



An  
Bord  
Pleanála

## Inspector's Report ABP 313638-22

### Question

Whether the use of development "Sarsfield Heights" (PA Ref 1704877 / PL04.249194, PA Ref 185275 & PA Ref 2140139 / ABP-311519-21) for institutional purposes and as predominantly/exclusively Part 5, P.D.A., housing is or is not development and is or is not exempted development.

### Location

Sarsfield Heights, Doughcloyne,  
Sarsfield Road, Cork.

### Declaration

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

R705/22

Applicant for Declaration

Eagle Valley Residents Association

Planning Authority Decision

Declared Exempted Development.

### Referral

Referred by

Eagle Valley Association of Residents  
& Home Owners

<b>Owner/ Occupier</b>	O'Brien O'Flynn Construction Umlimited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	23 <sup>rd</sup> January 2023.
<b>Inspector</b>	Brendan Coyne.

## Contents

1.0 Site Location and Description .....	4
2.0 The Question .....	4
3.0 Planning Authority Declaration.....	4
3.1. Declaration.....	4
3.2. Planning Authority Reports .....	5
4.0 Planning History.....	9
5.0 Policy Context.....	12
5.1. Development Plan.....	12
5.2. Natural Heritage Designations .....	15
6.0 The Referral.....	15
6.1. Referrer's Case .....	15
6.2. Planning Authority Response .....	39
6.3. Owner/ occupier's response ( <i>where not the referrer</i> ).....	39
6.4. Further Responses.....	<b>Error! Bookmark not defined.</b>
7.0 Statutory Provisions.....	39
7.1. Planning and Development Act, 2000 .....	39
7.2. Planning and Development Regulations, 2001 .....	41
7.3. Other ( <i>as appropriate</i> ).....	<b>Error! Bookmark not defined.</b>
8.0 Assessment.....	46
8.1. Is or is not development .....	46
8.2. Is or is not exempted development .....	51
8.3. Restrictions on exempted development .....	<b>Error! Bookmark not defined.</b>
9.0 Recommendation.....	55

## 1.0 Site Location and Description

1.1. The site (2.5 ha) is located on the western side of Sarsfield Road, the northern side of Eagle Valley Road and the eastern side of Sarsfield Heights Road, c. 5 km south-west of Cork City Centre. The site is accessed via Sarsfield Heights Road, which also serves a commercial unit on its western side. Doughcloyne Industrial Estate adjoins the site's northern boundary. The site contains a residential estate known as Sarsfield Heights. At the time of site inspection, dwellings along the southern section of the site were completed and occupied, and dwellings along the northern section were under construction.

## 2.0 The Question

2.1. An application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) was lodged with Cork City Council by the Eagle Valley Association of Residents and Home Owners on the 17<sup>th</sup> February, 2022.

2.2. The original question put before Cork City Council was stated as follows;

'Whether the use of development "Sarsfield Heights", 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.

2.3. Documentation submitted included the following:

- Section 5 Referral Report, prepared by Eagle Valley Association of Residents & Home Owners
- O.S. Maps

2.4. The Declaration of the Planning Authority has been referred to An Bord Pleanála for review by the Eagle Valley Association of Residents & Home Owners.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

On the 22<sup>nd</sup> April 2022, Cork City Council issued a decision declaring that –

- (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 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.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Report

The basis for the Planning Authority's decision is summarised under the following headings;

#### Development

- The referral has been submitted by the Eagle Valley Association of Residents & Home Owners.
- Eagle Valley residential estate adjoins the subject site.
- The first issue for consideration is whether the matter at hand is or is not development.
- Section 3(1) of the Planning and Development Act states that: 'development means, *except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.*
- The referral has queried whether the use for 'institutional purposes' and as 'predominately/exclusively Part V P.D.A. Housing is or is not development'.
- It is stated that the existing use is 72 residential units including approximately 6 units under Part V obligations'.

- The proposed use is 65 or more units to be Part V units and under institutional ownership/tenure'.
- It is outlined that the 'proposed institutional ownership' is the Respond Housing Association.
- This proposed use has not been substantiated by the referring party/residents' association.
- The subject matter of this Section 5 referral is the 'use' of the development.
- The permitted scheme is for residential development, comprising 69 units in total, with each residential unit coming within the definition of 'house' in Section 2 of the Act.
- The question is whether there is a material change of use of the residential units and/or land.
- The site is located within the southern environs of Cork City.
- The site is zoned SE-R-12, which is residential zoning. This zoning has the following specific development objectives:

*Medium A density residential development. Any proposals for this site will include a detailed traffic impact assessment and will address the need for road and junction improvements in the vicinity. The objective also notes that Airport Public Safety Zones and Obstacle Limitation Surfaces Objective applies.*

- There have been several grants of planning permission on the site.
- A residential scheme is under construction, with some housing units and ground works at an advanced stage of construction.
- It was subject to a number of conditions, including a condition re. Part V of the Planning and Development Act 2000 (as amended).
- It does not appear that any of the units are presently occupied. Accordingly, the use has not yet commenced.
- The scheme was permitted as a 'general housing development' (ref '*Ministerial Planning Guidelines Regulation of Commercial Institutional Investment in Housing*'). The authorised use is residential.

- The grants of planning permission for this estate/site pre-date the Regulation of Commercial Institutional Investment in Housing brought in in May 2021.
- Other than Part V conditions which are for the provision of social housing support, there were no conditions attached to the grants of planning permission restricting the use of the permitted units to persons of a particular class or description.
- Respond Housing Association is an Approved Housing Body (AHB).
- An AHB is an independent, not-for-profit organisation that provides affordable rented housing for people who cannot afford to pay private sector rents or buy their own homes; or for particular groups, such as older people or homeless people.
- Section 6 of the Housing (Miscellaneous Provisions) Act, 1992, enables housing authorities to assist AHBs in providing housing.
- Respond Housing Association would not come within the scope of being a 'corporate entity'.
- If Respond Housing Association were the owners, this would not be classified as being a 'commercial, institutional investment'.
- The use of the development based on the information provided is not deemed to be an institutional use.
- In the planning legislation, the use of houses by an approved housing body is not specified as a separate class of use.
- With regard to Part V of the Planning and Development Act 2000 as amended, conditions were attached to the grants of planning permission under Section 96 of the Act.
- Section 96 relates to the provision of social and affordable housing.
- The Part V conditions continue a residential use, and the occupancy of any of the houses to comply with Part V requirements does not result in a change of use.
- The Developer would need to comply with the conditions attached to the grant of planning permission.
- There is no evidence that the development would be predominately/exclusively for Part V housing.

- It is considered that the proposed use of the development is residential, and the use would fall within the permitted use.
- There would be no substantial change in the character in planning terms, and there would be no material impacts on the proper planning and sustainable development of the area. This means that there would be no change in the use of the development.
- The difference between the authorised use of this development, and the proposed use, is not deemed significant in planning terms and is therefore not material.
- It is considered that the subject matter of the referral does not result in a material change of use of the development as permitted.

#### Environmental Assessment & Restrictions on Exemption

- A number of restrictions on exemption are set out in Section 4(4) of the Act and Article 9 of the Regulations.
- This referral relates to the use of the development and does not query any works.
- Having regard to the contents of Article 103 and Schedule 7 of the Planning and Development Regulations 2001, as amended, it is considered that the proposed development by reason of its nature, scale and location, would not be likely to have significant effects on the environment. Accordingly, it is considered that environmental impact assessment is not required.
- The relevant European sites are the Cork Harbour S.P.A. (Site Code 004030) and the Great Island Channel S.A.C. (Site Code 001058).
- Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development, it is considered that the proposed development would not affect the integrity of these European sites.
- Accordingly, it is considered that appropriate assessment is not required.

#### Conclusion & Recommendation

The Planning Authority, in considering this referral, had regard particularly to -

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,



(b) The planning history of the site.

(c) Ministerial Planning Guidelines under Section 28 of the Planning and Development Act 2000 (as amended), Regulation of Commercial Institutional Investment in Housing and Circular Letter N.R.U.P. 03/2021

The Planning Authority concluded that -

(a) the permitted use of the development (permitted under planning Reg. Ref. Nos. 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 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 that the development will be used predominately/exclusively Part V, P.D.A. housing.

### 3.2.2. Other Technical Reports

None

## 4.0 Planning History

**P.A. Ref. 2140139** Permission GRANTED on the 26/10/2021 to O Brien and O Flynn for the proposed construction of 4 no. residential units at Doughcloyne, Sarsfield Road, Wilton, Cork. The proposed development comprises 2 no. additional apartments, 2 no. additional duplex apartments and all associated ancillary development works, including access roads, parking, footpaths, landscaping, 1 no. bin stores relocation of E.S.B. substation and all ancillary site works. Access to the proposed development will be via the existing entrance and access on to the Eagle Valley Road. The development will include modifications and partial change of layout to residential development permitted under ABP Ref. PL04.249194 and Cork County Council Reg. 18/05275.

Noted Condition includes the following;

C.9 Prior to the commencement of development, or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the applicant or other person with an interest in the land to which the application relates, shall enter into an agreement in writing with the Planning Authority in relation to the provision of social housing in accordance with the requirements of Section 96 of the Planning and Development Act 2000, as amended unless an exemption certificate shall have been applied for, and been granted, under Section 97 of the Act, as amended.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

**P.A. Ref. 185275** Permission GRANTED on the 22/10/2018 to George Maloney, Joint Statutory Receiver of O'Brien and O'Flynn Unlimited Company (In Receivership) for the proposed construction of 27 no. residential units comprising 12 no. additional apartments, 12 no. additional duplex apartments and change of design to 3 no. previously permitted townhouses and all associated ancillary development works including access roads, parking, footpaths, landscaping, 2 no. bin stores, drainage and amenity areas. Access to the proposed development will be via the existing entrance and access on to the Eagle Valley Road. The proposed development will include modifications and partial change of layout to residential development permitted under An Bord Pleanála Reg. PL04.249194 and Cork County Council Reg. 17/4877.

Noted Condition includes the following;

C. 36 Prior to the commencement of development, or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the applicant or other person with an interest in the land to which the application relates, shall enter into an agreement in writing with the Planning Authority in relation to the provision of social housing in accordance with the requirements of Section 96 of the Planning and Development Act 2000, as amended unless an exemption certificate shall have been applied for, and been granted, under Section 97 of the Act, as amended.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

**P.A. Ref. 174877 & ABP Ref. PL04.249194** Permission GRANTED ON APPEAL on the 05/02/2018 to George Maloney – Joint Statutory Receiver of O'Brien & O'Flynn Unlimited Company (In receivership and liquidation) for the proposed construction of 73 no. residential units and all associated ancillary development works including access roads, parking, footpaths, landscaping, drainage and amenity areas. Access to the proposed development will be via the existing entrance and access onto the Eagle Valley Road.

Noted Condition includes the following;

C.2 This permission permits the development of 41 number units only. Blocks identified as numbers 8 and 15 shall be omitted. These blocks shall be replaced with blocks identical to blocks numbered 6 and 10.

Reason: In the interest of clarity

c.14 Prior to the commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area

## 5.0 Policy Context

### 5.1. Development Plan

**Cork City Council Development Plan 2022-2028** is the statutory plan for the area. The following provisions are considered relevant:

**Zoning:** The site is zoned **ZO 02** New Residential Neighbourhoods (Map 08), where the zoning objective is 'To provide for new residential development in tandem with the provision of the necessary social and physical infrastructure'.

**Section ZO 2.2** This zone covers primarily greenfield, undeveloped lands for new sustainable residential areas. Development in this zone, while primarily residential, must provide an appropriate mix of housing types and tenures along with the amenity, social, community and physical infrastructure required to promote compact growth, balanced communities and sustainable, liveable communities.

**Section ZO 2.3** Uses set out under ZO 1 Sustainable Residential Neighbourhoods are appropriate under this zone subject to such uses supporting the creation of sustainable communities and not conflicting with the primary objective of this zoning.

**Objective 3.2 A Diverse, Inclusive and Equal City** - Cork City Council will seek to ensure that Cork is an inclusive City and meets the needs of all by:

- a. Providing a land use planning system that ensures an appropriate distribution of land uses, infrastructure and services to give equal access to all residents to live, work, educate, recreate and avail of other services in terms of range and quality;
- b. Consciously considering specific population groups in the design of neighbourhoods, places, buildings, streets and spaces to meet the needs of all citizens;
- c. Consciously considering specific population groups in the development of planning policy, strategies and frameworks with an emphasis on young people, old people and people with disabilities;
- (d) Promoting measures that reduce concentrations of social inequality between neighbourhoods.

### **Section 3.27 Delivering a Good Mix of Housing**

**Objective 3.12 Special Categories of Housing** - Cork City Council will actively seek to meet the housing need of special categories of housing by:

a. To directly provide and also support the development of suitable accommodation to meet the particular housing needs of Cork City's Travelling Community through the planning process and development of new sites, the extension of existing sites and the refurbishment of existing sites in accordance with the needs identified in the Travellers Accommodation Plan. Specific development locations are specifically identified in Table 3.7 and accommodation for Travellers will also be suitable on lands zoned for purposes that accommodate residential uses, including the ZO 1: Sustainable Residential Neighbourhoods and ZO 20 City Hinterland land use zoning objectives:

b. Encouraging and supporting, in conjunction with Túsla and other relevant agencies, the provision of Domestic Violence Refuge which seek to provide appropriate Domestic Abuse Crisis Intervention Services in Cork;

c. Supporting the provision of homeless accommodation and / or support services throughout Cork City;

d. Supporting the provision of housing for people with intellectual disability and / or autism consistent with the National Disability Act and the policy on congregated settings.

**Objective 3.6 Housing Mix** - Cork City Council will seek to:

a. Implement the provisions of the Joint Housing Strategy and HNDA as far as they relate to Cork City;

b. Encourage the development of an appropriate mix of dwelling types to meet target residential densities, utilising a range of dwelling types and density typologies informed by best practice (as illustrated in "Density Done Well" in the Cork City Density Strategy, Building Height and Tall Building Strategy) with combinations of houses, stacked units and apartments;

c. Within all new residential developments it will be necessary to ensure an appropriate balance of housing tenure and dwelling size to sustain balanced and inclusive communities, including a balance of family sized units and smaller dwellings tailored

to suit the location (please refer to Chapter 11: Placemaking and Managing Development for those standards);

d. Deliver at least 20% below-market priced housing across Cork City and ideally within each new residential neighbourhood;

e. Encourage the provision of housing for one and two person households in all neighbourhoods to meet the needs of all age groups, including providing for downsizing to release family housing units;

f. Update Development Plan policy as necessary to reflect emerging national guidance with regard to housing standards.

**Objective 3.10 Housing and Community for Older People** - Cork City Council will actively seek to meet the housing and community needs of older persons by:

a. Supporting mainstream housing options for older people and persons with disabilities (including but not limited to physical, mental health) consistent with NPO 30 of the NPF, and RPO 182 of the RSES;

b. Supporting the adaptation of existing homes;

c. Promoting opportunities for right sizing / downsizing by older people within their neighbourhoods to enable sustainable social networks and support to be maintained;

d. Supporting the provision of integrated housing and community development specifically designed for older people in accessible locations that allow for wider engagement with existing communities;

e. Integrating community facilities within a range of housing designed for the elderly such as assisted living homes and clusters (with support), transition clusters (combining mainstream and supported living) and step down units (with care), and specialised care homes;

f. Supporting the development of lifetime housing (Lifetime Homes Standard);

g. Supporting the development of housing designed to Universal Design Standards.

The Glossary provides a definition of the following:

**Affordable Housing** Owner-occupied or shared ownership housing provided at a price below the market value.

**Joint Housing Strategy** A joint strategy for Cork City Council and Cork County Council to address the housing needs of the existing and future population of Cork City and County.

**Social Housing** Rented housing provided either by the Local Authority or an Approved Housing Body.

## 5.2. Natural Heritage Designations

5.2.1. The nearest Natura 2000 European Sites to the referral site are as follows:

- Cork Lough Proposed Natural Heritage Area (Site Code: 001081) approx. 2 km north-east of the site.
- Lee Valley Proposed Natural Heritage Area (Site Code: 000094) approx. 2.8 km north-west of the site.
- Shournagh Valley Proposed Natural Heritage Area (Site Code: 000103) approx. 5.5 km north-west of the site.
- The Cork Harbour Special Protection Area (Site Code: 004030), approx. 4.8 km north-east of the site.
- Douglas River Estuary Proposed Natural Heritage Area (Site Code: 001046) approx. 4.8 km to the north-east of the site.

## 6.0 The Referral

A submission was made by the referrer, seeking a review by the Board of the Planning Authority's declaration, dated 24<sup>th</sup> April 2022, and is summarised under the headings below accordingly:

### 6.1. Referrer's Case

- Eagle Valley Association of Residents & Home Owners considers that at least 65 of the 69 houses in Sarsfield Heights will be used for social housing under the management of Respond Housing Association and will not be available for sale to the private market. This belief is based on:

- Cllr. Thomas Moloney's Facebook post on May 4th, 2022, stating that 22 units in Sarsfield Heights are under Cork City Council's Choice Based Letting System.
- Respond Housing's tweet on October 5th, 2021, announcing that Minister Darragh O'Brien, TD, visits the site to deliver 65 new social homes at Sarsfield Road.

(refer to Section 4.1, Appendix 1 of the submission - Sources of Information on the scope of Social Housing at Sarsfield Heights for more details.)

## 6.2. Change of Use

- Section 3(1) of the Planning and Development Act, 2000, as amended, defines 'development' as 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, except where the context otherwise requires.

### 6.2.1. Establishing the Permitted Use of the Development from the Planning

- In PL29/8/279 *McMahon v Dublin Corporation* 1997 1 ILRM 227, Barron J held that: "in the absence of explicit reference in the planning permission to a permitted use, regard must be had to the use for which the structure is designed, i.e., the use which was objectively intended for the structure having regard to the relevant planning documentation."
- The use of the development is inferred objectively by reference to the submitted drawings and documentation, as well as the terms of the permission itself.
- It is submitted that the permitted planned use and tenure nature of the units was clearly established during the successive applications for the permissions (PA Ref 174877/PL 04.249194, PA Ref 85275, PA Ref 2140139/ABP-311519-21). T
- All three planning applications presented the Sarsfield Heights development as a 69-unit mixed tenure development, combining social housing, affordable housing and residential units for sale to individual purchasers of which:
  - Six of the residential dwellings were designated for use as Part V housing units.



- 59 no. units would be for sale to a range of purchasers as private residential homes.
- 4 no. units (No. 66-69 in PA Ref 2140139) were identified as family homes for use as the permanent private residence of the Applicants, Finbarr, Tony, and Patricia 'Flynn, O'Brien O'Flynn Construction Unlimited, for the purposes of determining the level of Development Contribution payable.
- At the final grant of PA Ref 2140139 on 2/9/2021, Condition 9 was added relating to Part V requirements. However, unlike the previous grants, there were no planning documents in the public file.

Section 3 of the submission provides extracts from Planning Documents relating to the use and tenure of the permitted development, highlighting the following;

- Question 17 in the Planning Application forms indicated that the houses would be for sale and not for use as long-term or short-term rental. Refer to the following;
  - Section 3.1.1 of the submission - P.A. Ref. 174877 Application Completed Form 11th April 2017
  - Section 3.2.1 of the submission - P.A. Ref. 185275 Application Completed Form 18th May 2018
- The Design Statements accompanying the Application forms described the mixed tenure nature of the development. Refer to the following;
  - Section 3.1.2 of the submission - P.A. Ref. 174877 - Application Design Statement, Statement of Housing Mix, Mixed Tenure, 11th April 2017.
  - Section 3.1.4 of the submission - P.A. Ref. 174877 - Applicants Further Information Response, 18 July 2017, identifying the location of 6 no. Part V Units.
  - Section 3.2.1 of the submission - P.A. Ref. 185275 - Application Design Statement, 18 May 2018.
- Part V Units were identified in both the Application Maps and Housing Officer Reports during the planning process. Refer to the following;
  - Section 3.1.3 - P.A. Ref. 174877 Application Map showing the proposed location of 7 Part V Units

- Section 3.2.1 - P.A. Ref. 185275 Application Map of Proposed Part V Housing, 18 May 2018
- Section 3.1.5 - 27/7/2017 Cork County Council Housing Officer's Report on Part V Proposals
- Section 3.2.1 - 7/6/2018 Housing Strategy Officer's Report on Part V Proposals
- Section 3.2.2 - 19/6/2018 Housing Engineers Report
- It appears, therefore, that Sarsfield Heights was designed for, and intended for use as, private residential accommodation, without any limitation as to the type of occupant and was not intended for, nor designed for use by, only one category of resident.

#### 6.2.2. The Provision of Care

- As stated on Cork City Council's website ([www.cb.corkcity.ie](http://www.cb.corkcity.ie)) Approved Housing Bodies (AHBs) are independent, not-for-profit organisations that provide housing for different needs, such as families on low incomes, households with special needs, and homeless persons.
- AHBs work in partnership with Local Authorities and take nominations from the Local Authority to fill available accommodation provided by an AHB.
- The primary objective of the Respond Housing Association is to serve the most vulnerable groups in society who are referred to Respond via social service providers (<https://www.respond.ie/> and <https://respondsupport.ie/>).
- Details provided of how Respond Housing Association is Ireland's leading housing association, whose aims are as follows;
  - Establish and maintain vibrant, socially integrated communities rather than simply providing just shelter or accommodation.
  - Advance education among residents of our estates
  - Promote other charitable purposes beneficial to the community
  - Prevent and relieve hardship and distress amongst those who are homeless and amongst those in need who are living in adverse housing conditions

Respond believes in providing housing for social investment rather than financial profit. Therefore, it provides housing for some of the most vulnerable groups in society, including those who have lived for long periods in hostels, temporary and insecure accommodation. (<https://www.respond.ie/about-us/>)

- Respond Housing Association has specific conditions for tenants, including being registered on the local authority housing waiting list, having income below a prescribed level, and being in genuine need of housing.
- The rental cost is a combination of the tenant's payment and support from the Local Authority through financial subsidy.
- Tenants must provide income details of all household members annually and when requested.
- The tenancy arrangements are not comparable to private landlord-tenant arrangements.
- Respond Housing Association provides not only housing but also a range of services aimed at meeting the needs of vulnerable groups in society. These services include access to education, childcare, community development programmes, and other supports.
- Respond's personnel team acts as "care workers" to meet the social needs of residents.
- Tenant Relations Officers spend a significant amount of time on estates, providing support to tenants beyond standard property management and maintenance services.
- Tenant Relations Officers help tenants access services, address financial hardship cases, and organise community events.
- The Respond housing units and estate become a place of work for Tenant Relations Officers.
- The management services provided by Respond go beyond property maintenance management services in private estates, where there is more self-management by residents.
- Rebuilding Irish Neighbourhoods (2018) reported repeated emphasis on estate management by local authorities, including Cork City Council.

- The appeal submission contends that the support services provided by Respond Housing Association fall within the scope of "care" defined in Article 5 of the Planning and Development Regulations 2001, as amended, specifically, "*personal care including help with ...social needs*".
- The submission suggests that the use of the development for social housing by AHBs is an institutional type of use where the dwelling becomes a place of residence and acquires a use directly associated with the provision of services to meet the social needs of its residents.

### 6.2.3. **Providing a different Service to a different User Group**

- The Design Statement in Section 3.1.2 of the submission refers to planning application P.A. Ref. 174877 which clearly describes the mixed tenure nature of the development.
- The Design Statement indicates that the development is intended to cater for mixed communities with a range of house types and tenures to meet different housing needs in the local market.
- The development is designed to appeal to a broad range of purchasers, providing affordable homes for both individuals and families.
- Section 3.1.4 of the submission refers to P.A. Ref. 174877, which identifies the location of 6 Part V units located throughout the estate in accordance with the Guidelines for Sustainable Communities.
- Section 3.2.1 of the submission refers to P.A. Ref. 185275, which emphasises the design approach's full regard for supporting sustainable residential communities by promoting social integration and providing for a diverse range of household types, age groups and mix of housing tenures.
- With at least 65 units, Respond's ownership of virtually the entire development limits the development to a single type of purchaser, a corporate entity. It excludes access by individual purchasers, including First Time Buyers.
- At least 65 of the 69 units will be transferred into the ownership of Respond to be used exclusively to house tenants of Respond, which means a change of use has occurred.

- Current government policy does not allow Respond Housing Association tenants to buy their property, and while these units are owned by Respond, they cannot be sold to either the tenants or on the open market.
- This is contrary to the mixed tenure character that was proposed in the application process and contradicts the answers to Question 17 in the original Planning Application Forms for the use of the Sarsfield Heights Scheme, where the use of the House/Site was for sale rather than a short-term let, long-term let, use as a second holiday home or other.
- Submission refers to the following;
  - Section 3.1.1– P.A. Ref. 174877 - Application Completed Form 11th April 2017
  - Section 3.2.1– P.A. Ref. 185275 - Application Completed Form 18th May 2018
- The original planning applications were only assessed on suitability for permanent residential housing without considering accommodating people with social needs or care requirements.
- Due to the significant number of units, it is suggested that the proposed development may be more like a sheltered housing scheme containing supported housing, and these needs were not considered during the grants of planning permission.
- It is submitted that the proposed use is different from that assessed by the Planning Authority, and a change of use has occurred.

#### 6.2.4. **Material Change of Use**

- In the case of Galway County Council v. Lackagh Rock Justice Barron held that
 

*"it was not sufficient for the Council to establish an intensification of use had taken place. It had to prove that the intensification of activity amounted to a change of use which was material i.e. had given rise to fresh planning considerations.*

*To test whether or not the use are materially different it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use*

*on the appointed day or for the present use. If they are materially different, then the nature of use must be equally materially different."*

- A material change of use raises issues that would be considered under "proper planning and development" as defined in Section 26 of the 1963 Act.

#### 6.2.4.1. **Planning Considerations**

- The existing permitted use and the intended use of the dwellings of Sarsfield Heights have a common residential use, but they are not the same.
- The new use of Sarsfield Heights has different character and effects in terms of scale, care & support services, and restriction to a single category of user.
- The proposed tenure nature of Sarsfield Heights and its scale give rise to different planning considerations from the mixed tenure development that was permitted.
- Planning considerations would relate to the impact of the proposed non-residential use on established residential amenities, such as additional care and social support services, potential increased vehicular traffic and parking, becoming a place of employment, estate management programme, resident caretaker, and operation and security of the properties as a care facility.
- Availability and access to the local community, health and educational services, ease of access by foot and public transport, social exclusion, and social integration issues would be considered for proposed uses for social housing.
- The external context of the development, including the prevailing tenure mix in the neighbourhood, adequate supply of houses to meet the variety of housing needs, concentration of social housing in the area, demographic and socio-economic backgrounds, and degree of integration of the new development with the neighbourhood, are planning considerations.
- The change of use of Sarsfield Heights would unduly restrict the supply of housing under proper planning and sustainable development of the area.
- Local Authorities are required to take into account the need to counteract undue segregation in housing between persons of different social backgrounds in their housing strategy under the Planning Act.

#### 6.2.4.2. **Planning Policy**

- The proposed change of use of Sarsfield Heights to a mono-tenure social housing estate represents a material contravention of planning policy and the planning considerations that the proposed use would receive from a planning perspective if an application for the new proposal was made.
- Planning policies such as Objective 6.7 Private Sector and Objective 6.8 Housing Mix in the 2015 Cork City Development Plan, and Principle 1 and Principle 2 in the Cork County Development Plan Objectives 2014 support a mix of housing and apartment types, sizes and tenures to encourage the establishment of sustainable residential communities.
- As required under the Cork Planning Authorities Joint Housing Strategy 2021, planning applications for multiple housing units are required to submit a Statement of Housing Mix detailing the proposed mix and why it is considered appropriate. The needs of special groups, such as the elderly and disabled, shall also be considered as part of this process.
- The Cork Planning Authorities Joint Housing Strategy 2021 emphasises providing for a diverse range of housing needs to suit varying income levels and social circumstances and promoting a socially balanced and inclusive society in all housing areas within Cork City and County.
- The Department of Housing, Planning & Local Government Housing Circular 31/2019, Arrangements for the Provision by Local Authorities of Social Housing through Turnkey Projects, states that local authorities should satisfy themselves that any turnkey acquisition by them is not removing housing from the market that would otherwise be available to private purchasers, in particular to first-time buyers. Turnkeys are particularly appropriate when the housing would otherwise not be delivered but for the assurance of L.A. purchase to unlock the development.

#### 6.2.5. **Impacts of the Change of Use of Sarsfield Heights to the Area**

- The proposed use of Sarsfield Heights as predominantly / exclusively for social housing raises potential impacts on the surrounding area and proper planning and sustainable development. These are addressed under the headings below.

#### 6.2.5.1. Traffic Impact

- The planning applications for Sarsfield Heights were assessed solely on their suitability for permanent residential housing. They did not consider the potential use of the development to house and support a significant number of people with social care needs or facilitate visits from professional staff.
- The referrer notes that no information is available on the nature, volume, and frequency of support services that will be provided in Sarsfield Heights. As a result, it is unclear whether the development can adequately accommodate the needs of its future residents.
- The referrer contends that the proposed change of use from permanent residential accommodation to social housing may represent an intensification of use due to the support services associated with this use. This could lead to an increase in traffic movements and parking, which could have a negative impact on the surrounding area.
- Therefore, the referrer submits that the appropriateness of Sarsfield Heights to house and support people with social care needs, as well as the potential traffic impacts, should have been considered during the planning process.
- The potential impact of using the development as supported housing on a large scale and its impact on the wider environment are significant considerations for the Planning Authority in assessing the proper planning and sustainable development of the area, should an application for such use be made.
- During the previous planning applications for the Sarsfield Heights Development, the public raised concerns about existing traffic issues at the Eagle Road Junction with Sarsfield Road, as outlined in Section 4.4 Appendix 4 of the submission, which details unresolved traffic and access issues with Eagle Valley Road.
- Parking, traffic congestion, and traffic hazards are caused by events at the Funeral Home and the Church, which are frequent but irregular in pattern, and commercial HGV vehicles compound the issue.
- Traffic is often brought to a standstill during peak hours, preventing access and egress on Eagle Valley Road at the Sarsfield Road junction, which impacts the greater Sarsfield Road area.



- The lifting of COVID restrictions is expected to exacerbate this issue in the coming months, particularly in the Autumn, as people return to workplaces.
- Any potential increase in service provider traffic movements associated with supported housing may worsen the situation.
- In the event of an application for supported housing, the Planning Authority would have considered the impact of traffic issues on risk hazards and timely access to support potential residents, as well as the effect of parking in Sarsfield Heights during events and the issues of egress for residents wishing to exit during such events.
- In previous applications for Sarsfield Heights, the public submissions on traffic were not acknowledged, which is disappointing (refer to Section 4.4 Appendix 4 of the submission - Unresolved Traffic & Access Issues with Eagle Valley Road).
- The Developer's applications and responses have relied on an April 2017 Traffic & Transport Assessment (T.T.A.) Report that does not account for regular Funeral or Church Event traffic.
- The Developer's response also relied on a statement by the An Bord Pleanála Inspector that claimed the proposed development would not significantly contribute to traffic hazards or congestion.
- The Inspector's report does not mention the time of day or whether there were any events in progress at the Funeral Home or Church during the site visit on October 24, 2017, which was the main focus of the referrer.
- The referrer was not informed of the Developer's response, which relied on the April 2017 T.T.A. and was not given the opportunity to comment further.
- In the subsequent planning application P.A. Ref. 185275, the Access & Traffic Impact section of the McCutcheon & Halley 2018 Planning & Design Statement stated that "Considering the reduction in proposed units and following a discussion with the Traffic & Transport Section of Cork County Council, it was agreed that revising the T.T.A. would be unnecessary."
- Two Third Party Submissions were submitted by O'Connor Funeral Homes and Eagle Valley Association of Residents and Home Owners, with specific concerns detailed on the Traffic and Parking Issues.

- In the Engineering Report, Further Information 29/8/2018, refusal was recommended as the Applicants hadn't addressed the issue of event traffic access to Eagle Valley Road.
- On 5/9/2018, Cork City Council's Senior Executive Planners Report overruled the Area Engineer's recommendation to refuse permission on the basis of the An Bord Pleanála Inspector's opinion.
- As a result, no new Traffic & Transport Assessment (T.T.A.) Report was undertaken to assess the impact of such events, nor has any been undertaken to assess the impact of support service traffic to Sarsfield Heights.

#### **6.2.5.2. The Opportunity to address Home Ownership Needs in the Area is Lost**

- The proposed use of the Sarsfield Heights development does not consider the housing needs and composition of the surrounding neighbourhoods, which consist predominantly of rental households or an older population in owner-occupied homes.
- According to the Small Area Census Data (2016), more than 64% of households in the greater Sarsfield Road neighbourhood around Sarsfield Heights are rental occupants. In Eagle Valley, over 73% of the 301 houses are rented (Section 4.5 Appendix 5 Census 2016 Small Area Data on Sarsfield Road Area).
- The community includes many long-term tenant families and potential first-time buyers who are renting and seeking homes. Private landlords often put houses up for sale, leaving tenant families desperately trying to rent or buy another house in the area to maintain stability for their children.
- Sarsfield Heights represents the first new development opportunity in the area in many years for people with roots in the greater Bishopstown, Wilton, Doughloyne, and Togher areas. They have contacted the developers, O'Brien and O'Flynn, over the last three years since construction commenced, enquiring about when the Sarsfield Heights houses will be available for sale. The receptionist's response was to take their details to put them on a waiting list for when the houses are advertised for sale.
- The proposed use of Sarsfield Heights development exclusively for social housing undermines the principle of home ownership and choice. It takes away the

opportunity for downsizers and long-term renters in the area, the majority of whom are first-time buyers who have been approved under affordable housing schemes. They are severely challenged in achieving ownership and the associated security in a market of rapidly rising prices. The potential opportunity to buy a house in Sarsfield Heights and secure their home is now gone for them.

- The feeling amongst the community is that Cork City Council, as the paying long-term client, is bypassing the planning and public consultation process to meet its housing targets and enabling the Approved Housing Body to finance the purchase of houses en bloc for rent to one class of user. This impact is driving up market prices rather than ensuring that a good choice and supply of housing, including affordable housing, is available for the common public good. Approved Housing Bodies are corporate bodies and effectively act with the same impact on the market as commercial, institutional investors or vulture fund investors in bulk buying houses en bloc.

#### **6.2.5.3. The opportunity to meet the area's need for more owner-occupiers is lost.**

- The proposed use of Sarsfield Heights significantly undermines the opportunity to strengthen and balance the community in the greater Sarsfield Road neighbourhood by increasing the proportion of owner-occupiers.
- According to the Small Area Census Data (2016), over 64% of households in the greater Sarsfield Road neighbourhood are rental occupants, and in Eagle Valley, over 73% of the 301 houses are rented (refer to Section 4.5 Appendix 5 of the submission - Census 2016 Small Area Data on Sarsfield Road Area).
- Landlords acknowledge the reliance on owner-occupiers for proactive maintenance and improvement of Eagle Valley.
- Rental tenants generally do not have the same stakeholder interest in the community as owner-occupiers, who have a significant financial investment in their property and the neighbouring community.
- Housing Association tenure is 100% rental. In contrast, Local Authority tenants have a right under their tenure to purchase. In Eagle Valley, Cork City Council owns 11 of the 301 Eagle Valley houses (as well as two leaseholds), and their tenants will eventually have the opportunity to purchase the properties.

#### 6.2.5.4. **The Potential Impact of Increased Crime and Anti-Social Behaviour**

- Existing residents in the area, including tenants and owner-occupiers, express concern regarding the potential increase in crime and anti-social behaviour that an over-concentration of social housing in Sarsfield Heights may cause.
- According to the report "*Rebuilding the Irish Neighbourhood, 2018, Cork City Council*", crime and anti-social behaviour are more commonly associated with social housing than other tenures. Social housing estates are often perceived as "no-go" areas due to the prevalence or perceived incidence of crime and criminal activity, which may receive considerable media attention.
- Residents' concerns are based on their personal experiences. Several estates in the Sarsfield Road Area are of mixed tenure, where Cork City Council has bought individual houses for social housing in a "pepper-potting" fashion over the years. Although predominantly successful, some social housing units have experienced sustained periods of crime and anti-social behaviour, which have placed a considerable burden of fear and nuisance on neighbouring households.
- Residents experienced a poor response from authorities, and neighbours had to address the issues themselves.
- The proposed concentration of social housing in Sarsfield Heights represents an alarming multiplier risk factor for existing residents, including owner-occupiers, renters, and social housing tenants.

#### 6.2.5.5. **The Loss of Tenure Mixing Solutions and Risk of Social Segregation and Stigmatisation of Future Sarsfield Heights Tenants**

- The proposed use of Sarsfield Heights for social housing represents a significant change that contradicts the objectives of the government's mixed tenure policy. This change would revert to a mono-tenure social housing estate, which is associated with stigmatisation and historical experience in the concentration of social problems associated with local authority estates.
- According to the study "*Social Housing in Mixed Tenure Communities*" from the Irish Council for Social Housing and the Housing Agency (31st March 2022), large concentrations of low-income households have been found to result in higher

unemployment, stigmatised neighbourhood reputations, and additional pressure on social services.

- The current emphasis is on "mixed tenure" projects, as stated in the report "*Rebuilding The Irish Neighbourhood 2018*" by the Housing Agency. These projects divide homes between social housing for local authority tenants, affordable housing for people on low incomes, and private housing, all in one development.
- In a statement just before the launch of Rebuilding Ireland, former Minister for Housing Simon Coveney told radio presenter Pat Kenny that "building new social housing estates is not the answer to solving the current homeless crisis". This is because concentrated areas of social housing "create areas of deprivation and disadvantage." Coveney committed to creating "integrated communities" instead to encourage social mobility (from "*Are we right to fear the 'ghetto'?*" <https://www.focusireland.ie/fear-ghetto/>).

#### 6.2.6. Public Consultation Process

- SI. No. 600/2001 - Planning and Development Regulations, 2001, Part 8 outlines the requirements for Specified Development by, on behalf of, or in partnership with Local Authorities, where the construction or erection of a house is a prescribed class of development. Respond Housing Association is undertaking this development in partnership with Cork City Council.
- The referrer submits that if a planning application for the proposed use of the development as social housing is submitted, the Planning Authority would take into account materially different planning matters, including the contribution of citizens, and the public consultation process known as Part 8 would be employed, providing an opportunity for the public to make submissions or observations.
- The benefits of the Part 8 process are that the Council is seen to be open and transparent in its business, and the public is given the opportunity to voice their opinions.
- The Residents Association cites a recent 2021 Part 8 Application Process for the development of 67 social housing units in Bishopstown, which neighbours Sarsfield Road. The public consultation process received over 900 submissions on planning considerations. The development was consequently reduced to 64 units and

redesignated to a mix of social housing, affordable private housing, and both social and private downsizing housing - with 35 units now designated as Affordable Housing. Additionally, the Council took on board public concerns about road traffic and stated that the operations directorate intends to review the existing urban freight study in 2021 with a view to possibly excluding HGVs from using the road.

- There is a notable absence of transparency and information on the proposed use of the units by Respond, the number of tenants likely to occupy each unit, and the likely duration of their occupancy. Also, the likely level of support services required by each tenant and the overall level of engagement required for each unit (i.e. frequency of visits, times of visits, duration of visits, etc.), and whether any works were necessitated to facilitate their use as supported housing. Cork City Council, as a stakeholder and partner in the Sarsfield Heights development, has a conflict of interest in making this declaration.
- In the case of RL3502: Metro Apartments, Santry Cross/Ballymun Road, Dublin 9, the Inspector noted that such questions could reasonably be held to arise, and it would be inappropriate to try to determine them in the course of a Section 5 application, which does not provide for any public consultation or the imposition by Condition of any detailed or technical requirements that might be necessitated by the change of use. The report noted that these are planning matters that would need to be considered by the planning authority in the course of an application for permission, upon which the public would have the opportunity to comment.

#### **6.2.7. Is Not Exempted Development**

- With respect to the Planning and Development Act, 2000 as amended (Sections 2, 3 and 4) and the Planning and Development Regulations 2001 as amended (Articles 5, 6, 9 and 10 and Schedule 2), it is submitted that there is no exemption provided for the proposed development that may allow for the change of use of multiple dwellings to a supported housing scheme.
- Class 9 Use specifically excludes the use of a House from exemption or “the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)”. The exemption set out in Class 14(f) of Schedule 2 Part 1 does not apply to Sarsfield Heights as it specifically refers to "a house" rather than "houses," a scheme of houses/dwellings. Further, it is a specific

exemption for persons with an intellectual or physical disability. It is not a general exemption for persons requiring personal care, including help with social needs.

- As Sarsfield Heights has at least 65 properties and shared services and support will be provided to all residents within these properties, an exemption cannot apply due to the established concept of the intensification of use as summarised in *Butler V Dublin Corporation*, "that a particular use could be so altered in character by the volume of activities or operations being carried on that the original use must be regarded as having been materially changed."

#### **6.2.8. Extracts from Planning Documents relating to Use and Tenure**

##### **6.2.8.1. P.A. Ref. 174877 / ABP Ref. PL 04.249194**

- Question 9 clearly describes the development as Residential, with the construction of 73 residential units and all associated ancillary development works.
- Question 10 confirms that the proposed development is not a 'Strategic Infrastructure Development' as defined in the Planning and Development Acts 2000-2010, with a tick in the "YES" box.
- Question 17 selects the intention to sell the houses as distinct from other options to let the houses long-term or short-term.
- Question 18 affirms that the application is for residential development with a breakdown of the residential mix, including the total number of car parking spaces.
- Question 21 affirms the Social & Affordable Housing element where Part V of the Planning & Development Act 2020 applies, with the Part V Costs & Methodology attached to the completed application form.
- The Part V Costs & Methodology calculations for Cork County Council Planning Reg. Ref. 174877 include Marketing Costs for the future sale of a House in the development.
- These costs are based on a report prepared in July 2014 by Walsh & Associates on behalf of the Irish Home Builders Association, which outlines the fees required for sales agents and solicitors when selling houses to individual buyers.

- The report also notes that a show house is constructed to assist sales in conjunction with marketing and advertising campaigns.
- The methodology calculations provide an estimate of the total marketing costs involved in selling the houses in the development.
- The Design Statement for Planning Application Reg. Ref. 174877 includes a Statement of Housing Mix that clearly describes the development as catering for mixed communities with a range of house types and tenures. The Statement of Housing Mix detailed the following;
  - The proposed development aims to meet the changing needs and sizes of households by providing a greater mix of house types and sizes for households of different needs, in line with Policy objective HOU 3-3 of the Cork County Development Plan.
  - The proposed mix of house types and sizes has been influenced by factors such as the desirability of providing for mixed communities and a range of house types and tenures, the nature of existing stock in the area, the existing social mix in the area and the need to cater for groups such as the elderly and disabled, and the saleability of different types of housing having regard to the local housing market.
  - The proposed housing mix includes 8 no. 4-bed semi-detached dwellings, 8 no. 3-bed semi-detached dwellings, 29 no. 3-bed townhouses, 14 no. 3-bed duplexes, and 14 no. 2-bed apartments, ranging in size from 80 sqm apartments to 140.3 sqm semi-detached dwellings.
  - The proposed housing mix adds to the choice available in the area, ensuring the provision of homes that will meet the needs of the future residents of the south environs and promoting a synergy between the retail hub and the development.
  - The proposed layout of 73 no. dwelling units will consist of a range of different house types and sizes that will appeal to a broad range of purchasers.
- The Application included a map highlighting the proposed location of 7 No. 3-Bed Townhouses allocated for Part V, marked in magenta.



- Following a request for further information from the Planning Department on 2/6/2017, a new map was submitted on 18/7/2017, highlighting the proposed location of 6 No. 3 Bed Townhouses allocated for Part V, also marked in magenta.
- These townhouses are located throughout the estate as per the *Guidelines for Sustainable Communities*.
- On 27/7/2017, Cork County Council's Housing Officer reported that his concerns regarding the location and need to pepper pot the units to keep with the Guidelines for Sustainable Communities had been addressed with the F.I. Response, and had no objection to planning being granted permission.
- On 10/8/2017, a Grant of Planning Permission was issued for 67 units in accordance with plans and particulars lodged by the applicant on 11/04/2017 and 18/07/2017, subject to 51 conditions set out in the Second Schedule attached to the permission.
- Condition No.1 of the planning permission stated that the development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the documents/drawings received by the Planning Authority on 18/07/2017 except as may otherwise be required to comply with the conditions therein, in the interests of clarity.
- Following an appeal to An Bord Pleanála, its Order PL 04.249194 dated 2/2/2018 attached Condition 1, which required the development to be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 18th day of July 2017, except as may otherwise be required in order to comply with the subsequent conditions..

#### 6.2.8.2. **P.A. Ref. 185275**

- Question 9 describes the development as the construction of 27 residential units, including 12 additional apartments, 12 additional duplex apartments, and a change of design to 3 previously permitted townhouses, along with all associated ancillary development works such as access roads, parking, footpaths, landscaping, 2 bin stores, drainage, and amenity areas. The proposed development will include

modifications and a partial change of layout to residential development permitted under ABP Ref. PL04.249194 and Cork County Council Ref. 1714877.

- Question 10 confirms that the proposed development is not a "Strategic Infrastructure Development" as defined in the Planning and Development Act.
- Question 17 indicates the intention to sell the houses as a distinct option from letting the houses long-term or short-term.
- Question 18 affirms that the application is for a residential development with a breakdown of the residential mix.
- Question 21 affirms a Social & Affordable Housing element where Part V of the Planning & Development Act 2020 applies, with the Part V Costs & Methodology attached to the completed application form.
- The application form attachment provides Part V Costs & Methodology calculations.
- The report prepared on behalf of the Irish Home Builders Association in July 2014 by Walsh & Associates provides information on marketing costs for the future sale of a house in the development.
- The report suggests that fees are required for sales agents and solicitors and that a show house should be constructed to assist sales in conjunction with a marketing and advertising campaign.
- The Design Statement emphasises its commitment to supporting sustainable residential communities by promoting social integration and providing a diverse range of household types, age groups, and housing tenures.
- The Design Statement takes into account Objective HOU 3-2 and the relevant supporting text of the Cork County Development Plan 2014, as well as other government guidance documents, such as the Urban Design Manual and Planning Guidelines on Sustainable Residential Development in Urban Areas.
- The Design Statement is specific about the Part V units, which consist of 6 units of Type 'C2', 'C3', and 'C4' houses, located in the Estate on Site Layout Plan No. 16118-P-010.
- The Part V proposal details how the proposed planning application will result in an overall development of 65 residential units, and the applicant proposes to meet the

Part V obligations through the transfer of six units, as permitted in accordance with the 10% requirement.

- The location of the units to be transferred is detailed on the site layout plan (drawing no. 16118-P-010). As all the proposed units are located within the previously permitted scheme granted by An Bord Pleanála under ABP Ref. PI.04.249194, the applicant can agree to the provision of the Part V housing with the Planning Authority as part of the compliance submission.
- A Part V Costs & Methodology Proforma accompanies the application, and the identified construction costs are based on average estimates, with additional costs potentially arising during detailed site investigation works or as a condition of planning.
- The Statement of Housing Mix proposed was influenced by various factors, including the need to cater for different household types and provide mixed communities.
- The Statement of Housing Mix detailed the following;
  - The housing mix consists of 3 townhouses, 12 duplexes, and 12 apartments, with sizes ranging from 79.6m<sup>2</sup> to 108.3m<sup>2</sup>.
  - The proposed layout of the mixed units takes advantage of the site's views and provides passive surveillance over the streets and spaces.
  - The design includes a play area for children, providing a pleasant environment for families to live.
  - The housing mix aims to offer a selection of units in varying configurations, adding to the choice available in the area and meeting the needs of future residents.
  - The proximity to Wilton District Centre ensures that residents will have access to shops, facilities, and services, promoting a synergy between the retail hub and the development.
- The Application included a Site Layout Plan No. 16118-P-010 which shows the specific locations of the 6 proposed Part V Housing units.
- On 07/06/2018, Cork County Council confirmed that the Application Part V proposal 18/5276 may be validated.

- On 19/06/2018, the Housing Engineer from Cork County Council, reported that he was satisfied with the Part V proposal.
- On 6/9/2018, Planning Permission was granted for 67 units in accordance with plans and particulars submitted on 18/05/2018 and 10/08/2018, subject to 38 conditions.
- Condition No.1 of the permission stipulates that the proposed development shall comply with the terms and conditions of Planning Permission Reg. No. 17/4877 (ABP Ref. PL.04.249194) that governs the overall development of the lands unless otherwise amended by the subsequent conditions.

#### 6.2.8.3. **P.A. Ref. 2140139**

- The completed Application Form for 4 Units No. 66-69 under P.A. Ref. 2140139 was submitted on August 4, 2021, identifying the units as family homes and the permanent private residence of Finbarr, Tony, and Patricia Flynn of O'Brien O'Flynn Construction Unlimited for Development Contribution purposes.
- On September 2, 2021, the final grant of PA Ref 2140139 added Condition No. 9 relating to Part V requirements, but there were no planning documents in the public file specifying the location and number of these units, unlike previous grants.
- The Application was accompanied by a Planning Report dated 19/4/2021 prepared by the Applicant's Engineer, O'Shea Leader Consulting Engineers.
- In the report, it was stated that Part V of the Planning Act 2000 (as amended) did not apply to the application as it involves the provision of only 4 no. one-bedroom units, which is less than the 9 housing unit standard for Part V.
- The report also highlighted the need for residential accommodation in the area to support economic growth and population growth, and the importance of expanding to meet the demand.
- On 2/9/2021, a Grant of Planning Permission was issued for the construction of 4 no. residential units in Doughcloyne, Sarsfield Road, Wilton, Cork.
- The units will consist of 2 no. additional apartments and 2 no. additional duplex apartments, with associated ancillary development works such as access roads, parking, footpaths, landscaping, bin stores relocation of E.S.B. substation and all ancillary site works.

- 10 no. conditions were attached to the planning permission, including:
  - Condition No. 1: The development shall be carried out in accordance with the submitted plans and particulars, except where otherwise required by the conditions in this schedule.
  - Condition No. 2: The proposed development shall comply with the terms and conditions of P.A. Ref. 17/4877 (ABP Ref. Pl. 04.249194) and P.A. Ref. 18/5275, which govern the overall development of the lands of which the site forms part, save where amended by the terms and conditions herein.

6.2.9. Appendices include the following;

- Appendix 1: Cllr. Thomas Moloney's Facebook post from 4th May 2022 re. 22 Units in Sarsfield Heights available on Cork City Council's Choice Based Letting System and Respond Housing Tweet re. 65 new social homes at Sarsfield road.
- Appendix 2: Planning Application History
- Appendix 3: About Respond Housing Association
- Appendix 4: Unresolved Traffic & Access Issues with Eagle Valley Road
- Appendix 5: Census 2016 Small Area Data on Sarsfield Road Area by the Central Statistics Office - Census 2016 Small Area Population Statistics Small Area
- Appendix 6: Precedent Cases
  - **RF29N.RF1066 59** Hollybank Rd. Dublin 9, dated 30/08/2002, link <https://archive.Pleanála.ie/en-ie/case/RF1066>,  
 Description: Whether the use of dwelling house for women's resettlement project supported by the probation & welfare service is or is not exempt development.  
 Decision: Is development and is not exempted development.  
 Parties: PACE (Landowner), The Hollybank Road Residents Against the PACE Development (Appellant).
  - **RLO3.307064** Westbrook House, Gort Road, Ennis, Co. Clare. (R209), dated 25/09/2020, link <https://www.Pleanála.ie/en-ie/case/307064>,

Description: Whether the change of use of Westbrook House from a commercial guesthouse to a homeless hostel run by an approved housing body at Westbrook House, Gort Road, Ennis, Co. Clare is or is not development and is or is not exempted development.

Decision: Is development and is not exempted development.

Parties: Aughanteeroe Residents' Association (3rd party Referrer).

- **R3304** Carrickmines Manor, Glenamuck Road, Carrickmines, Dublin 18, dated 04/02/2015, link: <https://archive.pleanala.ie/en-ie/case/RL3304>,

Description: Whether the change of use of 19 residential units to use as a support housing scheme is or is not development, or is or is not exempted development. Decision: Is not development.

Participants: Housing Association for Integrated Living (Party), Housing Association for Integrated Living (H.A.I.L) (Party), Carmanor Management Limited (Referrer).

- **RL29N.308540** 15/17, Lower Drumcondra Road, Dublin, 9 (0313/20), dated 19/04/2021, link <https://www.Pleanála.ie/en-ie/case/308540>,

Description: Whether the change of use from residential to hostel, is or is not development or is or is not exempted development.

Decision: Is development and is not exempted development.

Parties: Dublin City Council, Anthony Corbett (1st party Referrer), Residents of Lower Drumcondra Road (1st party Referrer) (Active).

- **RL04.300805** Carrigaunroe, Shanballymore, Co. Cork (D/278/17), dated 12/11/2018, link <https://www.Pleanála.ie/en-ie/case/300805>,

Description: Whether conversion of attic space and change of use from residential to use for residential care is or is not development or is or is not exempted development.

Decision: Is development and is exempted development.

Parties: Cork County Council, Anthony Corbett (1<sup>st</sup> party referrer) and residents of Lower Drumcondra Road (1<sup>st</sup> party referrer)

- **RL17.309642** Ledwidge Hall Green, Drogheda Road, Slane, Co. Meath (LBS521). Date signed: 15/10/2021. Link: <https://www.Pleanála.ie/en-ie/case/309642>

Description: Whether the imminent use of development LB160659, LB180519 & LB190293 as exclusively Part 5, PDA housing is considered development or exempted development.

Decision: It is not considered development.

Parties: Mairead Phelan and Others (3rd party referrer).

- **RL3502** Metro Apartments, Santry Cross/Ballymun Road, Dublin 9. (0260/16) Date signed: 23/03/2017. Link: <https://www.Pleanála.ie/en-ie/case/RL3502>

Description: Whether the use of permitted residential apartments as serviced apartments constitutes a material change of use.

Decision: It is considered development and is not exempted development.

Parties: Metro Santry Hospitality Ltd (Owner/Occupier and Referrer).

### 6.3. **Planning Authority Response**

The Planning Authority did not respond to the grounds of the referral.

### 6.4. **Owner/occupier's response**

The owner/occupier did not respond to the grounds of the referral.

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000 (as amended)**

**Section 2(1)** of the Act provides the following definitions of relevance:

“development” has the meaning assigned to it by section 3 , and “develop” shall be construed accordingly;

"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;

"house" means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

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

(a) where this context so admits, includes the land on, in or under which the structure is situate...".

"use", in relation to land, does not include the use of the land by the carrying out of works thereon.

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

**Section 3(1)** of the Act states the following in respect of 'development':

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

**Section 4 (1)** set out what is exempted development for the purpose of the Act-

**(b)** development by the council of a county in its functional area, exclusive of any borough or urban district;

**(f)** development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning 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;

**(h)** development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

**Section 5 (3) (a)** states the following:

"Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of issuing the declaration."

**Part V** of the Act relates to housing supply whereunder Section 96 (1) refers to the provision of social and affordable housing, and states the following;

Subject to subsection (14) and section 97, where a development plan objective requires that a specified percentage of any land zoned solely for residential use, or for a mixture of residential and other uses, be made available for housing referred to in section 94 (4)(a), the provisions of this section shall apply to an application for permission for the development of houses, or where an application relates to a mixture of development, to that part of the application which relates to the development of houses, in addition to the provisions of section 34.

## 7.2. **Planning and Development Regulations, 2001 (as amended)**

### **Part 2 – Exempted Development**

**Article 5 (1)** includes the following definitions:

"care" means personal care, including help with physical, intellectual or social needs;

"protected person", for the purposes of Schedule 2, means—

- (a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013),
- (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or
- (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996;

**Article 6** states the following in respect of 'Exempted Development':

(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.

**Article 9** states the following in respect of Restrictions on Exemption.

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

**Article 10** states the following in respect of 'Changes of Use' -

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised, and which has not been abandoned.

**Schedule 2, Part 1** sets out Exempted Development – General, to which Art 6(1) refers, subject to conditions and limitations, including:-

**CLASS 14** - Development consisting of a change of use -

(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.

**Schedule 2, Part 4** sets out Exempted Development - Classes of Use to which Article 10(1) refers, including:-

**CLASS 9**

Use –

(a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose).

#### 7.2.1. **Other Relevant Planning Legislation**

Housing (Miscellaneous Provisions) Act, 1992

Regulation of Commercial Institutional Investment in Housing - Guidelines for Planning Authorities (2021)

### 7.3. Relevant Precedents

The following referrals decided by the Board are considered relevant to this case:

**ABP Ref. 307064** – in September 2020 the Board decided that the change of use of Westbrook House (Ennis, Co. Clare) from commercial guesthouse to a homeless persons hostel managed by an approved housing body is development and is not exempted development. It should be noted that Westbrook House at the time of the referral was in the ownership of Clare County Council and operated under the management of Mid-West Simon.

**ABP Ref. RL29N.308540** – in April 2021 the Board decided that the change of use from residential to hostel at 15/17 Lower Drumcondra Road, Dublin is development and is not exempted development.

**ABP Ref. RL09.308306** – in February 2021 the Board decided that the change of use from a house to use as residence by persons with an intellectual or physical disability or mental illness at Mylerstown, Naas, Co. Kildare is development and is exempted development.

**ABP Ref. RL17.309642** – in October 2021 the Board decided that the imminent use of the dwelling units permitted under the parent grant of permission, planning register reference number LB160659, and subject to modifications as set out under the grants of permission, planning register reference numbers LB180519 and LB190293, as exclusively Part V, Planning and Development Act 2000, as amended, 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 and is as a consequence exempted development;

**ABP Ref. 303392** – in September 2019 the Board decided that the change of use of a monastery to use as a hub/hostel for homeless families at 26 Carmelite Monastery, Firhouse Road, Dublin 24, is development and is exempted development.

**ABP Ref. 301688** – in February 2019 the Board decided that the conversion of the premises at Nos.57, 59 & 61 Cabra Road (Protected Structure) which was in use as a nursing home, to a supported homeless accommodation facility is development and is exempted development.

**ABP Ref. RL3304** – in February 2015 the Board decided that the change of use of 19 residential units to use as a support housing scheme for persons with mental illness at Carrickmines Manor, Glenamuck Road, Carrickmines, Dublin is not development.

**ABP Ref. RL3169** - in October 2014 the Board decided that the use by Crosscare of No. 2 Carlisle Terrace (a protected structure), Tivoli Road, Dún Laoghaire, County Dublin as residential accommodation for sheltered housing use is not development.

**ABP Ref. PL86.RL3032** – in March 2013 the Board decided that the amalgamation of Nos.5 & 6 Kilmantin Hill, Wicklow Town, into one unit and their change of use to a temporary accommodation centre for homeless persons is development and is not exempted development.

**ABP Ref. PL68.RL2685** – in May 2010 the Board decided that the change of use of the first and second floors of a hotel at Nos.58 & 59 Main Street, Longford, to a hostel to accommodate refugees is development and is not exempted development.

**ABP Ref. RL2616** - in October 2009 the Board decided that the change of use from dwelling unit to residential care unit for persons with intellectual, physical disability or mental illness and persons providing care is development and is exempted development.

**ABP Ref. PL79.RL2503** – in August 2008 the Board decided that the refurbishment and change of use of a residential unit at 56 Mitchel Street, Thurles, County Tipperary, for use as emergency accommodation for not more than six persons deemed to be homeless is development and is exempted development.

**ABP Ref. RL2317** - in November 2006 the Board decided that the change of use of six of the eight apartments within an apartment block situated at the Merrion Grove apartment complex, Stillorgan Road, Stillorgan, County Dublin to student accommodation is development and is not exempted development.

**ABP Ref. RL2328** - in August 2006 the Board decided that the use of the dwelling for multi-occupancy is development and is not exempted development.

**ABP Ref. RL2192** - in February 2005 the Board decided that the change of use of permitted holiday apartments to permanent residential accommodation at The Dolmen Hotel, Kilkenny Road, Carlow is development and is not exempted development

**ABP Ref. RF1066** - in August 2002 the Board decided that the use of a dwelling house for a women's resettlement project is development and is not exempted development.

#### 7.4. **Relevant Case Law**

The following case law is of relevance:

Referral reference PL29/8/279 was the subject of a High Court challenge, McMahon - v- Dublin Corporation 1997 1 ILRM 227, in which the Board's declaration was upheld.

Barron J. held that:

*"...in the absence of explicit reference in the planning permission to a permitted use, regard must be had to the use for which the structure was designed, i.e. the use which was objectively intended for the structure having regard to the relevant planning documentation. The purpose for which the plaintiffs' homes had been designed was private residential, whereas the use to which they were currently being put was commercial."*

The question as to whether a change of use is a material one was addressed by Keane J. in the case of Monaghan County Council -v- Brogan. He stated that the issues of relevance to this question are:

*"...the matters which the planning authority would take into account in the event of a planning application being made for the use. If these matters are materially different (from the original use), then the nature of the use must equally be materially different."*

## 8.0 **Assessment**

### 8.1. **Introduction**

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the relevant legislation.

## 8.2. Is or is not development

8.2.1. The question before the Board, in this instance, is stated as follows:

*Whether the use of "Sarsfield Heights" for institutional purposes and as predominantly/exclusively Part 5 housing constitutes development under the Planning and Development Act 2000 (as amended), and is or is not exempted development. The relevant planning applications are P.A. Ref. 1704877/ABP Ref. PL 04.249194, P.A. Ref. 185275, and P.A. Ref. 2140139/ABP-311519-21.*

8.2.2. Section 3(1) of the Planning and Development Act 2000 (as amended) defines "development" as "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".

8.2.3. Section 2(1) of the Act defines "works" as including "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure".

8.2.4. In this case, it is submitted that there will or has been a change in the use of the land from a mixed tenure development to an institutional purpose of providing social housing under the management of Respond Housing Association. Eagle Valley Association of Residents and Home Owners submits that at least 65 of the 69 houses in Sarsfield Heights will be used for social housing and will not be available for sale to the private market.

8.2.5. However, to establish whether this change of use constitutes development, it is necessary to refer to the planning permission granted for the development. As per the ruling in PL29/8/279 McMahon v Dublin Corporation 1997 1 ILRM 227, the use of the development is inferred objectively by reference to the submitted drawings and documentation, as well as the terms of the permission itself.

8.2.6. In this case, it is submitted that the permitted planned use and tenure nature of the units was clearly established during the successive applications for the permissions (P.A. Ref. 174877/ABP Ref. PL 04.249194, P.A. Ref. 185275, P.A. Ref. 2140139). All three planning applications presented the Sarsfield Heights development as a mixed tenure development, combining social housing, affordable housing and predominantly

residential units for sale to individual purchasers (i.e. those not being a corporate entity, as categorised under Section 4.0 of the Regulation of Commercial Institutional Investment in Housing - Guidelines for Planning Authorities, 2021).

- 8.2.7. Under P.A. Ref. 174877/ABP Ref. PL 04.249194, Condition No. 14 of the grant of permission on appeal required the applicant 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 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended. Similar Conditions were imposed by way of Condition No. 9 under P.A. Ref. 2140139 and Condition No. 36 under P.A. Ref. 185275 (as detailed in Section 4.0 above).
- 8.2.8. The documents of these planning applications indicate that the houses in Sarsfield Heights would be for sale and not for use as long-term or short-term rental. Under P.A. Ref. 174877, the applicant indicated under Question 17 of the application form that the proposed houses would be sold in the event of a grant of permission. A Part V Housing Cost Methodology was attached to the application form, and maps showing the location of 7 no. Part V housing units were submitted with the application, reduced to 6 no. in the further information submission. Similarly, under P.A. Ref. 185275, Question 17 of the application form showed that the proposed houses, if permitted, would be sold. A Part V Housing Cost Methodology and a map showing the location of 6 no. Part V housing units were attached to the application form, and the Design Statement submitted detailed the proposed transfer of 6 no. housing units, to meet Part V Housing obligations.
- 8.2.9. The design statements submitted with these applications indicate that the development was intended to cater for mixed communities with a range of house types and tenures to meet different housing needs in the local market.
- 8.2.10. It is, therefore, evident that Sarsfield Heights was designed for and intended for use as predominantly private residential accommodation by individual purchasers, and the permitted development ensured the provision of social and affordable housing in Sarsfield Heights in accordance with the requirements of Part V of the Planning and Development Act 2000 (as amended).
- 8.2.11. The referral submission purports that at least 65 of the 69 houses in Sarsfield Heights will be used for social housing under the management of the Respond Housing



Association. An appendix in the referral submission contains references to Cllr. Thomas Moloney's Facebook post (dated 04/05/2022) and a tweet from Respond Housing Association (dated 05/10/2021) regarding the delivery and availability of social homes at Sarsfield Heights/Road. However, the Planning Authority, in its assessment (dated 21/04/2022), asserted that there was no substantial evidence that the development would be used predominantly/exclusively for Part V housing. Regarding this issue, it is not within the purview of this assessment to confirm or negate this assertion. The purpose of the Board, as laid out in Section 5 of the Planning and Development Act 2000 (as amended), is to address the original question put forth by the referrer to the Planning Authority. Namely, in this instance, the Board is to determine whether the use of the "Sarsfield Heights" development, under the referred planning application references, 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. The determination to be made is not contingent upon the exact number of houses set to be used for social housing but hinges on whether such use constitutes development within the meaning of the Act and whether it is exempted development.

8.2.12. As stated previously, Section 3(1) of the Planning and Development Act 2000 (as amended) defines "development" as 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. The change in use from a mixed tenure development, combining Part V social and affordable housing and predominantly residential units for sale to individual purchasers, to a development predominantly or exclusively for social housing constitutes a material change in the use of the structures or land.

8.2.13. The purported transfer of ownership of at least 65 units to Respond Housing Association limits the development to a single type of purchaser, an Approved Housing Body, and excludes access by individual purchasers. This is contrary to the mixed tenure character that was proposed in the application process and is contrary to the answers to Question 17 in the original Planning Application Forms. Respond Housing Association, an approved housing body, is also a Company Limited by Guarantee (CLG), as stated on its Corporate Strategic Profile. This, in effect, is a type of corporate entity and operates under Part 18 of the Companies Act 2014, as detailed on the Companies Registration Office website. Section 4.0 of the Regulation of Commercial

Institutional Investment in Housing - Guidelines for Planning Authorities (2021) details individual purchasers as 'those not being a corporate entity'.

8.2.14. The referral also purports the provision of care services by the Respond Housing Association to meet the social needs of its residents at Sarsfield Heights. This further supports the conclusion that the proposed use is different from that assessed by the Planning Authority, and a change of use would or has occurred.

8.2.15. Section 3 of the Planning and Development Act, 2000 (as amended), requires that in order for a change of use to constitute development, it must be a material change of use. There is no statutory definition of 'material change of use'. However, it is linked to the degree of a change and the associated impacts, which are determined on the individual merits of a case. I note the test proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd* [1984 21 MCA] in determining whether or not a material change of use has 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 then the present use must be equally materially different.'*

8.2.16. In this case, it is purported that a material change of use will or has occurred on the site i.e. from use as a multi-unit residential development for sale to individual purchasers (i.e. those not being a corporate entity) to use by an approved housing body and corporate entity, Respond Housing Association, for the provision of social and affordable housing, and the provision of residential accommodation and care to people in need of care. In my opinion, this use is determined under Part V of the Planning and Development Act 2000 (as amended) for the provision of social and affordable housing and Class 9 of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended) 'for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)'.

8.2.17. Therefore, it is my conclusion that the purported use of the Sarsfield Heights residential estate as predominantly/exclusively Part V housing by an approved housing body, Respond Housing Association, for the provision of social and affordable housing and the provision of residential accommodation and care to people in need of care does constitute a material change in the use of the land, as the change of use is

not in accordance with the permitted use and tenure nature of the units established under its governing successive planning applications. Such a material change of use constitutes 'development' under Section 3(1) of the Planning and Development Act 2000 (as amended).

### 8.3. Is or is not exempted development

- 8.3.1. Section 4 (1) of the Planning and Development Act 2000 (as amended) sets out what is exempted development for the purpose of the Act. According to Section 4 (1)(f), *'development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning 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'* is exempted development. There is no substantive evidence on the file to demonstrate the development at Sarsfield Heights by Respond Housing Association was conducted on behalf of, or jointly, or in partnership with Cork City Council, pursuant to a contractual agreement with the local authority. The Planning Authority's assessment confirms the lack of substantiation regarding the alleged use of the development at Sarsfield Heights by the Respond Housing Association. Based on this information, it can be concluded that the purported use of Sarsfield Heights as predominantly/exclusively Part V housing does not fall under the category of exempted development as defined in Section 4(1)(f) of the Planning and Development Act 2000 (as amended). In any event, Part 8 of the Planning and Development Regulations 2001 (as amended) sets out requirements in respect of specified development by, on behalf of, or in partnership with local authorities whereunder Article 80(1)(a) sets out such development prescribed for purposes of section 179 of Act (i.e. Local Authority own development) includes 'the construction or erection of a house'. Any such development at Sarsfield Heights would be subject to the requirements under Part 8 of the Planning and Development Regulations 2001 (as amended), as required under sub-section (1)(b) of Section 179 of the Planning and Development Act 2000 (as amended).
- 8.3.2. Article 10(1) Planning and Development Regulations 2001 (as amended) refers to 'Changes of Use' and states that;

*'Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—*

*(a) involve the carrying out of any works other than works which are exempted development,*

*(b) contravene a condition attached to a permission under the Act,*

*(c) be inconsistent with any use specified or included in such a permission, or*

*d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned*

Therefore, subject to Articles 10(1)(a)-(d), the change from one use to another within the same use class does not require planning permission.

8.3.3. In this case, the purported use of the dwellings at Sarsfield Heights for social and affordable housing (referred to by the referrer as Part V development, as prescribed in Part V of the Planning and Development Act 2000, as amended) includes for the supposed provision of care to residents, which would fall within the scope of Class 9 of Part 4 of the Second Schedule of the Planning and Development Regulations 2001, as amended, namely 'the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)'

8.3.4. The purported development at Sarsfield Heights constitutes a change of use between two classes, from the permitted predominant use of residential for sale to individual purchasers (i.e. those not being a corporate entity) to use by an approved housing body and corporate entity, Respond Housing Association, for the provision of 'predominantly/exclusively' social and affordable housing, as provided for under Part V of the Planning and Development Act 2000 (as amended) and the provision of residential accommodation and care to people in need of care, as provided for under Class 9 of Part 4 of the Second Schedule of the Planning and Development Regulations 2001 (as amended). Such development, in my opinion, is a material change of use by reason that it is not in accordance with the permitted use and tenure nature of the units established during the successive planning applications. Such a material change of use constitutes 'development' under Section 3(1) of the Planning and Development Act 2000 (as amended). In my view, this material change of use

does not come within the scope of Article 10(1) of the Planning and Development Regulations 2001, as amended, as it does not constitute a change of use within any one class and therefore would not be considered exempt development.

8.3.5. Furthermore, the purported use of the development at Sarsfield Heights for 'predominantly/exclusively' social and affordable housing and the provision of residential accommodation and care for individuals in need would not fall under exempted development provisions due to its non-compliance with Condition No. 1 imposed under ABP Ref. PL 04.249194 and subsequent permitted planning applications, namely P.A. Ref. 185275 and P.A. Ref. 2140139. Condition No. 1 of ABP Ref. PL 04.249194 mandates that the development must adhere to the original plans and particulars submitted with the application, as amended by subsequent submissions, except where variations are required to comply with subsequent conditions. Condition No. 14 of this permission stipulates that the applicant shall enter into a written agreement with the planning authority regarding housing provisions in accordance with the requirements of sections 94(4) and 96(2), and (3) of the Planning and Development Act 2000, as amended. Condition No. 1 of P.A. Ref. 185275 necessitates compliance with the terms and conditions outlined in P.A. Ref. 174877/ABP Ref. PL 04.249194, which governs the overall development, unless amended by the conditions specified within. Similarly, Condition No. 2 of P.A. Ref. 2140139 requires compliance with the terms and conditions of planning permission P.A. Ref. 174877/ABP Ref. PL 04.249194, unless amended by the terms and conditions of the latter permission. Consequently, the purported development at Sarsfield Heights, providing for 'predominantly/exclusively Part V' social and affordable housing and residential accommodation and care for individuals in need, would be contrary to the conditions imposed under P.A. Ref. 174877/ABP Ref. PL 04.249194, P.A. Ref. 185275, and P.A. Ref. 2140139. Therefore, the purported use of Sarsfield Heights residential estate predominantly or exclusively for Part V social housing, affordable housing, and residential accommodation and care for individuals in need cannot be considered exempted development under Article 10(1)(b) of the Planning and Development Regulations 2001 (as amended). This conclusion is based on the fact that it represents a material change in the use of the development, which contravenes the permitted use and tenure conditions specified in the governing

planning permissions, thereby contravening the conditions attached to these successive permissions.

#### **8.4. Restrictions on exempted development**

8.4.1. There are no other exemptions available for this material change of use within existing legislation.

#### **8.5. Conclusion**

8.5.1. In conclusion, what has been determined under this referral, is that the purported 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 (which falls under Part V of the Planning and Development Act 2000, as amended, and Class 9 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended) constitutes a material change of use. This material change of use is from the permitted use of residential units for sale to individual purchasers, i.e., those not being a corporate entity, to use by an approved housing body and corporate entity, the Respond Housing Association. This provision of social and affordable housing, as stipulated under Part V of the Planning and Development Act 2000, and the offering of residential accommodation and care to people in need, as defined under Class 9 of Part 4 of the Second Schedule of the Planning and Development Regulations 2001, deviate from the approved use and tenure nature of the units established under its governing successive planning applications. In my opinion, this material change in use does not come within the scope of the exemptions defined in Section 4 (1)(f) of the Planning and Development Act 2000, as amended and Article 10(1) of the Planning and Development Regulations 2001, as amended. In view of the foregoing, I am of the opinion that the works referred to in the specific question for which a declaration is sought constitute development that is not exempted development, and no reasonable restrictions can be reasonably applied.

## 8.6. Environmental Impact Assessment

- 8.6.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.7. Appropriate Assessment

- 8.7.1. Having regard to the existing development on site, the nature of the development referenced in the referral question, the location of the referral site in a serviced area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 Recommendation

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

**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 22<sup>nd</sup> 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 19<sup>th</sup> 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:

- (a) The use of Sarsfield Heights residential estate predominantly/exclusively for Part V housing by an approved housing body, Respond Housing Association, for social and affordable housing provision, and for offering residential accommodation and care to people in need of care constitutes 'development' under Section 3(1) of the Planning and Development Act 2000 (as amended). This is due to the material change in the use of the land, which does not accord with the permitted use and tenure nature of the housing units permitted under its governing successive planning applications.
- (b) The use of Sarsfield Heights residential estate as predominantly/exclusively for Part V housing does not qualify as an exempted development as per Section 4(1)(f) of the Planning and Development Act 2000 (as amended). There is no substantive evidence to demonstrate that Respond Housing Association conducted the development at Sarsfield Heights on behalf of, or in partnership with, Cork City Council pursuant to a contractual agreement with the local authority. Such development at Sarsfield Heights would be subject to the requirements of Part 8 of the Planning and Development Regulations 2001 (as amended), as required under sub-section (1)(b) of Section 179 of the Planning and Development Act 2000 (as amended).

- (c) The use of development at Sarsfield Heights constitutes a material change of use between two classes. It changes from the permitted predominant use of residential for sale to individual purchasers (i.e., those not being a corporate entity), to use by an approved housing body and corporate entity, Respond Housing Association, for the provision of predominantly/exclusively social and affordable housing. This falls under Part V of the Planning and Development Act 2000 (as amended) and Class 9 of Part 4 of the Second Schedule of the Planning and Development Regulations 2001 (as amended). This material change of use does not come within the scope of Article 10(1) of the Planning and Development Regulations 2001 (as amended), as it is not a change of use within a single class and thus would not be considered exempt development.
- (d) 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 contravene the conditions set under P.A. Ref. 174877/ABP Ref. PL 04.249194, P.A. Ref. 185275, and P.A. Ref. 2140139. As such, it cannot be considered exempted development per Article 10(1)(b) of the Planning and Development Regulations 2001 (as amended). This represents a material change in the use of the development, contravening the permitted use and tenure conditions specified in the governing planning permissions and the conditions attached to these successive permissions.
- (e) No other exemptions exist for this material change of use within existing legislation.

**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 development and is not exempted development.

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Brendan Coyne  
Planning Inspector

30<sup>th</sup> June 2023