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OUR REF

YOUR REF

DATE

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15 September 2021

Senior Executive Officer
Forward Planning Section
Land Use Planning & Transportation Department
South Dublin County Council
County Hall, Tallaght
Dublin 24

cc. Chief Executive Officer, South Dublin County Council
cc. Information Office, South Dublin County Council
cc. Law Agent, South Dublin County Council

Our Client: Jones Investments Limited**Submission on the "Draft South Dublin County Council Development Plan 2022-2028" (the "Draft Plan")****Folio DN16077 - Stocking Avenue, Ballycullen**

Dear Sirs

This submission is made on behalf of our client, Jones Investments Limited ("JIL"). JIL is the representative of the owners of a circa 5 acre site on Stocking Avenue, Ballycullen, Old Court area, which is indicated on red in the attached map (the "Site").

The Site is zoned for residential development, RES-N, which is "*[t]o provide for new residential communities in accordance with approved area plans*", but that objective has been frustrated and prevented by a Specific Local Objective ("SLO") to provide a primary school that is contained in various South Dublin County Council ("SDCC") development plans since 2005. Before then, we understand the Site was first identified as a possible primary school site in the Ballycullen/ Oldcourt Area Action Plan 2000. This means that the Site has been reserved as a potential school site for 21 years.

Barry Devereux (Managing Partner), Catherine Deane (Chair), Terence McCrann, Roderick Bourke, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, Colm Fanning, Paul Lavery, Alan Fuller, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Rosaleen Byrne, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O'Raghallaigh, Karyn Harty, Philip Andrews, Barrett Chapman, Mary Brassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Aidan Lawlor, Darragh Murphy, Brian Quigley, Conor O'Dwyer, Stephen FitzSimons, David Hurley, Philip Murphy, Fiona O'Beirne, Garreth O'Brien, Gary McSharry, Alan Heuston, Josh Hogan, Richard Leonard, Rory O'Malley, Lisa Smyth, Brendan Slattery, Tom Dane, Catherine Derrig, Megan Hooper, Shane Sweeney, Adam Finlay, Iain Ferguson, Jennifer Halpin, Stuart McCarron, Stephen Proctor, Michael Coonan, Stephen Holst, Emily Mac Nicholas, Brendan Murphy, Shane O'Brien, Éamon Ó Cuív, Eleanor Cunningham, Gill Lohan, Ciara Ryan, Niall Best, Richard Gill, Douglas McMahon, Laura Treacy, Laura Deignan, Stephen Fuller, Niall McDowell, John Neeson, David O'Dea, Orlaith Sheehy.

Consultants: Catherine Austin, Séan Barton, Ambrose Loughlin, Eleanor MacDonagh (RCA), Lonan McDowell, Anna Moran, Peter Osborne, Tony Spratt (ACA).

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We must insist that SDCC now remove the constraint imposed by the SLO, and thereby secure the primary objective for these lands of residential development.

It is entirely unclear to our client how or why this Site was first designated with the SLO. There is little to no transparency or guidance around how or why this site was first considered suitable in 2000. This initial lack of transparency has been compounded in the 21 years since first designation. There has never been any attempt or interest from the Department of Education (the “**Department**”) to procure this site for use as a primary school, and yet the site continues to be subject to the SLO. There has never been any explanation, guidance or clarity around why the SLO must be retained where there is no realistic possibility of a primary school, or any school, being developed on the Site. This lack of transparency and guidance is completely at odds with the requirements of the plan-making process enshrined in Part II of the Planning and Development Act 2000 (as amended) (the “**Planning Acts**”).

The recently published draft guidelines on ‘*Development Plans – Guidelines for Planning Authorities*’ (the “**Draft Guidelines**”) require planning authorities to approach the development plan with a clear focus on the delivery of expected development outcomes. The Draft Guidelines point out, at section 1.5, that ‘*seeking to prioritise development at a location where there is an obvious deficit in services and/or infrastructure and without a clear commitment and timescale for resolution is unlikely to be appropriate*’.

This raises two points relevant to the Site.

First, SDCC should prioritise development at serviced lands, like the Site. This is consistent with section 15(1) of the Planning Acts, under which SDCC is obliged to take steps to secure the objectives of the plan. The residential zoning for these lands has been entirely undermined and frustrated by the SLO, and by the evident disinterest in acquiring the lands for that school purpose. The disinterest is confirmed further by the course of dealings between our client and the Department in relation to other lands, to the south, where the Department confirmed that it had no requirement for a primary school at the Site. Instead, the Department was interested to consider the other lands for a post-primary school. Our client engaged in meaningful terms, and even entered into a binding agreement to sell the other lands to the Department if planning for a school on the other lands was granted. Our client expended significant resources on that planning application but planning for the post-primary school was refused because of the SLO.

Second, good planning decisions should not be based on unjustified assumptions about the future. For the Site, SDCC has assumed for 21 years that the lands will be required for a primary school. That assumption was never justified, and, with the passing of this long time, has been proven to be wholly unjustified. It does not make sense that our clients have been forced to suffer the burden of sterilisation for 21 years, where there is no clear commitment or timescale for resolution.

In addition, consistent with section 11(3)(c) of the Planning Acts, elaborated below, the Draft Guidelines highlight the need to plan from an evidence base, with the plan-making process to include “[a] clear and transparent analysis of an existing baseline of plan-related information with a focus on an examination of the effectiveness of previous plans in achieving their stated objective”. This approach has never been applied in relation to the SLO. Worse still, even absent any evidence basis, it is proposed to change the SLO under the Draft Plan. Specifically, the Draft Plan preserves the site for a school, as opposed to a primary school, which is even harder to comprehend. We say that because we understand that our client was told by the Department that the Site is not large enough to properly accommodate a post-primary school.

There has long been an unacceptable and marked lack of transparency around the designation of the SLO; this continues and is compounded by the Draft Plan. We do not believe the new plan can lawfully retain the SLO without clear evidence, guidance and analysis of why:

- (A) the Site was initially selected as appropriate for the SLO;
- (B) the Site is still considered the most appropriate site to be subject to the SLO; and,
- (C) the SLO was amended to provide for a school, rather than a primary school.

For the record, we hereby request that you provide us with all written records of the same, as a matter of urgent priority. For this purpose, we copy this submission to the Information Office at SDCC and make this request on behalf of our clients under the European Communities (Access to Information on the Environment) Regulations 2007 (as amended).

You will be aware that SDCC is obliged by section 11(3)(c) of the Planning Acts to “*take whatever measures it considers necessary to consult with the providers of...education...and other services in order to ascertain any long-term plans for the provision of ...services in the area of the planning authority and the providers shall furnish the necessary information to the planning authority*”. In addition, the Draft Guidelines also refer to the requirements under section 11(3)(c), and particularly focus on the need for a planning authority ‘*to undertake additional engagement to further discuss how best to reflect sectoral priorities as they apply to the planning authority’s administrative area*’ (emphasis added) . Our clients have seen no evidence that such consultation has ever taken place, and certainly not in respect of the Draft Plan.

For example, has SDCC ever contacted or consulted with the patron bodies under whose patronage schools are operating in the Ballycullen/Oldcourt area or further afield? Has SDCC ever engaged meaningfully with the Department in relation to the designation of the Site? Please provide us with evidence of that engagement.

Our client has time and again shown a repeated willingness to facilitate the development of the Site as a school. Our client has tried to work with both SDCC and the Department to achieve the SLO. In working to achieve the SLO, our client has expended considerable resources. However, it is now clear to our client that SDCC and the Department have no intention to develop a school on the Site. In fact, when the Department carried out a site selection process for a school in 2012, the Site was not selected.

You will be aware that the High Court recently, in *Kemper v An Bord Pleanala* [2020] IEHC 601, quashed a planning permission granted by An Bord Pleanála for failure to carry out the necessary consultation with the Environmental Protection Agency, in the terms prescribed by legislation. If SDCC were to retain the school designation for the Site without consulting with education service providers in the manner provided by section 11(3)(c), the Plan, if adopted with the SLO retained, would be open to challenge.

Whilst it is accepted that a development plan can include objectives that amount to an interference with the rights of the citizens of the State, and particularly their constitutional property rights, this interference is only acceptable when based on rational objectives.

For 21 years, the Site has been sterilised, without any justification for why the interference is considered proportionate. That is inconsistent with the decision of the Supreme Court in *Reid v. Industrial Development Agency* [2015] 4 IR 494, where the court said that an interference like this must

be carried out "in such a way that the impairment of the individual's rights must not exceed that which is necessary to attain the legitimate object sought to be pursued. In other words, the interference must be the least possible consistent with the advancement of the authorised aim which underlines the power" (paragraph 44(iv)).

That proportionality test is best elaborated in *Heaney v. Ireland* [1994] 3 IR 593, in the following way:

"The objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must:-

- (a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations;
- (b) impair the right as little as possible, and
- (c) be such that their effects on rights are proportional to the objective: *Chaulk -v- R.* (1990) 3 S.C.R. 1303, at pages 1335 and 1336.)"

The SLO fails each of these criterion.

As a matter of fact, proven by 21 years of inaction, the Site is not required for a primary school, and is unfit for a post-primary school. There is no objective of any importance that should warrant interference with the owners' rights. The Department knows the Site is not wanted for a primary school and unfit for a post-primary school. This is confirmed by the course of dealing between our client and the Department in relation to other lands, to the south. As explained, even the possible post-primary school on those other lands was not progressed.

The SLO is entirely unfair, and based on considerations that have no evidential basis.

The SLO impairs the owners' rights to the maximum extent, preventing the owners from any use of the lands, burdening them to remain custodian of the lands and incur those costs, without making any compensation or return for this disproportionate interference.

We are currently in the midst of a housing crisis. The Site is zoned RES-N, which is "*[t]o provide for new residential communities in accordance with approved area plans*". Our client has a track record of providing residential housing and wants to deliver that objective at the Site. They should be let do that. Under section 15(1) of the Planning Acts, SDCC is under a duty to help secure, not frustrate, that objective.

Please see attached planning submission in respect of the Site prepared by Tom Phillips + Associates, which accompanies this submission and provides further information and background on the further provision of housing in the area.

In our view, it would be unlawful for SDCC to make a development plan that retains the SLO, or changes it to refer to merely a school, where:

- (1) no evidential basis for the SLO has been disclosed;

- (2) as a matter of fact, proven by 21 years of inaction, the Site is not required for a primary school, and is unfit for a post-primary school;
- (3) when a decision to locate a school in the area was made in 2012, the Site was not selected;
- (4) no meaningful consultation with education service providers has been completed, in breach of section 11(3)(c) of the Planning Acts;
- (5) the Site is zoned for residential development, which zoning objective has been frustrated by the SLO, and by the evident disinterest in acquiring the lands for that school purpose, in breach of section 15(1) of the Planning Acts; and,
- (6) the SLO has sterilised the lands for 21 years, in breach of the owners' constitutionally protected property rights. The SLO impairs the owners' rights to the maximum extent, preventing the owners from any use of the lands, burdening them to remain custodian of the lands and incur those costs, without making any compensation or return for this disproportionate interference.

For all of these reasons, we must insist that SDCC remove the SLO from these lands.

Our client has been tolerant of SDCC and the Department on this matter for long enough. 21 years is an extraordinary period of time for lands to be sterilised, without any measurable progress to deliver a school on the Site. If the SLO is not lifted under the Draft Plan the site will have been sterilised for in excess of 28 years. This is a disproportionate interference with the owners' property rights. If the Draft Plan is adopted with the current or proposed SLO, our client will have no choice but to challenge the validity of the decision to make the plan by way of judicial review.

Yours sincerely

Sent electronically and accordingly bears no signature

McCann FitzGerald



Site - Stocking Avenue
c. 1.9 ha (4.7 acres)



REMOVAL OF 'SCHOOL' ("S") OBJECTIVE ON LANDS AT STOCKING AVENUE, DUBLIN 16

SUBMISSION TO THE:

**DRAFT SOUTH DUBLIN DEVELOPMENT PLAN 2022-2028
(MAP SHEET 10)**

DATE: WEDNESDAY, 15 SEPTEMBER 2021

Prepared for:

**Jones Investments Limited
33 Mespil Road
Ballsbridge
Dublin 4
D04X027**

Prepared by:

**Tom Phillips + Associates
80 Harcourt Street
Dublin 2
D02 F449 Phone: (01) 478 6055**

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EXECUTIVE SUMMARY

Purpose of Submission – to seek the facilitation of lands' primary zoning ('new residential')

The purpose of this Submission is to outline why lands at Stocking Ave, Ballycullen, Dublin 16 should have its proposed 'School ("S")' objective zoning removed.

Why the 'School ("S")' objective should be removed

The Site has a 'Primary School' ("PS") Objective (now 'School ("S")') for the last 21 years without any justification for such.

Removing the 'School ("S")' objective will free up the underlying and primary land use zoning: 'new residential' ("Objective RES-N"). Freeing up residentially zoned land on this sterilised site will allow for the provision of much needed housing during one of Ireland's most severe housing shortages.

The Site is in a strategic location, which allows for the provision of housing in a sustainable manner. The Site's 'infill' nature (surrounded by existing residential development) and its close proximity to key transport routes make this site an ideal location for residential development.

Furthermore, the land is serviced *inter alia* by sustainable transport, a capable road network and water services.

The Figures below are taken from the main body of the Submission and illustrate what the current zoning is in the current *Development Plan* vs. what the **proposed zoning** is in the *Draft Development Plan* vs. what we **seek** in the *Amended Draft Development Plan*.)

We look forward to further engagement on this issue as part of the public consultation process for the *Draft Development Plan*.

ABOUT JONES INVESTMENTS LIMITED

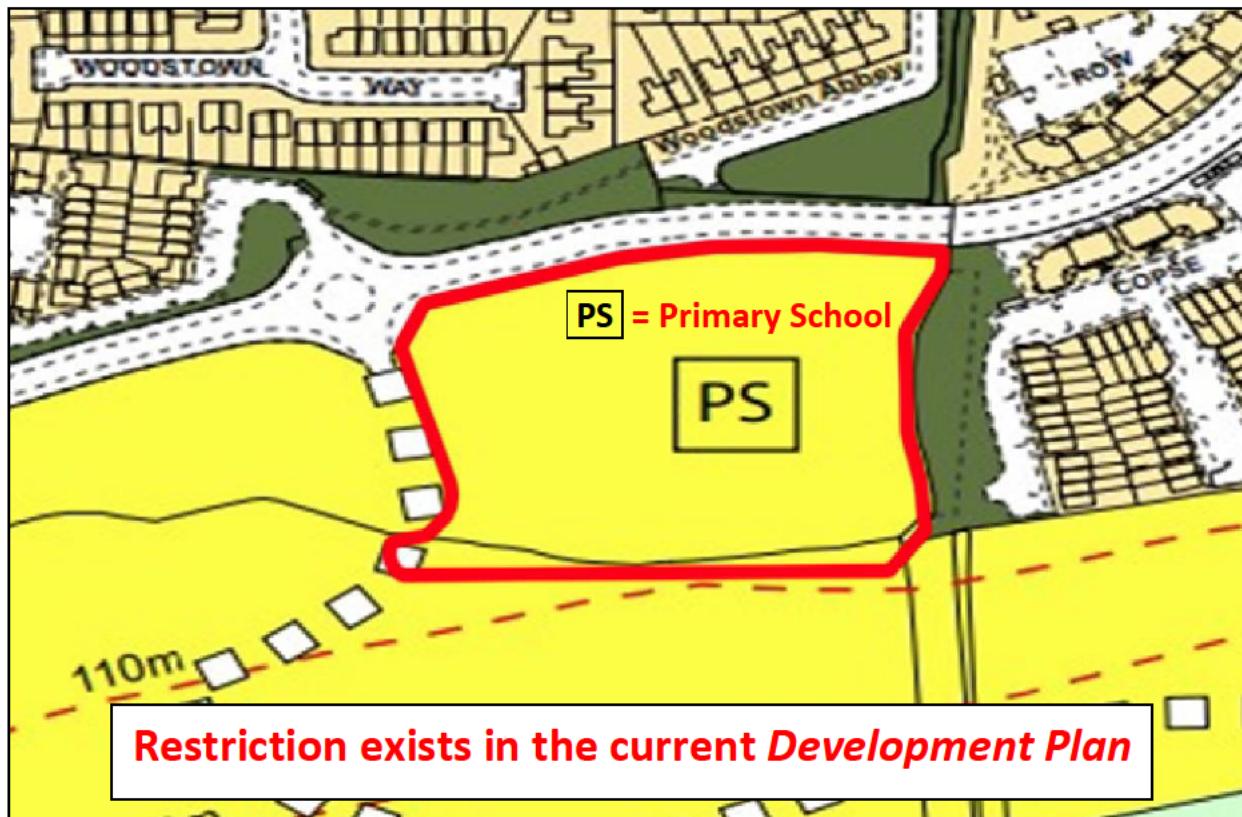
'Inspiring environments built to the highest standards.'

Jones Investments is a niche player that identifies projects which are different and unusual, and stand out both for the company and the occupier.

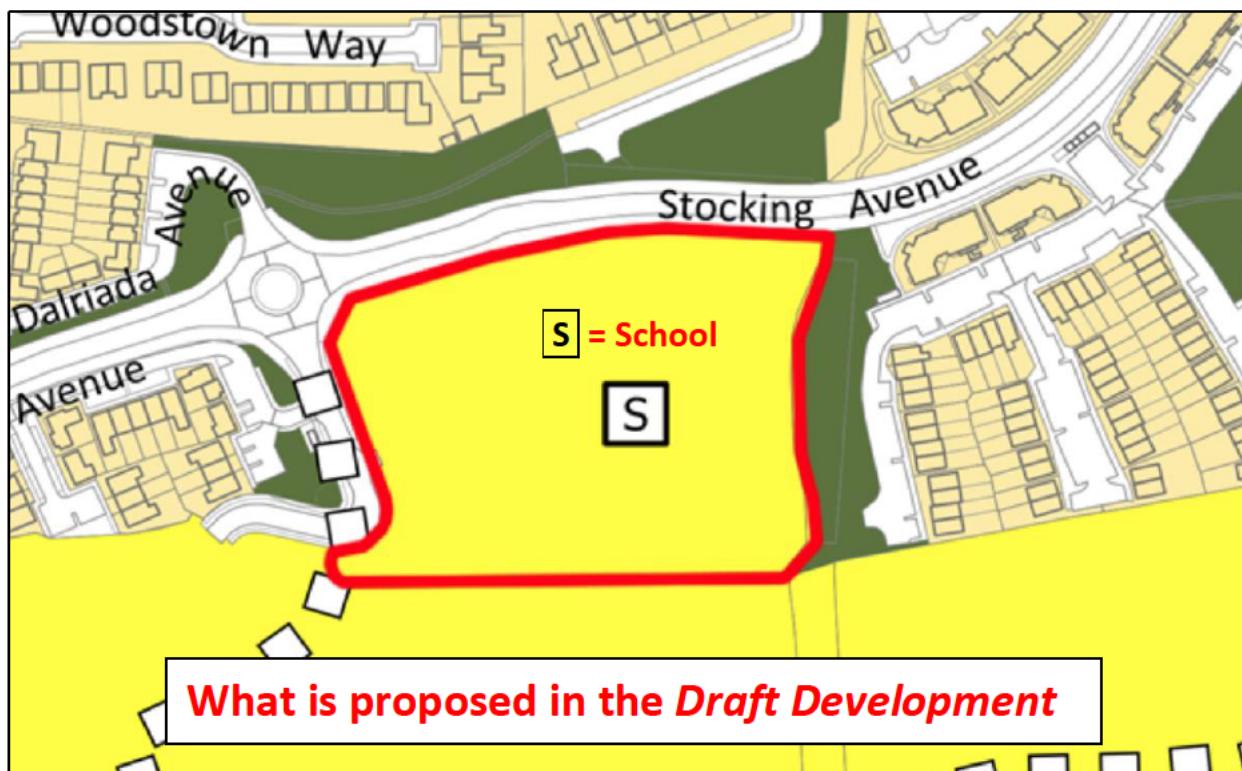
Jones Investments strives to set new standards in every project endeavour. Throughout adverse times, Jones Investments has maintained a strong and steady investment portfolio and will build upon this established success to reach new heights in investment and development.

Jones Investments has a proven track record identifying projects that are unique and deliver environments that perform now and into the future. Feature projects include: The One Building in Dublin's CBD; The Dockmill purchased by Google Dublin in 2014; and Hanover Reach, former headquarters to Facebook's EMEA operations.

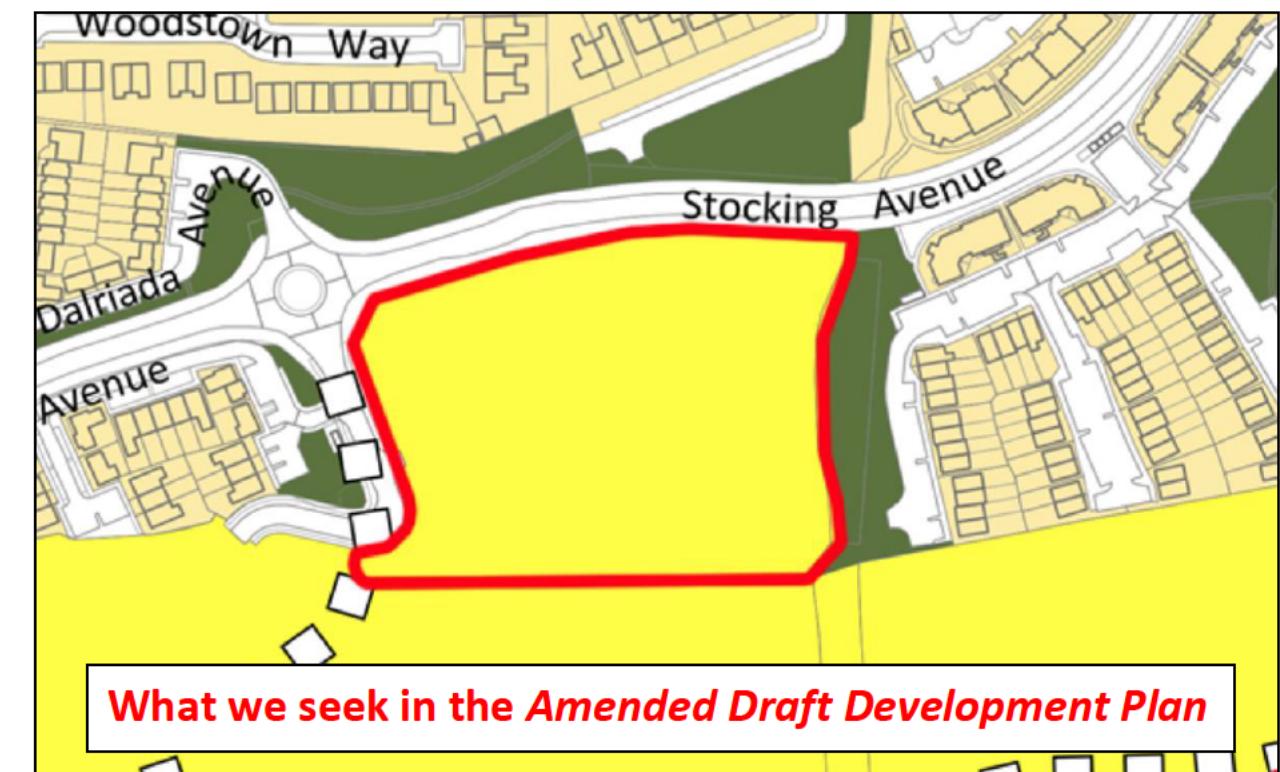
Jones Investments (formerly Ellier Developments Limited) has extensive experience in the Knocklyon area, being responsible for the delivery of a number of significant residential developments, including: Hunterswood (650 No. units); Woodstown Village (600 No. units); Dalriada (154 No. units); and Woodstown Shopping Centre.



Current zoning for the Site including 'Primary School' ("PS") objective. (Source: extract from Map 10 of the *South Dublin County Council Development Plan 2016-2022-Index Map*; annotated by TPA.)



Draft zoning for the Site including 'School' ("S") objective. (Source: extract from Map 10 of the *Draft South Dublin County Council Development Plan 2022-2028*; annotated by TPA.)



What we seek: the removal of the 'School' ("S") objective. (Source: Map 10 of the *Draft South Dublin County Council Development Plan 2022-2028*; edited and annotated by TPA.)

Senior Executive Officer
Planning Department
South Dublin County Council
County Hall
Tallaght
Dublin24
D24 A3XC

Wednesday, 15 September 2021

Lands At Stocking Avenue, Dublin 16

[By Online Submission]

Dear Sir/Madam

RE: SUBMISSION REGARDING THE REZONING OF LANDS AT STOCKING AVENUE

1.0 INTRODUCTION

1.1 Introduction

Jones Investments Limited¹ has retained Tom Phillips + Associates, Town Planning Consultants², to make a submission in respect of the *South Dublin County Council (SDCC) Draft County Development Plan 2022-2028*. (Figures 1.1 and 1.2.)

Our submission complements a legal submission by McCann FitzGerald dated 14 September 2021.

Our submission relates to a site of c. 1.9 ha, located south of Stocking Ave, Ballycullen, Dublin 16.



We seek that the Site has its 'School' ("S") objective removed in the *Draft County Development Plan* so that the underlying 'new residential' zoning can be fulfilled.

It is considered to be a positive outcome for both the landholder and local area/city/country as Ireland is amid a housing crisis with homes needed urgently.

Leaving these lands lie vacant indefinitely will detract from the area and will contribute to the continued lack of housing supply.

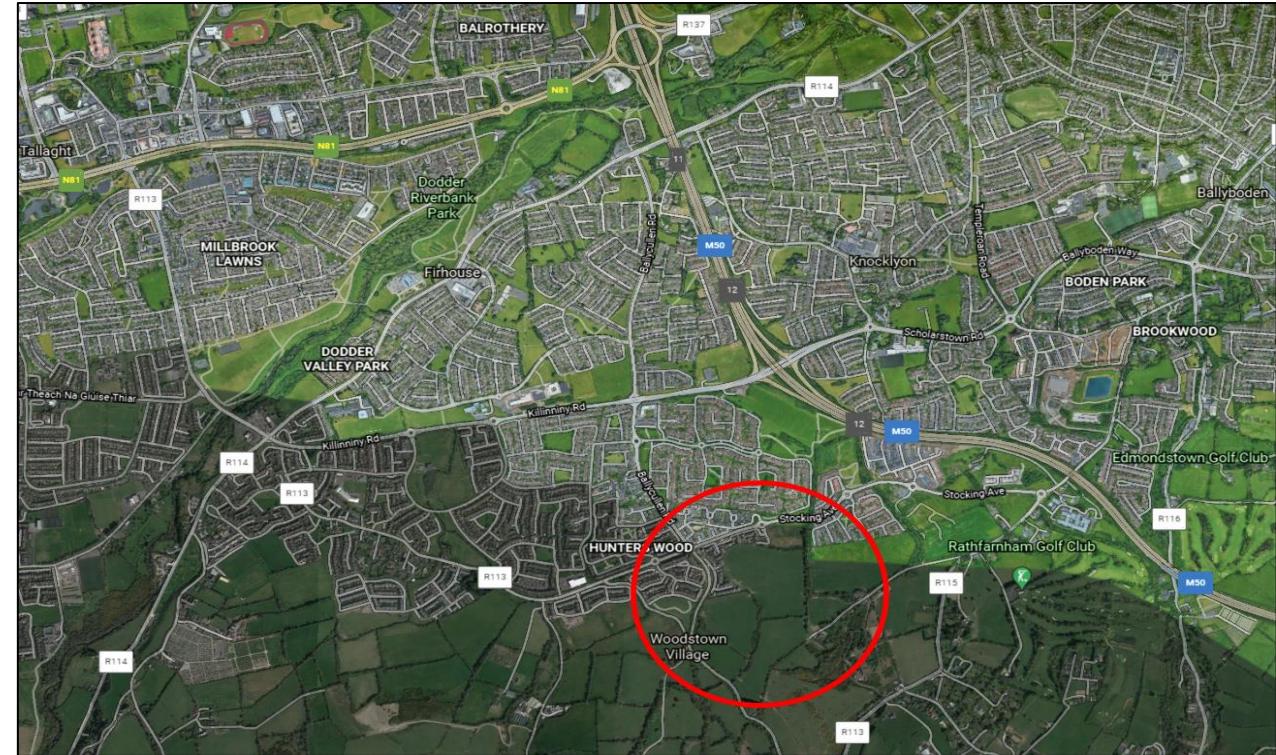


Figure 1.1: Approximate location of the Subject Site. (Source: Google Earth; annotated by TPA.)

This Submission sets out the respective zoning objectives that:

1. Currently **exist** in the *South Dublin County Development Plan 2016-2022*.
2. Are **proposed** in the *Draft County Development Plan 2022-2028*.
3. We now **seek** in the *Amended Draft County Development Plan 2022-2028*.

This document then sets out the reasons why we contend the Site should have its 'School' ("S") removed:

1. The Department of Education has no intent to locate a school on the Site.
2. The Site can provide much needed housing at a time of national and city-wide housing shortages.

The Site is c. 2 hectares in area, has an underlying residential zoning and thus could provide c. 76 No. units at c. 38 units per hectare as outlined in the *Ballycullen-Oldcourt Local Area Plan 2014*.

3. The Site is excellently serviced *inter alia* by sustainable transport, a capable road network, and water services.

¹ 33 Mespil Road, Ballsbridge, Dublin 4, D04 X027.

² 80 Harcourt Street, Dublin 2, D02 F449.



Ultimately, the Site is currently derelict as its school/primary school objective has not been fulfilled in the past 21 years across a number of successive Development Plans and Local Area Plans.

To put that in perspective it stems from the following County Plans:

1. 1998 (placed in the *Ballycullen/Oldcourt Area Action Plan 2000*).
2. 2004-2010.
3. 2010-2016.
4. 2016-2022.

It is also included in the *Ballycullen/Oldcourt Local Area Plan 2014* (extended to 2024).

At this point the school objective has hindered any development as the Department of Education has not seen it fit to construct a school on the Site.

Successive Development plans have referred to the shortage of and need for additional school places to serve the area. In spite of this and the designation and availability of our Client's site for this purpose, no progress has been made in implementing this objective.

Our Clients were approached in 2012 by a Valuer from Dublin City Council (acting on behalf of SDCC and the DoES) seeking to value our Client's land for the purpose of purchasing it for educational purposes. They facilitated the Valuer in inspecting the lands. Please see copy of letter attached. The letter makes clear that our Client's site was not the only site being considered.

On 5 August 2021, the Department of Education sent an email to Jones Investments stating *inter alia* that:

"I have consulted with my colleagues in the Department's Forward Planning Section. They have confirmed, following consultation with the Local Authority and based on the level of proposed residentially zoned lands in the development plans & the projected increase in the demand for school places resulting from this projected future development, a designated new school site will be required in the Ballycullen-Oldcourt area."

[Our emphasis.]

1.2 Jones Investments' past endeavours to develop the Site

Jones Investments have been seeking clarity in relation to the development status of the Subject Lands at Stocking Avenue for 21 years and have been in contact with the Department of Education and South Dublin County Council during that time.

In September 2006, Chris Jones, Founder and CEO, wrote to the then-Minister for Education seeking clarification as to the Department of Education's plans for the lands - having been unsuccessful in the preceding 6 years to obtain such clarification.

Nine years later, in September 2015, the Planning Consultant Tony Manahan of Manahan Planners made a submission to the Review of the *South Dublin County Development Plan 2010-2016*.

That Submission stated *inter alia*:

"Our clients have been writing to the Minister and the Department Of Education in this regard since 2006, a period of almost 10 years. They have asked that if this site is needed for a school that it be acquired. In the meantime they are expected to maintain and secure what is a sterile piece of land."

We emphasize the use of 'a' (singular) as there are now two schools proposed within the *Ballycullen/Oldcourt LAP boundary*.

The other school objective is located c. 600 m from the Subject Site.

Thus, we contend that the Subject Site's school objective should be removed as the Department only intends to develop one. (Figure 1.2.)

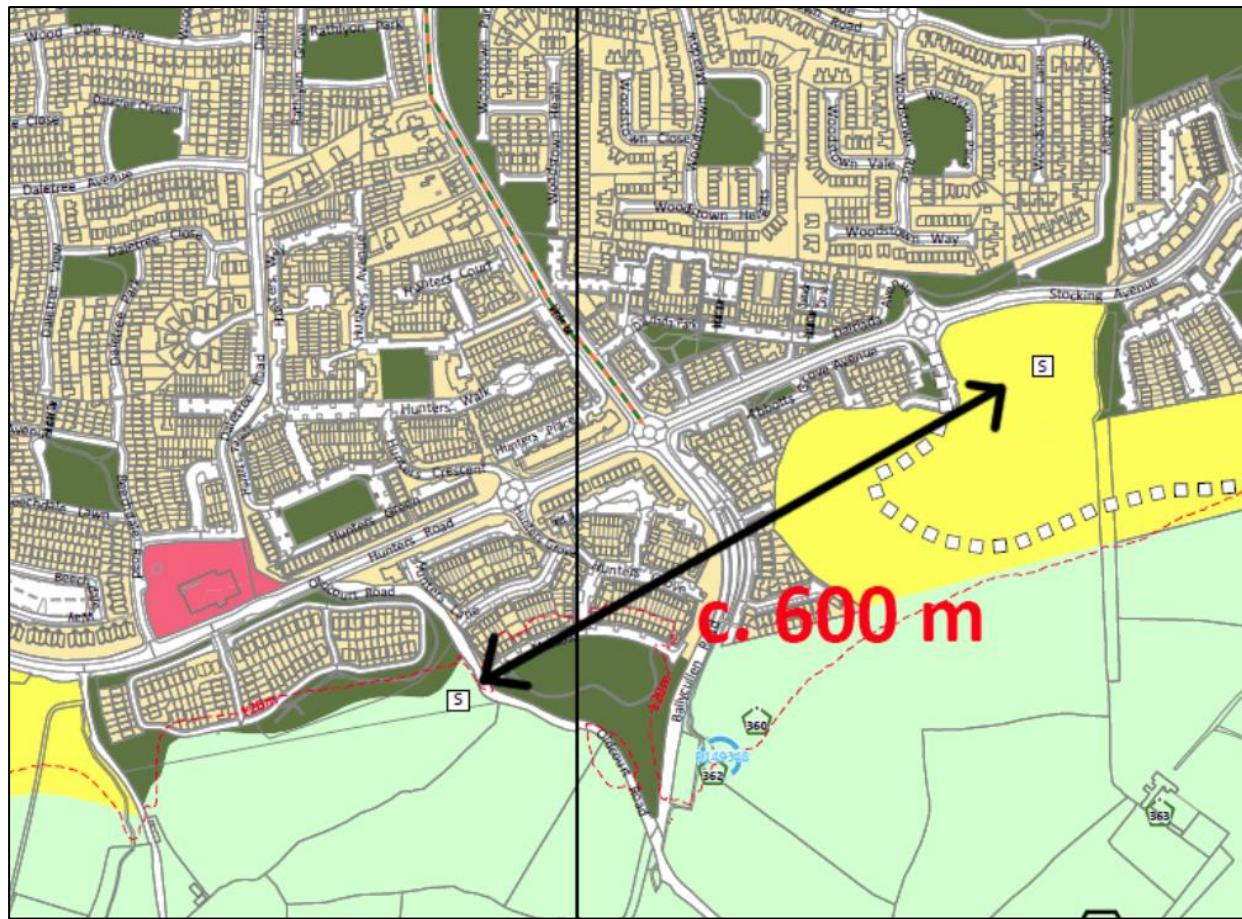


Figure 1.2: Map 9 and 10 (combined) showing the other school objective located c. 600 m from the Subject Site. (Source: *Draft South Dublin County Development Plan 2022-2028*; annotated by TPA.)



Figure 1.3: Subject Site boundary annotated in red (April 2021). (Source: Google Earth; annotated by TPA.)

1.3 Location and context of the Subject Lands

The Subject Site is located along Stocking Avenue, Ballycullen, Dublin 16, within the administrative boundary of South Dublin County Council.

The Site has direct frontage onto Stocking Avenue, is adjacent to Abbotts Grove Avenue and is greenfield in nature.

The Site is zoned 'Objective RES-N' in the *South Dublin County Development Plan 2016-2022* and the *Draft South Dublin County Development Plan 2022-2028* – "To provide for new residential communities in accordance with approved area plans".

1.4 Purpose of this Submission – to seek the freeing up of residentially zoned land

To reiterate, the Site has a Specific Local Objective (SLO) for a 'Primary School' in the *South Dublin County Development Plan 2016-2022* – it is now proposed to be a 'School' in the *Draft South Dublin County Development Plan 2022-2028*.

This SLO has been in place for 21 years, with no fulfilment or plans for fulfilment evident in those 21 years.

This has prevented any housing from being built on the underlying residentially zoned land. We are in a housing crisis and need homes urgently.

We seek the 'School' ("S") to be removed in the *Amended Draft Development Plan*.

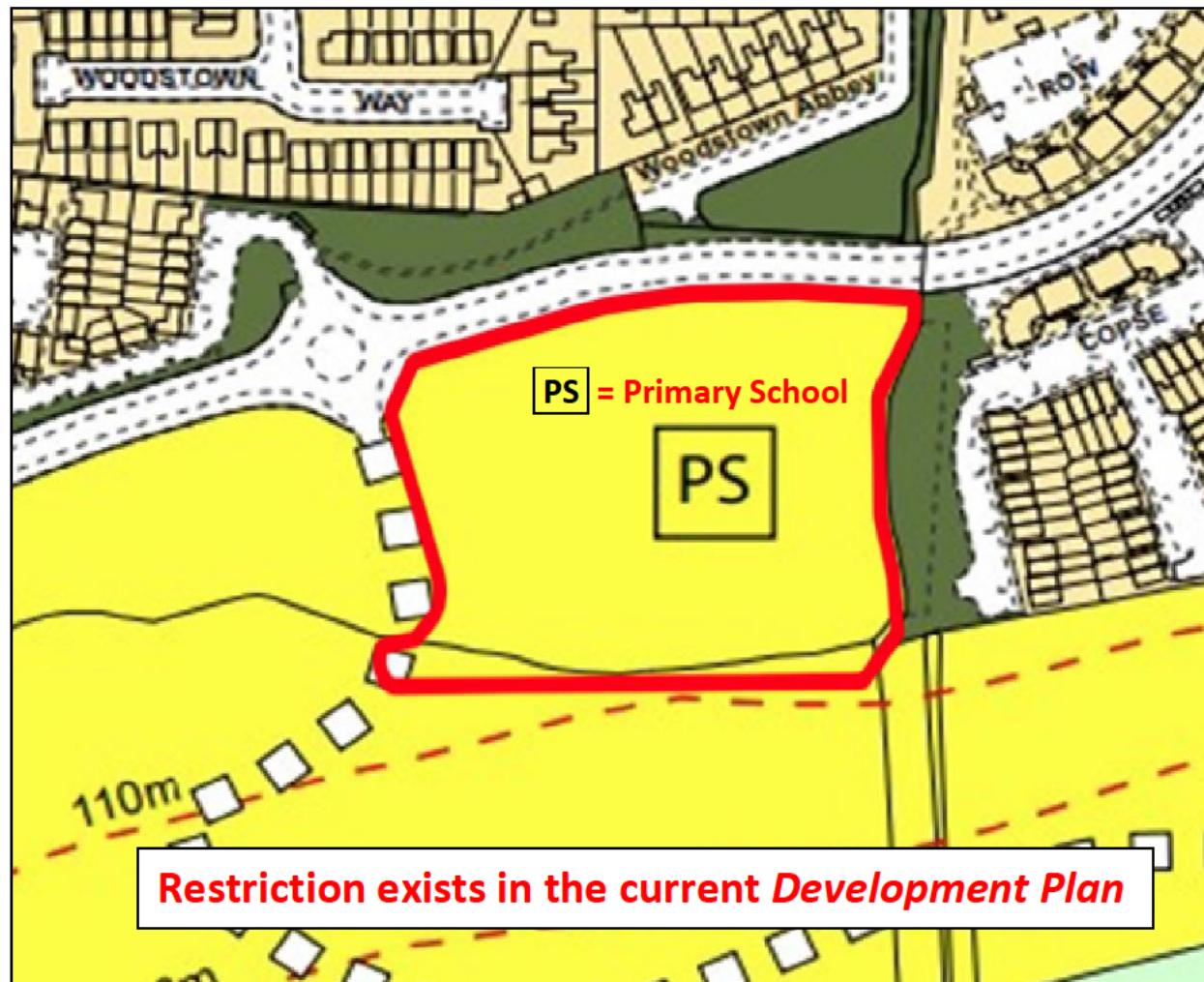


Figure 1.4: Current zoning for the Site including 'Primary School' ("PS") objective. (Source: extract from Map 10 of the *South Dublin County Council Development Plan 2016-2022-Index Map*; annotated by TPA.)

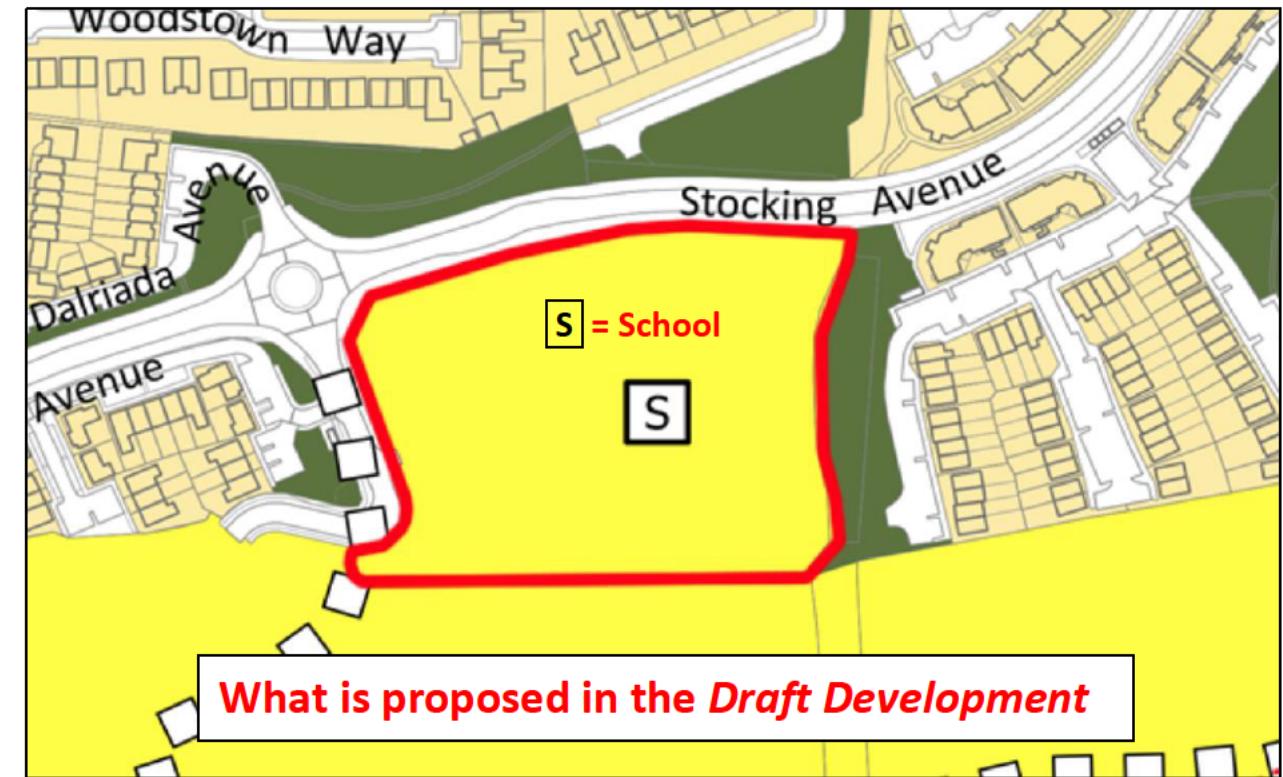


Figure 1.5: Draft zoning for the Site including 'School' ("S") objective. (Source: extract from Map 10 of the *Draft South Dublin County Council Development Plan 2022-2028*; annotated by TPA.)

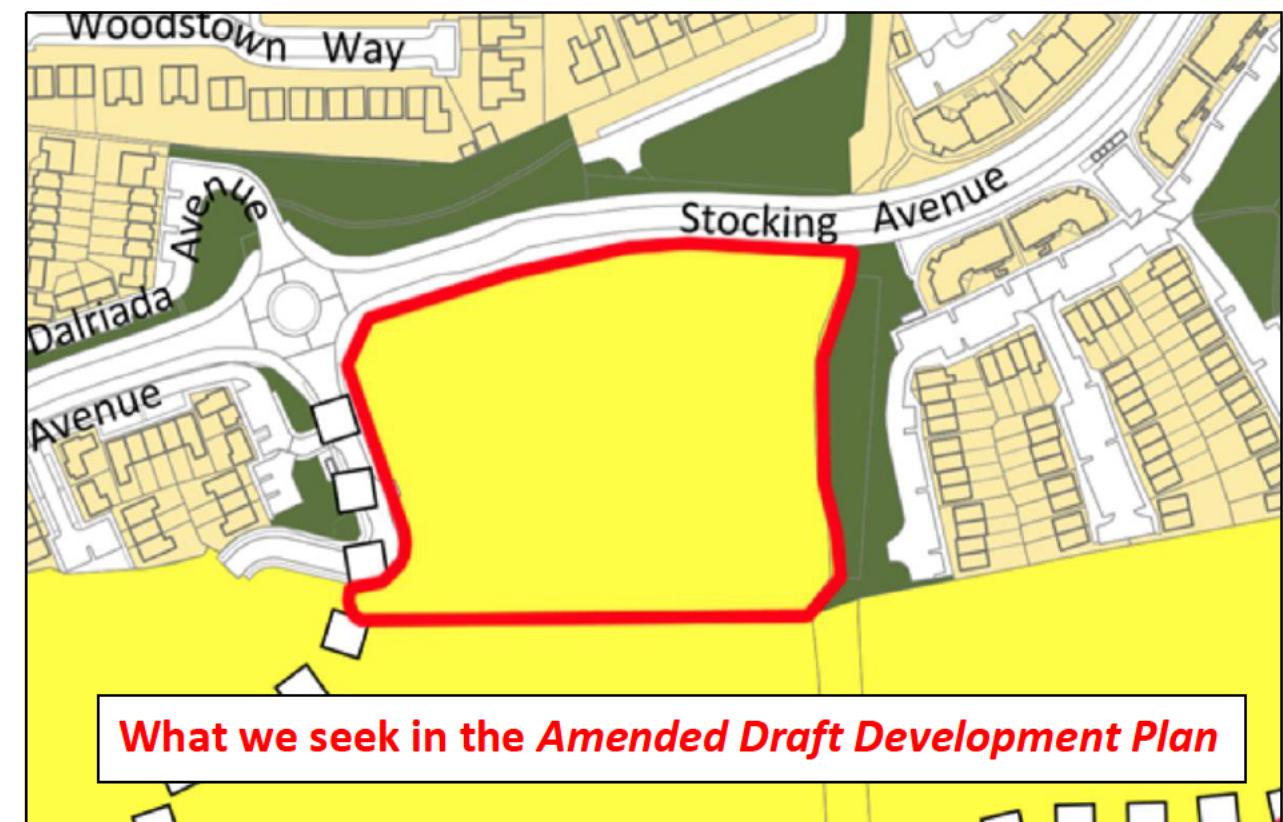


Figure 1.6: What we seek: the removal of the 'School' ("S") objective. (Source: Map 10 of the *Draft South Dublin County Council Development Plan 2022-2028*; edited and annotated by TPA.)

2.0 WHY THE SITE SHOULD HAVE THE 'SCHOOL ("S") OBJECTIVE REMOVED

Sustainable development is described as meeting the needs of the present without comprising the needs of future generations.

As such, to meet both the present population's housing needs, and the future population's housing needs, more homes must be built.

Sustainable development is a key objective of National and Local Planning Policy. The forthcoming *South Dublin County Development Plan 2022-2028* should aim to support sustainable development and provide much needed housing.

The Core Strategy of the *Draft South Dublin County Development Plan* should ensure that sufficient and correct quantum of lands are zoned at suitable locations within the County.

2.1 No intent for a school on the Site – c. 21 years without fulfilment of the objective

The Site is zoned for new residential development.

However, the Site has had a 'primary school'-specific objective for the past 21 years that is now proposed to be a 'school'-specific objective in the *Draft Development Plan*.

The Department of Education has shown no intent to locate either a primary or post-primary school on the Site.

Furthermore, the Department of Education has stated in an email to Jones Investments', dated 5 August 2021, that "a" school (singular) will be required for the Ballycullen/Oldcourt area.

However, there is now another school designated c. 600 m from the Subject Site. We contend that the Subject Site's school objective should be removed as the Department only intends to develop **one** school in the area.

We do not oppose a school being located on this Site; however, with the Department having no intent to develop a school on this site, our client has been left with a vacant site for 21 years and counting with no possibility for development in the foreseeable future.

The McCann FitzGerald Submission – which this Submission is appended to – makes this point:

"It is entirely unclear to our client how or why this Site was first designated with the SLO. There is little to no transparency or guidance around how or why this site was first considered suitable in 2000. This initial lack of transparency has been compounded in the

21 years since first designation. There has never been any attempt or interest from the Department of Education (the "Department") to procure this site for use as a primary school, and yet the site continues to be subject to the SLO. There has never been any explanation, guidance or clarity around why the SLO must be retained where there is no realistic possibility of a primary school, or any school, being developed on the Site. This lack of transparency and guidance is completely at odds with the requirements of the planning process enshrined in Part II of the Planning and Development Act 2000 (as amended) (the "Planning Acts").

The recently published draft guidelines on 'Development Plans – Guidelines for Planning Authorities' (the "Draft Guidelines") require planning authorities to approach the development plan with a clear focus on the delivery of expected development outcomes. The Draft Guidelines point out, at section 1.5, that 'seeking to prioritise development at a location where there is an obvious deficit in services and/or infrastructure and without a clear commitment and timescale for resolution is unlikely to be appropriate'.

The McCann FitzGerald Submission further makes the point that 'good' planning should be justified and based in fact rather than unjustified assumptions about the future:

"good planning decisions should not be based on unjustified assumptions about the future. For the Site, SDCC has assumed for 21 years that the lands will be required for a primary school. That assumption was never justified, and, with the passing of this long time, has been proven to be wholly unjustified. It does not make sense that our clients have been forced to suffer the burden of sterilisation for 21 years, where there is no clear commitment or timescale for resolution.

In addition, consistent with section 11(3)(c) of the Planning Acts, elaborated below, the Draft Guidelines highlight the need to plan from an evidence base, with the plan-making process to include "[a] clear and transparent analysis of an existing baseline of plan-related information with a focus on an examination of the effectiveness of previous plans in achieving their stated objective". This approach has never been applied in relation to the SLO. Worse still, even absent any evidence basis, it is proposed to change the SLO under the Draft Plan. Specifically, the Draft Plan preserves the site for a school, as opposed to a primary school, which is even harder to comprehend. We say that because we understand that our client was told by the Department that the Site is not large enough to properly accommodate a post-primary school."

We concur with those points and iterate the same.

Further to the McCann FitzGerald Submission, we outline references in the *Draft Development Plan* that we argue are not consistent with the unjustified designation of the SLO and also the unjustified amendment to the SLO and provide our response:

1. "South Dublin County Council will continue to work in conjunction with the Department of Education and Skills (DES) to support the provision of new schools in specific areas identified by the DES Schools Building Programme."

Our response: We are not aware of any significant engagement between the Council and the Department of Education. Furthermore, the Department has shown no intent to locate a school on the Subject Site.

2. "Education facilities have a central role to play in developing sustainable and balanced communities. Responsibility for delivery of education facilities and services lies with the Department of Education and Skills (DES)."

Our response: The Department of Education has shown no intent to locate a school at the Site. If it is the Department's responsibility and they have shown no intent, why is the Site zoned for a school?

3. "The Department of Education and Skills identifies the need for new schools through a nationwide demographic review, using a Geographical Information System (with data from the CSO, OSI and Department of Social Protection in addition to the DES's own databases). Locations where pressure for additional primary and post-primary school places will arise are identified and this need is catered for either by new schools or the expansion of existing schools. Demographic changes in South Dublin County will continue to be monitored by the Department of Education and Skills on an ongoing basis. In addition, the Council has engaged extensively with the Department, as part of the preparation of this Plan, to identify school need in each neighbourhood area based on the population growth identified in the core strategy. This engagement involved the review of school reservations on the 2016 Development Plan maps and within LAPs to ascertain whether they should be retained as part of this Plan and an assessment, based on the core strategy, of whether new schools would be required. This is reflected in the objectives contained within the Development Plan maps and are also identified in Chapter 12: Our Neighbourhoods."

Our response: This "assessment" only assessed general trends in areas. There has been no assessment of the Subject Site's suitability for a school. We agree that schools should be encouraged in the area but in our opinion, there is no evidence supporting why this Site in particular is suitable for a school.

4. "To reserve and identify early on sites for primary and post-primary provision in developing areas through the Development Plan, Local Area Plans, Planning Schemes and masterplans, in consultation with the Department of Education and Skills and to ensure that designated

sites are of sufficient size and are accessible cycle and pedestrian friendly locations, consistent with, consistent with NPO 31 of the NPF and RPO 9.21 of the RSES."

Our response: There has been no assessment conducted for the Site for its suitability for a school, thus there is no way to be sure that the designated site is of "sufficient size".

From early informal conversations with the Department of Education and Skills (DES), the Jones Investments was made aware of the fact that the DES had identified an acute need for a Post-Primary School in the Ballycullen - Oldcourt area, not for a Primary School.

Following a feasibility study of the Site carried out by Duignan Dooley Architects in 2018, it became evident that due to size constraints, it was not possible to provide a Post-Primary School for 1,000 No. pupils, as required by the Department of Education, that would comply with the standards of the DoE⁴.

5. "To require schools to be provided in new communities on a phased basis in tandem with the delivery of residential development, in accordance with the phasing requirements of Local Area Plans and Planning Schemes or as may be otherwise required."

Our response: There has been no intent shown to locate a school on the Site, let alone a plan for the school to be developed on a phased basis. In our opinion, it is now likely that the surrounding 'new residential' land will be developed prior to a school being developed on the Site. The school objective should be located elsewhere (e.g. at the 'School ("S")' objective site c. 600 m away) so that a proper phasing plan can be put in place.

In summary, there has been no intent by the Department of Education (whose responsibility it is) to develop a school on the Subject Site.

A site-specific assessment should have been conducted in order to determine whether the Site is an appropriate site for universal design and whether the site is of sufficient size.

Furthermore, schools should be developed on a "phased basis", which there is no plan for at this site.

It is considered that for these reasons the Specific Local Objective for a school should be removed and located elsewhere e.g. at the 'School ("S")' objective site c. 600 m away from the Subject Site.

⁴ We refer to the Technical Guidance Document TGD – 020 General Design Guidelines for Schools (Primary & Post Primary) 1st edition August 2007, Rev 2 November 2017 and the Technical Guidance Document TGD – 022 Primary School Design

Guidelines, 1st Edition, October 2007; Rev 3 February 2013, both published by the Planning & Building Unit of the Department of Education.

2.2 The urgent need for housing – potential for c. 76 No. homes on the Site

The objective for a school prevents the delivery of much needed housing on the site.

Ireland is amid a housing crisis meaning that homes are needed urgently.

The underlying ‘new residential’ zoning has the potential to deliver c. 76 No. homes at c. 38 No. units per hectare as outlined in the *Ballycullen-Oldcourt Local Area Plan 2014*.

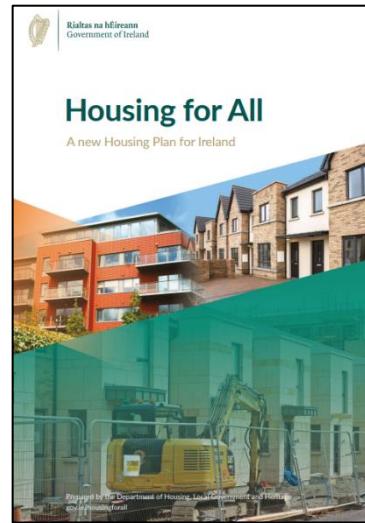
The lands are identified as “lower slope lands” based on the ground contour lines. According to the *LAP*, densities ranging from 32 to 38 No. dwellings per hectare are permitted in the “lower slope lands”.

Ireland requires a housing supply of 33,000 No. new homes every year – as set out in the *Housing for All* (2021) initiative – which we are presently not close to reaching.

Furthermore, residential development at this site would “infill” the gap between the housing developments situated on either side of the site; this would incorporate the principles of compact and sustainable development.

In regard to ‘infill’ development, the *Draft Development Plan* states that:

In established residential areas sustainable intensification can be achieved through infill development, the subdivision of larger houses, backland development and the development of large corner sites. (pg. 230.)



[Our emphasis.]

Through internal research, TPA has calculated that only 42% of planning permissions nationally are eventually developed.

Specifically for South Dublin County Council, we have calculated that the administrative area has a permission-to-construction translation rate of 44%.

The *Draft Development Plan* also provides a similar statistic of 49%:

“Figure 7 below illustrates the number of sites with extant planning permission and of these, the quantum which are under construction per quarter since 2016 in South Dublin. The average trend indicates that half of sites (51%) with planning have not commenced.

This could reflect a range of factors including market forces, permission sought to increase land value for re-sale, issues with sourcing the appropriate level of funding to commence construction, capacity of construction industry, etc. While COVID-19 has influenced this gap in terms of commencements, the trend of planning permissions relative to active sites (see linear lines in Fig. 7) was continuing to diverge by the end of 2020.” (Pg. 42.)

Thus, we argue that an increased quantum of land must be zoned in order to meet the high quantum of homes (33,000) per year that are required as identified in the *Housing for All* initiative.

With the above being the case, it is considered prudent to not restrict housing development on lands already zoned ‘new residential’.



Figure 2.2: Figure 7 from the *Draft Development Plan*: Construction Activity of Residential Sites in South Dublin County. (Source: HTF Series 2016 – 2020.)

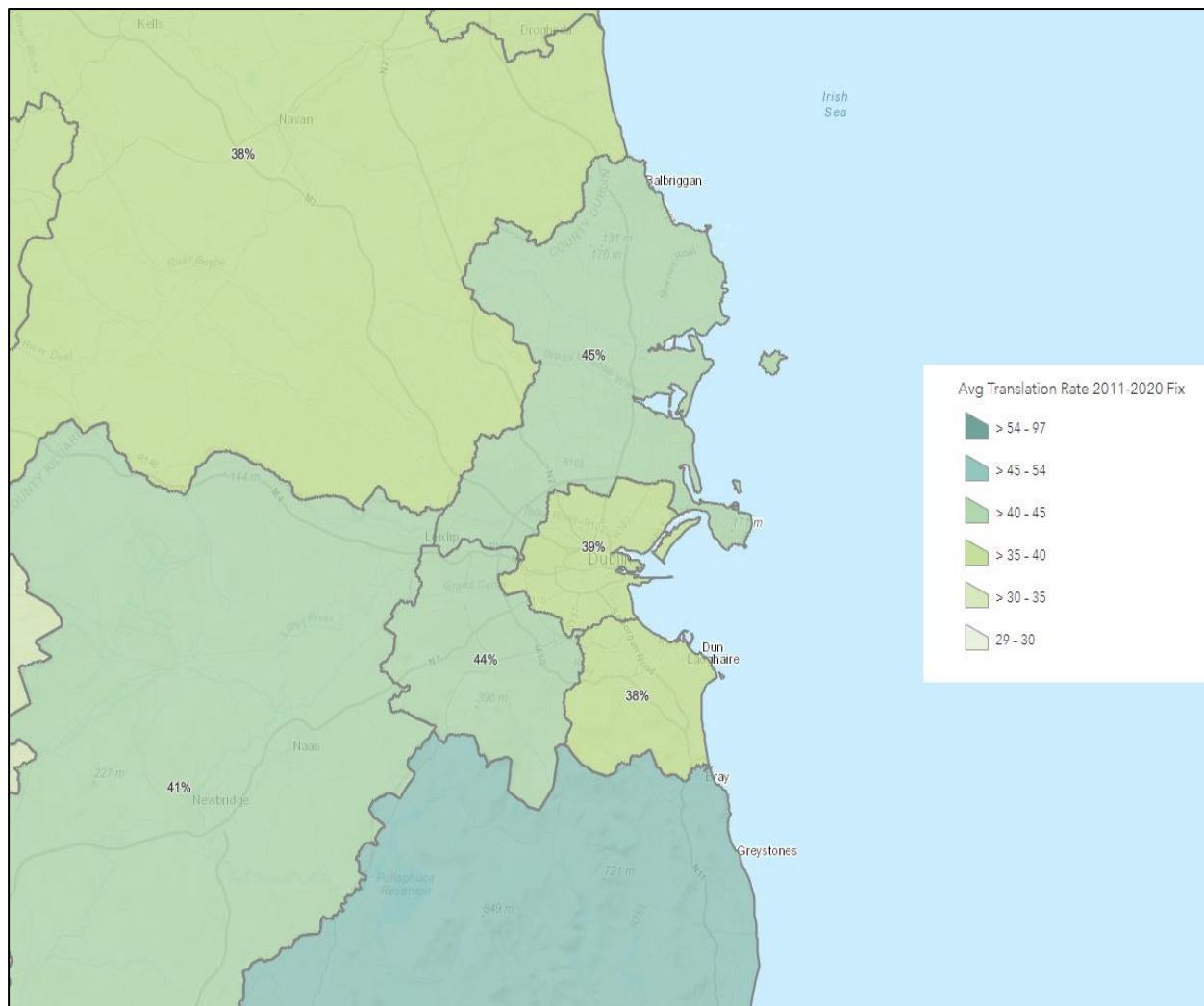


Figure 2.3: GIS map showing the permission-to-construction translation rate for Dublin Councils and the wider Dublin region. (Source: TPA internal research.)

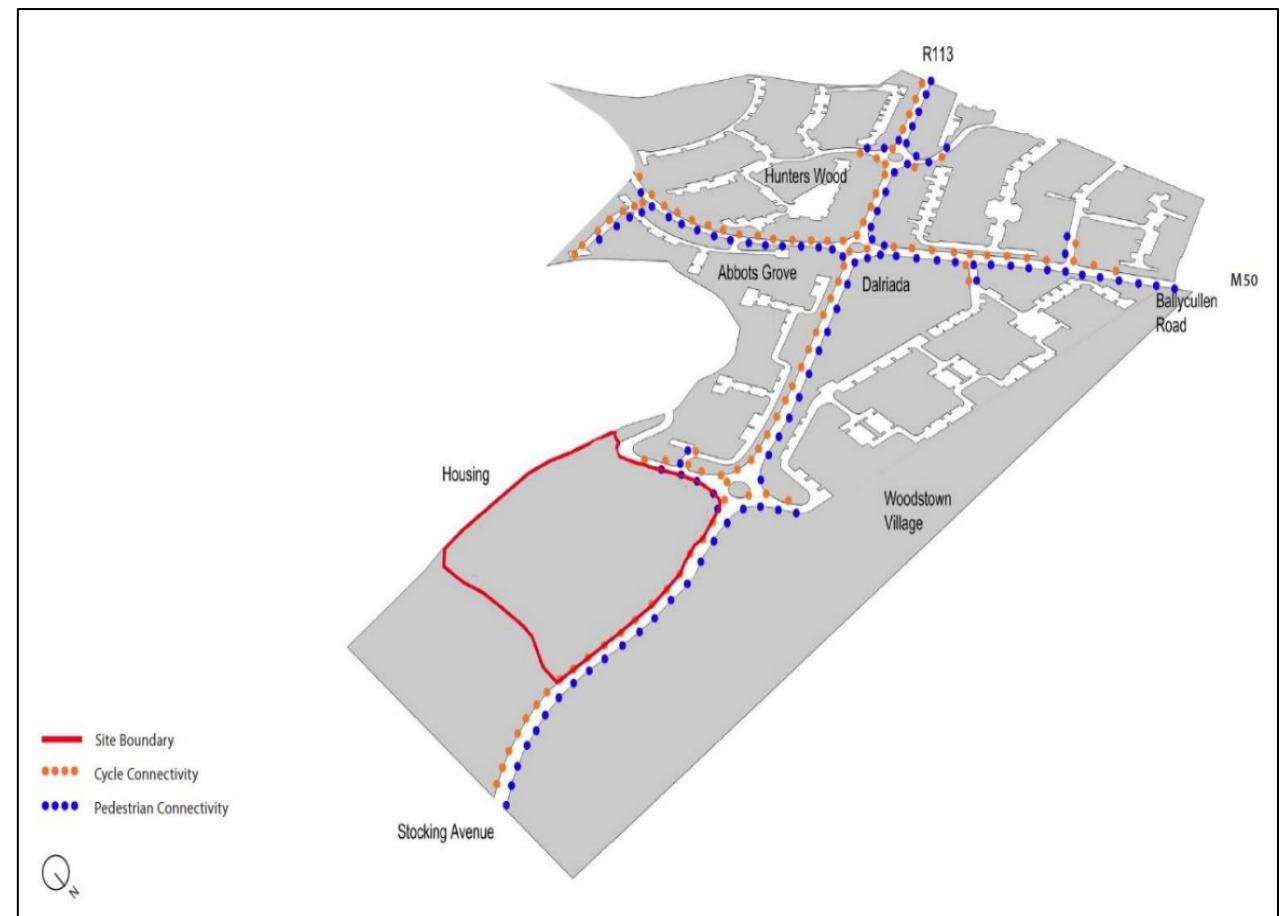


Figure 2.4: Pedestrian and cycle network around the Subject Site. (Source: Duignan Dooley Architects; Design Statement Reg Ref. SD18A/0204.)

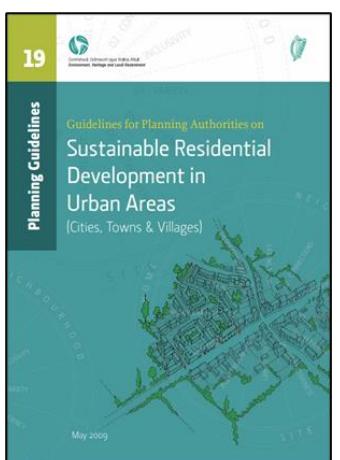
There are two Dublin Bus stops at the front of the Subject Site on Stocking Avenue. These bus stops service the 15b Dublin Bus route that runs from Dalriada to Ringsend.

Regarding this, the *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* (2009), state that:

“Walking distances from public transport nodes (e.g. stations / halts / bus stops) should be used in defining such corridors. It is recommended that increased [housing] densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station”.

[Our emphasis.]

These bus stops provide direct sustainable transport into and out of Dublin City Centre for prospective residents.



2.3 The Site is excellently serviced – *inter alia* sustainable transport, a capable road network, and water services

2.3.1 Sustainable Transport

The site is connected to Stocking Avenue, which in turn connects to the R113 and the R119.

The M50 motorway, which provides access to nearly everywhere in Dublin and Ireland is located c. 600 metres from the site.

Furthermore, there are pedestrian footpaths and cycle lands the whole way along Stocking Avenue and the adjoining street network.

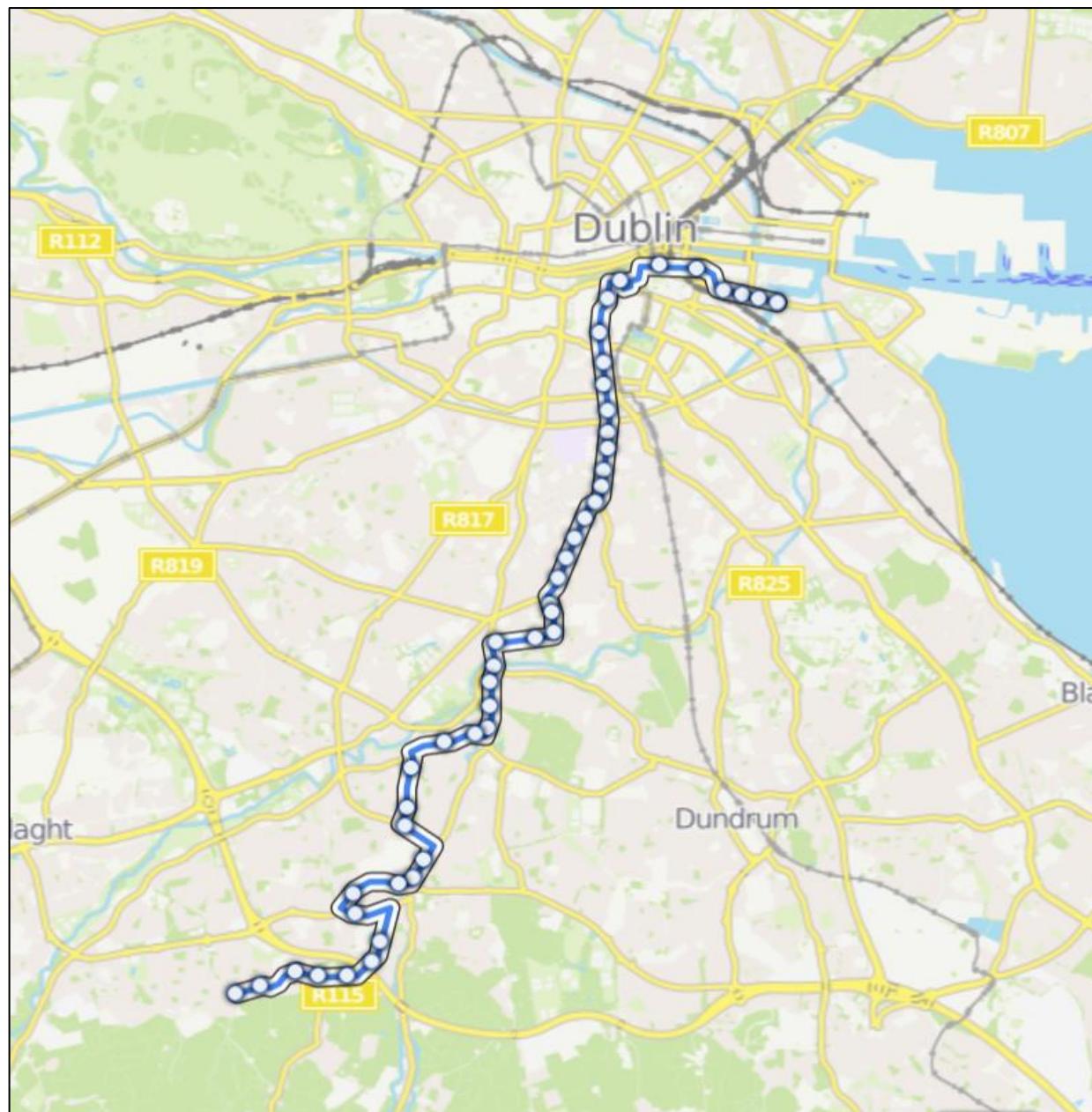


Figure 2.5: 15b Dublin Bus Route that has two stops (No. 6279 and No. 6286) at the doorstep of the Site.

We also note the future objective to support and encourage high-capacity public transport solutions for the area.

SM3 Objective 7 and 12 in the *Draft Development Plan* states the following, respectively:

"To support and encourage the NTA in investigating high-capacity public transport solutions for Dublin south-west, including examining the feasibility of Metro and/or Luas,

serving areas including Ballyboden, Ballycullen/Oldcourt, Firhouse, Kimmage, Knocklyon, Rathfarnham, South Tallaght, Templeogue and Terenure." (Pg. 259.)

[and]

"To work with the NTA to secure the expansion of the bus network to serve new development and regeneration areas within the South Dublin County area including Tallaght, Naas Road, Adamstown, Clonburris, Fortunestown, Ballycullen and Newcastle." (Pg. 261.)

[Our emphasis.]

2.3.2 Road network capacity

A *Traffic and Transport Assessment* was conducted on 23 April 2018⁵ by JB Barry & Partners Consulting Engineers for Planning Application Reg Ref. SD18A/0204.

The Application was for 65 No. residential units and concluded that the proposed residential development did not pose any significant residual risks:

"The study concludes that from a traffic and road safety perspective, the proposed residential development as described herein, does not pose any significant residual risks." (Page 28.)

2.3.3 Water Services

A *Water Services Report*, dated 23 April 2018 by J.B. Barry & Partners Consulting Engineers as part of the same Application concluded that the proposed development could connect to the existing watermain foul sewer in the access road.

⁵ We could not conduct a more recent assessment as the Covid-19 pandemic would not paint as accurate a picture due to large numbers of people 'working from home'.

3.0 CONCLUSION

Failure to meet housing targets is a key issue for the forthcoming *South Dublin County Development Plan 2022 – 2028*.

Sustained economic and social development is a particular concern regarding the challenges raised by the ongoing Covid-19 pandemic.

There is a need to ensure that a sufficient quantum of zoned Lands is available to meet housing targets set by the Government.

The reasons for why we contend the Subject Site should have its 'School ("S")' objective removed are, namely:

1. The Department of Education has no intent to locate a school on the Site.
2. The Site can provide much needed housing at a time of national and city-wide housing shortages.

The Site is c. 2 hectares in area, has an underlying residential zoning and thus could provide c. 76 No. units at c. 38 No. units per hectare as outlined in the *Ballycullen-Oldcourt Local Area Plan 2014*.

3. The Site is excellently serviced *inter alia* by sustainable transport, a capable road network, and water services.

I would be grateful to receive a formal acknowledgement of this submission in due course. If any queries arise in relation to this matter, please do not hesitate to contact the undersigned directly at this office.

Yours faithfully



Tom Phillips
Managing Director
Tom Phillips + Associates


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Appendices

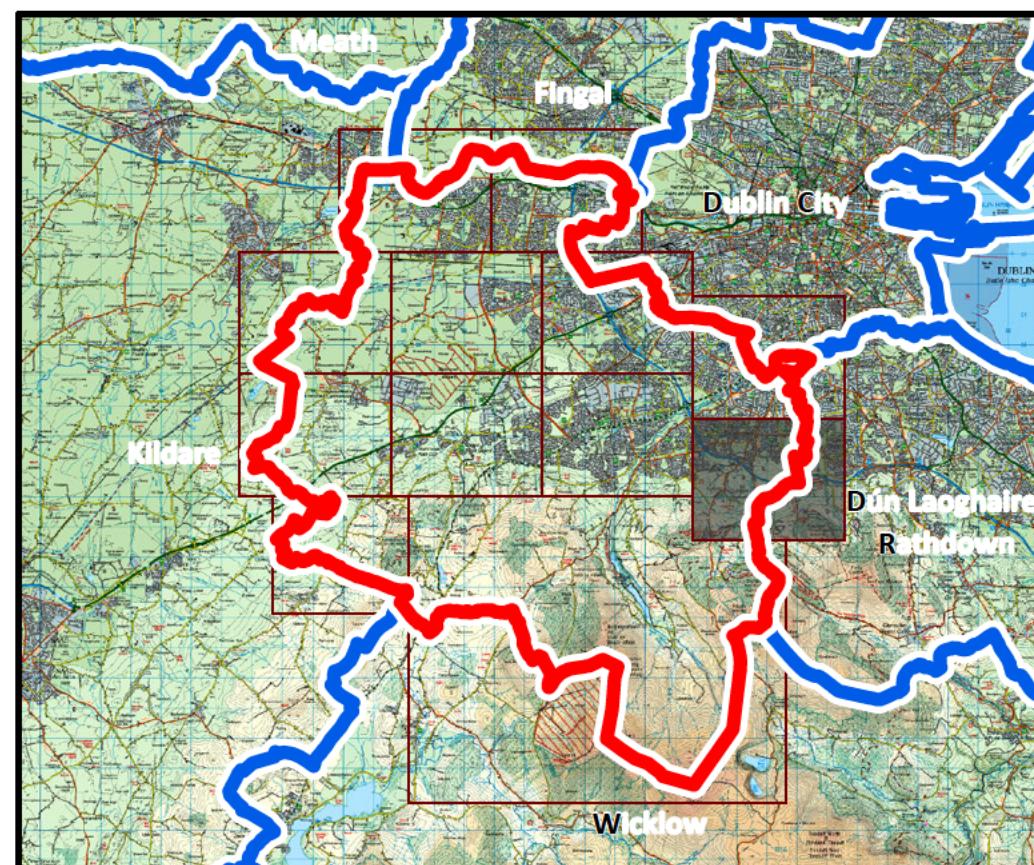
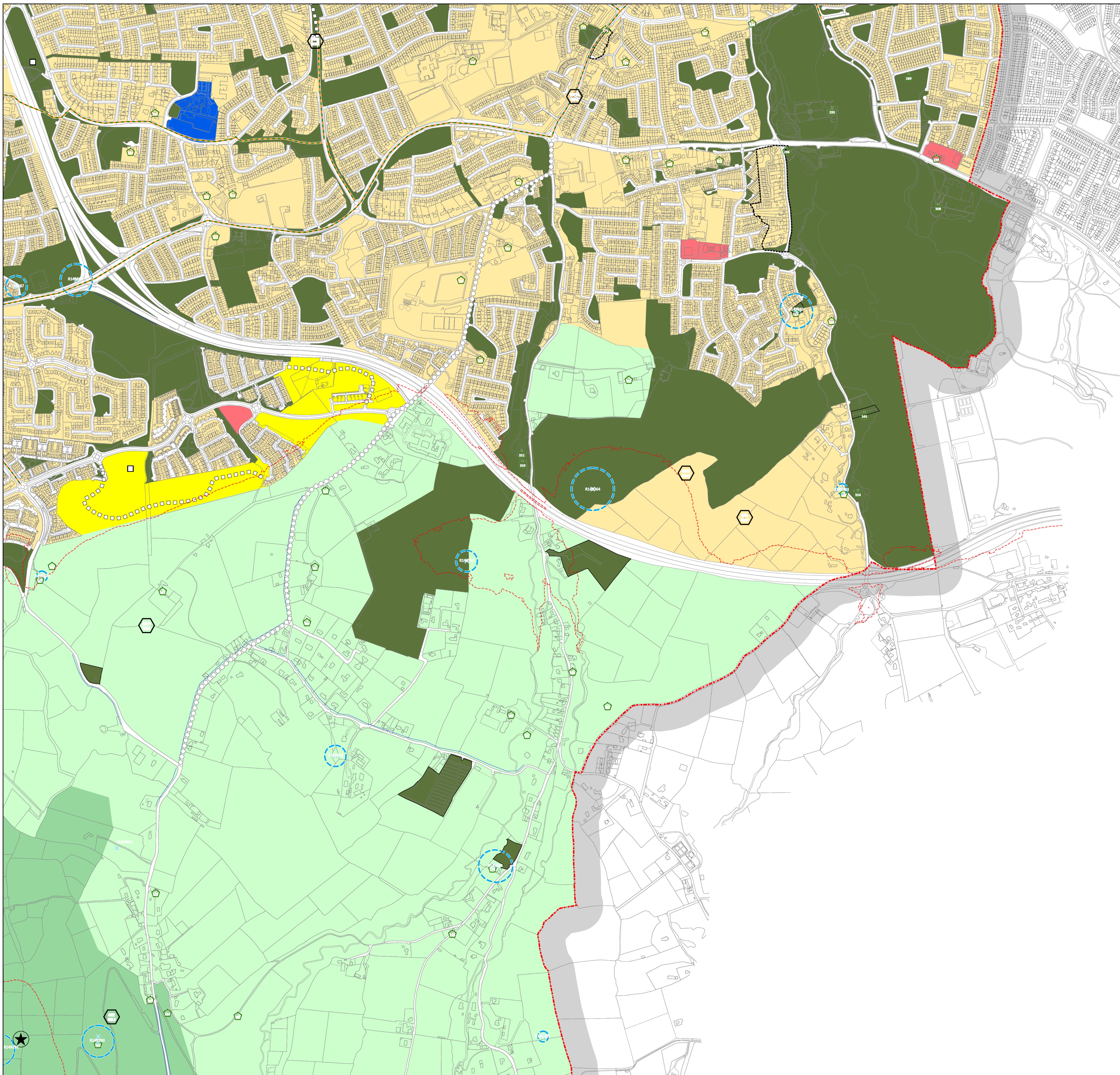
APPENDICES

(Following pages)

Appendix A: Map Sheet 9 DRAFT SOUTH DUBLIN COUNTY DEVELOPMENT PLAN 2022-2028



Appendix B: Map Sheet 10 DRAFT SOUTH DUBLIN COUNTY DEVELOPMENT PLAN 2022-2028



U N N O C V

Figure 1: A 2D bar chart showing the distribution of 1000 reads across 5 samples. The x-axis represents the samples, and the y-axis represents the read count. The chart shows a high density of reads in the first sample (black bar) and a low density in the second sample (white bar). The other three samples have zero reads.