



An
Bord
Pleanála

Inspector's Report ABP-309642-21

Question

Whether the imminent use of development LB160659, LB180519 & LB190293 as exclusively Part 5, PDA, housing is or is not development or is or is not exempted development.

Location

Ledwidge Hall Green, Drogheda Road, Slane, Co. Meath.

Declaration

Planning Authority

Meath County Council.

Planning Authority Reg. Ref.

LBS52102.

Applicant for Declaration

1. Mairead Phelan.
2. Frank McGinn.
3. Fergal Riggs.

Mairead Phelan (for and behalf of all of the residents of the Ledwidge Hall Residents Association).

Planning Authority Decision

Is 'exempted' development.

Referral

Referred by

4. Mairead Phelan.

5. Frank McGinn.
6. Fergal Riggs.
7. Mairead Phelan (for and behalf of all of the residents of the Ledwidge Hall Residents Association).

Owner/ Occupier

Cheverdale Ltd.

Observer(s)

None.

Date of Site Inspection

17th day of April, 2021.

Inspector

Patricia-Marie Young

Contents

1.0 Preliminary Comment	4
2.0 Site Location and Description	4
3.0 The Question	4
4.0 Planning Authority Declaration.....	4
4.1. Declaration.....	4
4.2. Planning Authority Reports	5
5.0 Planning History.....	6
5.1. On Site	6
5.2. In the vicinity	6
6.0 Policy & Context	7
6.1. Local Planning Provisions	7
7.0 Relevant Referral Cases.....	7
8.0 The Referral.....	7
8.1. Referrer's Case	7
8.2. Planning Authority Response	9
8.3. Owner/occupier's response.....	9
9.0 Statutory Provisions.....	12
9.1. Planning and Development Act, 2000	12
9.2. Planning and Development Regulations, 2001.	13
10.0 Assessment.....	14
10.1. Is or is not development.....	14
10.2. Is or is not exempted development	17
11.0 Recommendation	20

1.0 Preliminary Comment

- 1.1. In relation to this referral case a request was made for an Oral Hearing. The Board decided in accordance with Section 134(3) of the Planning and Development Act, 2000, as amended, that there was sufficient evidence on file to enable an assessment of the issues raised in this appeal case and therefore that it would determine it without an Oral Hearing.

2.0 Site Location and Description

- 2.1. The site is located within the village settlement of Slane, c178m to the east of the N2 and c300m to the north of the N51, as the bird would fly. It is located at the northern end of the Ledwidge Hall residential scheme and lies to the immediate west of Stanley Hill and on the eastern periphery of this settlement. It comprises of an unkempt piece of undeveloped land that is bound by agricultural land to the west and has an edge of settlement character.

3.0 The Question

- 3.1. Whether the proposed use of the developments granted planning permission under P.A. Ref. No. LB160659, LB180519 and LB190293 as exclusively Part 5 Social and Affordable housing is development which is exempted development.

4.0 Planning Authority Declaration

4.1. Declaration

- 4.1.1. By order dated the 4th day of February, 2021, the Planning Authority declared that the proposed use of the developments granted planning permission under P.A. Ref. No. LB160659, LB180519 and LB190293 as exclusively Part 5 Social and Affordable housing at Ledwidge Hall Green, Drogheda Road, Slane, is development and is exempted development.
- 4.1.2. In making this Declaration the Planning Authority had particular regard to:

- (a) The use of the developments granted planning permission under P.A. Ref. No. LB160659, LB180519 and LB190293.
- (b) Section 2, 3, 4 and Section 32 of the Planning & Development Act, 2000, as amended.
- (c) Part 5 of the Planning & Development Act, 2000, as amended.
- (d) Articles 6 and 9 of the Planning & Development Regulations, 2001, as amended.
- (e) Part 5 of the Planning & Development Regulations, 2001, as amended.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planning Authority's Planning Officer's report dated the 1st day of February, 2021, is the basis of the Planning Authority's declaration. It includes the following comments:

- Section 32 of the Planning & Development Act, 2000, as amended, sets out a general obligation to obtain planning permission in respect of any development of land not being exempted development.
- Under the grants of planning permission P.A. Ref. No. LB160659, LB180519 and LB190293 it was conditioned that the applicant agrees the required Part 5 social and affordable housing element of the scheme with the local authority prior to the commencement of development.
- The use of the permitted houses will be residential whether they are privately owned or in use for social and affordable housing purposes.
- No appropriate assessment issues arise.
- A change of use is not required to use any or all of the permitted houses for social or affordable housing purposes as the use will be residential.
- A recommendation for an exempted development is certificate is concluded upon.

4.2.2. Other Technical Reports

None of relevance.

5.0 Planning History

5.1. On Site

- **P.A. Ref. No. LB90293:** Planning permission was **granted** subject to conditions for a change of house types only on approved sites 1 to 6 inclusive (previously subject to the grant of planning permission P.A. Ref. No. LB160659) at Ledwidge Hall Green from 6 no. 2 storey 4 bedroom detached dwellings to 6 no. detached bungalows comprising of 3 no. single storey 3 bedroom detached dwellings on sites No.s 1 to 3 inclusive and 3 no. single storey 2 bedroom detached dwellings on site's No.s 4 to 6 inclusive.
- **P.A. Ref. No. LB180519:** Planning permission was **granted** subject to conditions for 16 no. 3 bedroom semi-detached dwellings on site No.s 13 to 28 including in lieu of 11 no. 4 bedroom two storey detached dwellings on sites No.s 13 to 23 inclusive as previously approved under grant of planning permission P.A. Ref. No. LB160659 also comprising of a turning area opposite units 12 and 13 and a gated access to the lands to the east of the application site with a minimum 5m wide strip with 4m wide gates all on previously approved sites 13 to 23 inclusive (P.A. Ref. No. LB160659) with vehicular access via the existing Ledwidge Hall residential scheme.
- **P.A. Ref. No. LB160659:** Planning permission was **granted** subject to conditions for 23 no. two storey dwellings in a mix of detached and semi-detached form. The development also provides for all associated site development works.
- **P.A. Ref. No. LB160895:** Planning permission was granted subject to conditions for the construction of 1 no. two storey dwelling with associated landscaping works. This dwelling would replace that permission under P.A. Ref. No. SA/50493.
- **ABP Ref. No. PL17.219467 (P.A. Ref. No. SA/50493):** On appeal to the Board planning permission was granted subject to conditions for a development described as Phase 3 of a residential development of 35 dwelling units.

5.2. In the vicinity

5.2.1. None relevant.

6.0 Policy & Context

6.1. Local Planning Provisions

The Meath County Development Plan 2013 – 2019 is the relevant Statutory Plan under which the site is situated on lands zoned 'A1 – Existing Residential' and is identified as Phase 1 lands. Under Variation No. 2 of the Meath County Development Plan, 2016, introduced written statements, objectives and maps for urban centres that were previously subject to a Local Area Plan, including Slane (Note: Slane Written Statement, Volume 5).

6.2. Natural Heritage Designations

6.2.1. The nearest Natura 2000 sites are:

- River Boyne & River Blackwater SAC (Site Code: 002299) which is located c452m to the south of the site at its nearest point.
- River Boyne & River Blackwater SPA (Site Code: 004232) which is located c621m to the south of the site at its nearest point.

7.0 Relevant Referral Cases

7.1. There are a number of previous Board decisions which relate to change of a dwellings residential use. Notwithstanding, I can find no relevant referral cases in the ABP's referrals database whereby a change of use of a residential dwellings tenure was the basis of the question before the Board.

8.0 The Referral

8.1. Referrer's Case

8.1.1. The referrer's case can be summarised as follows:

- The referrer wishes to appeal the determination of the Planning Authority declaring that the proposed developments associated with P.A. Ref. No. LB160659, LB180519 and LB190293 as being 'Exempt' Development under Section 5(3)(a) of the PDA, 2000, as amended.

- The referrer contends that the development to which this referral case relates was not permitted under the grants of permission relating to the residential development on the subject site. As such this development is inconsistent with the grants of permission for residential development at the subject site.
- Part 5 housing are a distinct and discrete form of development which was not considered during the course of the planning process. Therefore, they argue require a separate grant of permission prior to proceeding.
- Part 5 of the Planning and Development Act 2000, as amended by the Urban Regeneration and Housing Act, 2015, provides a detailed description as well as defines Part 5 developments. It is contended that this alone differentiates and distinguishes such developments from other types of conventional residential development as provided for under the PDA.
- Under the PDA development requires a detailed characterisation and description during the planning process to determine all aspects of the consent process.
- The mere fact that the designation of social and affordable housing requires specific provisions within the Planning Code in order to distinguish it and to define it legislatively should clearly necessitate that it be discreetly identified in the planning application in order that it receives discrete consideration during the planning process. This should proceed before any grant of permission and this has not occurred in this case.
- The lack of this distinction in use and ability of the appellants to make comment upon it has greatly prejudiced them due to their lack of awareness and the obscurity of the actual underlying proposals and the intentions for the use of the development units. It is further contended that it has prejudiced them in terms of seeking redress in the court system.
- There was no scope for the referrers to consider the proposal or variations to the development which might have ensured better outcomes, ensure better social integration and to provide for the optimal absorption of the intended residential units by the receiving community of Ledwidge Hall Green.
- Due to this there was no forum for which the following issues of concern to the referrers to be considered as part of the determination:

- Over concentration of Part 5 housing at this location.
 - The provision of 100% social/affordable housing units at the proposed site is not desirable in terms of social integration between the existing residents of Ledwidge Hall and Ledwidge Hall Green as well as the prospective residents of the proposed development site.
 - No consideration of whether the difficulties created by the proposed 100% social/affordable housing development. Including the future marketability of the current dwellings.
 - No consideration was given to the provision of an alternative means of access via a different public roadway to serve this development together with separate common areas and green areas with the Ledwidge Hall and Ledwidge Hall Green.
- Part 5 of the PDA constitutes a defined and unique class of development which requires consideration and adherence to discrete statutory provisions. As such it should be disclosed during the planning process.
 - It is argued that this development is not 'exempt', that the planning process was fundamentally flawed and there is no scope for this development under the grants of permission relating to this site.

8.2. Planning Authority Response

8.2.1. None.

8.3. Owner/occupier's response

8.3.1. The owner of the site's response can be summarised as follows:

- This referral is not grounded in planning matters including those relating to the proper planning and sustainable development of the area. As such it is requested that the Board dismiss this case.
- The construction of these needed dwellings is ready to commence.

- The Planning Authority were correct in their findings that the use of the dwellings is a permitted residential development to provide entirely for social and affordable housing. This does not constitute 'development' that is 'not exempt'.
- This referral relates to 'use' and does not relate to physical or operational development as the use of the buildings does not require any works as defined under the PDA, 2000, as amended.
- Does the use comprise a material change of use. In relation to this it is contended that the changing of tenure of a house does not amount to a material change of use, i.e. a residential house occupied for residential purposes is a residential use regardless of tenure.
- In terms of the proper planning and sustainable development of the area for an 'impact' to arise it must be a 'material' impact and that the materiality of the change is assessed by reference to its effects.
- There is no change to the building assemblage, and this remains unaltered with the proposed uses in place.
- 'Tenure' is not mentioned in the definition of a house.
- There is no definition of 'social' or 'affordable' housing in the PDA, 2000, as amended.
- The use of the houses for 'social and affordable' occupants as opposed to 'private' does not constitute a material change of use and set against any reasonable test of materiality there is no difference in terms of land use planning which is what we are restricted to considering in this case. There is no change of use, much less a material change of use as the buildings will be used for the purposes for which they are designed, i.e., houses.
- The referrer would have to show a planning impact which would justify the determination that a 'material' change of use will occur.
- There is no planning impact simply by the nature of the tenure of the occupant and primarily the buildings will still be used as houses with no change in terms of traffic, levels of activity or noise other such disturbance.

- A change of use application for such a development is not required and not tenable. It is hard to imagine a scenario where by a site notice is erected outside a house saying in effect that this house is to be occupied by someone that cannot afford to buy a house and the occupants will be of a different 'use class' than other people.
- The contention that Part V of the PDA 2000, as amended, intentionally differentiates, and distinguishes social and affordable housing such that it becomes a distinct and unique form of development in its own right is an interpretation that is simply not grounded in legislation.
- If there was an intention to have made a distinction between social and affordable housing with private housing it would have been done in legislation.
- Part V exists only to ensure a minimum provision of social and affordable housing which is an over-arching Government objective regarding social inclusiveness and equality.
- If social and affordable housing was differentiated it would be discriminatory.
- The planning application relating to the site were validly made and adjudicated upon. Their development descriptions referred to the number and form of dwellings proposed. It is irrelevant whether or not the dwellings are sold to the private market, leased to tenants through to made available for social and affordable housing provisions. The key issue is that the dwellings are occupied for residential purposes irrespective of tenure.
- The parent grant of permission P.A. Ref. No. LB160659 prior to the lodging of the commencement notice entered into an agreement with the Local Authority for the provision of social and affordable housing. Such a condition allows for the Local Authority to agree the whole scheme be used for social and affordable housing. This point is noted by the Planning Authority in their referral report.
- Where Part 8 Applications are made there are no specification made to tenure.
- It is not a requirement of residential developments like this to specify tenure when being applied for planning permission.
- Part V forms part of the assessment of all multi-unit residential applications.

- Planning Authorities have used their CPO powers to acquire housing, refurbish them and to use them for social housing. This does not require planning permission to change the residential use to social and affordable housing purposes.
- Call for Housing 2020 – A National Call to Property Owners and Developers. This initiative does not require planning permission.
- To decide different from that the Planning Authority on this matter would be discriminatory and would set an undesirable precedent that would seriously jeopardise the ability to deliver increased housing supply nationwide.
- The uses at the stated residential development for the purposes of social and affordable houses is not development.

9.0 Statutory Provisions

9.1. Planning and Development Act, 2000

9.1.1. Section 2(1) of the Act states the following:

‘development’ has the meaning assigned to it by Section 3.

‘structure’ means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.

‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’

‘house’ means a building or part of a building which is being or has been occupied as a dwelling...

‘habitable house’ means a house which –

(a) is used as a dwelling

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied

‘exempted development’ has the meaning specified under Section 4...

9.1.2. Section 3(1) 'In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

9.1.3. Section 4 – Exempted Development - Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including but not limited to:

- Section 4(1)(f) providing for 'development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity'.

9.1.4. Section 4(4) – Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

9.1.5. Part V relates to housing supply and applies where:

- the land is zoned for residential use or for a mixture of residential and other uses,
- there is an objective in the Development Plan for the area for a percentage of the land to be made available for social and/or affordable housing, and
- the proposed development is not exempt from Part V.

9.2. **Planning and Development Regulations, 2001.**

9.2.1. Article 6(1) - Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

9.2.2. Article 9(1) - This article sets out restrictions on exemption to which Article 6 relates e.g. if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act (subsection (a)(i)), endanger public safety by reason of traffic hazard or obstruction of road users (subsection (a)(iii)) or consist of or comprise the extension,

alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use (subsection (a)(viii)).

9.2.3. Schedule 2, Article 6, Part 1, Class 14 sets out the types of change of use development that are exempt together with conditions and limitations.

10.0 Assessment

10.1. Is or is not development

- 10.1.1. The question relates to the use of dwelling units permitted planning permission pursuant to P.A. Ref. No.s LB160659, LB180519 and LB190293 for social and affordable housing. Firstly, it is necessary to establish whether or not this constitutes development. Section 3(1) of the Planning and Development Act, 2000, as amended defines 'development' as follows: *"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."*
- 10.1.2. Having carried out an inspection of the site I observed that the site consists of green field land that is located on the northernmost end of the Ledwidge Hall residential scheme. Based on the planning history of the site under P.A. Ref. No. LB160659 planning permission was granted for a total of 23 no. two storey dwelling houses with these of mixed detached and semi-detached built forms on the 17th day of November, 2016.
- 10.1.3. This grant of planning permission was subject to conditions including and not limited to Condition No. 4 which stated inter alia that: *"prior to the lodgement of a commencement notice within the meaning of Part 11 of the Building Regulations 1997, the developer shall enter into an agreement with the Planning Authority providing for the requirements of Section 96(3) of the Planning and Development Acts, as amended, in respect of the proposed development, in accordance with the requirements of the Meath Development and Housing Strategy"*. The stated reason for this condition is: *"to comply with the requirements of Part V of the Planning and Development Act, 2000-2015"*.
- 10.1.4. On the 4th day of October, 2018, under P.A. Ref. No. LB180519 planning permission was granted subject to conditions for 16 no. 2-storey 3-bedroom semi-detached

dwellings on site No.s 13 to 28 including in lieu of 11 no. 4-bedroom 2-storey detached dwellings on site No.s 13 to 23 inclusive approved under P.A. Ref. No. LB160659. Under Condition No. 8 of the notification to grant permission the requirements of Condition No. 4 of P.A. Ref. No. LB160659 were reiterated.

- 10.1.5. On the 7th day of May, 2019, planning permission was granted subject to conditions for a change of house type only on approved sites 1 to 6 inclusively of the residential scheme granted planning permission pursuant to P.A. Ref. No. LB160659 from 6 no. 2-storey 4-bedroom detached dwellings to 6 no. detached bungalows comprising 3 no. single storey 3-bedroom detached dwellings on site no. 1 to 3 and 3 no. 2-bedroom detached single storey dwellings on sites No.s 1 to 4 respectively. Under Condition No. 4 of the notification to grant permission the requirements of Condition No. 4 of P.A. Ref. No. LB160659 were reiterated.
- 10.1.6. In relation to this referral question, whilst carrying out of works on, in, over and under the subject land will be required to construct the permitted dwellings for which it is now proposed to be used in their entirety for 'social' and 'affordable' residential use upon completion no material alterations are proposed to the permitted dwellings to facilitate this use.
- 10.1.7. Further, no type of residential tenure was denoted by the applicant of the above grants of planning applications relevant to the subject site and the type of dwelling units that were sought related detached and semi-detached dwelling units only nor is it a requirement for this to be specified as part of a planning application for this type of residential development.
- 10.1.8. Section 3 of the Planning and Development Act, 2000, requires that in order for change of use to constitute development, it must be a material change of use. There is no statutory definition of 'material change of use'.
- 10.1.9. It is generally accepted that this matter is considered in relation to the degree of a change that would arise and the associated impacts of the same, if any, which are determined on the individual merits of a case.
- 10.1.10. I also note the test put forward by Barron, J, in *The County of Galway v Lackagh Rock Ltd* [1984 21 MCA] in the determining of whether or not a material change of use had occurred. In this case, Barron, J, considered that: 'in determining whether or not a present use was materially different from a use being made on the appointed day

one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different than the present use must be equally materially different.’

10.1.11. In this particular referral case it is clear in my view that the question before the Board relates solely to use of the dwellings permitted under P.A. Ref. No.s LB160659, LB180519 and LB190293 for a specified type of tenure. The dwellings would still be used and function as individual dwelling units within their defined curtilages. As such I consider that no material change of use would occur internally or externally for each of the dwelling units whether considered individually or in combination with one another whether in private or social/affordable tenure. Moreover, in terms of planning considerations the nature of use and function of the permitted dwelling units as social and affordable housing does not give rise to any different substantive planning considerations that would require additional consideration to that of a dwelling house that was in private tenure when being determined as a proposed residential development.

10.1.12. For example, there are no differentiating local through to national planning standards or guidance that Planning Authority’s in their determination of a multi-unit residential schemes to which the Part V provisions are applicable to or is tenure referred to under planning legislation in the given definitions of a house or habitable house.

10.1.13. What is however, provided for under Part V of the Planning & Development Act, 2000, as amended, is that it is a requirement of planning permission for specified new housing developments that a certain portion of the land - up to 20% - be reserved to meet the need for social and affordable housing.

10.1.14. Part V of the Act enables local authorities to achieve this strategy by requiring housing developers to enter into an agreement, with the appropriate Local Authority, in this Meath County Council, to provide houses, fully or partially serviced sites, or land or an equivalent monetary contribution for the purposes of Social and Affordable Housing. It also sets out the terms of such agreements and the way compensation will be decided.

10.1.15. Under the P.A. Ref. No.s LB160659, LB180519 and LB190293 Part V was provided for under the conditions attached to the each of the notifications to grant of

planning permission for the proposed developments sought under each of these planning applications.

10.1.16. Accordingly, I consider the change of tenure of a dwelling unit is not a material change of use under the definition of Section 3(1) of the Planning and Development Act, 2000, as amended.

10.2. Is or is not exempted development

10.2.1. As concluded above there is no material change of use proposed as the dwelling units subject of this question would be used a single dwelling units which is their permitted use under the grants of permission were P.A. Ref. No.s LB160659, LB180519 and LB190293 to be implemented in part or fully. As such Article 6(1) of the Planning and Development Regulations, 2001, as amended, which sets out that subject to Article 9 of the said regulations, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, I consider are not applicable.

10.2.2. Further no external and/or internal alterations are proposed to facilitate the proposed use of the permitted dwelling units for social and affordable housing.

10.2.3. In relation to Article 9(1) of the Planning and Development Regulations, 2001, as amended, this sets out restrictions on exemption to which the aforementioned Article 6 relates. These restrictions are wide ranging from the carrying out of such development would contravene a condition attached to a grant of planning permission under the Act, would be inconsistent with any use specified in a permission under the Planning and Development Act, 2000, as amended. In this regard I note:

- Subsection (a)(i) - From an examination of the planning history of the subject site that the use of the dwellings for social and affordable dwellings is in part consistent with the requirements set out in the notifications to grant permission for P.A. Ref. No.s LB160659, LB180519 and LB190293 sets out requirements to comply with Part V and which crucially sets out that the typology of dwelling units to be provided. Therefore the principle of the dwellings to accommodate social and affordable development is

provided for. The conditions attached do not dictate the tenure of any of the dwellings individually, in part or in-combination.

- Subsection (a)(ii) – The proposed development does not consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.
- Subsection (a)(iii) - There is no evidence to support that the change in type of tenure of a dwelling unit would give rise to any endangerment public safety by reason of traffic hazard or obstruction of road users.
- Subsection (a)(iv) – The proposed development does not include a porch (Class 7) and there is no construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- Subsection (a)(v) – The proposed development does not consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies.
- Subsection (a)(vi) – The proposed development would not interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- Subsection (a)(vii)- The proposed development gives rise to no built heritage issues.
- Subsection (a)(viiB) – The proposed development gives rise to no new appropriate assessment considerations over and above those examined as part of the

determination of the residential developments sought under P.A. Ref. No.s LB160659, LB180519 and LB190293.

- Subsection (a)(viiC) - There are no natural heritage areas in the immediate and wider vicinity.
- Subsection (a)(viii), (ix), (x) and (xii) – The proposed development relates to a greenfield site and therefore there are no works authorised or unauthorised thereon.
- Subsection a(xi) - There is no evidence to support that the subject site contains a public right of way or that if one did exist that the question before the Board would result in any material impact on it over and above the permitted development under P.A. Ref. No.s LB160659, LB180519 and LB190293.

10.2.4. In relation to Article 9(1)(b) I note that the site does not form part of any land subject to a special amenity area order.

10.2.5. I can find no precedent case in the Boards database that would provide precedent where a different type of tenure of an individual dwelling unit in the circumstances described by the referrer was considered to be a material change of use.

10.2.6. Based on the above considerations, the use for consideration under this question before the Board under this referral case constitutes exempted development.

10.3. **Appropriate Assessment**

10.3.1. Having regard to the nature and scale of the development which is the subject of this referral and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a

10.3.2. Appropriate Assessment Having regard to the nature and scale of the development which is the subject of this referral and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

10.4. **Other Matters Arising**

10.4.1. The referrer raises several concerns that fall outside of the Board remit to adjudicate upon as part of their determination of this referral case.

10.5. Conclusion

10.5.1. Having regard to the foregoing, I consider that the proposed development would not comprise of a material change in the use of dwelling units granted permission under P.A. Ref. No. LB160659, LB180519 and LB190293 by way of their tenure use as social and affordable dwelling units. I also do not consider there are any restrictions that would de-exemption the proposed development. Therefore, I consider the proposal would comprise development and exempt development.

11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the imminent use of development permitted under P.A. Ref. No. LB160659, LB180519 & LB190293 as exclusively Part 5, Planning and Development Act, 2000, as amended, social and affordable housing is or is not development or is or is not exempted development:

AND WHEREAS Mairead Phelan & Others requested a declaration on this question from Meath County Council and the said Council issued a declaration on the 4th day of February, 2021, stating that the matter was development and was exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 1st day of March, 2021:

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, as amended,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Part V of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site, and,
- (g) the nature and scale of the proposed use.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The imminent use of the dwelling units permitted under the parent grant of permission P.A. Ref. No. LB160659 and subject to the modifications set out under the grants of permission P.A. Ref. No. LB180519 and LB190293 as exclusively Part 5, Planning and Development Act, 2000, as amended, does not constitute a material change of use, and is therefore development that is exempted development under Part 3(1) of the Planning and Development Act, 2000, as amended.
- (b) The use referred to does not come within the scope of Article 10(1) of the Planning and Development Regulations, 2001, as amended
- (c) None of the restrictions on exemption set out under Article 6 and Article 9(1) of these Regulations apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the imminent use of development permitted under the parent grant of planning permission P.A. Ref. No. LB160659 and subject to the modifications set out under the

grants of permission P.A. Ref. No. LB180519 and LB190293 as exclusively Part 5, PDA, housing is not development and is exempted development.

Patricia-Marie Young

Planning Inspector

29th day of September, 2021.