



An
Bord
Pleanála

Board Direction
ABP-313638-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 16/10/2023.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether the use of development at "Sarsfield Heights" as permitted under P.A. Ref. 1704877 / PL 04.249194, P.A. Ref. 185275 & P.A. Ref. 2140139 / ABP-311519-21 for institutional purposes and as predominantly / exclusively Part 5, P.D.A., housing is or is not development or is or is not exempted development:

AND WHEREAS Eagle Valley Association of Residents & Homeowners requested a declaration on this question, Cork City Council and the Council issued a declaration on the 22nd day of April 2022 stating the following;

- (a) The permitted use of the development (permitted under planning register reference numbers 174877 ABP 249194, 185275 and 2140139) is residential.
- (b) The proposed use of the dwelling units may be by an approved housing body, which is not considered to come within the scope of a commercial institutional investment in housing.

(c) The proposed use, which may be by an approved housing body, would remain in residential use, and this would not be material in planning terms and, therefore, is not development.

(d) There is no evidence the development will be used predominantly/exclusively Part V, P.D.A. housing.

AND WHEREAS Eagle Valley Residents Association referred this declaration for review to An Bord Pleanála on the 19th day of May 2022:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

(a) Section 2(1) of the Planning and Development Act, 2000, as amended,

(b) Section 3(1) of the Planning and Development Act, 2000,

(c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

(d) Section 5 (3) (a) of the Planning and Development Act, 2000, as amended,

(e) Part V of the Planning and Development Act, 2000, as amended,

(f) Articles 5(1), 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001, as amended,

(g) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(h) the provisions of the Cork City Development Plan 2022-2028

(i) the planning history of the site,

(j) the submissions on file, and

(k) the pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that the use of Sarsfield Heights residential estate predominantly or exclusively for Part V social and affordable housing, and residential accommodation and care for individuals in need, would not contravene the conditions set under P.A. Ref. 174877/ABP Ref. PL 04.249194, P.A. Ref. 185275, and P.A. Ref. 2140139 and does not involve the carrying out of any works on, in, or under land and does not constitute a material change in the use of any structures or other land, and therefore does not constitute development.

NOW THEREFORE An Bord Pleanála, in the exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the use of Sarsfield Heights residential estate predominantly or exclusively for Part V social and affordable housing, and residential accommodation and care for individuals in need, is not development.

In deciding not to accept the inspector's recommendation, the board considered that, insofar as a 'change of use' might be considered to occur by virtue of a change of ownership and tenure mix from that originally envisaged; that this change would not be material. In particular the Board did not consider that the care and support services that might be provided by an entity such as Respond Housing Association would be of such a level and intensity as to constitute 'care' within the meaning of Class 9 of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended), and would not differ materially from the care and support that may from time to time be required by any potential residents of a new development. The Board did not consider that any material differences in traffic generation would arise and was satisfied that the purported use would not give rise to any planning considerations that would differ materially from those that arose at the time of the granting of permission.

Board Member:


Stephen Brophy

Date: 17/10/2023

