



August '22

Title

Material Contravention Statement

Development Description

*Strategic Housing Development –
165 Residential units*

Location

Dunlo & Pollboy, Ballinasloe, Co. Galway

Applicant

Limehill Esker Ltd.

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1.0 Introduction

1.1 Overview

I have been instructed by Limehill Esker Ltd. to prepare a “*Material Contravention Statement*” with respect to a “*Strategic Housing Development*” application to An Bord Pleanála for 165 no. proposed residential units in the townlands of Dunlo & Pollboy, Ballinasloe, Co. Galway. The proposed residential development is located on a site size of c.6.67ha site, within the urban envelope of the town of Ballinasloe, at the southern suburbs of the settlement.

On 13th May 2021, as part of the SHD process, An Bord Pleanála issued a “*Notice of Pre-Application Consultation opinion*” to the applicant. Item No. 2 of this opinion required the following specific information to accompany the application for permission “*A detailed statement, which should provide adequate identification of all such elements and justification as applicable, where/if the proposed development materially contravenes the statutory plan/LAP for the area other than in relation to the zoning of the land, indicating why permission should, nonetheless, be granted, having regard to a consideration specified in section 37(2)(b) of the Act of 2000.*”

It should be noted that the pre-application submission was made when the 2015-2021 County Development Plan (CDP) and 2015-2021 Ballinasloe Local Area Plan (LAP) were in force. The subject SHD application is now being made having regard to the provisions of the current 2022-2028 County Development Plan & 2022-2028 Ballinasloe Local Area Plan. In this regard, an updated Statement of Consistency accompanies the application, and it is considered that the proposed development is generally consistent with the relevant provisions of the current Plan.

However, in the interest of due diligence, and to respond to the validation requirements of the Board, a Material Contravention Statement has been prepared. In this regard, the scheme as proposed may be determined to materially contravene the Local Area Plan with regard to “*Roads/ access*” objectives,

It is considered that there is sufficient justification for An Bord Pleanála to grant permission for the proposed development, notwithstanding any material contravention of the LAP, by reference to Section 37(2)(b) of the Act for the reasons set out in Section 2.0 below.

1.2 Section 37(2)(b) of the Planning & Development Act

Section 37(2)(b) of the Planning and Development Act 2000 (as amended) permits the Board to grant permission for a Strategic Housing Development that materially contravenes a development plan (other than in relation to the zoning of the land) with regard to the requirements of section 37(2)(b) of the Act of 2000, which 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 spatial and economic strategy 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 relevance of the latter legislative provisions is discussed in Section 2.0 below.

2.0 Material Contravention – Roads/Access Objectives

2.1 Identification of potential Material Contravention

Basically, the current LAP does not include clear written or mapped specific objectives to support the proposed vehicular access roads to serve the residential scheme. If viewed in isolation, it could be construed that the proposed development would materially contravene LAP Land Use Policy **Objective BKT 37** entitled “*Reservation of Access Points*” and Land Use Policy **Objective BKT 32** entitled “*Transportation Infrastructure*”.

Policy objective BKT 37¹ sets out to “*Reserve access points for future development and the development of backlands that may be identified for reservation by the Planning Authority during the plan period, to ensure adequate vehicular, pedestrian and cycle access to backlands, in order to facilitate efficient development of these lands and to ensure connectivity and accessibility to lands with limited road frontage.*” However, these “access points” for future development are not mapped as part of the LAP, and are therefore not indicated at the subject lands.

Policy objective BKT 32 sets out to “*Facilitate the provision and maintenance of essential transportation infrastructure. This shall include the reservation of lands to facilitate public roads, footpaths, cycle ways, bus stops and landscaping together with any necessary associated works, as appropriate.*” However, no such “essential transportation infrastructure/public road” objective has been mapped on the subject lands as part of the LAP.

Given that there is no mapped specific objective or supporting maps which identifies the reservation of vehicular access points to cater for future development at the subject lands, it could be construed that the proposed development and associated access road proposal would materially contravene the provisions of the Objective BKT 37 & BKT 32 of the LAP. However, we would submit that if the provision of vehicular roads to access the subject lands cannot be considered, it would render these serviceable residential development lands as being essentially landlocked and undevelopable.

Notwithstanding, we are of the opinion that the proposed development is justifiable, under the criteria set out in Section 37(2)(b) of the Act, having regard to the fact that;

- The proposed residential development is of Strategic/National importance,
- The roads/access objectives are not clearly stated in the LAP,
- The proposed roads design is consistent with the pattern of development in the area.

2.1 Justification - Proposed development is of strategic or national importance

We would submit that the proposed development can be justified in this instance, having regard to that fact that the proposed development is of strategic and national importance.

A Statement of Consistency accompanies the application. This demonstrates that the proposed residential development is consistent with the provisions of the National Planning Framework, the Sustainable Residential Development Guidelines and Rebuilding Ireland. In this regard, the strategic importance of the delivery of housing units to address housing shortages in the principle urban areas is established in the national, regional and local planning policy context.

¹ This version of Policy Objective BKT 37 is set out in the main written statement of the LAP, (Section 3.0 Page 40).

Furthermore, 20% of the proposed units will be allocated for the purposes of Part V. Therefore the proposed development is entirely consistent with the achievement of the Governments policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for housing and Homelessness issued in July 2016, and is of strategic and national importance on this basis.

Therefore we would submit that the proposed residential development of 165 residential units as part of a Strategic Housing Development application, is of strategic and national importance, and can be assessed accordingly.

2.2 Justification – The roads/access objectives are not clearly stated in the LAP

We would submit that the provisions of BKT 37 & BKT 32 are not clearly stated and are confused by other Road Access Objectives contained in the LAP.

Again BKT 37 of the main written statement of the LAP sets out to *“Reserve access points for future development and the development of backlands that may be identified for reservation by the Planning Authority during the plan period, to ensure adequate vehicular, pedestrian and cycle access to backlands, in order to facilitate efficient development of these lands and to ensure connectivity and accessibility to lands with limited road frontage.”*

The fact that vehicular “access” reservation points are not spatially identified in the Plan, is far from ideal. This is particularly unfortunate given that these had been previously mapped at the subject lands under the provision of the former 2015-2021 LAP. In fact, we are aware that these access objectives formed part of the preceding 2009-2015, Ballinasloe Town Development Plan and the 2003-2009 Ballinasloe Town Development Plan before that. Therefore, for almost 20 years, these objectives have informed development proposals and permitted schemes in the area. This has therefore informed the pattern of development in the area. In particular, these indicative access objectives were integral to the design of the permitted housing development which is currently being developed by the applicant to the north-east. In this situation, it is unclear as to how the access points mentioned in BKT37 are now to be identified under the provisions of the current LAP? Do the Planning Authority intend to identify these on a case by case basis once planning applications are lodged? Will these be identified as part of a review to the LAP?

There are also 2 different versions of BKT 37 stated in the LAP. In addition to the stated wording of BKT37 in the main written statement of the LAP, it should be noted that a different version of BKT37 is set out in the *“Ballinasloe Local Transport Plan”*² which forms part of the LAP. This sets out to; *“Reserve access points for future development and the development of backlands that may be identified for reservation by the Planning Authority during the plan period, to ensure adequate vehicular, pedestrian and cycle access to backlands, in order to facilitate efficient development of these lands and to ensure connectivity and accessibility to lands with limited road frontage. Filtered permeability, pedestrian and cycle-only access points should be considered as part of this process, with reference made to the NTA’s Permeability Best Practice Guide as appropriate.”*

Given that there are 2 different versions BKT37 included in the LAP, it is fair to say that this access point reservation objective is not clearly stated.

² A different wording for Policy Objective BKT 37 is set out in Section 2.3.41 of the “Ballinasloe Local Transport Plan” (Page 28/119 refers).

Furthermore, we would submit that the 2 no. versions of BKT 37 are further confused by the provisions of BKT31 of the main written statement of the LAP which sets out to “*Support the implementation of the Local Transport Plan....*”

Therefore, as the provisions of BKT 37 of the current LAP are not clearly stated, the proposed development can be considered in this case. However, given that the proposed design will ensure connectivity and accessibility to backlands at this location which have limited road frontage, the proposed development is justifiable in this case.

As stated above, Policy objective BKT 32 sets out to “*Facilitate the provision and maintenance of essential transportation infrastructure. This shall include the reservation of lands to facilitate public roads, footpaths, cycle ways, bus stops and landscaping together with any necessary associated works, as appropriate.*”

It is noted that the “*Local Transport Plan*” (LTP) which forms part of the current LAP includes a “*Cycle Route – Additional Link*” transecting the subject lands. This is indicated in Figure 52 of the LTP. This is set out in Figure 1 below for ease of reference.

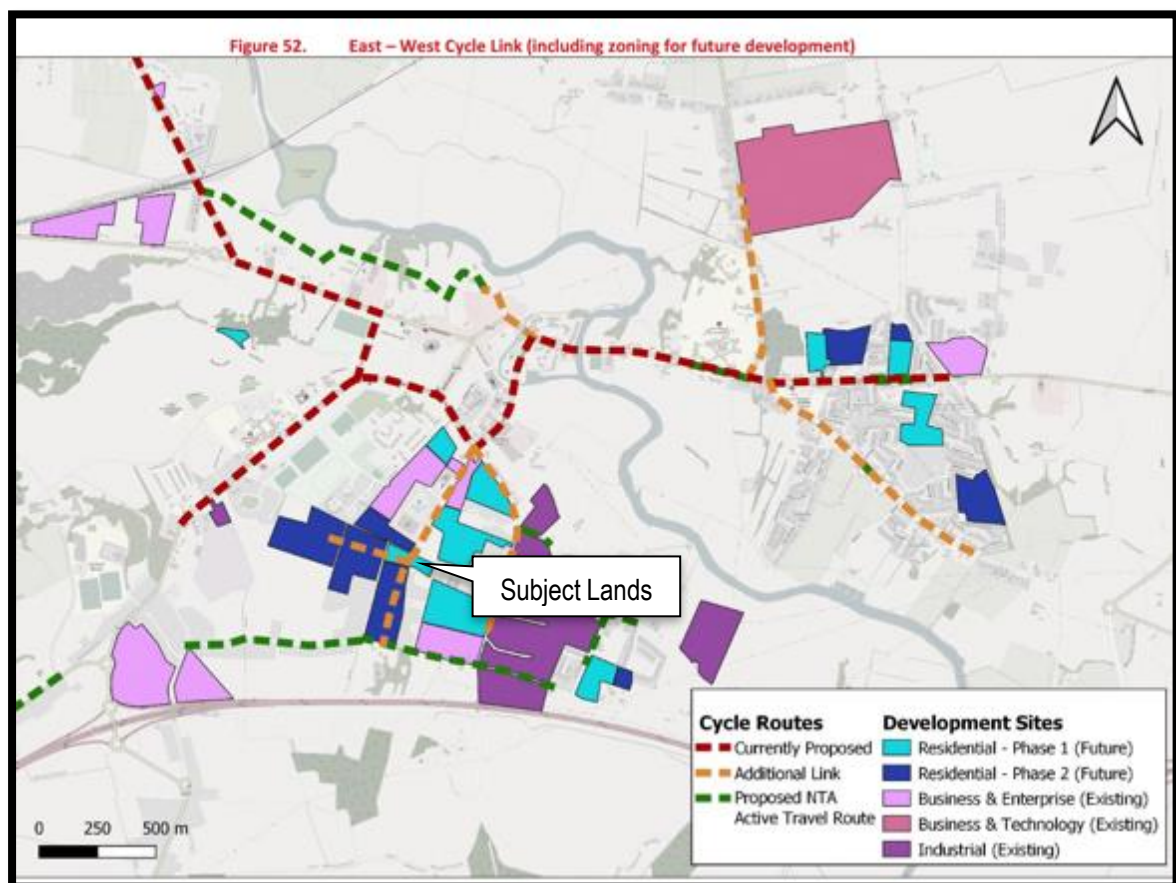


Figure 1: Extract from Figure 52 of Ballinasloe Local Transport Plan, showing indicative “*Additional Link Cycle Route*” transecting the subject lands.

It is noted that the LAP includes for mapped indicative cycle routes at the subject lands. Albeit the north/south indicative “*Additional Link*” actually transects the permitted houses under construction under PI. Ref. No. 19/1978 to the northeast of the subject site. Moreover, the LAP fails to identify mapped indicative vehicular access routes for this large residential land bank at this location.

Therefore, we would submit that the provisions of BKT 32 are not clearly stated as no such objectives are mapped for the **reservation of public roads** at subject lands as part of the current LAP. This is regrettable as such objectives were included as part of the previous LAP/Development Plans for the area, dating back to 2003. Given that the provisions of BKT 32 are not clearly stated or mapped under the provisions of the current LAP, the proposed development can be considered in this case.

Finally, it should be noted that the LAP contains 2 no. versions of Policy Objective BKT 38 entitled “*Road Junction Improvements*”. Firstly, as part of the main written statement, Policy Objective BKT 38 is stated as follows;

“Continue to carry out road junction improvements at the following locations:

- a) River Street and Main Street (adjacent to the Bank of Ireland);*
- b) Harris Road and R446/Dunlo Street;*
- c) Dunlo Street and R446/Dunlo Hill;*
- d) Complete Works on Relief Road.*

The provision of the above listed road junction improvements shall be in compliance with the EU Habitats Directive and The Planning System and Flood Risk Management -Guidelines for Planning Authorities (2009) (as updated).”

However, as part of the “*Local Transport Plan*” which forms part of the LAP, Section 2.3.42 (Page 28/119) provides the following wording for Objective BKT 38;

“Continue to carry out road junction improvements at the following locations:

- a) River Street and Main Street (adjacent to the Bank of Ireland);*
- b) Harris Road and R446/Dunlo Street;*
- c) Dunlo Street and R446/Dunlo Hill;*
- d) Complete Works on Relief Road **and proposed link Road at Dunlo.***

The provision of the above listed road junction improvements shall be in compliance with the EU Habitats Directive and The Planning System and Flood Risk Management -Guidelines for Planning Authorities (2009) (as updated).”

The latter version of BKT38 (within the Local Transport Plan in the LAP) clearly refers to the completion of the proposed link road at Dunlo. Whilst this is not supported by a corresponding mapped objective, it is clear that the proposed link road relates to the subject lands at Dunlo. This can also be gleaned from the Planning History of the area. The latter version of BKT38 are also supported by Objective BKT31 which sets out to “*Support the implementation of the Local Transport Plan....*”

In the light of the foregoing, given that the roads/access objectives are not clearly stated in written or mapped form in the LAP, the proposed development can be considered.

2.3 Justification - The proposed roads design is consistent with the pattern of development in the area.

As stated above, road access objectives have been included as part of the local statutory plans between 2003 and 2021. These roads objectives have informed the existing pattern of road design in the area. In turn, the existing road layout in the area has been determined by established planning permissions in the area. In this regard we refer to the road layouts to the northwest and north east permitted under PI. Ref. No.'s 06/090, 07/9022, 07/9104 and more recently under PI. Ref. No. 19/1978.

These permitted road layouts were grounded in the Mapped Roads Objectives at the time. For example, as part of the recommendation to grant permission for the “*construction of internal site roads....to serve future commercial development*” under Pl. Ref. No. 07/9022 in 2007 the Planning Officers Report stated that “*The road proposals submitted are in line with those indicated on Ballinasloe Town Council Development Plan Map 8.*”

More recently we refer to the Planning Authority's decision to grant permission for a housing development (under Pl. Ref. No. 19/1978) on the neighbouring lands to the northeast of the subject site to Limehill Esker Ltd (the current applicant). This permitted layout was specifically designed to accord with the Roads access objectives contained within the 2015-2021 LAP, in particular Objective TI26 which formed part of that Plan. In fact the impact of the latter objective on the scheme design was discussed as part of the “Planning & Design Statement” which accompanied the application. This report stated, inter alia, that “*The requirement for the need to provide a future link road, extending from the existing roundabout to the East, effectively subdivides the development site into two distinct sections*”. This permitted layout also provided for a continuation of this “future link road” to extend further southwards towards the remainder of the applicants Residential zoned lands to the south. This development is under construction and the permitted roads layout has been constructed.

Therefore, whilst not specifically provided for in the Mapped Specific Objectives of the current LAP, it is considered that the proposed vehicular link to “tie in” and “connect” with the existing and permitted “future link road” is entirely consistent with the pattern of development in the area.

2.3.1 Benefits of proposed access

In summary, the proposed development provides for optimum connectivity and accessibility to development lands at this location. This includes;

- Vehicular and pedestrian access to the residential development under construction to the north and onto the town centre,
- Completion of the planned access road and footpath to the west of Tesco and onto the town centre,
- Provision for future vehicular and pedestrian access to the R-Phase 1 lands to the east,
- Vehicular and pedestrian access to the existing “Beechlawn Heights” estate to the south-east,
- Provision for pedestrian connectivity to the Dun Esker Estate to the east,
- Vehicular and pedestrian access to the undeveloped “R-Phase 2 lands” to the south,
- Vehicular and pedestrian access to the undeveloped “R-Phase 2” lands to the west.

In this regard, the shortcomings and ambiguous provisions of Objective BKT37, together with the failure to identify reserved access points as part of the LAP is regrettable. In these circumstances, in the absence of the proposed development and its inherent connectivity proposals, accessibility to the above mentioned zoned development lands would be entirely compromised.

3.0 Alternative Option

It is noted that the proposed development includes a vehicular access road which transects “OS” zoned lands. It is acknowledged that the scope of the Material Contravention Statement cannot consider the material contravention of “zoning” objectives. However, we would submit that it is unclear as to whether the provision of a vehicular access road via this “OS” zone would materially contravene this zone, especially as Figure 52 of the Local Transport Plan (which forms part of the LAP), clearly indicates a “cycle route” objective within the “OS” Zone at this location. Therefore, if a cycle route is

allowable under the provisions of the current LAP, and given the fact that the objectives are unclear, it would appear that a vehicular road would not be precluded. Furthermore, the provision of access is not precluded within the “OS” zone under the provisions of the LAP Land use Zoning Matrix. In addition, Objective BKT 38 of the Local Transport Plan of the LAP allows for the completion of the “*proposed link road at Dunlo.*” Moreover, it should be noted that part of this link road has already been constructed within the northern end of the “OS” zone under the provisions of the neighbouring residential development to the north (Pl. Ref. No. 19/1978 refers), and no material contravention of the “OS” zone was triggered in that case.

However, if the Board consider it to be absolutely necessary and appropriate, the proposed vehicular access road via the “OS zone” could be downgraded to a cycle route only, by way of condition, should the Board be mindful to grant permission in this instance

4.0 Summary

In summary, given that the proposed development consists of a Strategic Housing Development which strives to deliver 165 residential units, it qualifies as being of strategic and national importance. Furthermore, it is considered that the road access objectives in the LAP for the subject lands are not clearly stated. In addition, the proposed roads design is consistent with the pattern of development in the area. In this regard, a decision to grant permission is justifiable under the provisions of Section 37(2)(b) of the Planning Act.

Moreover, in the absence of the proposed development and inherent access arrangements, large swathes of development lands at this location will remain landlocked, inaccessible and undevelopable, and would prejudice future growth at this location.

Yours faithfully,

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