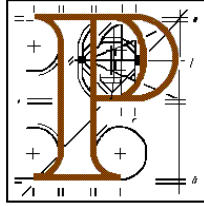


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

Wexford County

Planning Register Reference Number: W2013100

An Bord Pleanála Reference Number: 26.RP.2136 (appeal reference number PL 85.243203)

WHEREAS by order dated the 30th day of July, 2014 An Bord Pleanála, under appeal reference number PL 85.243203, granted subject to conditions a permission to O'Leary International of Marshmeadows, New Ross, County Wexford for development comprising retention and completion of construction works related to five number two-storey dwellinghouses, at sites numbers 36, 37, 38, 39 and 40 Ard na Cuain and retention permission for minor alterations to five number previously constructed two-storey dwellinghouses, at sites number 35, 41, 42, 43 and 44 Ard na Cuain. Planning permission was also sought for ancillary site works, all with reference to planning register reference numbers 20023678 and 20043065, at 35 to 44 Ard na Cuain, Whiterock South, Wexford:

AND WHEREAS condition number 12 attached to the permission required the developer to enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate was applied for and had been granted under section 97 of the Act, as amended, and the condition provided that where such an agreement is not reached within eight weeks from the date of that order, the matter in dispute (other than a matter to which section 97(7) applies) could be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination:

AND WHEREAS the developer and the planning authority failed to agree on the discharge by the developer of the requirements of condition number 12 of appeal reference number PL 85.243203, and the matter was referred by the developer to An Bord Pleanála on the 10th day of October, 2016 for determination:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that an appropriate amount in terms of the discharge of the requirements of condition number 12 of appeal reference number PL 85.243203 by the developer to the planning authority is a nil amount.

REASONS AND CONSIDERATIONS

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

- (a) the provisions of Section 34(5) of the Planning and Development Act, 2000, as amended,
- (b) the nature of condition number 12 attached to the grant of permission by An Bord Pleanála under appeal reference number PL 85.243203,
- (c) the failure of the planning authority and the developer to agree in relation to condition number 12,
- (d) the documentation on file, the submissions made by the parties to this case, and the report of the Inspector,
- (e) the history of this case, whereby the site had previously been zoned for residential use at the time of the original grants of permission under planning authority register reference numbers 20023678 and 20043065; the expiry of those permissions prior to final completion of the development; and the nature of the application under An Bord Pleanála appeal reference number PL 85.243203 (planning authority register reference number 2013100), which sought to retain and complete the then substantially completed houses,

- (f) the Open Space and Amenity land use zoning objective that applied to the development on the date of the grant of permission by An Bord Pleanála, as set out in the Wexford Town & Environs Development Plan 2009-2015, whereby residential use is neither permitted in principle, nor open for consideration, but is not normally acceptable, and
- (g) the provisions of Section 96 of the Planning and Development Act, 2000, as amended, which applies to applications for permission for the development of houses on land zoned solely for residential use, or for a mixture of residential and other uses.

The Board decided, in the particular circumstances of the case, that the appropriate sum would be a nil amount in terms of the discharge of the requirements of condition number 12 of appeal reference number PL 85.243203 by the developer to the planning authority, and was satisfied that this was a reasonable approach in the circumstances.

In deciding not to accept the Inspector's recommendation that the developer should be paid €30,000 by the planning authority in respect of the transfer of a house, the Board did not consider that this approach was appropriate in light of the zoning objective for the lands, and the provisions of Section 96 of the Planning and Development Act, 2000, as amended, which no longer applied to the lands in question on the date of the grant of planning permission.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2017.