



An  
Bord  
Pleanála

## Inspector's Report RP26.RP2136

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| <b>Development</b>                  | Point of detail regarding condition no. 12 of PL85.243203 |
| <b>Location</b>                     | 34-44 Ard na Cuain, White Rock South, Wexford.            |
| <b>Planning Authority</b>           | Wexford Co. Council                                       |
| <b>Planning Authority Reg. Ref.</b> | No Declaration  |
| <b>Applicants</b>                   | O'Leary International Ltd.                                |
| <b>Type of Application</b>          | Point of Detail   |
| <b>Planning Authority Decision</b>  | No Declaration  |
| <b>Type of Appeal</b>               | First Party   |
| <b>Date of Site Inspection</b>      | None required   |
| <b>Inspector</b>                    | Siobhan Carroll   |

## 1.0 Introduction and Background

- 1.1. This referral was lodged with the Board on 10<sup>th</sup> October 2016 under Section 34(5) of the Planning and Development Act 2000, as amended. This provision provides for matters to be referred to the Board where a point of detail is in dispute between the applicant and planning authority. The case relates specifically to Condition No.12 of PL85.243203 which relate to compliance with Part V of the Planning and Development Act 2000, as amended and the housing strategy.

## 2.0 Site Location and Proposed Development

- 2.1. The site in question comprises a 1.26 hectare area of land located at Whiterock South, Wexford Town. It adjoins the Ard na Cuan housing estate and accessed from that development.
- 2.2. The site contains ten detached dwellings.

## 3.0 Planning History

### 3.1. PL85.243203

Permission was granted for retention and completion of five two storey houses at 36, 37, 38, 39 and 40 Ard Na Cuain and permission for retention of alterations to previously approved houses at 35, 41, 43, 43 and 44 Ard Na Cuain ancillary site development works further to prior grants of permission under P. A. Reg. Ref. 2002/3678 and 2004/3065.

### P. A. Reg. Ref. 2004/3065

Permission was granted for (a) Change of site boundaries and relocation of houses 43,44 and 45 and additional house with garage (b) Change of site boundaries and relocation of houses 37 & 38 (c) 2 no. dwellings instead of house 39,40,41 & 42 with garages previously granted under reg. ref. 2002/3678. Permission was granted on 22<sup>nd</sup> of September 2004.

### P. A. Reg. Ref. 2002/3678

Permission was granted for 22 no. dwellings with garages on 16<sup>th</sup> of May 2003.

## 4.0 Condition of subject Referral

### 4.1. Condition no. 12 of PL85.243203 is as follows:

Prior to recommencement of development, the developer 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 and affordable 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. 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 97(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.

## 5.0 The Referral

### 5.1. Grounds of referral

- The referral concerning a point of detail has been lodged by Adrian Doyle on behalf of O'Leary International Ltd.
- The owners of the site in question have failed to reach agreement with Wexford Co. Council in relation to part V as required under condition 12 of PL85.243203.
- It is disputed that the site is zoned open space and that part V cannot be applicable as the legislation sets out that the land must be zoned residential, in whole or in part.
- The Council do not agree that the zoning alters the Part V requirement and state that Part V is applicable.
- The Board are requested to determine whether Part V is applicable.

- The method by which the existing use value is calculated is also queried. The Council's valuation is €30,000. It is stated that this use value does not take account of the completed show house. The show house was completed before the permission expired.
- The Board are requested to determine that the show house was authorised and as an authorised development that the show house must be included in the existing use value.

## 5.2. Planning Authority Response

- In the letter dated the 20<sup>th</sup> of October 2016 the Council state that they do not dispute that a house should be included in the calculation of the original use value.
- The dispute relates to the specific circumstances in relation to the value attributable to the house. The house was situated in an unfinished estate without roads and public lighting and surrounded by shells of houses in various stages of construction.
- The Council contend that the value of the house is therefore greatly diminished by the condition of the estate at the expiration of planning permission 20023678.
- The original use value pertaining to the house under planning permission W2013100 was the value of the house in its existing state and where the only works to the house or the estate that could be undertaken were those exempted under the planning acts.
- In relation to the matter of the zoning of the lands a copy of a response has been provided from the Executive Planner. The response dated the 25<sup>th</sup> of July 2016 was originally written in relation to the referral RP26.RP2130 which was deemed invalid.
- The response sets out the planning history. Under Planning permission 200223678 permission was granted for 22 no. dwellings. 11 no. dwellings were completed and under planning permission 20043065 permission was granted for the 11 no. remaining dwellings. The site was zoned 'Residential'

under the Wexford Town & Environs Development Plan 2002. Appropriate Part V conditions were attached to these permissions.

- An application for the retention and completion of works was made under planning permission W2013100 & PL85.243203 and was assessed under the provisions of the Wexford Town & Environs Development Plan 2009. The site was zoned 'Open Space and Amenity'. As detailed in the Planner's report, notwithstanding the zoning, a grant of permission was considered appropriate having regard to the level of works completed under the 2004 permission and a Part V condition was attached.
- In relation to the provisions of Part V the submission states that it would draw the Board's attention to the section 96 of the Planning and Development Act, 2000, and as amended which states, 'or for a mixture of housing and other uses'.
- While it is noted that it is local policy that residential development would 'not normally be acceptable' on a site zoned 'Open Space and Amenity', the prevailing factor of works completed meant that residential development was acceptable on the site at that time. Therefore, as the land was considered appropriate for residential use as it was zoned and serviced and a Part V condition was recommended.

### 5.3. Further Responses

- A further response was received from Adrian Doyle.
- There are two issues to be addressed. The first concerns the inclusion of a Part V condition on the land that was not zoned residential in the Wexford Town Development Plan 2009.
- Section 96 of the Act states, "any land zoned solely for residential use, or for a mixture of residential and other uses". The site was and is zoned in its entirety as open space.
- The submission from the Planning Authority refers to the fact that the site was previously zoned residential and due to the fact that it was an unfinished

estate on serviced land that it allowed the Planning Authority to attached conditions.

- The response from the Planning Authority also refers Section 96 of the Act “for a mixture of housing and other uses”. This refers to the zoning of the land and is not relevant in this case as there is no mixture of zoning.
- The reason for condition 12 states “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. The condition does not comply with Part V of the Act and it does not comply with Section 5 of the Wexford Council Housing Strategy, which “require that 20% of all land zoned for residential use, or for a mixture of residential and other uses, be reserved.”
- It is requested that the Board determine that the attachment of a Part V condition on land that was/is not zoned residential is outside the powers of the Planning Authority.
- The second issue which it is requested that the Board determine is whether the existing show house should be included in the existing use value.
- The response from the Planning Authority states that they do not dispute the fact that the house should be included in the calculation of the “original” “use value” but that the dispute arises around the value attributable to the house.
- The statement in the Valuers report states “we would estimate the open market value of the land, not including any development thereon”.
- The house was completed in 2007 and was open to the public as a showhouse. A copy of brochure advertising the houses at Ard Na Cuan has been included with the submission.
- The house was accessible and visited by the public including Mr Doyle.
- The response from the Planning Authority states that the house was situated in an unfinished estate without roads and public lighting, there is no evidence to support this.
- The house is located immediately to the left of the entrance and at the nearest point to the completed estate.

- In conclusion, it is requested that the Board determine that the completed house was authorised, within the meaning of section 40 of the Act and that as such the Planning Authority are required to assess the existing use value inclusive of it.

## 6.0 Assessment

- 6.1. This referral on a 'point of detail' is made under Section 34(5) of the Planning and Development Act, 2000, as amended by Section 6 of the 2002 Act. It is noted that Section 34(5) states;
- 6.2. 'The conditions under subsection (1) may provide that points of detail relating to any grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination'.
- 6.3. The referrer O'Leary International Ltd. have requested that the Board determine the principle of the attachment of a Part V condition. The subject referral on a 'point of detail' relates to the permission granted under Reg. Ref. 2013100 and PL85.243203. The applicant did not appeal the condition on the decision of the planning authority requiring an agreement with regard to the provision of social and affordable housing. Accordingly, the requirement to conclude such an agreement cannot be considered again in the course of a referral under section 96(5) of the acts.
- 6.4. The second issue which it is requested that the Board determine in relation to condition no. 12 is whether the existing show house should be included in the existing use value. This relates to how the net monetary value of the property is established in order that a Part V agreement can then be determined.
- 6.5. In relation to the matter, I refer to the Guidelines issued by the Minister under Section 28 of the Planning and Development Act, 2000, "Application of Part V of Planning and Development Act 2000, after 1 September 2015, to development granted permission prior to 1 September 2015.
- 6.6. Permission was granted by the Board under Reg. Ref. 2013100 and PL85.243203 for the retention and completion of the housing scheme on the 30<sup>th</sup> of July 2014. The Ministerial Guidelines provide that;

“In respect of cases where permission for a development had been granted before 1 September 2015 but the Part V agreement was not yet made on or before that date all Part V agreements made after 1 September 2015 must be made under and in all compliance with the provisions of Part V as amended with effect from 1 September 2015.”

- 6.7. The matter under dispute relates to the existing use value of the House site no. 35. The referrer O’Leary International Ltd. have stated that the house was completed in 2007 and that it was open to the public as a show house. It is requested in the referral that the Board should determine that the show house was authorised and that as an authorised development must be included in the existing use value.
- 6.8. In response to the matter Wexford County Council have stated that they do not dispute that House on site no. 35 should be included in the calculation of the existing use value. The dispute refers to the value attributable to the house.
- 6.9. In terms of the establishment of the existing use value of the site, the house on site no. 35 was constructed on foot of the original permission P. A. Reg. Ref. 2002/3678. When the permission lapsed the house was situated within an unfinished housing scheme without road, footpaths and lighting and containing unfinished houses.
- 6.10. The works carried out in the intervening period between when the original permission P. A. Reg. Ref. 2002/3678 lapsed in 2008 and the further permission P. A. Reg. Ref. 2004/3065 lapsed in 2009 until 2014 when the permission was granted for the retention and completion of the scheme under P. A. Reg. Ref. W2013100 & PL85.243203 were therefore unauthorised at the time, until the situation was regularised with the grant of permission on the 30<sup>th</sup> of July 2014 under P. A. Reg. Ref. W2013100 & PL85.243203.
- 6.11. The existing use value is defined in Section 96(6)b of the Planning and Development Act 2000, as amended, as the value of the land calculated by reference to its existing use on the date on which the permission was granted for the development on the basis that on date that it would have been and would thereafter have continued to be, unlawful to carry out any development in relation to that land other than exempted development.
- 6.12. Therefore, the existing use value must therefore be considered having regard to the existing situation on site prior to any subsequent unauthorised development or works



carried out on site. Accordingly, Wexford County Council have provided a valuation of €30,000.00 on the basis that the subject house was located in an unfinished housing scheme.

- 6.13. Having regard to the details on file and the planning history, I consider that the valuation of €30,000.00 as the existing use value constitutes a reasonable figure.

## 7.0 Recommendation

- 7.1. I recommend that the existing use value in respect of the house at site no. 35 which is in dispute in relation to the establishment of a Part V Agreement as per Condition No. 12 of PL85.243203 is €30,000.00.

## 8.0 Reasons and Considerations

Having regard to:

- a) section 96(5) and section 96(6)b of the Planning and Development Act 2000, as amended,
- b) the planning history of the site,
- c) the submissions on file

the Board considered that the existing use value of the house on site no. 35 must be considered having regard to the existing situation on site prior to any subsequent unauthorised development or works carried out on site. Having regard to the planning history of the site it is clear that the house on site no. 35 was situated within an unfinished housing scheme and that any subsequent development or works carried out within the housing scheme were unauthorised until the situation was regularised with the grant of permission under P. A. Reg. Ref. W2013100 & PL85.243203. Therefore, the Board considered it appropriate that the existing use value €30,000.00 as provided by Wexford County Council should apply.

## **MATTERS CONSIDERED**

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

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Siobhan Carroll  
Planning Inspector

20<sup>th</sup> February 2017