

Senior Executive Officer,
Planning Department,
Meath County Council,
Buvinda House,
Dublin Road,
Navan,
Co. Meath

29th June 2021

RE: Submission to the Material Amendments to the Draft Meath County Development Plan 2021-2027 – Submission in relation to Proposed Amendment Chapter 2.5 Section 2.8.2.

Dear Sir/Madam,

1.0 INTRODUCTION

We, McGill Planning Ltd., 45 Herbert Lane, Dublin 2, have been instructed by our client, Loughglynn Developments Limited t/a Hora Homes, 8 Mount Street Crescent, Dublin 2, to make this submission on their behalf in respect of the Material Amendments to the Draft Meath County Development Plan (CDP) 2021-2027 published on the 31st of May 2021.

This submission relates to material errors in Chapter 2 -Core Strategy - arising from an SHD planning grant for 212 units on our clients lands at Grangend, Dunshaughlin (ref: ABP-307244-20).

The purpose of this submission is to highlight these errors, their potential consequences, and the legislative background as to how these errors can be rectified without delaying the adoption of the draft plan.

2.0 STRATEGIC HOUSING DEVELOPMENT PERMISSION

Our client applied for a Strategic Housing Development (SHD) of 212 units on c.7.9 ha of land at Grangend, Dunshaughlin on May 18th, 2020.

On the date of application, c.3.4 hectares of the area within the application site had been indicated for de-zoning following the publication of the draft CDP in December 2019.

On 6th March 2020, our client made a submission to the Draft County Development noting that formal pre-planning had been held with An Bord Pleanala (and Meath CoCo) in relation to the lands, and that lodgement of the SHD application was imminent. The submission requested that MCC revise the Land Use Zoning map for Dunshaughlin (Sheet No. 14 of the Draft Development Plan) and include the remainder of our client's land at Grangend within

the development boundary of the town and zoned “A2: New Residential” as per the remainder of their lands adjoining to the west.

The SHD planning permission was granted by An Bord Pleanala on September 15th, 2020 - prior to the publication of the Manager Report on submissions to the Draft Development Plan, on September 23rd, 2020.

The Managers Report on the Draft Plan submission stated the following in relation to our client’s submission:

“Dunshaughlin is one of the most active settlements in the County for household construction. Whilst this increase in housing supply is welcomed, it is important to carefully manage the release of housing lands to ensure the population of the town increases at a steady and manageable rate.

Taking this into account, future development in the town will primarily focus on the build out of existing developments the most significant being the Strategic Housing Development (The Willows) south of the town centre and adjacent to the Business Park. This is a 10 year permission for 913 units granted in 2019.

The core strategy household allocation for Dunshaughlin has taken account of the SHD permission which is likely to build out across multiple development plans. Therefore two thirds (600 units) have been included in the core strategy allocation with the remaining units to be in subsequent plans.

A surplus of residential lands has been identified in Dunshaughlin. In recognition of the longer term objective of Dunshaughlin becoming a rail based settlement as part of the construction of the Phase 2 Navan rail project, a reserve of residential land that will not become available until after 2027 has been identified to provide for the long term growth of the town.

In this context, it is considered that the approach taken to remove the Residential Phase 2 (post 2019) is the most sustainable approach to ensure that housing lands are carefully released in line with the population growth of the town over the plan period.

*Chief Executives Recommendation
No change recommended”*

As stated, planning permission with 30 no. Conditions for the proposed Strategic Housing Development was granted by decision of An Bord Pleanala dated 15th September 2020 Ref: ABP-307244-20, one week before the Managers Report was published.

There was clearly a lack of awareness of the presence of this recently granted Strategic Housing Development permission given the very site specific statements made regarding the only other Strategic Housing Development in Dunshaughlin – also granted on Phase 2 lands.

The SHD application was decided by the Board and permission granted under the current Meath County Development Plan in which the entire landholding, the subject site in respect of the permission, is zoned Residential Phase II zoning objective .

In its decision the Board’s Reasons and Consideration stated:

“In coming to its decision, the Board had regard to the following:

(a) the site’s location on lands with a zoning objective for residential development and the policy and objective provisions in the Meath County Development Plan 2013 – 2019 in respect of residential development;”

The proposed de-zoning of a large portion of the planning permission site creates significant difficulties relating to the permission Ref: ABP-307244-20 and, indeed, for the status of Meath County Development Plan 2021-2027, if so adopted. ***It also highlights a material error in Table 2.11 – Core Strategy Table set out in the proposed Material Amendments.***

2.0 MATERIAL AMENDMENTS TO DRAFT MEATH COUNTY DEVELOPMENT PLAN

The Material Amendments to Chapter 2.0 Core Strategy of the Draft Meath County Development Plan 2021-2027 published on the 31st of May 2021, includes the Amendment to Table 2.11 in the Core Strategy of the Draft Development Plan. This is based upon general observations on population growth and recommendations for Dunshaughlin from the Office Planning Regulator in its submission MH-C5-816.

The Planning Authority proposed inter alia the following material amendment to the Draft Meath Development Plan as follows:

Table 2.11 Core Strategy Table from the Draft Plan

Column-A	Column-B	Column-C	Column-D	Column-E	Column-F	Column-G
Settlement	Population 2016	Projected population increase to 2026	Projected population 2026	Approximate households completed 2016-2019	Extant units not yet built	Household allocation 2020-2026

Dunshaughlin	4,035	2,200	6,235	470	1,156 ⁴¹	1,003
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⁴¹ Under a Strategic Housing Development application permission was granted for 913 units. This is a 10 year permission where it is envisaged the lands will be developed across multiple Development Plans . Taking this into account 600 (two-thirds) of the 913 units have been included in the Household allocation during this Development Plan.

Draft Plan

Column A	Column B	Column C	Column D	Column E	Column F	Column G
Settlement	Population 2016	Projected population increase to 2027	Projected population 2027	Approximate households completed 2016-2019	Extant units not yet built	Household allocation 2027
Dunshaughlin	4,035	2,200	6,235	470	1,156 ⁴¹	1,003

⁴¹ Under a Strategic Housing Development application permission was granted for 913 units. This is a 10 year permission where it is envisaged the lands will be developed across multiple Development Plans . Taking this into account 600 (two-thirds) of the 913 units have been included in the Household allocation during this Development Plan.

Under Column F, 'Extant units not yet built,' 1,156 is stated for Dunshaughlin, as included in the Draft Meath County Development Plan and which is marked for amendment.

Under Column F, 'Extant units not yet built,' 1,156 is stated for Dunshaughlin in the proposed amended version of the Draft development Plan .

Superscript 41 to '1,516' in the Draft to be amended refers to 'a strategic Housing Development application permission was granted for 913 units'.

Superscript 41 to '1,516' in the proposed amended Draft refers to '*a strategic Housing Development application permission was granted for 913 units*'.

The permission for the Strategic Housing Development on the subject lands in Dunshaughlin, which includes 212 residential units, Ref: ABP-307244-20, was granted on the 15th of September 2020, after the Draft Meath County Development Plan was published on 18th December 2019, and before the proposed Material Amendments of the Core Strategy was published on 31st May 2021 which includes the proposed amendment to Chapter 2 Core Strategy Table 2.11. The 212 units fall into the categories of Column F "*Extant units not yet built*" in proposed Table 2.11.

The 212 no. permitted residential units also fall into the category of units permitted in strategic Housing Development applications stated in superscript 41.

The permission for Strategic Housing Development on the subject lands, Ref: ABP-307244-20 increased the number of extant units not yet built to 1,368 (1,156 + 212) in proposed Column F in Table 2.11; and increased the number of units for which permission was granted by the Board in Strategic Housing Development applications to 1,125 (913+212), the proposed superscript 41 in Table 2.11.

The figures stated above for residential units for Dunshaughlin in the proposed Material Amendment of "Chapter 2 'Core Strategy', Table 2.11." of the Draft Meath County Development Plan 2021-2027 have not been amended to include the 212 residential units in the SHD permission, Ref: ABP-307244-20.

The Draft Meath County Development Plan 2021-2027 if adopted in its current form, will contain a material error in respect of the extant units to be built and units permitted under SHD applications in Dunshaughlin.

3.0 SUBMISSION RATIONALE

Under the current County Development Plan, 2013-2019, the subject lands are zoned A2 New Residential and subject to a phasing objective - 'Residential Phase II (Post 2019)'. This zoning (and phasing) also applies to the remainder of our clients' land to the immediate west and it is on this basis that permission for the Strategic Housing Development on the subject lands was granted by An Bord Pleanala, Ref: Ref: ABP-307244-20.

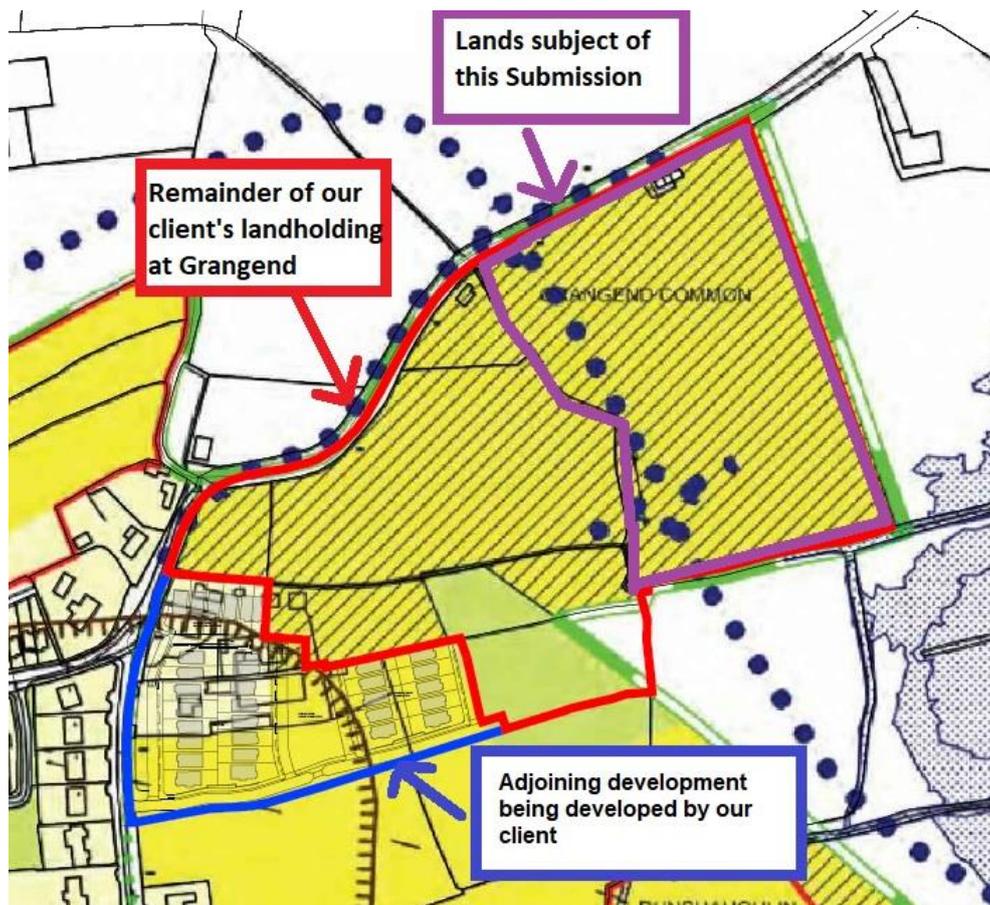


Figure 1: Subject Lands as per current County Development Plan Zoning Map

The current Draft Development Plan for which submissions in respect of Material Amendments are currently under consideration inexplicably continue to propose to de-zone the 3.4ha of our client's land east of the stream and remove this land to outside the development boundary of the town.

The Material Alteration in respect of Chapter 2 Table 2.11 of the Draft Development Plan incorrectly restates the extant number of residential units not yet built as 1,156 instead of 1,368; and the number of residential units for which SHD permissions granted as 913, instead of 1,125 for Dunshaughlin.

The proposed de-zoning of 3.4ha. of the subject lands, which forms part of the lands for which the permission was granted, is clearly based upon error in respect of the number of residential units for which permission has already been granted, both through section 34 (2000 Act as amended) and the SHD processes.

It has been the practice in both the 2013 CDP and the draft 2021-27 CDP to retain zoning where extant permissions exist at the time of making the Development Plan. We are not aware of another case where a de-zoning has occurred on lands which have a live planning permission.

The consequences for the permission for 212 units as part of the SHD development granted by the Board are very serious if the proposed de-zoning and material amendment of Chapter 2 Table 2.11 is adopted by Meath County Council in making the Development Plan 2021-2027 for the following reasons:

- The permission will be contrary to the unzoned status of the 3.4ha. part of the subject site in the Development Plan, creating uncertainty as to the status of the permission;
- The Meath County Development Plan 2021-2027, Chapter 2 Core Strategy Table 2.11 will not recognise the permission, the 1,156 extant units not yet constructed and the 913 units for which SHD permissions are granted do not include the 212 units for which permission was granted on the site, Ref: ABP-307244-20;
- The SHD permission Ref: ABP-307244-20 will not be recognised in the Meath County Development Plan 2021-2027;
- The permission must be considered and substantially completed in its entirety. It cannot be split into the aspect of the permission on the lands that are zoned Residential and the de-zoned lands;
- If any aspect of the development requires alteration under section 146B of the 2000 Act, which is always a possibility, the Board may be precluded from determining such application due to the status of the permission being uncertain and potentially in material contravention of the Meath County Development Plan 2021-2027, if so adopted.

The consequences for the Meath County Development Plan 2021-2027, if so adopted are that:

- It is contrary to the provisions of the Planning and Development Act, 2000 as amended;
- It is contrary to the National Planning Framework (NPF), the Regional Spatial and Economic Strategy for the Eastern and Midlands Region (RSES);
- The legal status and integrity of the Meath County Development Plan 2021-2027, if so adopted is open to challenge.

The Planning and Development Act 2000 as amended, in its provisions for the preparation of the Draft Development Plan under section 11 and the making of the Development Plan under section 12 restricts the elected members to considering the proper planning and sustainable development of the area to which the development plan relates.

Section 9 of the 2000, Act as amended, provides for the obligation on the local authority to make a development plan. Particularly subsection 9(6) requires that a *“A development plan shall in so far as is practicable be consistent with such national plans, policies or strategies as the Minister determines relate to proper planning and sustainable development.”*

The material error in the proposed amendment to the Draft Meath County Development Plan and the inexplicable de-zoning of 3.4ha. of the lands, now the subject of planning permission Ref: ABP-307244-2, is contrary to proper planning and sustainable development for the Dunshaughlin area.

The members of Meath County Council in the making of the development plan are restricted to considering the proper planning and sustainable development of the area to which the development plan relates, which includes Dunshaughlin.

In the circumstances, the members of Meath County Council are precluded by the provisions of the 2000 Act from making the Meath County Development Plan 2021-2027 that includes the material error in the amended Draft plan and the de-zoning of 3.4ha. of the lands, the subject of SHD permission Ref: ABP-307244-20. ***If the elected members make the Development Plan with the material error in the Core Strategy and de-zoning of the subject lands, the Council will act ultra vires its authority.***

The error in Chapter 2 Core Strategy Table 2.11 highlighted in the foregoing is misleading in terms of allocation of residential units for population growth in Dunshaughlin and contrary to Recommendation 7, page 11 of submission MH-C5-816 of the Office Planning Regulator which *inter alia* state:

“In order to ensure coordination of residential growth and relevant facilities, services and employment and to avoid unbalanced communities and adverse impacts on the quality of life of existing and future residents is it important that your authority provides for appropriate population growth rates in the Core Strategy in accordance with the NPF and the RSES.”

The draft amendment, if adopted by the members will be contrary, therefore, to the provisions of the NPF and the RSES as well as contrary to section 9(6) of the 2000 Act as amended.

A solution to the problem facing Meath County Council in making the development plan containing the material error and the de-zoning of the subject lands is found in Section 12(10) of the 2000 Act as amended which provides:

“(10) (a) The members of the authority shall, by resolution, having considered the chief executive’s report, make the plan with or without the proposed amendment that would, if made, be a material alteration, except that where they decide to accept the amendment they may do so subject to any modifications to the amendments as they consider appropriate, which may include the making of a further modification to the alteration and paragraph (c) shall apply in relation to any further modification.

(b) The requirements of subsections (7) to (9) shall not apply in relation to modifications made in accordance with paragraph (a).

(c) A further modification to the alteration—

(i) may be made where it is minor in nature and therefore not likely to have significant effects on the environment or adversely affect the integrity of a European site,

(ii) shall not be made where it relates to—

- (I) an increase in the area of land zoned for any purpose, or
(II) an addition to or deletion from the record of protected structures.”*

The members have an opportunity under subsection 12(10(a) to modify the amendment to Chapter 2 Core Strategy Table 2.11 which includes the error highlighted in the foregoing and to reinstate the correct Residential Phase II (post 2019) zoning for the 3.4ha of the site, the subject of permission Ref: ABP-307244-20.

The further modification merely corrects the errors in the Draft Development Plan, is minor in nature and is not likely to have significant effects on the environment or adversely affect the integrity of a European site.

The modification does not increase the area of land zoned for any purpose, it merely maintains the status quo in respect of zoning; and it does not relate to the addition or deletion from the record of protected structures.

Furthermore, the further modification, being a mere correction of the proposed material amendment is minor in nature does not require compliance with the provisions of section 12(7) to 12(9) of the 2000 Act as amended and therefore, does not impose any additional administrative burden on the Council.

In utilising the provisions of section 12(10) of the 2000 Act, Meath County Council in making the County Development Plan 2021-2027 can be confident that the plan complies with the provisions of the Planning and Development Act, the proper planning and sustainable development of the area to which the development plan relates including Dunshaughlin, and any relevant policies or objectives of the Government.

This matter cannot be amended retrospectively through a variation of the development plan under section 13 of the 2000 Act as amended, given that the Meath County Development Plan 2021-2027, containing the aforementioned error and the subject 3.4 ha. Lands dezoned, (the subject of the SHD permission) will have been made by the Members contrary to sections 11 and 12 of the 2000 Act as amended, and contrary to Government policy, which may invalidate the entire development plan.

The matter cannot be addressed retrospectively through the procedure for granting permission in material contravention of the development plan under section 34(6) of the 2000 Act as amended, given that the Strategic Housing Development permission ABP-307244-2 for the entire site was granted by the Board under the Planning and Development (Housing) and Residential Tenancies Act, 2016 which specifically precludes the Board from granting permission for development that is a material contravention of a zoning objective.

We therefore request that the Planning Authority revise the Land Use Zoning map for Dunshaughlin (Sheet No. 14 of the Draft Development Plan) and include the remainder of our client’s land at Grangend within the Development Boundary of the town and zoned “A2: New Residential” as per the remainder of their lands adjoining to the west.

We request also that the Planning Authority amend Chapter 2. Core Strategy Table 2.11 to include the 212 residential units for which permission was granted Ref: ABP-307244-20 into the Column F “*Extant units yet to be built*”, for Dunshaughlin, from “1,156” to “1,368”; and amend superscript 41 in respect of that entry to read;

“⁴¹ Under Strategic Housing development Applications permission was granted for 1,125 units. These are 10 year permissions where it is envisaged the lands will be developed across multiple Development Plans. Taking into account 600 (almost one half) of the 1,125 units have bene included in the Household allocation during this Development Plan.”

4.0 CONCLUSION

The Material Amendment to the Draft Meath County Development Plan 2021-2027 contains a material error in respect of the extant units to be built and units permitted under SHD applications in Dunshaughlin. The Draft Development Plan also inexplicably de-zones 3.4 ha of lands the subject of a Strategic Housing development permission ABP-307244-2.

The material error is contrary to the NFP and the RSES. The combined error and dezoning is contrary to the proper planning and sustainable development in the Dunshaughlin area and therefore, is contrary to the provisions of the Planning and Development Act, 2000 as amended and also contrary to Government policy.

The Elected Members of Meath County Council, in making the development plan are restricted to consider the proper planning and sustainable development of the area to which the plan relates, which includes Dunshaughlin.

The Members in making the plan, which includes the material error and the de-zoning, will act *ultra vires* its powers as provided under the 2000 Act as amended.

The Planning Authority is precluded from addressing the matter by a retrospective variation of the development plan under section 13 of the 2000 Act; or, through the procedure for granting permission in material contravention of the development plan under section 34(6) of the 2000 Act for reasons set out in the foregoing.

It is respectfully submitted that the solution to the problem facing Meath County Council in making the development plan containing the material error and the de-zoning of the subject lands is provided by Section 12(10) of the 2000 Act as amended which gives the Members the power to make a further minor alteration to the draft development plan, correcting the material error and reinstating the zoning of the lands to “A2: New Residential”.

Yours sincerely



Trevor Sadler

McGill Planning Ltd.

APPENDIX A – REVIEW OF ZONED LANDS IN DUNSHAUGHLIN

