



12th April 2022

For the Attention of: Mr Frank Curran, Chief Executive

Dún Laoghaire-Rathdown County Council,
County Hall,
Marine Road,
Dún Laoghaire,
County Dublin,
A96 K6C9

Section 31 of the Planning and Development Act 2000, as amended

**Notice of Intention to Issue a Direction to Dún Laoghaire-Rathdown County Council on the
Dún Laoghaire-Rathdown County Development Plan 2022 - 2028**

Dear Chief Executive,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 6th April 2022 in connection with the Dún Laoghaire-Rathdown County Development Plan 2022 – 2028, as adopted by the elected members of Dún Laoghaire-Rathdown County Council on 10th March 2022, and pursuant to section 31 of the Planning and Development Act 2000 (as amended) (the Act), I write to give notice of my intention to issue a direction to Dún Laoghaire-Rathdown County Council to take certain measures specified in this notice.

On consideration of the recommendation made to me by the Office, I have formed the opinion that:

- (i) Dún Laoghaire-Rathdown County Council has failed to implement recommendations made to it, as planning authority, by the Office under section 31AM of the Act;
- (ii) The Plan, as made, fails to set out an overall strategy for the proper planning and sustainable development of the area;



- (iii) The Plan is inconsistent with national and regional policy objectives specified in the National Planning Framework (NPF) and the Eastern and Midlands Regional Spatial and Economic Strategy (RSES);
- (iv) The Plan, as made, is inconsistent with Ministerial Guidelines issued under Section 28 of the Act to which s. 28(1C) applies; and
- (v) The Plan, as made, is not in compliance with the requirements of the Act.

A draft of the Direction accompanies this notice and I request that you publish notice of this draft Direction, no later than two weeks after receipt of this notice. The reasons for the Direction are set out in the Statement of Reasons section of the attached draft Direction and further detail is provided in the Summary of Issues as set out below.

PROCESS TO DATE

The draft Dún Laoghaire-Rathdown County Development Plan 2022 – 2028 (the draft Plan) was on public display from 12th January 2021 until 16th April 2021. The Office made a submission on the draft Plan containing nine (9) recommendations and two (2) observations (16th April 2021).

OPR 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 the 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 maximising 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 OPR 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.

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.

In respect of OPR 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 O/O zone objective (following the earlier rejection of OPR 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, you issued 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.

On 6th April 2022, in accordance to section 31AM(8), the Office notified the Minister for Local Government and Planning that the Dún Laoghaire-Rathdown County Development Plan 2022-28 had not been made in a manner consistent with the 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).

As a consequence of the above, it is the opinion of the Office that the Development Plan, as made by Dún Laoghaire-Rathdown County Council, fails to set out an overall strategy for the proper



planning and sustainable development of the area concerned, which is a breach of the requirements of the Act.

SUMMARY OF ISSUES

0/0 zone objective – OPR Recommendation 4

The Development Plan includes the 0/0 zone objective and associated provisions for 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.

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.”

In response to Recommendation 4 of the Office’s submission on the draft Plan, your 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 your recommendation concerning OPR Recommendation 4, with the significant exception that they agreed to insert the aforementioned new specific local objective (as SLO 130 under MA 296).

Having considered the reasons of the elected members, the Office considers that the heritage and amenity of these parts of Killiney and Dalkey are fully protected by existing 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. In forming my opinion on this matter, it is further considered that the O/O objective is disproportionate, especially in the context of SLO 130/MA296.

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).

Build-to-rent – OPR 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, your 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. This report 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 and recommended that amendment 160 be omitted.

The section 31AM(6) notice indicates that the elected members resolved to make the Plan with MA 160, rejecting this recommendation.

Having considered the detailed reasons given by the elected members in relation to MA 160, the Office is of the view that 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).

Overview

It is my opinion that certain elements of the Development Plan as made are 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. 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 locations to which the 0/0 zone objective is applicable, urban areas well served 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 0/0 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, and would be disproportionate.

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.

The factors taken into account in forming this opinion are as follows:

- 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 Minister's statutory obligations under the Act.



DRAFT DIRECTION

Accordingly, having considered the recommendation of the Office, I am issuing a draft direction pursuant to section 31 of the Planning and Development Act 2000 (as amended), to direct Dún Laoghaire-Rathdown County Council with regard to the Dún Laoghaire-Rathdown County Development Plan 2022 – 2028.

The Planning Authority is hereby directed to take the following steps within the Development Plan as set out in the draft direction to the planning authority accompanying this notice:

a. Delete the following provisions from the adopted Development Plan:

- (i) the O/O 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”.

Please note that in accordance with Section 31(4) of the Planning and Development Act 2000, those parts of the Dún Laoghaire-Rathdown County Development Plan 2022 – 2028 Plan referred to in this notice shall be taken not to have come into effect, been made or amended.

NEXT STEPS - PROCEDURAL REQUIREMENTS

I wish to draw your attention to the public consultation obligations under section 31 of the Planning and Development Act 2000 (as amended), and the initial requirement as Chief Executive,



under section 31(7) to publish notice of the draft Direction no later than 2 weeks after receipt of this notice, stating that the draft direction may be inspected as specified in the notice, for a period of not more than 2 weeks.

The notice must also state that written submissions or observations in respect of the draft direction may be made to the planning authority during the consultation period.

Also in line with statutory requirements, a Chief Executive's report is to be prepared on the public consultation period under section 31(8), and must be furnished to the Office, the elected members and myself as Minister, no later than 4 weeks after the public consultation process is completed, for further consideration.

The report of the Chief Executive must:-

- (a) summarise the views of any person who made submissions or observations to the planning authority;
- (b) summarise the views of and recommendations (if any) made by the elected members of the planning authority;
- (c) summarise the views of and recommendations (if any) made by the regional assembly;
- (d) make recommendations in relation to the best manner in which to give effect to the draft direction.

In addition, the elected members of the planning authority may make a submission to the Office of the Planning Regulator at any time up to the conclusion of the 2 week public consultation period referred to above and must also send any such submissions to me, as Minister.

The Office will then consider the Chief Executive's report together with any submissions made and will make a further recommendation to me, as Minister, regarding whether the Direction is



to be issued with or without minor amendments, or not issued. Where I am in agreement with the further recommendation, I may issue the final direction.

Where the Office is of the opinion that a material amendment to the Draft Direction is required, or further investigation is necessary, or it is necessary for another reason, then the Office may appoint an inspector no later than 3 weeks after receipt of the Chief Executive's report, prior to making a final recommendation to me.

My officials are available to assist you, as necessary, in complying with the foregoing process now underway. Should you have any queries please contact Laura Courtney, Planning Adviser at laura.courtney@housing.gov.ie.

Yours sincerely,

Peter Burke, T.D.,
Minister for Local Government and Planning

Copied to:

- Cathaoirleach, Dún Laoghaire-Rathdown County Council, County Hall, Marine Road, Dún Laoghaire, County Dublin, A96 K6C9
- Mr. Jim Conway, Director, Eastern and Midland Regional Assembly, 3rd Floor North, Ballymun Civic Centre, Main Street, Ballymun, Dublin 9, DO9 C8P5.
- Office of the Planning Regulator, Fourth Floor (West Wing) Park House, Grangegorman, 191-193A North Circular Road, Dublin 7, D07 EWV4.

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 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".

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 0/0 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. It is further considered that the 0/0 objective is disproportionate, especially in the context of SLO 130/MA296.

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 Local Government and Planning

Day of Month, year.