

An
Bord
Pleanála

Board Order ABP-318904-23

Planning and Development Acts 2000 to 2022

Planning Authority: Cork City Council

Planning Register Reference Number: T.P.23/42409

Appeal by Michael Kearney of Altomont SP, Mount Alto, Glanmire, County Cork and by Longview Estates Limited care of Tom Phillips and Associates of Suites 437 and 455, 1 Horgan's Quay, Waterfront Square, Cork against the decision made on the 20th day of December, 2023 by Cork City Council to grant subject to conditions a permission to the said Longview Estates Limited in accordance with plans and particulars lodged with the said Council.

Proposed Development: Large Scale Residential Development (LRD) comprising amendments to a permitted Strategic Housing Development (SHD) of 753 number units (An Bord Pleanála reference number ABP-306325-20) at a site located at Lahardane, Ballyvolane, Cork City. The proposed development will consist of amendments to Neighbourhoods 2 and 4 of the permitted SHD. The proposed amendments in Neighbourhood 2 include (a) the removal of three number residential units and a change of house types resulting from replacing three number detached houses with two number detached houses; replacing two number semi-detached houses with one number detached house and omitting a mid-terrace unit so that a terrace of four number houses becomes a terrace of three number houses including amendments to the road layout and amenity pathway in Neighbourhood 2 and all

associated services. The proposed amendments in Neighbourhood 4 include (b) the reorientation of four number residential units in Neighbourhood 4 and localised amendments to the road layout and all associated services. The proposed development also seeks the amendment of planning condition number 3 of An Bord Pleanála reference number ABP-306325-20 to extend the permission period to ten years. The proposed development includes for ancillary site works associated with the modifications; all at Lahardane, Ballyvolane, Cork City.

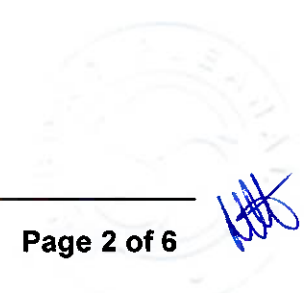
Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

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

- (a) the policies and objectives of the planning authority, as set out in the Cork City Development Plan 2022-2028, including the location of the site on lands subject to Zoning Objective 'ZO 02 - New Residential Neighbourhoods which seeks "to provide for new residential development in tandem with the provision of the necessary social and physical infrastructure",
- (b) the nature, scale and design of the proposed development,
- (c) the pattern of existing development in the area,
- (d) the planning history of the site and within the area,



- (e) Housing for All – A New Housing Plan for Ireland, 2021,
- (f) Project Ireland 2040 - National Planning Framework,
- (g) The Regional Spatial and Economic Strategy for the Southern Region, 2020,
- (h) The Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities, issued by the Department of Housing, Local Government and Heritage in January, 2024,
- (i) the reports of the planning authority, including its assessment and recommendation to grant permission subject to conditions,
- (j) submissions received by the planning authority from observers and prescribed bodies,
- (k) the grounds of appeal and subsequent responses to the same, and
- (l) the report and recommendation of the Inspector including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

The Board considered that the proposed development, subject to compliance with the conditions set out below, would be in accordance with the policies and objectives set out in the Cork City Development Plan 2022-2028, would constitute an acceptable design and layout of residential accommodation, would not seriously injure the residential or visual amenities of property in the vicinity, would be capable of being adequately served by surface water, wastewater, and water supply networks, and would be acceptable in terms of flood risk. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



The Board did not agree with the Inspector that it was appropriate to consider extending the duration of permission, subject of the first party appeal against condition number 3 of An Bord Pleanála reference number ABP-306325-20. In coming to this decision, the Board had regard to the High Court judgment of *South-West Regional Shopping Centre v ABP* [2016] IEHC 84. This case related to amendment applications to aspects of a parent permission. It is noted that in this case, the duration of the permission remained the same as the duration of the parent permission. This was achieved by way of condition to the grant of the amendment. It is also noted that the holder of the permission availed of section 42 of the Planning and Development Act, as amended, to extend the life of the permission. Consequently, the Board did not agree with the Inspector that this judgement supports the request made by the applicant to extend the permission in this case to 10 years. The Board also had regard to the approach of the High Court in *Friends of the Irish Environment v ABP* [2019] IEHC 80, where the High Court stated: '*I have very real doubts as to whether an application for an extension of the duration of a planning permission can ever lawfully be made pursuant to section 146B. It seems to me that the application can only be made pursuant to the provisions of section 42.*' [para 28]. The Board, therefore, concluded that an extension to the duration of a permission should be sought via section 42, which provides both the legal power and the safeguards around extending the permission.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking in to account the Board's determination on Appropriate Assessment and Section 11 of the Inspector's Report pertaining to An Bord Pleanála reference number ABP-306325-20, the nature, scale and limited extent of the proposed alterations relative to the permitted development under An Bord Pleanála reference number ABP-306325-20 and the Inspector's Report. In completing the screening exercise, the Board agreed with and adopted the report of the Inspector and concluded that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in

view of the sites' conservation objectives, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed preliminary examination for environmental impact assessment of the proposed development and concluded that it would not have the potential to have significant effects on the environment, having regard to the limited scale/nature of the proposed alterations to the development granted permission under An Bord Pleanála reference number ABP-306325-20, the site's locational context and the context of the development site. Given that the subject proposal is limited to minor revisions of the permitted development (An Bord Pleanála reference number ABP-306325-20) which do not require the wider project to be assessed from first principles, it is considered that the proposed development would not have the potential to give rise to likely significant effects on the environment that would alter the conclusions of the previous Environmental Impact Assessment for the permitted scheme and submission of an environmental impact assessment report would not, therefore, be required.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following condition.


Reason: In the interest of clarity.

2. (a) Apart from any departure specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted for the Strategic Housing Development, An Bord Pleanála reference number ABP-306325-20.



- (b) The total number of residential units permitted in this development is 750.

Reason: In the interest of clarity, to ensure that the overall development is carried out in accordance with the previous permission and to allow sufficient time for the construction of the permitted development.



Martina Hennessy

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this 13th day of May 2024