

Planning  
Observation

ABP Ref. 313322

Priorsland SHD,  
Townlands of  
Carrickmines Great  
and Brennanstown,  
Dublin 18.

For Quintain  
Developments Ireland  
Limited

**MAY 2022**

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## 1 INTRODUCTION

We, Stephen Little & Associates, Chartered Town Planners and Development Consultants, 26/27 Upper Pembroke Street, Dublin 2 D02 X361 have been instructed by our client, Quintain Developments Ireland Limited, Fitzwilliam Court, Leeson Close, Dublin 2, D02 YW24 to make this Formal Observation to An Bord Pleanála in relation to a SHD Planning Application by 1 Carrickmines Land Limited for a residential development in the townlands of Carrickmines Great and Brennanstown, Dublin 18 (ABP Ref. 313322).

Our clients control a significant portion of lands within the Cherrywood Planning Scheme and are currently on site building a number of schemes in Cherrywood.

This Observation has been prepared with inputs from CS Consulting Engineers.

The Observation is being made within the appropriate period, which ends on 17 May 2022, and is accompanied by the appropriate fee (€20.00).

We confirm that we have reviewed the SHD Planning Application material and are familiar with the application site.

### 1.1 Cherrywood Planning Scheme

The application site is within the Cherrywood SDZ Planning Scheme lands.

Section 170 of the Planning & Development Act 2000 sets out the procedure for planning applications within a Strategic Development Zone where they are essentially the same as any other application for planning permission for development. However, the three Sections of the Act are of particular relevance and quoted below as follows: -

*“(2) A planning authority shall grant permission in respect of an application for a development in a strategic development zone where it is satisfied that the development, where carried out in accordance with the application or subject to any conditions which the planning authority may attach to a permission, would be consistent with any planning scheme in force for the land in question, and no permission shall be granted for any development which would not be consistent with such a planning scheme,*

*(3) Notwithstanding Section 37, no appeal shall lie to the Board against a decision of a planning authority on an application for permission in respect of a development in a strategic development zone*

*(4) Where a planning authority decides to grant permission for a development in a strategic development zone, the grant shall be deemed to be given on the date of the decision.”*

Considering this information, where an application is submitted to the Planning Authority, it shall be granted planning permission, so long as it complies with the Planning Regulations and the appropriate Planning Scheme.

The Cherrywood Planning Scheme is an incredibly complex document with a range of inter-linked issues, objectives and delivery requirements in place across a range of amenities, infrastructure and dwelling numbers.

What is relevant to point out at this juncture is that where development is not consistent with the Planning Scheme, permission may not be granted.

It is also important to note that the Planning Scheme has gone through a statutory process both with the Councillors, prescribed bodies, members of the public and An Bord Pleanála, wherein the parameters set down by the Planning Scheme have been approved.

Section 7.5 of the Planning Scheme confirms this where it states that:

*"In determining whether planning permission should be refused or granted, development proposals within the Cherrywood SDZ will be considered under the following principal heading:*

- 1. According to the sequencing and phasing of development.*
- 2. According with Development Areas.*
- 3. According with the Objectives set out in the Planning Scheme.*
- 4. According with the Physical Infrastructure and Green Infrastructure requirements.*
- 5. Overall Design Detail."*

In this instance it is An Bord Pleanála who are the Planning Authority and whom must assess the application and determine whether the proposals are indeed consistent with the Planning Scheme. We understand that the Council will submit their Opinion on the matter also as part of the SHD process.

Our client is seeking to ensure that this instant application in the Cherrywood Planning Scheme area is assessed and treated in a fair, equitable and reasonable manner in line with the established requirements of the Planning Scheme for this area. We note that it is not possible to materially contravene an SDZ Planning Scheme.

## 2 PLANNING HISTORY OF APPLICATION SITE

A planning application for a mixed-use village centre and residential development (445no. residential units in total) was submitted to DLRCC on 23 July 2021 (DZ21A/0677). This application was ultimately Refused Permission by DLRCC on 15 September 2021 for 10no. reasons.

Our Client wishes to ensure that the reasons for refusal for the previous application on site are fully considered by the Board, and ensure that the development as now proposed has addressed fully each of these reasons and is now wholly consistent with the specific objectives of the Planning Scheme. As the Planning Authority in this case, our Client asks that the Board ensure this.

## 3 CHERRYWOOD PLANNING SCHEME

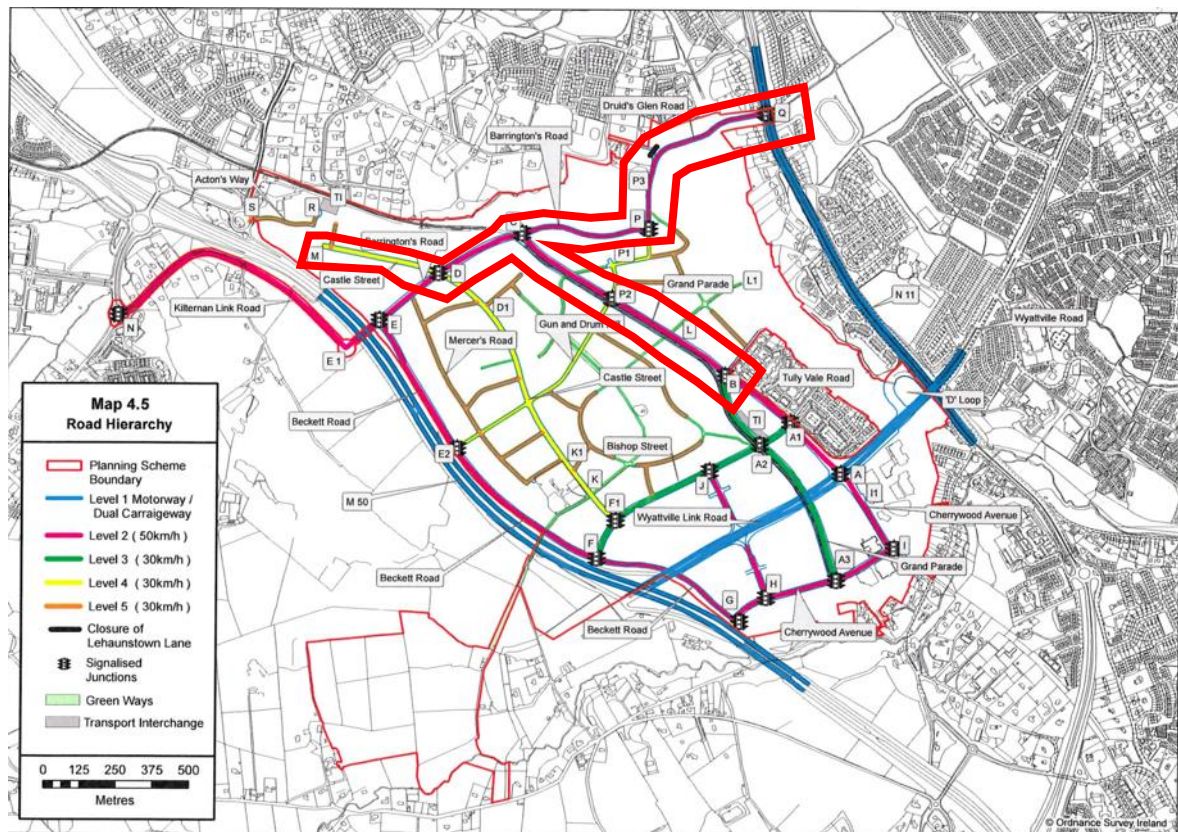
Our clients submission in this instance is primarily focussed on the infrastructural constraints in Cherrywood and the manner in which these are to be addressed in line with the Planning Scheme. The site of this Application is located in Development Area 3 – Priorsland, which in turn is in Growth Area 2 as identified by the Cherrywood Planning Scheme.

Table 6.3.2 of Chapter 6 of the Planning Scheme identifies the infrastructure required to facilitate the development of each Development Area, including Development Area 3.

**Table 6.3.2:** Infrastructure Requirements Development Area 3  
Priorsland. See Maps 4.1-4.5.

Road Requirements
<ul style="list-style-type: none"> <li>Construct M – D.</li> <li>Roads D-C-P-Q, A-B and B-C as specified for Development Area 1.</li> </ul>
Construction Access
<ul style="list-style-type: none"> <li>Through single controlled access at Junction D on Barrington's Road.</li> </ul>
Stormwater Requirements
<ul style="list-style-type: none"> <li>Flood containment zone.</li> <li>Diversion of Ticknick Stream.</li> <li>Flood flow bypass culvert parallel to Carrickmines River.</li> <li>Detention basins and swales as shown on Map 4.2.</li> </ul>
Foul Sewer Requirements
<ul style="list-style-type: none"> <li>450mm approx. diameter sewer from E and D connecting into the Carrickmines Sewer.</li> </ul>
Water Supply Requirements
<ul style="list-style-type: none"> <li>Upsizing (600mm) and re-route of existing 20" AC main.</li> <li>300mm branch main from the upsized 600mm diameter main to existing 300mm diameter at I.</li> <li>Connection to DCC Stillorgan 24" main at Q.</li> <li>400mm diameter from 24" main to A, A', B, L, P2, C, D and at 300mm. via M and S to connect to existing 200mm watermain in Glenamuck Road.</li> <li>400mm diameter Luas crossing at C.</li> <li>Abandon section of existing 33" Main and reroute through E to tie back into existing main near attenuation pond 1.</li> </ul>

Table 6.2.3 needs to be read in conjunction with Figure 5.4 of the Planning Scheme. The references to various nodes on the road network, or foul sewer and water supply network are each identified on that map.



**Figure 1:** Map 4.5 of the Planning Scheme with the required roads necessary to enable development in Development Area 3 to proceed, with SLA additions in red.

What Figure 1 above demonstrates is that the Planning Scheme envisages vehicular access to be via a new junction on the N11 at **Q** (constructed) together with a bridge over the Carrickmines Valley between **Q** and **P3** and that this is connected to the permitted Roads Phase 1 development under Reg. Ref. DZ15A/0758 at junction **C**. For clarity, none of the roads described above are permitted under Ref. DZ15A/0758 and this can be evidenced from Map 7.2 of the Planning Scheme, as amended. The roads identified in Table 6.2.3 as being **B – C – D** (or Grand Parade – Barrington's Road as they are known) do form part of the permitted Roads Phase 1 development under Reg. Ref. DZ15A/0758. However, this is under construction at present and is not yet complete and is not catering for traffic as a result.

Table 6.2.3 confirms also that the Planning Scheme envisages construction access as coming off Junction **D** on Barrington's Road.

There are also a number of specific objectives pertaining to the Development Area set out at Objectives DA 19 – DA 27 inclusive.

Chapter 7 of the Planning Scheme, which was the subject of an Amendment in 2018, sets out the *Implementation, Sequencing and Phasing of Development* in the Planning Scheme. Section 7.2.1 states that:-

*"Growth Area 1 can be permitted immediately. In addition, on the basis of the infrastructure permitted to-date and under construction (Roads Phase 1, Tully Park, Ticknick Park and Beckett Park), it is considered appropriate that in addition to the residential development of Growth Area 1, development up to a maximum of 2,300 residential units in total, in either Growth Area 2 or 3 may be permitted in tandem with Growth Area 1 (Refer To Map 7.2).*

*Accordingly, the sequencing requirements allow for the delivery of residential units in Growth Areas 2 & 3 in tandem with the Growth Area 1. In addition, the Village Centres may be permitted as supporting uses for the initial threshold of 2,300 residential units in Growth Areas 2 & 3."*

Section 7.2.2 of the Planning Scheme was brought in through the 2018 Amendment of the Planning Scheme. This facilitates the introduction of interim infrastructure for a limited period of time, pending delivery of the ultimate infrastructure required by the Planning Scheme. In this regard 7.2.2 acknowledges that:-

*“it is acknowledged that there may be exceptional or unforeseen circumstances beyond the reasonable control of an individual developer or the local authority, whereby a piece of infrastructure necessary to progress the development of a Growth Area cannot be provided in the short to medium term (circa 0-3 years).”*

Crucially however in the context of this particular application, 7.2.2 then goes on to state

*“In such instances, there may be an appropriate alternative utilising **other infrastructure as provided for under the Planning Scheme**, as an interim measure to facilitate the early delivery of housing, and early engagement with the Development Agency will be an essential prerequisite.*

*The Development Agency Project Team will work with applicants to explore viable alternatives that accord with the overall objectives of the Planning Scheme and in doing so will have regard to the following criteria: urban design and place-making objectives; the character of the village centres at the core of the residential neighbourhoods; landscape and visual amenity impact; the permeability and connectivity of walking and cycling routes; the hierarchy and function of the roads as set out in the scheme; traffic safety and an acceptable level of access to the proposed development; the resilience of the emerging road network; and consistency with the build-out or ‘long-term’ objectives of the Planning Scheme.”*

*SLA Emphasis in **bold***

It is clear therefore that the Planning Scheme requires that such interim measures must be *other infrastructure as provided for under the Planning Scheme*.

In the context of Construction Access, the Planning Scheme goes on to state

*“The Planning Scheme also identifies construction access points/routes for the Development Areas. Where any such construction accesses as identified in Chapter 6, cannot be achieved and where alternatives are proposed, the Planning Authority will consider such proposals on their merits having regard to the following: impact on existing residential amenity; road and traffic safety; Luas operation; Luas Interface; environmental impacts; cumulative impacts; and the proper planning and sustainable development of the area.”*

What is worth highlighting for the convenience of the Board is that whilst interim measures have been accepted by the local Planning Authority, it has also been a requirement that the Applicant’s provide the Planning Authority with sufficient legal certainty in planning terms that the infrastructure ultimately intended to serve the development will a) be provided within the 0-3 year period specified and b) that this will be available to the Applicant. That has involved including the works it is intended to be relied upon within the red line boundary of the application and to include the necessary letter of consent from each land owner confirming that the infrastructure will be made available.

As an adjoining landowner our client advises that the Applicant did not seek a letter of consent and/or legal certainty for the proposed infrastructure in the subject application. Our clients would have welcomed the opportunity for pre-application engagement to alleviate any infrastructural capacity concerns and other issues that may affect their land holding.

We would highlight for the convenience and understanding of the Board that in more recent applications, the Planning Authority have raised significant concerns with regard to the operational capacity of Castle Street to perform its intended function as a public transport link through the heart of Cherrywood due to the extent of developments permitted to utilise Castle Street for access purposes to date. These constraints do not appear to be addressed in this application.



## 4 COMMENTS ON SHD APPLICATION

### 4.1 Compliance with SDZ Standards

#### 4.1.1 Construction Access

The Planning Scheme requires that the construction access for the application site is through Junction D on Barrington's Road and utilising the permitted Roads Phase 1 under Reg. Ref. DZ15A/0758 getting access either from the N11 or from Grand Parade. The Roads Phase 1 development under Reg. Ref. DZ15A/0758 is still under construction, is partially principally complete in places (ie Bishop Street, Castle Street) and none of it is yet taken in charge and is as a result in private control by multiple landowners.

The proposed development proposes to take the construction access from the existing lane to the west of the site on an interim basis, which the applicant has confirmed that they have a right of way over.

We would highlight the previous Reason for Refusal number 2 in this regard, where the Planning Authority (DLRCC at that time) considered that this precise approach was not acceptable and, *"will negatively impact on the functioning, performance and safety of the strategic road network operated by Transport Infrastructure Ireland (TII)."*

It was additionally considered by the Planning Authority that this approach was not consistent with Sections 4.2.6, 4.2.7, Table 7.5 and Objectives PI 14, PI 15 and DA 26 of the Planning Scheme.

The Applicant has indicated that the ultimate means of access is the Castle Street Extension and they have referred to the planning permission secured by our clients for same and to the option of URDF funding for same. However, the Applicant has failed to acknowledge that the remaining roads in Cherrywood permitted under Reg. Ref. DZ15A/0758 are not complete, nor are they taken in charge, but rather remain in private ownership pending completion of the development as a whole and the completion of the normal taking in charge procedures. The Applicant did not engage with our client, as the owner of the built portion of Castle Street, Barrington's Road and Bishop Street to seek permission for use of same. As a result, the Applicant has no means of gaining access to a public road for access purposes, other than via a laneway which has already been deemed unacceptable by the Planning Authority.

#### 4.1.2 Phase 1 Roads and Red Line Boundary

Whilst it is noted that the application provides for a section of Castle Street to connect to the permitted, and under construction Phase 1 Roads (Reg. Ref. DZ15A/0758), these have not been included in the application red line boundary and the appropriate letters of consent have not been sought or included as part of the application.

As noted above, landowners in the Cherrywood SDZ lands, including our clients and others have been required to include the Phase 1 Roads within the red line boundary as they are not yet taken in charge, are therefore private and are still under construction in places and to obtain Letters of Consent from the various landowners on whose lands this road network is being built. Our clients and the other landowners have been advised by DLRCC that this is required in order to provide sufficient legal certainty in planning terms that the development proposed has a right to access these roads and their related services.

We note that the Applicant in this case has not included any of the services or roads within Cherrywood required to cater for their development. The Board are therefore invited to consider whether there is sufficient legal certainty in planning terms that within a period of 0-3 years the Applicant in this case will have the right to access/use the services currently under construction but not yet complete or taken in charge to facilitate their development in line with Section 7.2.2 of the Cherrywood Planning Scheme.

In the interests of a consistent, fair and reasonable approach to proposed development in Cherrywood, our Client is of the view that the approach to red lines and the inclusion of the Phase 1

roads in same should be consistent throughout all applications until such time that they are complete and taken in charge.

## 4.2 Drainage & Water Supply

We are concerned that there is insufficient information supplied by the Applicant in order to comply with Objective PI 12 of the Planning Scheme. We would have a number of concerns in this regard, as follows:-

- The Applicant is saying that they will connect to the Ex300mm water main in Castle Street to accommodate occupation flows. However, at this time that section of watermain is not commissioned and is not available to provide supply as a result. The Applicant did not engage with our client regarding commissioning of this pipe.
- There is reference made to the diversion of an existing watermain. It appears from Drg. No. 182-186-031 prepared by PUNCH that part of this includes passing over lands in the control of our client identified for residential development and the suggestion is that the diversion has been agreed. We have been advised that the diversion has not been agreed with our client and no evidence is provided to show that this has been agreed with Irish Water either. The consent of our client was not sought, nor is it given to such an alignment.
- Our clients lands immediately adjoining the application site is a RES 3 tile and which also includes part of the lands required for Priorsland Park. The RES 3 tile is required to be developed at high densities and a Principal Frontage addressing Priorsland Park must be delivered in order to meet the requirements of the Planning Scheme. Our clients are concerned that the Applicant's suggestion that the diversion could impact on their RES 3 tile would prejudice their ability to adhere to the Planning Scheme requirements for these lands.
- In this regard, we note that the Services Report prepared by PUNCH notes that the existing watermain is to be diverted by others but fails to acknowledge who is responsible for this diversion.
- The Applicant also does not mention the exact location of the existing water main as it runs up past the Ticknick Stream. It appears that the alignment is diagrammatically shown on the engineering drawings and passes in close proximity to the suggested bridge crossing over the Ticknick River. If the main clashes with the bridge, you cannot build the bridge until the main is diverted so you could point out their development is premature as the diversion route needs to be agreed at least before a grant of permission. – our land, no consent

## 4.3 Flood Risk

We have noted that Reason for Refusal 1 of the previous application in these lands related to flood risk issues. We are concerned that there is insufficient information supplied by the Applicant in order to comply with Objective PI 11 of the Planning Scheme. We would have a number of concerns in this regard, as follows:-

- From a review of the Flood Risk Assessment (FRA) on file, it appears that downstream modelling was not assessed in this application as part of the Flood Risk Assessment conducted by PUNCH. This is confirmed by the consultants on Page 19, Section 5.2.1 of the FRA. It also appears that no sensitive downstream receptors were therefore identified either. The Applicant has only considered their own lands in undertaking this assessment. These were matters specifically raised in the Reason for Refusal previously.
- Our client would also raise a query as to how the proposed permanent scenario and proposed interim scenario flowing back into the Carrickmines river will affect the lands immediately adjoining and other downstream lands.
- The Applicant have not commented on the attenuated flows generated from the development site (5.0 l/s) on the Ticknick and Carrickmines Streams in the FRA.

- The Applicant does not seem to have carried out any flood risk assessment or even commented on the bridging detail on the Ticknick Stream and if that has any effect on the upstream/downstream flows during a storm event.

## **5 CONCLUSION**

Our Client would reiterate that the Board are requested to ensure that all objectives of the Planning Scheme and previous reasons for refusal on site have been addressed by this application, and in the interests of fairness and consistency with approaches taken elsewhere in the Planning Scheme. This includes demonstrating access to the long term infrastructure required to service the development and an absence of any negative impacts on adjoining development lands. In that regard, it appears that not all of the previous Reasons for Refusal have been satisfactorily addressed, with issues regarding flood risk, access and drainage and water supply remaining.

**STEPHEN LITTLE & ASSOCIATES**

17 May 2022

Stephen Little & Associates are committed to progressing and achieving sustainable development goals.

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