



Oifig an  
Rialaitheora Pleanála  
Office of the  
Planning Regulator

17<sup>th</sup> June 2022

Mr Peter Burke TD  
Minister for Housing, Local Government and Heritage  
Department of Housing, Local Government and Heritage  
Custom House  
Dublin 1  
D01 W6X0

**Re: Notice pursuant to section 31AN(4) of the Planning and Development Act 2000 (as amended) – Dun Laoghaire County Development Plan 2022-2028**

A chara,

I am writing to you pursuant to section 31AN(4) of the *Planning and Development Act 2000* (as amended) (the "Act") in the context of the Dun Laoghaire County Development Plan 2022-2028 (the "Plan"). In particular, I write arising from the consideration by this Office of the following:

- a) the Notice of Intent to issue a Direction issued to Dun Laoghaire County Council (the "Council") by your office on 12/04/2022, and
- b) the report of the Chief Executive of the Council dated May 2022 on the submissions and observations received by the Council (the "Report").

I refer also to the submission made directly by an elected member of the Council (Cllr Anne Colgan) to this Office and considered by this Office pursuant to section 31(10)(a) of the Act. The submission containing the observations of the elected member requested that the provisions inserted under material amendment MA 160 concerning Build To Rent (BTR) development be retained as part of the Plan. The submission is attached to this letter. This Office has carefully taken into consideration the Report and the submission made directly to this Office.

## **Draft Direction**

You will note that the Report prepared in accordance with section 31(8) of the Act recommends that the draft direction issued by the Minister is given effect, as drafted, subject to a minor amendment to clarify that the paragraph numbering was altered by the making of the Plan such that the relevant section referred to in subsection (iv) of Part (a) is 12.3.7.8 and not 12.3.8.8 as stated in the draft direction.

The Office now recommends, pursuant to section 31AN(4) of the Act that you issue the attached Direction, without material amendment to the draft direction and with the abovementioned minor amendment.

The Office notes that the Minister added the following wording to point II of the Statement of Reasons in the draft direction which issued to the Council, "It is further considered that the 0/0 objective is disproportionate, especially in the context of SLO 130/MA296." The Office agrees with the Minister's assessment and has included this minor amendment to the wording in the Statement of Reasons in the attached Direction.

In forming this recommendation, this Office reiterates the submissions made to you in the Notice, which issued from this Office to your office on 06/04/2022 pursuant to section 31AM(8) of the Act. You might please note the following:

- The submission to the Office from an elected member under section 31(10)(a) of the Act opposes the draft direction only in respect of Part b, the deletion of text relating to certain percentages of 3-bed units in Build To Rent apartment development after the first paragraph of section 12.3.3 of the adopted Plan.
- As set out in the Report, of the 16 submissions made by elected members at the Special Council meeting concerning Part a, relating to the 0/0 zone objective, two (2) submissions recommended implementing the draft direction, eight (8) recommended against the implementation, five (5) recommended a general reduction in the area of the 0/0 zone objective and/or the retention of the policy provisions, and one (1) did not include a clear recommendation.

- As set out in the Report, of the 22 submissions made by elected members at the Special Council meeting concerning Part b, relating to Build To Rent apartment development, seven (7) submissions recommended implementing the draft direction, six (6) recommended against its implementation, and four (4) recommended a more modest threshold be applied. A further five (5) submissions made no recommendation, but three (3) of those made submissions which were generally in favour of the draft direction and two (2) made submissions which were generally against the draft direction, one (1) did not include a clear recommendation.
- As set out in the Report, of the 10 submissions made to the Council by members of the public under section 31(7)(c) of the Act concerning Part a, relating to the O/O zone objective, three (3) submissions were received in favour of the draft direction, and seven (7) were received against the draft direction.
- As set out in the Report, of the 14 submissions made to the Council by members of the public under section 31(7)(c) of the Act concerning Part b, relating to Build To Rent apartment development, six (6) submissions were received in favour of the draft direction, and eight (8) were received against the draft direction.
- As set out in the Report, the position of five of the submissions made to the Council by members of the public during the display period was unclear.
- The Report summarised the views of members of the public who made submissions to the planning authority under section 31(7)(c), and the views and recommendations made by the elected members of the planning authority.
- In relation to reasons given by elected members, and members of the public under section 31(7)(c) of the Act, the Office notes that many of the reasons relating to the O/O zone objective were similar to the reasons given by the elected members for the decision to not comply with the recommendations of

the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority. Additional reasons include the following: the Plan can meet the national policy objectives (e.g. NPO 3b) without omission of 0/0 zoned objective; infrastructural, services and topographical constraints; impact on local democracy; consequences on environment and habitats not considered in SEA contrary to EU Directives; and that it would be possible to amend the objective boundary to address the Direction.

- In relation to reasons given by elected members, and members of the public under section 31(7)(c) of the Act, the Office notes that the majority of the reasons were similar to the reasons given by the elected members for the decision to not comply with the recommendations of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority. Additional reasons include the following: impact on local democracy; guidelines are out of date or there may be legal issues with the guidelines.
- As set out in the section 31AM(8) notice to your office, the reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in respect of those similar points raised again by the elected members and members of the public.

### **Part a**

The Office is satisfied that the Chief Executive's recommendation in respect of Part a is adequate as it would delete the relevant symbols and text from the Development Plan maps 1-14, policy section on 'Notable Character Area Exclusions' under section 4.3.1 of Chapter 4 and section 12.3.8.8 '0/0 Zone' (as renumbered 12.3.7.8 in the final numbering of sections in the Plan as made) in Chapter 12 of the Development Plan.

The Office notes that a number of the reasons in the submissions were similar to the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority including:

- Conflict between the O/O objective, which looks to protect the area and the national objective to increase densities;
- An Bord Pleanála may not uphold the SLO 130 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”*;
- Reasonable to require the highest level of protection to a very small area; current plan has not protected the area and O/O objective is useful.

As set out in the section 31AM(8) notice to your office, the reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in respect of those similar points raised again by elected members.

In relation to the reasons regarding the availability of land outside of the ‘O/O Zone’ to meet compact growth objectives under the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES), the Office notes that the relevant objectives refer to the delivery of at least 50% of all new homes that are targeted for the suburbs of Dublin within their existing built up footprints, and not a minimum target. The Office remains of the view that the proposed restriction of development within the built up footprint of these parts of Dalkey and Killiney along a high quality public transport corridor is not consistent with the national and regional objectives for compact growth.

In relation to additional reasons relating to site-specific issues such as steeply sloping land/ coastal erosion /flood risk, and social and physical infrastructure

constraints, the Office notes that there are extensive and reasonable provisions in the Development Plan to provide sufficient safeguards in this respect such as:

- SLO 130 which seeks *'To ensure that development in this [O/O zone] area does not ... 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;'*
- *Section 12.10 - Drainage, Flood Risk and Coastal Erosion, which requires 'All planning applications submitted shall clearly show existing and proposed water supply arrangements and surface and wastewater drainage proposals having due regard to SuDS'; 'Applications shall adhere to the policies and objectives set out in Appendix 15 Strategic Flood Risk Assessment and Section 10.7 Flood Risk while having regard to 'the 'Planning System and Flood Risk Management' Guidelines for Planning Authorities' DEHLG (2009) and DECLG Circular PL2/2014'; and 'The Planning Authority will refer to the Coastal Defence Strategy or any review in the assessment of planning applications in the areas identified within the strategy as being at risk from erosion and/or coastal flooding'.*
- *Policy Objective PHP18: Residential Density seeks to 'increase housing (houses and apartments) supply and promote compact urban growth through the consolidation and re-intensification of infill/brownfield sites having regard to proximity and accessibility considerations, and development management criteria set out in Chapter 12.*
- *Policy PHP19 Existing Housing Stock seeks to 'densify existing built-up areas in the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods.'*
- *Development management standards section 12.3.7.7 Infill provides that 'New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/ gateways, trees, landscaping, and fencing or railings. This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th century suburban*

*'Garden City' planned settings and estates that do not otherwise benefit from ACA status or similar'.*

In relation to the issue of local democracy, the Office is satisfied that the provisions of sections 12(11) and 12(18) are clear in terms of the statutory obligations of members to ensure the development plan is consistent with NPOs, RPOs and SPPRs, which necessarily set parameters for local government decisions, and that the Ministerial Direction only ensures consistency with those obligations.

In relation to the adequacy of the environmental assessments, the Office is satisfied that the Direction is not inconsistent with the Strategic Environmental Assessment Environmental Report and the Appropriate Assessment Natura Impact Report. Individual projects are also required, where appropriate under the Act to be subject to screening for environmental impact assessment and appropriate assessment, and subject to environmental impact assessment and / or appropriate assessment where required.

In relation to the recommendation *'possible redraw of boundary of O/O zone to exclude DART Station and adjacent area'*, the Office notes that no such amendment was recommended by the chief executive.

Following consideration of the submissions and Report, the Office is satisfied that there is no basis to materially amend the recommendation of this Office in respect of Part a.

## **Part b**

The Office is satisfied that the Chief Executive's recommendation in respect of Part b is adequate as it would delete the relevant text after the first paragraph of section 12.3.3 Quantitative Standards for All Residential Development from the Development Plan as made.

The Office notes that a number of the reasons in Cllr Colgan's submission were similar to the reasons given by the elected members for the decision to not comply

with the recommendation of the Office when adopting the Plan, and were detailed in the section 31AM(6) notice received from the planning authority including:

- Conflict with requirements under section 94(1) concerning housing strategy;
- Conflict with the HNDA;
- Function of BTR and long term view of housing supply.

As set out in the section 31AM(8) notice to your office, these reasons were carefully taken into consideration by the Office in recommending the exercise of your function under the relevant provisions of section 31 of the Act and the Office adopts the same rationale as set out in the 31AM(8) notice in respect of those similar points raised again by Cllr Colgan. In relation to the function of BTR and long term housing supply the Office would further note that the Guidelines (updated in 2020) provide a full consideration of the role of BTR in the overall housing supply system and provide specific policy through SPPR 7 and SPPR 8.

New planning reasons set out in the submission of Cllr Colgan can be summarised as follows:

- The *Urban Design Manual*, accompanying the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas: Cities, Towns and Villages* (2009) (SRDUA Guidelines), advises that housing mix in larger developments should create mixed neighbourhoods supporting a variety of people through all life stages, and on smaller sites should be conducive to maintaining a healthy and balanced neighbourhood.
- Apartments granted permission following the introduction of Strategic Housing Development (SHD) are overwhelmingly 1 and 2 bedroom apartments.
- The HNDA concludes that a mix of unit types is required particularly in larger high-density schemes.

The submission addresses the substantive issue of non-compliance with SPPR 8(i) by submitting, inter alia, that the wording '*all other requirements of these Guidelines shall apply, unless specified otherwise*' can be interpreted to include the scope to specify the unit mix in any tenure, including in Build to Rent, in line with HNDA, as contained in SPPR1, and that this line is unintentionally omitted from SPPR 8.

Otherwise there would appear to be a contradictory provision within the Guidelines



that discriminates against those who may need to rent family homes. The Office does not agree with Cllr Colgan's interpretation of SPPR8 and considers that SPPR8 is clear that no restrictions on dwelling mix are permitted in respect of BTR development.

Section 5 of the of the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*' introduced specific BTR planning and design policies and standards in recognition of the particular characteristics and role of this type of housing development. In this context, 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;*

Under (ii) – (v) the SPPR continues to specify where the requirements of the Guidelines do not apply in respect of BTR, for example the provision of private amenity space, reduced car parking, minimum floor areas and apartments per core.

Consequently, 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).

In relation to reasons given by elected members and members of the public in the Report, the reasons for retaining Material Amendment 160 were common to either the reasons given by the elected members for the decision to not comply with the recommendation of the Office when adopting the Plan (and as set out in the 31AM(6) notice) or similar to reasons given in the submission by Cllr Anne Colgan. Additional reasons relate to the following themes:

- Impact on local democracy - The Office is satisfied that the impact on local democracy has been addressed under Part a above
- The guidelines are out of date and / or legal issues arise with the guidelines - The Office notes that the guidelines were updated in 2020 and were prepared and published under the provisions set out in section 28 of the Act.

The Office otherwise adopts the same rational as set out in the 31AM(8) notice and in how it addresses Cllr Colgan's submissions where similar points have arisen.

Following consideration of the submissions and Report, the Office is satisfied that there is no basis to materially amend the recommendation of this Office in respect of Part b.

### **Recommendation**

Having regard to section 31AN(4) of the Act, the Office recommends the exercise of your function under the relevant provisions of section 31 of the Act to issue the direction with the aforementioned minor amendment.

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](mailto:plans@opr.ie).

Yours sincerely,



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**Niall Cussen**  
Planning Regulator

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ENC Draft Direction, Submissions from elected members dated 31<sup>st</sup> March 2022.

**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 31AN(4) of the Act hereby directs as follows:

- (1) This Direction may be cited as the Planning and Development (Dún Laoghaire-Rathdown County Development Plan 2022-2028) Direction 2022.
- (2) 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 12.3.7.8 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 Office of the Planning Regulator is of the opinion that the Development Plan has not been made in a manner consistent with its recommendations and that the Development Plan as made fails to set out an overall strategy for the proper planning and sustainable development of the area.
- II. 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. It is further considered that the O/O 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.

- III. 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.
- IV. The Chief Executive of the Planning Authority has prepared a report dated 27/05/2022 pursuant to Section 31(8) of the Act and has

recommended that the draft Direction issued by the Minister is given effect, as drafted and without amendment except to clarify that the final numbering has altered so that the relevant section under '0/0 Zone' (Chapter 12) is 12.3.7.8 and not 12.3.8.8 as stated in the draft Direction.

GIVEN under my hand,

Minister for Housing, Local Government and Heritage

day of Month, year.