



28<sup>th</sup> July 2022

For the Attention of: Mr. Danny McLoughlin, Chief Executive

South Dublin County Council,  
County Hall,  
Belgard Square North,  
Tallaght  
Dublin 24,  
D24 A3XC

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

**Notice of Intention to Issue a Direction to South Dublin County Council on the South Dublin  
County Development Plan 2022 - 2028**

Dear Danny,

Consequent to a recommendation made to me as Minister by the Office of the Planning Regulator (the Office) on 19<sup>th</sup> July 2022 in connection with the South Dublin County Development Plan 2022 – 2028, as adopted by the elected members of South Dublin County Council on 22<sup>nd</sup> June 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 South Dublin County Council to take certain measures specified in this notice.

I wish to also remind you of the recent enactment of the Planning and Development, and Maritime and Valuations (Amendment) Act 2022 affecting Ministerial Directions on development plans and local area plans in the Planning and Development Act, 2000 (as amended) as advised in Circular NRUP 04/202, issued on 27<sup>th</sup> July 2022. Pending the consolidation of the Act on foot of the amendments, you are asked to take note of the procedural amendments that now apply to the section 31 process as it relates to development plans. For example, section 31(8) requires



your report prepared under this subsection to also be furnished to the relevant Regional Assembly.

### **OPINION**

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

- (i) South Dublin 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), specifically National Strategic Outcome 1 (Compact Growth) and NPO 11.
- (iv) The Plan is not consistent with regional development objectives set out in the Regional Spatial and Economic Strategy for the Eastern and Midland Region, specifically RPO 5.3 (MASP Sustainable Transport), RPO 5.6 (MASP Employment lands) and RPO 8.25 (Communications Networks and Digital Infrastructure).
- (v) The Plan, as made, is inconsistent with Ministerial Guidelines issued under Section 28 of the Act, specifically:
  - a. Section 6.2.5 (zoning for employment uses) in the Development Plans, Guidelines for Planning Authorities (2022);
  - b. Section 2.7 (Development at National Road Interchanges or Junctions) in the Spatial Planning and National Roads Guidelines for Planning Authorities (2012); and



- c. Section 3 (Principles and key mechanisms – Justification Test) of the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).
- (vi) 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 below.

#### **PROCESS TO DATE**

The Draft South Dublin County Development Plan 2022 – 2028 (the draft Plan) was on public display from 7<sup>th</sup> July 2021 to 15<sup>th</sup> September 2021. Ministerial Planning Guidelines under Section 28 of the Planning and Development Act 2000 (as amended): Development Plans, Guidelines for Planning Authorities were published on 1<sup>st</sup> July 2022 and superseded the draft version published in August 2021. The Office of the Planning Regulator made a submission to the draft Plan containing 9 recommendations and 13 observations on 15<sup>th</sup> September 2021.

The Office of the Planning Regulator was generally satisfied with the overall approach and policies/objectives in the draft Plan which direct the majority of future development to strategic development zones and the designated strategic development areas for residential and employment in the Regional Spatial and Economic Strategy consistent with the Regional Policy Objectives and guiding principles for growth of the Dublin Metropolitan Area which are set out in the Metropolitan Area Strategic Plan (MASP).

The Office's submission to the draft Plan identified some issues for the planning authority to address to more fully align the draft Plan with current national and regional policy and the Act. The issues raised related to refinement of the Housing Supply Target (HST) figures in the Core Strategy, moderating the future growth of the settlements of Rathcoole, Newcastle and Saggart



and requirements for social and affordable housing under Part V of the Act amongst others. The majority of the issues raised were either addressed as material alterations or the Office was satisfied with the response provided by the Chief Executive in his report to the elected members on the draft Plan submissions.

The elected members, having considered the draft Plan and the Chief Executive's (CE's) Report on submissions received, resolved to make material alterations to the draft Plan on the 1<sup>st</sup>, 3<sup>rd</sup>, 7<sup>th</sup> and 9<sup>th</sup> March 2022. The material alterations to the draft Plan were on public display from 29<sup>th</sup> March to 26<sup>th</sup> April 2022. The material alterations included a number of changes including:

- Material amendments 2.20 and 9.4 which rezoned 53 hectares of land to the north and east of Greenogue Business Park from the Rural RU zone to the Enterprise and Employment zone and applied a specific local objective requiring site specific flood alleviation measures forming part of any future planning application for the lands.
- Material amendments 13.1, 13.2 and 13.3 which amended the REGEN, Enterprise & Employment (EE) and Major Retail Centre (MRC) zoning objectives to make data centres a 'not permitted' use across all zoning objectives in the Plan. The Office made a submission on 26<sup>th</sup> April 2022 to the material alterations to the draft Plan containing 3 recommendations and 3 no. observations. The Office's submission letter stated:

*"...the Office considers that the proposal to rezone significant further lands for employment at Greenogue Business Park in an area that is poorly served by public transport is not consistent with the objectives of sustainable mobility and transition to a low carbon and climate resilient society, and would set a further precedent for this pattern of development in the general area.*

*The Office also considers that the material amendment to make data centres a 'not permitted' use across all land use zones represents an unconditional policy approach for*



*which no clear evidence-based rationale is evident, and which is not consistent with the regional policy objectives for economic development in the RSES...”*

The elected members of South Dublin County Council resolved to make the South Dublin County Development Plan 2022 – 2028 on 22<sup>nd</sup> June 2022. Subsequently, the Chief Executive sent a notice letter under Section 31(AM)(6) of the Act dated 28<sup>th</sup> June 2022 to the Office advising of the making of the Development Plan and specifying the recommendations of the Office not complied with.

The notice letter stated that MA Recommendation 1, MA Recommendation 2 and Recommendation 5 of the Office’s submission to the draft Plan had not been complied with and provided a summary of the elected members’ reasoning for not complying with the aforementioned recommendations.

Having reviewed the CE’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 MA Recommendation 1 and MA Recommendation 2, 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.

As a consequence of the above, it is the opinion of the Office that the Development Plan, as made by South Dublin 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.



## **REASONS**

### **Employment zoning at Greenogue – OPR MA Recommendation 1**

MA Recommendation 1 of the Office’s submission to the material alterations to the draft Plan required the planning authority to omit the enterprise and employment zoning to the north and east of the existing Greenogue Business Park which is located north of junction 4 of the N7 Naas Road outside the Dublin City and suburbs boundary. The Baldonnell Aerodrome is immediately east and northeast of the subject land and the settlement of Newcastle is approximately 2.5 km to the west.

MA Recommendation 1 – Greenogue Business Park stated:

*“Having regard to National Strategic Outcome 1 (Compact Growth) and National Policy Objective 11 of the National Planning Framework (NPF), Regional Policy Objectives 5.3 and 5.6 of the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Regional Assembly, section 2.7 of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012), and section 6.2.5 of the Development Plans, Guidelines for Planning Authorities - Draft for Consultation August (2021), the planning authority is required to:*

*“(i) omit the Enterprise and Employment zoning (Material Amendment 2.20) from the lands at Greenogue Business Park and retain the Rural RU zoning objective. The Office considers that the rezoning is contrary to compact growth and sequential development and would support unsustainable car dependant development at a greenfield location remote from high capacity public transport and in close proximity to a junction on the national road network. Further, there is no evidence based rationale underpinning the zoning of land for employment purposes at this location which also demonstrates that the criteria in section 2.7 of the Spatial Planning and National Roads Guidelines (2012) have not been satisfied; and*



*(ii) omit the specific local objective (Material Amendment 9.4) which requires site specific flood alleviation measures to support its development. The Office notes that lands are affected by flood zones A / B and further rezoning in this general area is not supported in the Justification Test in the Strategic Flood Risk Assessment which recommends retaining the Rural RU zoning (page 27)."*

In response to MA Recommendation 1 of the Office's submission on the draft Plan, your report recommended to omit proposed Material Amendments 2.20 and 9.4 and make the Plan without same. Your report on submissions raised concerns about the traffic implications affecting the national road network and policy in the RSES. However, the elected members did not accept your recommendation to make the Plan without proposed Material Amendments 2.20 and 9.4.

Having regard to the reasons given by elected members that the zoning objective was justified in terms of the need for employment land/ jobs, I am satisfied that the analysis demonstrates that there is no strategic justification to support zoning significant further employment lands at Greenogue, in what is a peripheral location that is outside the Dublin City and Suburbs boundary and remote from high quality public transport. The members' decision to retain Material Amendments 2.20 and 9.4 fails to have regard, properly, and/or adequately, and/or at all to relevant Ministerial Guidelines issued under section 28 of the Act, specifically:

- Section 6.2.5 (zoning for employment uses) in the Development Plans, Guidelines for Planning Authorities (2022);
- Section 2.7 (Development at National Road Interchanges or Junctions) in the Spatial Planning and National Roads Guidelines for Planning Authorities (2012); and
- Section 3 (Principles and key mechanisms – Justification Test) of the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).



The Greenogue Business Park consists of an ‘island’ of Enterprise & Employment zoned land surrounded by Rural RU zoned land in a location that is remote from high quality public transport and a significant residential population. In addition, Greenogue Business Park is not identified as a strategic employment area in the RSES for the EMRA. The subject lands are in agricultural use and form part of the greenbelt on the western edge of the city. The rezoning does not provide for compact growth or follow a sequential approach and does not provide for a plan led approach that facilitates sustainable travel.

The objectives of the Development Plan are therefore not consistent with NPF National Strategic Outcome 1 (Compact Growth), NPO 11 and regional planning objectives RPO 5.3 (MASP Sustainable Transport), RPO 5.6 (MASP Employment lands) and RPO 8.25 (Communications Networks and Digital Infrastructure) in addition to section 2.7 of the Spatial Planning and National Roads Guidelines for Planning Authorities (2012) and section 6.2.5 of the Development Plans - Guidelines for Planning Authorities (2022) and the Planning System and Flood Risk Management Guidelines for Planning Authorities (2009).

### **Prohibition on Data Centres – OPR MA Recommendation 2**

MA Recommendation 2 of the Office’s submission to the material alterations to the draft Plan required the planning authority to retain data centre use class as an ‘open for consideration’ use class in the REGEN, Enterprise & Employment (EE) and Major Retail Centre (MRC) zoning objectives. Data centre is a ‘not permitted’ use class in all other zoning objectives in the adopted Plan.

MA Recommendation 2 – Data Centres stated:

*“Having regard to Regional Policy Objective 8.25 of the Regional Spatial and Economic Strategy for the Eastern and Midland Regional Assembly which states that ‘Local authorities shall... Support the national objective to promote Ireland as a sustainable international destination for ICT infrastructures such as data centres and associated economic activities at appropriate locations...’, and the absence of any strategic justification to support making data centres a ‘not*





*permitted’ use across all zoning objectives in the draft Plan, the planning authority is required to make the Plan without Material Amendments 13.1, 13.2 and 13.3 and retain data centres as an ‘open for consideration’ use in the REGEN, Enterprise & Employment (EE) and Major Retail Centre (MRC) zoning objectives.”*

In response to MA Recommendation 2 of the Office’s submission on the draft Plan, your report recommended omitting Material Amendments 13.1, 13.2 and 13.3 and make the Plan without the proposed amendments. However, the elected members did not accept your recommendation to omit proposed Material Amendments 13.1, 13.2 and 13.3 and make the Plan without same.

It is noted that Development Plan objective EDE7 Objective 2 requires that space extensive enterprises demonstrate measures to reduce their carbon footprint such as measures to facilitate district heating or heat networks where excess heat is produced. Therefore, the reasons put forward by the elected members to make data centre use class a ‘not permitted’ use class in the REGEN, Major Retail Centre (MRC) and Enterprise and Employment (EE) zonings do not amount to a robust planning rationale for imposing a blanket restriction on data centres across all land use zonings in the Development Plan.

The objectives of the Development Plan are therefore not consistent with RPO 8.25 in the RSES, which promotes Ireland as a sustainable international destination for ICT infrastructures such as data centres and associated economic activities at appropriate locations.

#### **MEASURES TO BE TAKEN – 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 South Dublin County Council with regard to the South Dublin 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. Omit the Enterprise and Employment zoning and the specific local objective which requires site-specific flood alleviation measures introduced as Material Amendments 2.20 and 9.4 from the lands to the north and east of the existing Greenogue Business Park and retain the Rural RU zoning objective.
- b. Amend the land use zoning objectives in tables 13.4, 13.8 and 13.10 to reinstate data centre use class as an 'open for consideration' use class in the REGEN, Enterprise & Employment (EE) and Major Retail Centre (MRC) zoning objectives.

Please note that in accordance with Section 31(4) of the Planning and Development Act 2000, those parts of the South Dublin 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.

In accordance with Section 31(9) of the Act, 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, and
- 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](mailto:laura.courtney@housing.gov.ie).

Yours sincerely,

Peter Burke, T.D.,

Minister for Local Government and Planning

Copied to:

- Cathaoirleach, South Dublin County Council, County Hall, Belgard Square North, Tallaght, Dublin 24, D24 A3XC
- Mr. Jim Conway, Director, Eastern and Midland Regional Assembly, 3<sup>rd</sup> 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 EWW4.

**DRAFT DIRECTION IN THE MATTER OF SECTION 31**

**OF THE PLANNING AND DEVELOPMENT ACT 2000 (as amended)**

**South Dublin County Development Plan 2022-2028**

“Development Plan” means the South Dublin County Development Plan 2022-2028

“Planning Authority” means South Dublin County Council

**WHEREAS** the powers and duties of the Minister for Housing, Local Government and Heritage under the Planning and Development Act 2000 (as amended) ("the Act"), 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 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:

- (1) This Direction may be cited as the Planning and Development (South Dublin County Development Plan 2022-2028) Direction 2022.
- (2) The Planning Authority is hereby directed to take the following steps:
  - a. Omit the Enterprise and Employment zoning and the specific local objective which requires site-specific flood alleviation measures introduced as Material Amendments 2.20 and 9.4 from the lands to the

north and east of the existing Greenogue Business Park and retain the Rural RU zoning objective.

- b. Amend the land use zoning objectives in tables 13.4, 13.8 and 13.10 to reinstate data centre use class as an 'open for consideration' use class in the REGEN, Enterprise & Employment (EE) and Major Retail Centre (MRC) zoning objectives.

## **STATEMENT OF REASONS**

### **I. Pursuant to section 31(1)(ba)(i) and section 31(1)(c)**

The Development Plan as made includes material amendments to the draft Plan, which are not consistent with national and regional planning policy and the proper planning and sustainable development of the area, including:

- a. Land zoned for enterprise and employment development at a peripheral location at Greenogue Business Park (Material Amendment 2.20, which is also facilitated by Material Amendment 9.4), is remote from high quality public transport and outside the designated strategic employment development areas identified in the RSES for the Dublin Metropolitan Area inconsistent with the requirements for compact growth in National Strategic Outcome 1 and National Planning Objective NPO11 to generate jobs within existing cities, towns and villages, as well as the sequential approach and planning for future development of employment lands in a manner that facilitates sustainable transport patterns consistent with Regional Policy Objectives 5.3 and 5.6 in the RSES.
- b. Changes to land use zoning objectives for REGEN, Major Retail Centre and Enterprise and Employment (Material Amendments 13.1,

13.2 and 13.3) which make data centre use class a ‘not permitted’ use class across all zoning objectives in the Plan inconsistent with Regional Policy Objective 8.25 in the RSES for the EMRA which promotes Ireland as a sustainable international destination for ICT infrastructures such as data centres and associated economic activities at appropriate locations and lacks an appropriate evidential basis.

**II. Pursuant to section 31(1)(ba)(i) and section 31(1)(c)**

The Development Plan fails to show how the development objectives in the development plan are consistent, as far as practicable, with national and regional development objectives set out in the National Planning Framework and RSES, as required by Section 10(1A) and Section 10(2A)(a) of the Act when read in conjunction with Section 12(18) of the Act.

**III. Pursuant to section 31(1)(c)**

The South Dublin County Development Plan 2022 – 2028 does not include a strategy for employment development to inform Material Amendments 2.20 and 9.4 which has regard to the Ministerial Guidelines issued under Section 28 of the Act, specifically Section 6.2.5 (zoning for employment uses) in the *Development Plans, Guidelines for Planning Authorities (2022)*, Section 2.7 (Development at National Road Interchanges or Junctions) in the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)*, and Section 3 (Principles and key mechanisms – Justification Test) of the *Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)*.

**IV. Pursuant to section 31(1)(c)**

The Development Plan fails to identify proper or adequate reasons for departing from Section 6.2.5 (zoning for employment uses) in the *Development Plans, Guidelines for Planning Authorities (2022)*, Section

2.7 (Development at National Road Interchanges or Junctions) in the *Spatial Planning and National Roads Guidelines for Planning Authorities (2012)* and Section 3 (Principles and key mechanisms – Justification Test) of the *Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)* consistent with the presence of an overall strategy for the proper planning and development of the area.

**V. Pursuant to section 31(1)(a)(i)(II)**

The Development Plan has not been made in a manner consistent with, and has failed to implement, the recommendations of the Office of the Planning Regulator under Section 31AM which results in the making of a Development Plan that fails to set out an overall strategy for the proper planning and sustainable development of the area.

**VI.** By virtue of the matters set out at I-V above, the Minister 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.

**VII.** By virtue of the matters set out at I to V, above, the Development Plan is not in compliance with the requirements of the Act.

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.