, in performing its functions, have regard to:
 - a) the policies and objectives for the time being of the Government, a State authority (including Ministerial guidelines, policy directives and directions issued under *Chapter IV of Part II*), planning authorities and any other body which is a public authority whose functions have, or may have, a bearing on the proper planning and sustainable development of cities, towns, villages or other areas, whether urban or rural,

- b) the public interest and any effect the performance of the Office's functions may have on issues of strategic, economic or social importance to the State,
- c) the National Planning Framework (or, where appropriate, the National Spatial Strategy) and any regional spatial and economic strategy for the time being in force, and
- d) the requirements of relevant acts of the European Union, in particular, those relating to—
 - (i) the Environmental Impact Assessment Directive,
 - (ii) Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment,
 - (iii) the Habitats Directive, and
 - (iv) the Birds Directives,

in so far as those requirements relate to planning authorities by virtue of being designated competent authorities for the purposes of those Acts.

Accordingly, having considered the Development Plan in light of section 31AM(1), section 31AM(2), section 31AM(3)(a), section 31P(3) and section 31S, and the letter from the planning authority of the 21st March 2022 issued under section 31AM(6), the Office is of the opinion that the Development Plan has not been made in a manner consistent with the recommendations of the Office pursuant to Section 31AM (7).

The Development Plan as made is inconsistent with national and regional policy objectives specified in the NPF, including national policy objectives NPO 3b, NPO 11 and NPO 35, and the RSES including regional policy objectives RPO 3.2 and RPO 4.3. These policy objectives relate to the implementation of compact growth and the intensification of development on infill/brownfield lands. However, the inclusion of the 0/0 zone objective for significant parts of Killiney and in Dalkey is inconsistent with these objectives, contrary to the requirements of section 10(1A) of the 2000 Act.

Having regard to the location of the area to which the 0/0 zone objective in an urban area well serviced by public transport, the Development Plan as made would undermine the Development Plan core strategy and other objectives that promote

compact and infill growth and the alignment with high quality public transport systems (Objectives CS11, PHP18, and T1 of the Development Plan).

Furthermore, the O/O zone objective for significant parts of Killiney and Dalkey is not considered to be necessary to meet the elected member's stated purpose or reasonable having regard to the comprehensive provisions within the Development Plan for the protection of the heritage, character and amenities of the functional area.

The Development Plan as made is also inconsistent with Ministerial Guidelines issued under section 28 of the Act to which s. 28(1C) applies, specifically SPPR 8(i) of the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*' (2020), due to the inclusion of restrictions on dwelling mix for BTR development by specifying the number of 3-bedroom units.

Moreover, having considered the adequacy of the reasons of the elected members as set out above, the Office remains of the view that provisions of the Development Plan as made are inconsistent with National Planning Objectives NPO 3b, NPO 11 and NPO 35 of the NPF, regional policy objectives RPO 3.2 and RPO 4.3 of the RSES, and the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*' (2020).

In circumstances where the Development Plan as made is inconsistent with the requirements of the NPF and the RSES, contrary to s. 10(1A) of the 2000 Act, inconsistent with Specific Planning Policy Requirements, contrary to s. 28(1C) of the 2000 Act and where the objectives identified undermine the core strategy and other objectives promoting compact and infill growth and the alignment with public transport systems, the Office is of the opinion that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

The factors that the Office has taken into account in forming this opinion include:

- i. National Policy Objectives NPO 3b, NPO 11 and NPO 35 of the NPF and Regional Policy Objectives RPO 3.2 and RPO 4.3 of the EMRA RSES, which state:

NPO 3b

Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints. to achieve the National Strategic Objective for compact growth (NSO 1).

RPO 3.2:

‘Local authorities, in their core strategies shall set out measures to achieve compact urban development targets of at least 50% of all new homes within or contiguous to the built up area of Dublin city and suburbs and a target of at least 30% for other urban areas’.

NPO 11

‘In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.’

NPO 35

‘Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.’

and

RPO 4.3:

‘Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.’

- ii. The strategy statement for the core strategy and the policy objectives in the adopted Development Plan, including to achieve compact growth (Objective CS11), infill/ brownfield development (Objective PHP18), and

the alignment of land use and zoning with high quality public transport systems (Objective T1).

- iii. The location of a significant proportion of the area within 1km of the DART and in an urban area well served by public transport, and the section 28 '*Guidelines for Planning Authorities on Sustainable Residential Development (Cities, Towns & Villages)*' (2009) which provide for increased residential density in existing urban areas and along public transport corridors.
- iv. The policy objectives in the adopted Development Plan, including objectives relating to the designation of the Killiney Architectural Conservation Area (ACA), Vico Road – Sorrento Point ACA, and Sandycove Point (ACA), the preservation of the character of ACAs, the inclusion of a record of protected structures and objectives for the protection of protected structures, objectives to protect buildings and other structures which may not be subject of formal protections under the Act, objectives to protect coastal heritage and amenities, the inclusion of specific local objectives 'to protect trees and woodlands'.
- v. SPPR 8(i) of the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* (2020) which states:

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

 - (i) *No restrictions on dwelling mix and all other requirements of these guidelines shall apply, unless specified otherwise;*
- vi. The CE reports on Draft Plan Consultation and material alterations to the draft Development Plan.
- vii. The relevant requirements of section 10, section 12(11), section 12(18) and section 28 of the Act.
- viii. The Office's statutory obligations under the Act.

In light of the foregoing, the Office considers that the Development Plan has not been made in a manner consistent with the Office's recommendations and that the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.

3. Recommendation to the Minister

Having regard to section 31AM(8) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act taking such steps as to rectify the matters as set out in the draft direction to the planning authority accompanying this notice, as follows:

- a. Delete the following provisions from the adopted Development Plan:
 - (i) the 0/0 zone objective, including symbol and boundary of objective area from maps 3, 4, 7 and 10;
 - (ii) the text '*No increase in the number of buildings permissible*' and associated symbols from maps 1-14;
 - (iii) the policy section on '*Notable Character Area Exclusions*' under section 4.3.1; and
 - (iv) policy section 12.3.8.8 0/0 Zone.
- b. Delete the following text after the first paragraph of section 12.3.3 *Quantitative Standards for All Residential Development* from the adopted Development Plan:

"That the requirement for certain percentages of 3-bed units in apartments shall apply to Build To Rent developments to accord with mix on page 233".

Please do not hesitate to contact the Office should you have any queries in relation to the above. Contact can be initiated through the undersigned or at plans@opr.ie.

Yours sincerely,



Niall Cussen

Planning Regulator



Spatial representation of the 0/0 Zone Objective in the adopted Dún Laoghaire-Rathdown County Development Plan Map 2022-2028

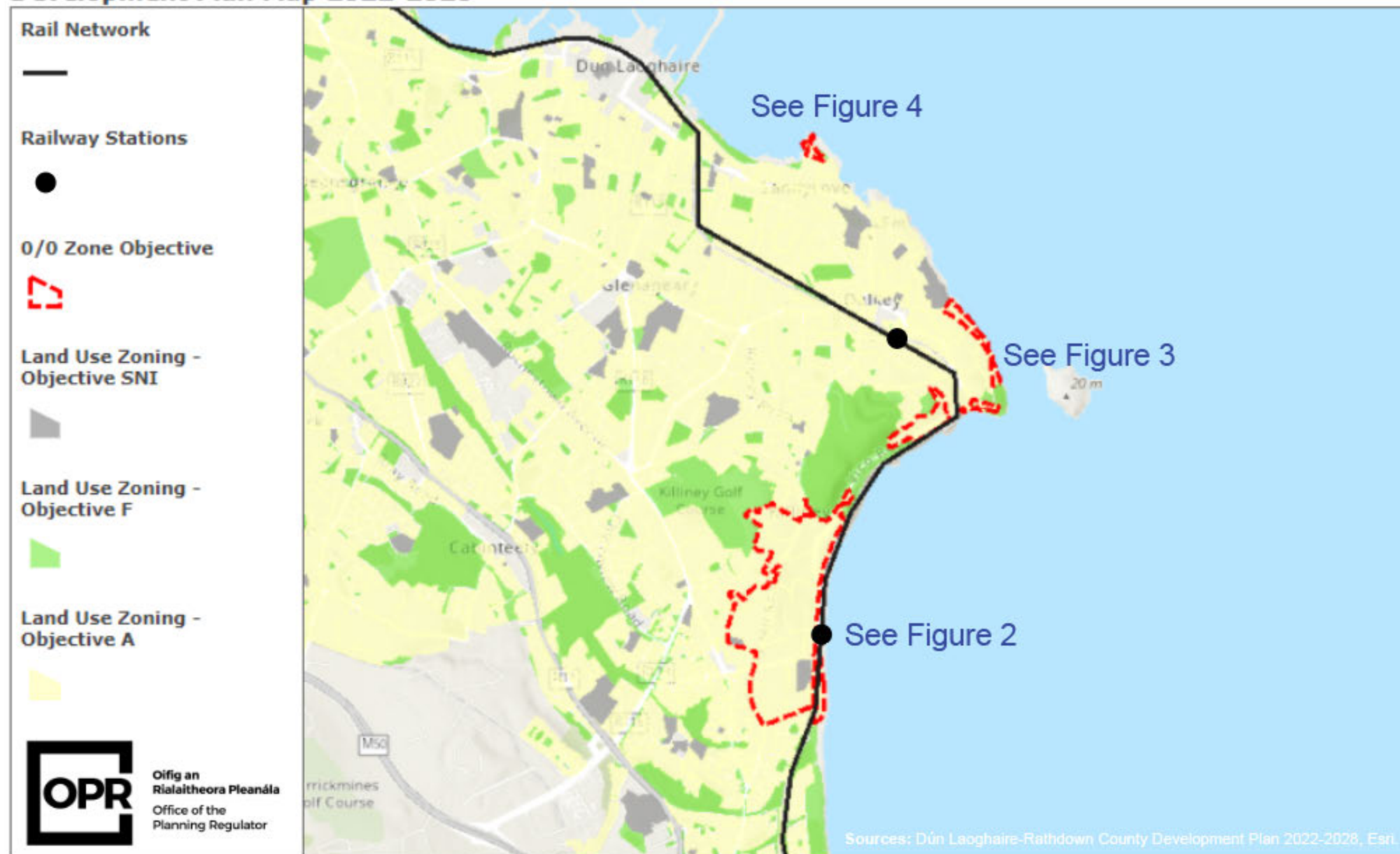


Figure 1 - Context Map (Not to scale)

Spatial representation of the 0/0 Zone Objective in the adopted Dún Laoghaire-Rathdown County Development Plan Map 2022-2028

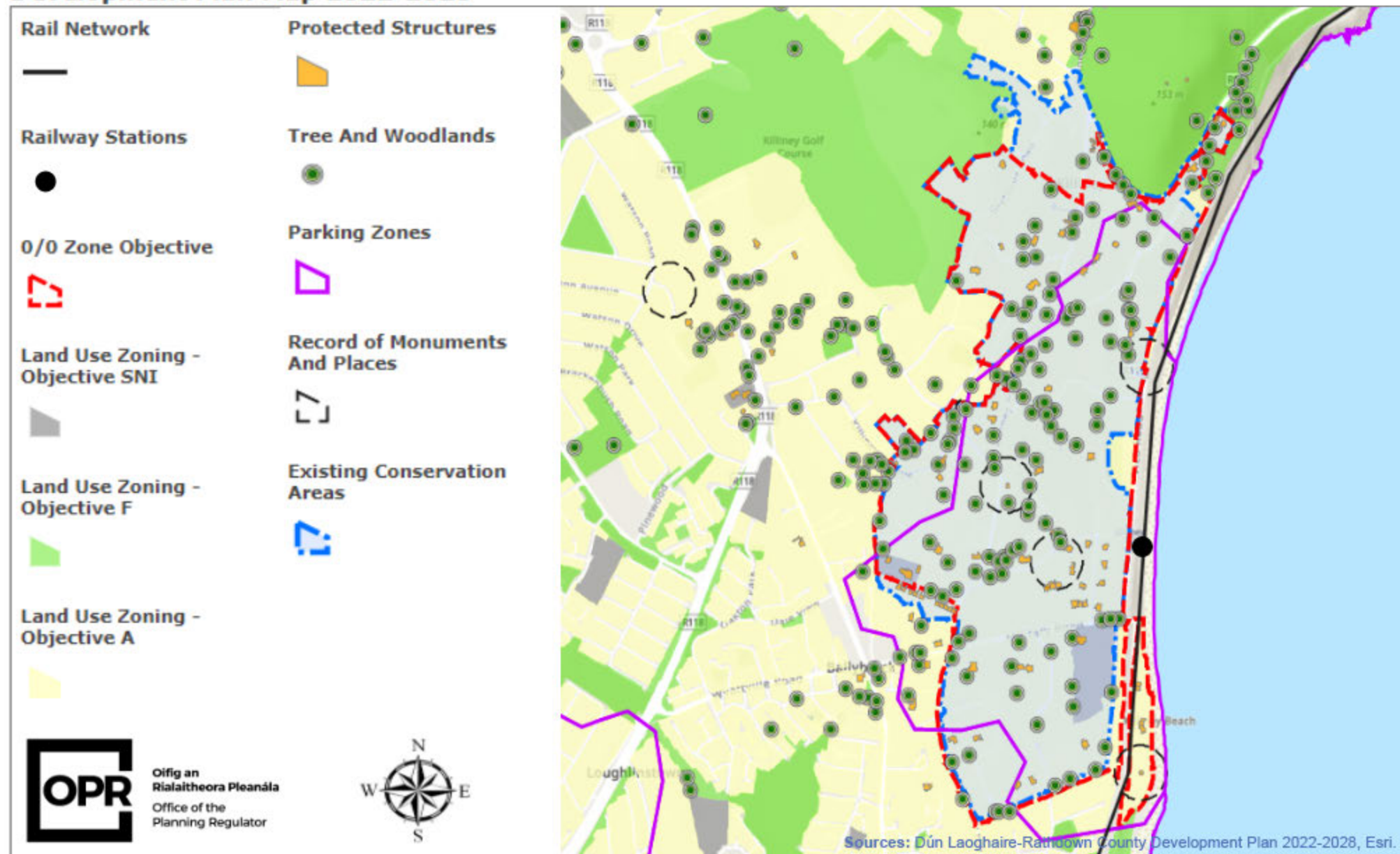


Figure 2 (Not to scale)

Spatial representation of the O/O Zone Objective in the adopted Dún Laoghaire-Rathdown County Development Plan Map 2022-2028

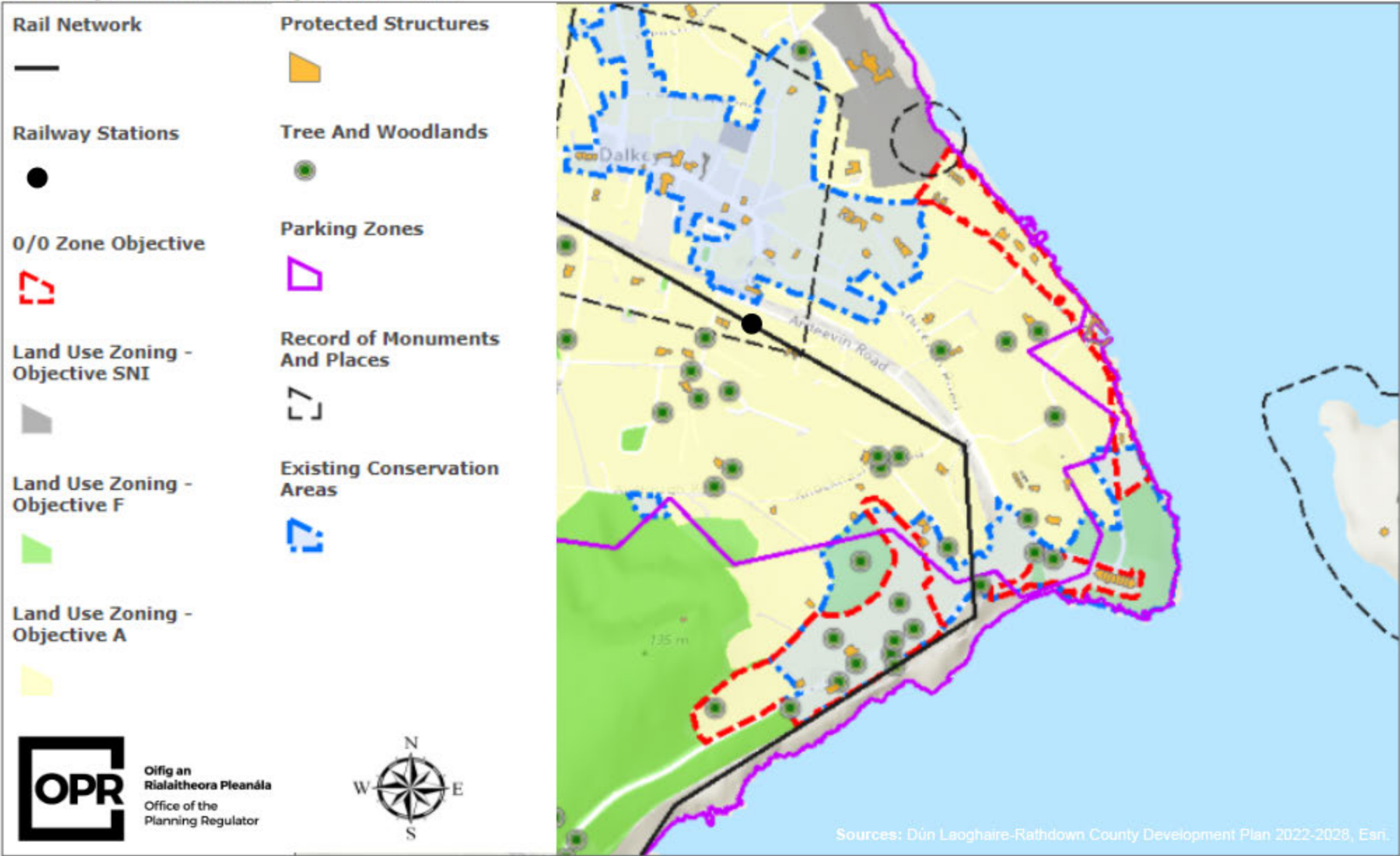


Figure 3 (Not to scale)

Spatial representation of the 0/0 Zone Objective in the adopted Dún Laoghaire-Rathdown County Development Plan Map 2022-2028

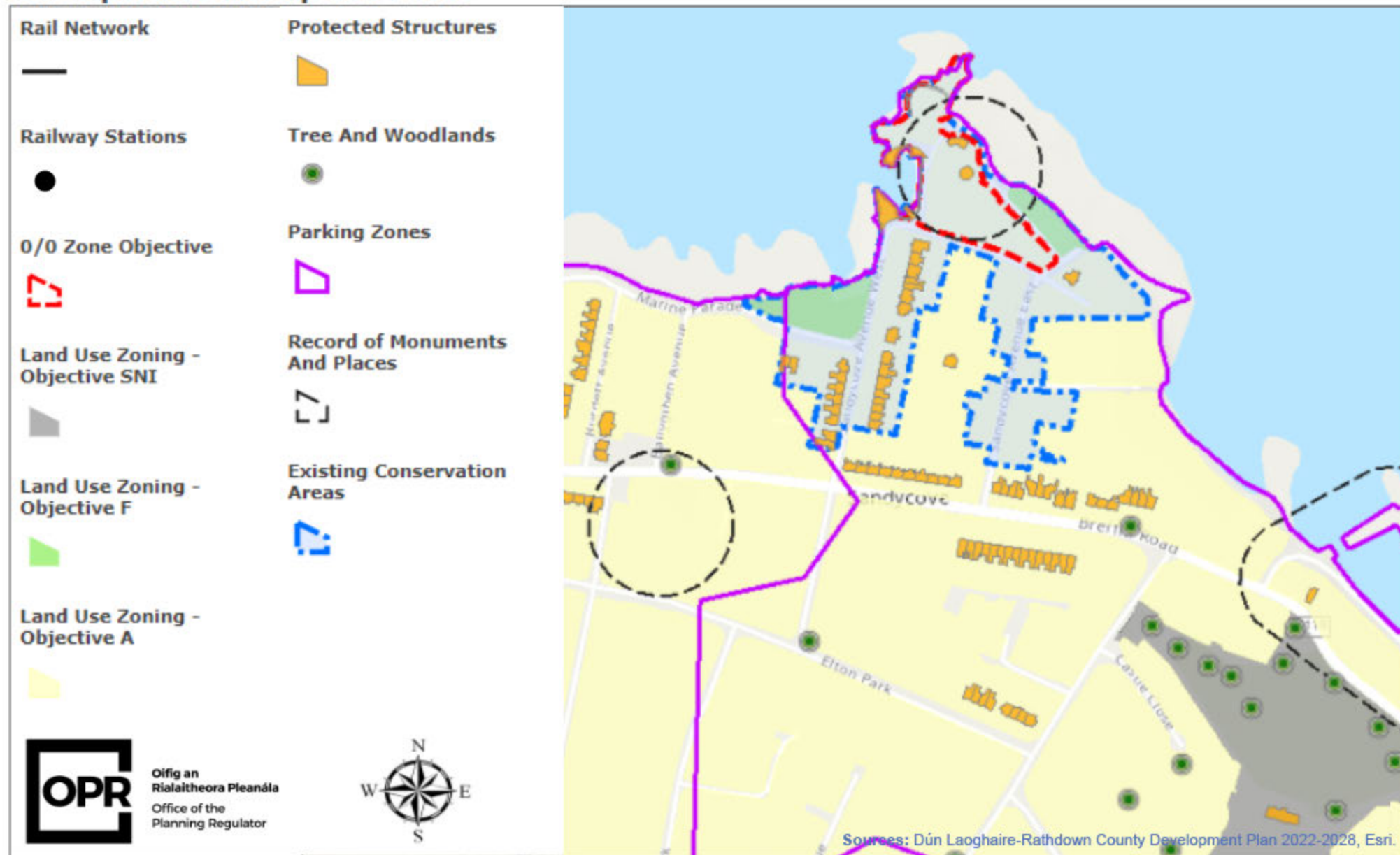


Figure 4 (Not to scale)

Excerpt from Map 7 Dún Laoghaire-Rathdown County Development Plan 2022-2028

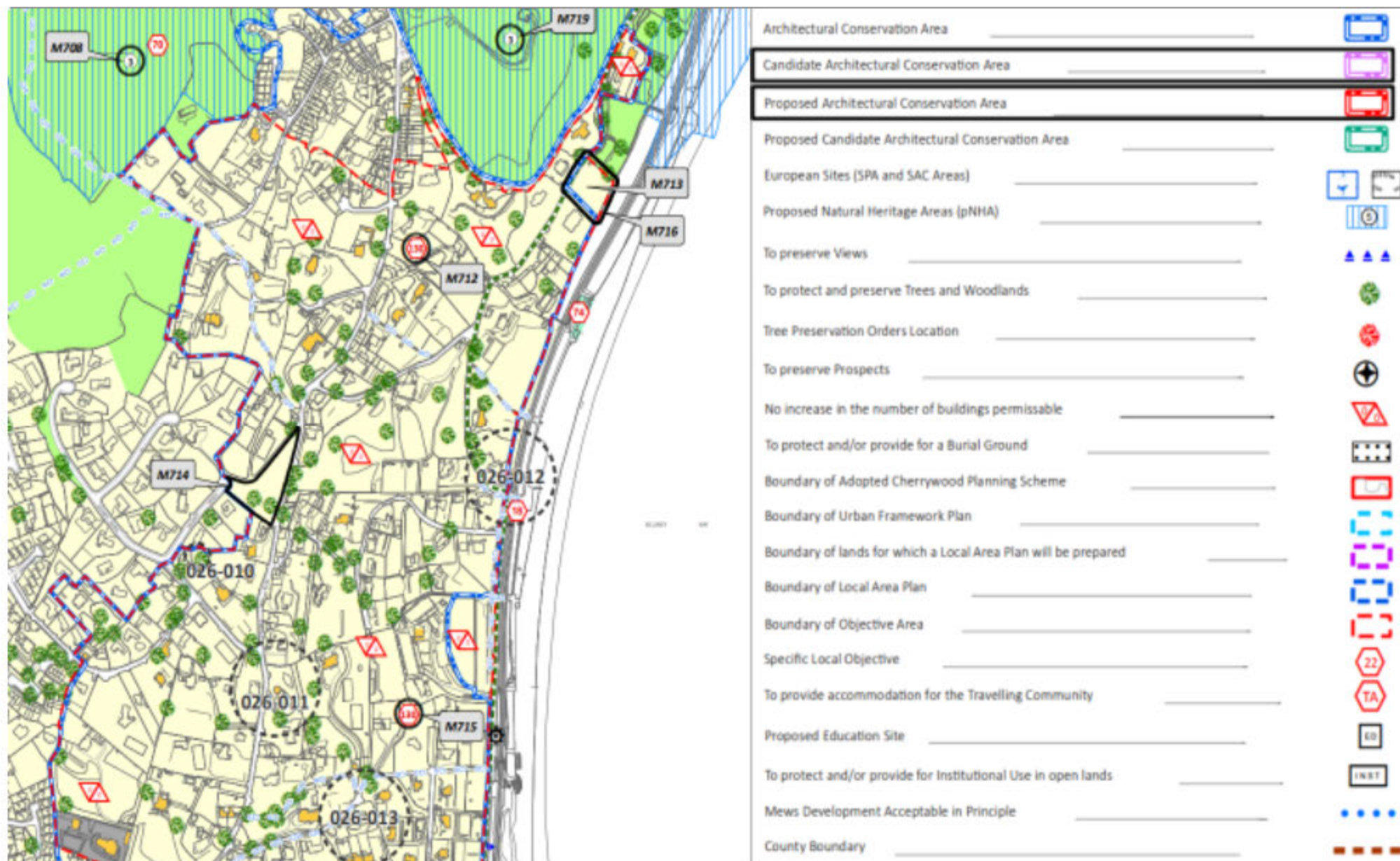


Figure 5 (Not to scale)

DRAFT DIRECTION IN THE MATTER OF SECTION 31

OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)

Dún Laoghaire-Rathdown County Development Plan 2022-2028

“Development Plan” means the Dún Laoghaire-Rathdown County Development Plan 2022-2028

“Planning Authority” means Dún Laoghaire-Rathdown County Council

WHEREAS the powers and duties of the Minister for the Department of Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended), other than the power to prosecute an offence, have been delegated to the Minister of State at the Department of Housing, Local Government and Heritage pursuant to the Housing, Local Government and Heritage (Delegation of Ministerial Functions) Order 2020 (S.I. 559 of 2020).

WHEREAS the Minister of State at the Department of the Housing, Local Government and Heritage in exercise of the powers conferred on him by section 31 of the Planning and Development Act 2000 (as amended) ("the Act"), and consequent to a recommendation made to him by the Office of the Planning Regulator under section 31AM(8) of the Act hereby directs as follows:

This Direction may be cited as the Planning and Development (Dún Laoghaire-Rathdown County Development Plan 2022-2028) Direction 2022.

The Planning Authority is hereby directed to take the following steps:

- a. Delete the following provisions from the adopted Development Plan:
 - (i) the 0/0 zone objective, including symbol and boundary of objective area from maps 3, 4, 7 and 10;

- (ii) the text *‘No increase in the number of buildings permissible’* and associated symbols from maps 1-14;
 - (iii) the policy section on *‘Notable Character Area Exclusions’* under section 4.3.1; and
 - (iv) policy section 12.3.8.8 O/O Zone.
- b. Delete the following text after the first paragraph of section 12.3.3 *Quantitative Standards for All Residential Development* from the adopted Development Plan:

“That the requirement for certain percentages of 3-bed units in apartments shall apply to Build To Rent developments to accord with mix on page 233”.

STATEMENT OF REASONS

- I. The Dún Laoghaire-Rathdown County Development Plan 2022 – 2028 as made is inconsistent with national and regional policy objectives specified in the National Planning Framework (the NPF) and the Eastern and Midlands Regional Spatial and Economic Strategy (the RSES), including national policy objectives NPO 3b, NPO 11 and NPO 35 of the NPF, and with regional policy objectives RPO 3.2 and RPO 4.3 of the RSES, relating to the implementation of compact growth and the intensification of development on infill/brownfield lands, contrary to s. 10(1A) of the Act. Further, the Development Plan as made would undermine the Development Plan core strategy and other objectives that promote compact and infill growth and the alignment with high quality public transport systems (Objectives CS11, PHP18, and T1 of the Development Plan).

Moreover, the O/O zone objective for significant parts of Killiney and Dalkey is not considered to be necessary or reasonable having regard to the comprehensive provisions within the Development Plan for the

protection of the heritage, character and amenities of the planning authority's functional area.

The Development Plan as made is inconsistent with Ministerial Guidelines issued under Section 28 of the Act to which s. 28(1C) applies, specifically Specific Planning Policy Requirement SPPR 8(i) contained in the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities* (2020) and the requirement for the planning authority to comply with the aforementioned Specific Planning Policy Requirements under section 28(1C) and 12(18), in the performance of its functions.

- II. In circumstances where the Development Plan as made is inconsistent with the requirements of the NPF and the RSES, contrary to s. 10(1A) of the Act, and would undermine the Development Plan Core Strategy and other objectives promoting compact and infill growth and the alignment with public transport systems, and is inconsistent with an SPPR, contrary to s. 28(1C) of the Act, the Development Plan fails to set out an overall strategy for the proper planning and sustainable development of the area.
- III. The Development Plan has therefore not been made in a manner consistent with the recommendations of the Office of the Planning Regulator under Section 31 AM and fails to set out an overall strategy for the proper planning and sustainable development of the area.

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.