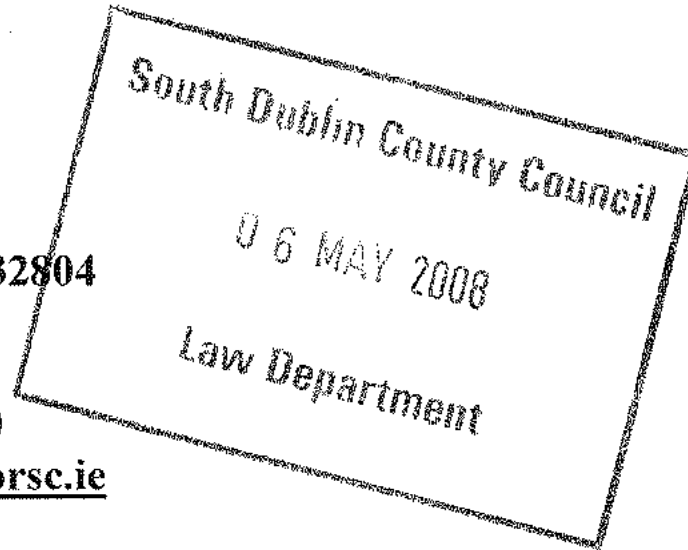


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Ms. Avril Mullins,
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6th May 2008

**Re: Proposed Variation of County Development Plan –
Golf Design Village, Saggart.**

Dear Avril,

As you know, I met with your Director of Planning, Tom Doherty, and his colleagues last Tuesday, when we went through the draft Manager's Report on the submissions and observations received on the proposed variation.

As discussed, it is my view that the draft Manager's Report is a very thorough document, and provides detailed and precise comments on the observations offered by the various objectors.

As I previously advised, while I am in a position to offer legal advice where relevant, I am not qualified to comment on the planning views and observations offered on the submissions received, in particular from Place Investments Limited and its advisers. However, I would observe that, to my layman's eyes, the Manager's proposed observations appear particularly cogent and, in particular, are offered by reference to established policy positions and precedents.

The only additional matter that I felt should be addressed is the assertion by Place Investments that it developed the District Centre as a direct result of a request by the then Director of Planning. While I note, from our consultation, that this is a considerable over simplification (and arguably mis-statement) of matters, there appears to be no doubt but that the local and well-established planning need for a District Centre had been clearly acknowledged at the time by the SDCC Officials concerned and by the elected

members, who initiated and participated in the West Tallaght Study which, inter alia, identified a need for a greater level of retail facilities in the area and it does appear that this may have been, at least, an encouragement, at the time, for Place Investments to proceed with the Centre. In my opinion, the circumstances pursuant to which Place Investments proceeded to develop a District Centre (as opposed to their alternative then proposal) confers on them a prima facie legitimate expectation to have the relevant circumstances in this regard placed fully before the elected members again now, and taken into account by them when considering the proper planning and sustainable development of the area, the statutory obligations of any Local Authority in the area, and the relevant policies or objectives for the time being of the Government, or any Minister of the Government.

It seems to me that, in particular, while Section 13 (7) restricts the elected members with regard to the matters they may consider in making a variation to the Development Plan under PDA 2000, the facts behind the decision of Place Investments to construct the District Centre confers a particular legitimate expectation on it that its submissions should be given particularly careful consideration when the elected members come to consider the matters that they are required to consider under Section 13 (7).

As you know, the content of the Submissions offered on behalf of Place Investments are very detailed, and, from the report of the Manager, and the planning analysis applied thereto, it is clear that its objections are particularly well founded. In this regard I note that the Manager's report proposes to recommend the members to refuse to make the proposed variation.

Reading the proposed Manager's Report, I find it hard to conceive how an elected member could, in fact, considering only the matters set out in Section 13 (7) of the PDA 2000, decide to vote in favour of the proposed variation. There would appear to be no rational basis upon which it would appear that, considering only the matters set out in Section 13 (7) of the Act, the proposed variation could be supported. It follows that, if the variation was allowed, disappointed objectors would be likely to institute judicial review proceedings against SDCC seeking to have the decision quashed on grounds of irrationality.

The Supreme Court has clearly stated that a decision of an administrative body can be quashed where the impugned decision "*plainly and unambiguously flies in the face of fundamental reason and commonsense*" (*The State (Keegan) v Stardust Compensation Tribunal* (1986) I.R. 642, per Henchy J. at p.658).

Further, in *P & F Sharpe Limited v Dublin City and County Manager* (1989) I.R. 701, the then Chief Justice Finlay stated that, in the case of a local authority, if a decision of the elected members was "*unreasonable*" within the meaning of the *Keegan* criteria, that... "*the decision would be illegal and invalid...*" .

I believe that, in these circumstances, it would be highly desirable for the elected members to be advised that, without strong and compelling reasons to support the

proposed variation, being reasons deriving from the criteria set out in Section 13 (7) of the PDA 2000, and in particular, deriving from the "...*proper planning and sustainable development of the area*", a decision to adopt the variation would be at extreme risk of being quashed in any future judicial review proceedings that might be taken by a disappointed objector.

I emphasize, in particular, the criteria in Section 13 (7) relating to "*sustainability*", because it is clear that the fundamental basis for the Place Investments objection is expressly based on notions of sustainability. It is clear that their objection seeks to assert that the proposed variation infringes against the basic principle of sustainability.

I will advise further as required.

With kind regards,

Yours sincerely,


JOHN TRAINOR S.C.