

## **Statement of Material Contravention**

Castlestar (Athlone) Limited

Cornamagh, Clonbrusk and  
Coosan, Athlone, Co. Westmeath  
Strategic Housing Development





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# 1. INTRODUCTION

This Statement of Material Contravention has been prepared by MKO on behalf of Castlestar (Athlone) Limited in support of an application to An Bord Pleanála (ABP) under the Planning and Development Act 2000 (as amended by the *Residential Tenancies Act 2016*) for a strategic housing scheme located at Cornamagh, Clonbrusk and Coosan, Athlone, Co. Westmeath. This application is made under the *Strategic Housing Provisions of the Planning and Development (Housing) and Residential Tenancies Act, 2016*.

Under Section 5(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, the Board may grant planning permission for a proposed development that is considered to materially contravene the Development Plan, other than in relation to zoning, having regard to the requirements of Section 37(2)(b) of the *Planning and Development Act 2000*, as amended. The requirements of Section 37(2)(b) of the Act are as follows:

*‘(i) the proposed development is of strategic or national importance,  
(ii) there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned, or  
(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or  
(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.’*

In light of the above this Statement of Material Contravention has been prepared in order to address a matter which may be deemed to materially contravene the provisions of the *Athlone Town Development Plan 2014-2020* in accordance with Section 8(1)(iv)(II) of the *Planning and Development (Housing) and Residential Tenancies Act 2016*.

## 1.1 Potential Material Contravention

In the context of the subject planning application it is considered that the proposed density may be deemed to represent a material contravention of the density standards in the *Athlone Town Development Plan 2014-2020 (ATDP)*. The ATDP provides for density standards of **30-35 no. units per ha** for outer suburban and green field site. The proposed site extends to 15.565 ha, of which 10.037 ha is zoned for ‘Residential’ use. The gross floor area of the built development is 41,041.4 sqm, which equates to a plot ratio of 0.41:1 (calculation based on land zoned for ‘Residential’ use) or **42.44 units per ha**. On this basis it may be deemed by An Bord Pleanála that the proposed development exceeds the maximum permissible density in respect of the outer suburban/greenfield site on which it is located.

However, it is considered that the proposed development can be considered favourably and granted planning permission by An Bord Pleanála under the provisions of Section 37(2)(b) of the *Planning and Development Act 2000*, as amended. More detail in respect of this matter is set out in the following sections.

## 2. SITE CONTEXT & PROPOSED DEVELOPMENT

The proposed site is located within the townlands of Cornamagh, Clonbrusk and Coosan, Athlone, Co. Westmeath. The proposed site is located within the northern suburbs of Athlone, some 2km from the town centre. It is located on the Coosan Road, which acts as a local distributor road linking the N55 (Athlone to Ballymahon/Cavan road) in the east and the Hillquarter/Castlequarter Road (L1482) in the west. The general area is suburban in character with an increasing number of traditional housing estates accessed off the Two Mile Round Road. It is an elevated site which rises substantially from east to west along the road frontage. Buccaneers Rugby Football Club (Dubarry Park), comprising playing fields and clubhouse, lies to the east, with agricultural lands to the north, the Two Mile Round residential area to the south, with 'The Glen' housing estate opposite and Churchfields and Church Hills housing estate to the west.

The site area for the current planning application measures 15.615 (10.037 ha excluding open space zone). The proposed site is predominantly being used as agricultural/greenfield land. The site in question has proposed 'Low to Medium Density Residential' and 'Open Space' zoned lands under the *Athlone Town Development Plan 2014-2020*. An existing access dirt road is located between the two existing residential estates of Churchfields and Church Hills which are situated adjacent to the lands in question.

With regard to the topography of the site, the lands are gently undulating throughout, however this is combined with a hillier topography which rises from east to west along the road frontage. The changes in levels mean that parts of the site are as much as 5 meters above the adjoining road. Concrete posts demarcate the field boundary fronting Coosan Road. Mature trees and hedgerow define the boundaries of the fields set in from the road front. A number of overhead lines traverse the site including an ESB 38kv overhead electricity supply line running across the site in parallel to the road.

There are no protected structures or archaeological monuments located within the application site; however, there is a National Monument Record (Record number WM029-002) which is described as 'two large limestone slabs/boulders...known locally as the 'Druids Altar' located circa 72 m east of the entrance to the proposed site. 'Our Lady Queen of Peace' freestanding Roman Catholic church on rectilinear-plan, built in 1973 is located circa 240m to the west of the site (NIAH Ref 15,402,923).

The lands are located in the vicinity of a number of Natura 2000 designations (European ecologically designated sites). The site is located approximately 1.0 kilometres south of the Lough Ree Special Area of Conservation, approximately 2 kilometres to the northeast of the River Shannon Callows Special Area of Conservation and Middle Shannon Callows Special Protection Area.

### 2.1 Proposed Development

Planning permission is sought by Castlestar (Athlone) Limited permission for development on a site which extends to 15.615 ha of land located within the townlands of Cornamagh, Clonbrusk and Coosan Athlone, Co. Westmeath.

The development will consist of the following:

- 1) Construction of 426 no. residential units comprising 237 no. housing units and 189 no. apartment units:
  - 237 no. houses (4 no. two-beds, 207 no. three-beds, 26 no. four-beds)
  - 15 no. apartments in Block A (4 no. one-beds, 10 no. two-beds, 1 no. three-beds)
  - 20 no. Apartments in Block B (5 no. one-beds, 15 no. two-beds)

- 18 no. Apartments in Block C (4 no. one-beds, 14 no. two-beds)
  - 18 no. Apartments in Block D (4 no. one-beds, 14 no. two-beds)
  - 15 no. Apartments in Block E (4 no. one-beds, 10 no. two-beds, 1 no. three beds)
  - 16 no. Duplex Apartments in Block F (8 no. two-beds, 8 no. three-beds)
  - 11 no. Apartments in Block G (3 no. one-bed, 8 no. two-beds)
  - 16 no. Duplex Apartments in Block H (8 no. one-beds, 8 no. three-beds)
  - 12 no. Apartment Units in Block J (4 no. one-beds, 8 no. two-beds)
  - 12 no. Apartments in Block K (4 no. two-beds, 8 no. three-beds)
  - 14 no. Duplex Apartments in Block K1 (7 no. two-beds, 7 no. three-beds)
  - 12 no. Apartments in Block L (4 no. one-beds, 8 no. two-beds)
  - 10 no. Duplex Apartments in Block L1 (5 no. two-beds, 5 no. three-beds)
- 2) Development of a creche facility (545 sqm), associated outdoor play areas and parking.
  - 3) Construction of a 430m section of a new distributor road linking Coosan and Cornamaddy.
  - 4) Provision of shared communal and private open space, car and bicycle parking, site landscaping and public lighting, services, access with the Coosan Road and new distributor road, and all associated site development works.

### 3. LOCAL PLANNING POLICY CONTEXT

#### 3.1 Athlone Town Development Plan 2014-2020

Section 3 of the Athlone Town Development Plan (ATDP) sets out the Council's key aims and strategy as it relates to the delivery of housing and the creation of sustainable neighbourhoods. A central aim is as follows:

*'To facilitate the provision of high quality residential development in sustainable communities and provide an appropriate mix of house sizes, types of tenures in order to meet the different household needs of the people of Athlone.'*

A selection of the key housing policy and objectives set out in the ATDP are listed below:

- To provide sufficient land to meet anticipated demand and to facilitate and implement the Housing Strategy and its policies.
- To ensure the provision of a suitable range of house types and sizes to fit the demographic profile of the town
- To achieve attractive and sustainable development and create high standards of design layout and landscaping for new housing development.

The criteria set out above are detailed in policy terms, through the objectives in the plan as well as through the various other policy/guidance documents at local and national level. Having reviewed these documents in the context of the proposed development, we consider that the key issue relating to the proposed development are:

The application site is located in an area zoned 'Proposed Low to Medium Density Residential' under the provisions of the *Athlone Town Development Plan 2014-2020* (ATDP) within an outer suburban/greenfield site. The ATDP provides for density standards of 30-35 no. units per ha within this area.

The proposed site extends to 15.565ha of which 10.037 ha is zoned for 'Residential' use. The gross floor area of the built development is 41,041.4 sqm which equates to a plot ratio of 0.41:1 (calculation based on land zoned for 'Residential' use) or 42.44 units per ha. The proposed site coverage is 22.7%.

4.

## MATERIAL CONTRAVENTION

Under Section 5(6) of the *Planning and Development (Housing) and Residential Tenancies Act, 2016*, the Board may grant planning permission for a proposed development that is considered to materially contravene the Development Plan, other than in relation to zoning, having regard to the requirements of Section 37(2)(b) of the *Planning and Development Act 2000*, as amended.

The requirements of Section 37(2)(b) of the Act are as follows:

- ‘(i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.’

The remaining sub-sections will address Section 37(2)(i), (ii) and (iii) of the Act in turn.

4.1

### Development of Strategic or National Importance

The *Planning and Development (Housing) And Residential Tenancies Act 2016* provides a statutory definition of “strategic housing development” in Section 3 to mean:

- (a) the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,*
  - (b) the development of student accommodation units which, when combined, contain 200 or more bed spaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon,*
  - (c) development that includes developments of the type referred to in paragraph (a) and of the type referred to in paragraph (b), or*
  - (d) the alteration of an existing planning permission granted under section 34 (other than under subsection (3A)) where the proposed alteration relates to development specified in paragraph (a), (b) or (c),’*
- [our emphasis added]

The strategic and national importance of the delivery of homes across the country is a fundamental principle of the *Rebuilding Ireland* programme. This programme sets out a range of measures to facilitate both the construction of new homes (including the SHD process) but also a range of schemes which facilitate social and affordable sale and lease models. A key concept of the *Rebuilding Ireland* programme state that it is:

*‘Designed to accelerate housing supply in this country, Rebuilding Ireland is tackling our country’s housing shortage. This action-driven plan will result in a dramatic increase in the delivery of homes nationwide.’*

The strategic goals of the Government in relation to the delivery of new residential development, and their national importance, is reflected in the policies and objectives of the *National Planning Framework*



and the *Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031*. A comprehensive assessment of the proposed development in respect of those publications is enclosed with this planning application submission (please see the enclosed **Planning Report and Statement of Consistency**). It is considered that the proposed development accords with the provisions of those national and regional planning documents.

The proposed development will deliver 426 residential units of which 43 no. units ultimately intended to be social housing (as per Part V proposals outlined in the planning application submission).

On the basis of the above it is considered reasonable to conclude that the proposed development which is the subject of this planning application is clearly of both strategic and national importance.

## 4.2 Conflicting Objectives in the Development Plan

A selection of the key strategy goals set out in the Athlone Town Development Plan 2014-2020 are listed below:

- To provide sufficient land to meet anticipated demand and to facilitate and implement the Housing Strategy and its policies.
- To ensure the provision of a suitable range of house types and sizes to fit the demographic profile of the town.
- To achieve attractive and sustainable development and create high standards of design layout and landscaping for new housing development.

The density standards specified for new development on ‘outer suburban and green-field’ zoned lands is 30-35 no. units per hectare as set out in Section 3.1 above. It is considered that the delivery of development at this density on these residential zoned lands, would not facilitate the sustainable or optimal use of land. Furthermore, it is considered that the delivery of development at the specified density can potentially prejudice the creation of sustainable neighbourhoods and high-quality residential development. It also potentially reduces the scope for the delivery of community facilities such as an on-site childcare facility.

It is considered that the key conflict in this instance relates to the Council’s strategic goal to facilitate sustainable patterns of development, which represent optimal land use solutions, while limiting the density of any development proposal to a density of 30-35 no. units per hectare. It is considered that the requirement to deliver a development on zoned residential land, while maintaining a maximum density of 30-35 units per hectare are mutually exclusive goals.

## 4.3 National Planning Policy & Section 28 Planning Guidance

### 4.3.1 National Planning Framework

The Department of Housing, Planning, Community and Local Government recently published the National Planning Framework (NPF) entitled Ireland 2040 to succeed the National Spatial Strategy. The NPF comprises the Government’s proposed long-term strategic planning framework to guide national, regional and local planning and investment decisions over the next 25 years. The NPF is a high-level document which provides a framework for future development and investment in Ireland, providing a long-term and place-based aspect to public policy and investment, and aiming to coordinate sectoral areas such as housing, jobs, transport, education, health, environment, energy and communications, into an overall coherent strategy.

Within the NPF Athlone has been designated to fulfil the role as a regional centre within the midlands. Furthermore, due to strategic location and scale of population, employment and services, Athlone has an influence that extends to part of all three Regional Assembly areas. The NPF also notes that given the importance of regional interdependencies, it will be necessary to prepare a co-ordinated strategy for Athlone at both regional and town level, to ensure that the town and environs has the capacity to grow sustainably and to secure investment, as the key regional centre in the Midlands. The NPF has a number of directly relevant national policy objectives that articulate delivering on a compact urban growth programme. These include:

- National Strategic Outcome 1: Compact Growth
- NPO 2b recognises the regional role of Athlone to the midlands
- NPO 4 relating to attractive, well-designed liveable neighbourhoods;
- NPO 5 relating to sufficient scale and quality of urban development;
- NPO 6 relating to increased residential population and employment in urban areas;
- NPO 7 strengthening Ireland’s overall urban structure, specifically referencing Athlone in the Midlands.

The proposed density of 42.44 units per ha is considered to align with the NPF’s national policy objectives that advocate for a compact urban growth programme to strengthening Athlone’s role as a key regional centre in the Midlands.

#### 4.3.2 Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009)

It is considered that the standards set out in the *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009)* are the most pertinent for the purposes of setting out the relevant density standard. These Guidelines set out appropriate levels of density depending on the location of a site. Development sites which are identified for increased levels of density, among others, are those located on “Outer Suburban/Greenfield’ sites”. The guidelines state the following in respect of such sites-

*‘Studies have indicated that whilst the land take of the ancillary facilities remains relatively constant, the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally. Development at net densities less than 30 dwellings per hectare should generally be discouraged in the interests of land efficiency, particularly on sites in excess of 0.5 hectares.’*

[Our emphasis added]

The application site is located within the Northern suburbs of Athlone some 2km from the town centre. The proposed density of 42.44 units per ha is considered to align with Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) as they relate to “Outer Suburban/Greenfield’ sites.

#### 4.3.3 Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018

The *Sustainable Urban Housing: Design Standards for New Apartments* 2018 guidelines update previous guidance in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National *Statement on Housing Demand and Supply*, the Government’s action programme on housing and homelessness *Rebuilding Ireland* and the *National Planning Framework*, published since the 2015 guidelines. Section 2.4 of the Guidelines identifies the

types of location in cities and towns that may be suitable for apartment development. In relation to 'Peripheral and/or Less Accessible Urban Locations' the Guidelines state:

'Such locations are generally suitable for limited, very small-scale (will vary subject to location), higher density development that may wholly comprise apartments, or residential development of any scale that will include a minority of apartments at low-medium densities (will also vary, but broadly <45 dwellings per hectare net), including:

- Sites in suburban development areas that do not meet proximity or accessibility criteria;
- Sites in small towns or villages.

The range of locations outlined above is not exhaustive and will require local assessment that further considers these and other relevant planning factors.'

The proposed residential scheme provides 426 no. residential units on an area of land zoned for residential development which extends to 10.037 ha which equates to a residential density of 42.44 units per hectare. In terms of density, the proposed scheme is considered to comply with the national policy objectives set out in Section 2.4 of the Guidelines which promotes low to medium density development on sites in suburban development areas that do not meet proximity or accessibility criteria.

#### 4.3.4 Urban Development and Building Heights Guidelines for Planning Authorities

The Department of Housing, Planning and Local Government published the *Urban Development and Building Heights Guidelines for Planning Authorities* in December 2018. The purpose of these guidelines is to outline wider and strategic policy considerations and a more performance criteria driven approach that planning authorities should apply when considering building heights. The Guidelines are designed to move planning authorities away from generic maximum height restrictions in urban areas.

A key point set out in Section 2.0 of the Guidelines is as follows:

*'While achieving higher density does not automatically and constantly imply taller buildings alone, increased building height is a significant component in making optimal use of the capacity of sites in urban areas where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability.'*

The Guidelines go on to provide guidance in respect of building heights in suburban/edge locations (City & Town) i.e. developments outside city and town centres and inner suburbs. The application site is zoned 'Outer Suburban/Greenfield Site' therefore the following guidance is applicable. It states that:

*'Development should include an effective mix of 2, 3 and 4-storey development which integrates well into existing and historical neighbourhoods and 4 storeys or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets.'*

The proposed building heights vary across the site. Typologies include 2 storey houses, 3 and 4 storey duplex units, 3 and 4 storey apartment buildings. The proposed layout incorporates 4 storey buildings at important street junctions and public spaces. As noted above, the proposed density equate to 42.44 units per hectare which is considered appropriate for the proposed site given its location on a greenfield site in the outer suburbs.

5.

## CONCLUSION

It is considered that the proposed development is fully compliant with all national and regional planning policy and guidance and that the density proposed is appropriate. The siting and design of the proposed development have been carefully considered in the context of the site location and the proposed development will deliver a high-quality mixed-use scheme which incorporates high quality public spaces and amenity facilities for residents and the wider community. It is considered that the proposed development accords with the principles of proper planning and sustainable development.

We respectfully submit that the criteria have been met for the Board to grant planning permission for the proposed development in accordance with Section 37(2)(b) of the *Planning and Development Act 2000*, as amended despite the fact that the density of the proposed density exceeds the maximum threshold set out in the *Athlone Town Development Plan 2014-2020*.

Whilst the proposed density of 42.44 units per ha is above the maximum standards set out in the ATDP (30-35 no. units/ha), it is submitted that the proposed density is in compliance with preceded national planning policy in relation to density, height and the objective to secure compact growth.

- Alignment with the *National Planning Framework* in terms of National Strategic Outcome 1: Compact Growth
- Alignment with national policy in the form of the *Guidelines for Planning Authorities on Sustainable Residential Development* Chapter 5 guidance which states that densities in the range of 35-50 no. units per ha are appropriate for greenfield site in the outer suburbs;
- Alignment with the *Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities 2018*, in particular Section 2.4 which promotes higher
  - density development on sites within walking distance of principal city centres or
  - significant employment locations; and
- Alignment with recently published *Urban Development and Building Heights Guidelines for Planning Authorities*. Reflecting on the NPF strategic outcomes in relation to compact urban growth, the Guidelines considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas.

