

**MEETING OF DÚN LAOGHAIRE RATHDOWN COUNTY COUNCIL**

**14 JANUARY 2019**

**CHAIRPERSONS REPORT FROM THE PLANNING STRATEGIC POLICY COMMITTEE**

**held in the Council Chamber, County Hall, Dún Laoghaire, Co. Dublin**  
**on Thursday, 7 June 2018 at 5.00 pm**

**PRESENT**

**Councillors:**

Lewis, Hugh  
Baker, Marie  
Brennan, Shay  
Colgan, Anne  
Cuffe, Jennifer  
Daly, Kevin

**Councillors:**

Gildea, Jim  
Merrigan, Michael  
Murphy, Tom  
Stewart, Patricia  
Tallon, Grace

Councillor Hugh Lewis presided as Chairperson

Apologies were received from Councillor Alex White

**SECTORIAL REPRESENTATIVES PRESENT**

Matt Gallagher and Veronica Heywood

Apologies were received from Martin O'Donnell

**OFFICIALS PRESENT**

Mary Henchy (Director of Service, Planning and HR), Ger Ryan (Senior Executive Planner), Julieanne Prendiville (Assistant Planner, Planning and HR Department), Maura Murphy (Administrative Officer, Planning and HR Department), Patricia Howe (Staff Officer, Planning and H.R) and Frank Ward (Assistant Staff Officer)

**Confirmation of Minutes**

It was proposed by Councillor Michael Merrigan, seconded by Councillor Marie Baker and **RESOLVED** that the minutes of the meeting of the Planning Strategic Policy Committee held on Thursday, 8<sup>th</sup> March 2018 be **CONFIRMED** and **ADOPTED**.

**Matters arising (if any)**

Ms. Veronica Heywood advised the Members that at a previous meeting she had indicated that she would not be able to attend two meetings and that this had not been recorded in the minutes. The item was **NOTED**.

## **Information submitted by members for written reply**

### **(a) Councillor A. Colgan**

#### **Building Heights Strategy**

To ask the Chief Executive to outline any national guidelines, policies or legislation on building height strategy since 2016 that will have had an impact on the treatment of this matter in the County Development Plan 2016-2022 of DLR

#### **Reply:**

There has been some recent media speculation with regard to possible new guidance emerging from the Department of Housing, Planning & Local Government in relation to setting building height parameters, but to date this has failed to materialise. It had been anticipated the issue of building height would have been addressed in the recent "Sustainable Urban Housing: Planning Standards for New Apartments - Guidelines for Planning Authorities" published in March 2018. While these Guidelines comprehensively address such matters as apartment mix, size, orientation, aspect, parking, lift cores etc., they are effectively silent in relation to building height - other than a number of fairly oblique and generic references hinting at " *...building inwards and upwards, rather than outwards.*"

The Building Design section of the recent Guidelines (Para 2.23 & 2.24) does, however, hint yet again at forthcoming guidance in relation to appropriate building height in different locational scenarios, vis:

"Building Design

2.23

The National Planning Framework (NPF) signals a move away from rigidly applied, blanket planning standards in relation to building design, in favour of performance-based standards to ensure well-designed high quality outcomes. In particular, general blanket restrictions on building height or building separation distances that may be specified in development plans, should be replaced by performance criteria, appropriate to location.

2.24

While it would not be appropriate for these guidelines to indicate performance criteria for building height or building separation distance relative to location, it is recognised that there is a need for greater flexibility in order to achieve significantly increased apartment development in Ireland's cities. This will be subject to separate guidance to planning authorities with regard to the different types of location set out above and in the context of an approved NPF."

Until such time as that guidance is forthcoming, the issue of building height in DLR will continue to be informed by the Building Heights Strategy set out in Appendix 9 of the current County Development Plan, supplemented by more focused and nuanced building heights guidance included in adopted various Local Area Plans and the Cherrywood SDZ Planning Scheme.

The report was **NOTED**.

### **(b) Rent increases by Landlords**

#### **Veronica Heywood**

Looking through Jane Shackleton's 1880s Photos of Ireland I found a quote by her son to be very apt today; He was camping in the Kerry mountains and witnessed evictions; he was

shocked and appalled at the cruelty, observing that the families had scratched small fields out of the mountainsides with hard labour where there had been only rocks and bog before.

I hear too many stories of people being evicted from their homes through loopholes in the planning laws: Families evicted due to the landlord saying he or she needs to move back into their place...and does no such thing...only ups the rent and puts it on offer again; Residents of an entire apartment block evicted with the excuse that the building needs upgrading...it doesn't, it's in excellent condition...then offering it on the property market at vastly increased rent. Some of these places were in Nama and have been bought by "Vulture Funds".

My question: Is there any way these loopholes in the planning laws can be blocked?

**Reply:**

Planning law does not deal with Landlords and Tenants.

The report was **NOTED**.

**Business submitted by the Director of Services**

**(a) Metro Public Consultation Report and response**

Mr. Ger Ryan, Senior Executive Planner gave a presentation on the Metro Public Consultation Report, and took questions from the Members regarding issues and concerns arising from the Report.

The Report was **NOTED**

**(b) Short Term Letting - Councillor M. Baker**

"A review of the legislative framework regarding short term letting and the question of whether it requires planning permission for change of use."

**Reply:**

Circular letter PL 10/2017 issued by the Department of Housing, Planning and Local Government on 23<sup>rd</sup> October 2017 provides guidance in relation to planning applications relating to short term lettings and changes of use and also refers back to an earlier circular from 2016. This guidance also includes reference to the legislative background.

The circular provides the following guidance;

***"Relevant Planning Provisions***

*Under the planning code, all development, including a material change of use, requires planning permission unless exempted under the Act or the associated Regulations.*

*However, there is a specific exemption in article 10(4) of the Planning and Development Regulations 2001 (the Regulations) for, within certain limitations or restrictions, development which consists of the use of a house for overnight guest accommodation, which, therefore, does not require planning permission. This exemption is typically or traditionally relied on in the context of the provision of B&B type accommodation. It is important to note that, for the purposes of article 10(4), "house" does not include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building. In other words, apartments do not benefit from this exemption.*

***Section 5 Referral and An Bord Pleanála Decision***

*Where a question arises as to what, in any particular case, is or is not development or is or is not exempted development, section 5 of the Act provides that any person may request in writing from the relevant planning authority (or from An Bord Pleanála on referral) a declaration on that question.*

*In this regard, in Circular Letter PL12/2016 of 22 December 2016, the Department advised on a determination by An Bord Pleanála (ref RL3490) that, in a particular case, the exclusive use of a residential apartment for short term holiday lettings was a material change of use requiring planning permission."*

In the 2016 Circular the Department stated

*"In light of this determination, the continued operation of an apartment or residential unit without planning permission for such a material change of use should be considered unauthorised development and subject to enforcement proceedings by the relevant Planning Authority. However, it is also important in this connection to distinguish between properties which are –*

*(a) only made available for short-term letting purposes on an occasional basis or for particular periods of the year,*

*(b) partially occupied by the residential owners on an ongoing basis, and*

*(c) exclusively used for commercial short-term letting purposes on a year-round basis*

The circular went on to state

*"It should be particularly noted that any planning enforcement action in this area should be focussed on properties coming within scenario (c) above i.e. those being exclusively used for commercial short-term letting purposes on a year-round basis."*

The later 2017 circular stated that *"The Department, under Action 18 of the Strategy for the Rental Sector, has established a Working Group consisting of all the major public stakeholders with interest in Short Term Letting. The Working Group will report to the Minister on the appropriate regulatory approach for short term lettings and the identification of any necessary amendments to legislation required giving effect to such regulation. It is expected that the Working Group will report by end 2017."*

**Dun Laoghaire Rathdown County Council are not aware that this working group has made a report to date.**

The B and B exemption which exists reads as follows

*"Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission"*

It does not give clarity as to whether the owner of the dwelling should also be residing in the dwelling which is something that the working group may report on.

The 2017 circular did however provide some guidance for planning authorities on individuals applying for a change of use for short term letting in an existing single apartment as follows;

*"A grant of permission may be appropriate in an apartment where the following conditions are met:*

- Applicant is the owner or occupant of the apartment in question;*
- Apartment has a permanent resident;*
- Confirmation of consent of management company;*

- *Short term letting does not exceed 60 nights in any one year and not more than 5 consecutive nights in any specific letting;*
- *Not more than 2 rooms per apartment to be occupied per night and not more than 4 guests; and*
- *Not more than 20% of the apartments accessible on any floor from any access stairwell/lift core to be approved for short term letting, on a first come first served basis, as is the norm for other locally contentious uses building up in an area”.*

**Advice was also provide on individuals applying in relation to what they called a non exempt house as follows;**

*“Material factors to be considered in deciding on an application in these circumstances include:*

- *Where there is a high housing demand / need in the area;*
- *The applicant is the owner or occupant of the house in question;*
- *The house has a permanent resident;*
- *Locational context and potential for nuisance where close proximity to other permanent accommodation; and*
- *Is there a proliferation of short term lettings in the area, both in urban or rural housing i.e. attractive rural tourist areas may be dominated by short term lettings resulting in reduced accommodation available for locals and increased pressure for more houses”.*

As set out above in some instance short term letting may require planning permission.

Ms. Julieanne Prendiville, Assistant Planner gave a presentation on Short Letting, and took questions from the Members regarding issues and concerns arising from the Report.

The report was **NOTED**.

### **Item for consideration for Future Work Programme**

#### **(a) Councillor A. Colgan**

*“To ask the Chief Executive to outline the processes that will be involved in the review of the County Development Plan scheduled for 2018, and the likely timeframe for these processes.”*

#### **Reply:-**

The Two Year Progress Report on the current County Development Plan was a headed item at the April 2018 Council Meeting (8<sup>th</sup>) under ‘Chief Executive’s Business for Noting’. After consideration it was duly noted by the Elected Members.

Simply for clarification and the avoidance of doubt, this is purely a progress report to advise how the various policies and objectives of the CDP are operating and functioning corporately on a day-to-day basis and the influence they bring to bear in relation to Forward Planning, planning applications and the wider Development Management processes etc. The report also comments on the ‘externalities’ that are being brought to bear through Government Guidelines, Circulars and, particularly, the use of Specific Planning Policy Requirements (SPPRs) that are being afforded statutory underpinning. The report is **not** a precursor to any fundamental review of the CDP. That statutory Review process will be triggered in March 2020 - albeit that the nascent Development Plan Team set up to advance the new 2022-2028 CDP will probably be in situ six months prior to the ‘trigger date’ to commence necessary preparatory work and background research that will feed into the new Plan.

Electronic copies of both the Two Year Progress Report and the presentation that was given to the Elected Members on 8<sup>th</sup> April 2018 have been forwarded to the Sectoral Members of the SPC.

The report was **NOTED**.

**(b) Councillor A. Colgan**

**Planning and Development Bill (2016)**

To request the Chief Executive to outline the key provisions of the Planning and Development Bill (2016) establishing the Office of the Planning Regulator, and how this will, if passed, impact on the role of local planners and Councillors in relation to County Development Plans and LAPs

**Reply:-**

At the time of writing the Planning and Development (Amendment) Bill 2016, which will facilitate the establishment of the Office of the Planning Regulator (OPR) - independent of the Department of Housing, Planning & Local Government – is still passing through the Houses of the Oireachtas .

While the Bill itself sets out, in some detail, the overall functions and powers likely to be afforded to the OPR – including oversight of statutory County Development Plans and Local Area Plans - it is recommended that consideration of this subject matter by the Planning SPC be delayed until such time as the Amendment Bill is formally enacted, and when there is some further clarity in relation to any possible Regulations that might evolve from the process.

The report was **NOTED**.

**Business referred from the Council (if any)**

It was **NOTED** that there was no business.

**Business referred from the Corporate Policy Group (if any)**

It was **NOTED** that there was no business.

**Any other Business (if any)**

Councillor J Gildea asked that if this was the forum to discuss an item he would like raised with the SPC Committee for Future Works Programme. The item would come under the heading of A Review of operations of the Enforcement Section of the Planning Department.

Mary Henchy, Director of Services advised Councillor Gildea that SPC Committees are for policy making and that if Councillor Gildea wished to contact her to identify issue he had.

The response was **NOTED**.

**Conclusion of Meeting**

The meeting ended at 18.05