

To: An Bord Pleanála
64 Marlborough Street,
Dublin 1.

BB/COC

24th October 2022

Our Clients: John Conway of 91 St. Nicholas Avenue, Dundalk, Co. Louth; and
the Louth Environmental Group of 91 St. Nicholas Avenue,
Dundalk, Co. Louth.

Re: Proposed Strategic Housing Development (Case No. 314686) SHD
Development comprising Former Bray Golf Club Lands, Off Ravenswell Road
and Dublin Road, Bray, Co. Dublin and Co. Wicklow. Dun Laoghaire-Rathdown
County Council. Change of use from former golf course, construction of 586 no.
residential units (76 no. houses, 348 no. apartments, 162 no. Build to Rent
apartments), creche and associated site works.

Closing Date for Submissions – 24th October 2022 (5:30pm)

Dear Sirs,

On behalf of the above-named Clients, we wish to lodge the within written
submissions/observations on the proposed Strategic Housing Development comprising
586 no. residential units, off Ravenswell Road and Dublin Road, Bray, County Dublin
and County Wicklow.

The grounds and reasons for our submission/observations are detailed hereinafter.

Planning and Development Act 2000, Section 28 of the Planning and Development Act
2000 (as amended) & Guidelines

- (i) The Board should refuse to consider and cannot grant permission for the
proposed development in circumstances where such grant would have to be
justified by reference to the Guidelines for Planning Authorities on Urban
Development and Building Height 2018 and the Apartment Guidelines,
dated December 2020. These Guidelines and the specific planning policy
requirements contained therein are *ultra vires* and not authorised by section

28(1C) of Planning and Development Act 2000 (as amended). In the alternative, insofar as section 28(1C)) purports to authorise these Guidelines, including the specific planning policy requirements, such provision is unconstitutional/repugnant to the Constitution. The said Guidelines are also contrary to the SEA Directive, insofar as they purport to authorise contraventions of the development plan/local area plan, without an SEA being conducted, or a screening for SEA being conducted, on the variations being brought about to the development plan/local area plan as a result of same.

- (ii) The proposed development materially contravenes the density requirements/provisions provided in the Development Plan and Local Area Plan. The aforesaid materially contravention cannot be justified by reference to s.37(2) of the Planning and Development Act 2000 or s.28 Guidelines.
 - (iii) The proposed development materially contravenes the Development Plan/Local Area Plan and the provisions relating to housing mix. The aforesaid materially contravention cannot be justified by reference to s.37(2) of the Planning and Development Act 2000 or s.28 Guidelines.
 - (iv) The proposed development materially contravenes the Development Plan/Local Area Plan in relation to the provisions for public open space. The aforesaid materially contravention cannot be justified by reference to s.37(2) of the Planning and Development Act 2000 or s.28 Guidelines.
 - (v) The proposed development materially contravenes the requirements of the Development Plan/Local Area Plan in relation to building height and visual impact. The proposed development cannot be justified by reference to the Guidelines for Planning Authorities on Urban Development and Building Height 2018 (*'the Height Guidelines'*), including the SPPR's set out therein. The aforesaid materially contravention cannot be justified by reference to s.37(2) of the Planning and Development Act 2000.
 - (vi) The proposed development and documentation presented does not comply with the requirements of the Guidelines for Planning Authorities on Urban Development and Building Height 2018 (*'the Height Guidelines'*), including the SPPR's set out therein and the Criteria and Specific
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Assessments identified therein, including SPPR's 1, 2 and 3 referred to in the Material Contravention Statement submitted. The Board cannot grant permission for the proposed development in circumstances where the relevant criterion under the Height Guidelines, which are mandatory in nature, cannot be satisfied.

- (vii) The proposed development materially contravenes the Development Plan and/or Local Area Plan ('LAP'), in respect of car parking. The aforesaid materially contravention cannot be justified by reference to s.37(2) of the Planning and Development Act 2000 and Bray Municipal District Local Area Plan 2018-2024.
 - (viii) The proposed development materially contravenes the Development Plan and/or LAP, in respect of the provision of childcare. The aforesaid materially contravention cannot be justified by reference to s.37(2) of the Planning and Development Act 2000.
 - (ix) The Board cannot grant planning permission for this development under Section 37(2)(b) of the Planning and Development Act 2000. The proposed development is not of strategic or national importance – the Developer has not adduced any objective basis for asserting that the proposed development is of strategic or national importance. Purported reliance in the definition of "*strategic housing development*" under the 2016 Act as a basis for asserting that the proposed development is of strategic or national is erroneous.
 - (x) The application and application documentation does not comply with the requirements of the Planning and Development Regulations 2001 (as amended) in terms of the particulars to be provided with the application in respect of the proposed development, including in relation to the plans and particulars lodged. The application documentation does not comply with the requirements of the 2016 Act and the associated Regulations in relation to the requirements for detailed plans and particulars.
 - (xi) The application documentation has not demonstrated that there is sufficient infrastructure capacity to support the proposed development, including by reference to public transport, drainage, water services and flood risk.
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- (xii) If the Board purports to justify the non-compliance with the objectives of the LAP, Development Plan, Masterplan and/or Urban Design Framework – same will amount to a unlawful breach of the requirements of the SEA Directive.

Environmental Impact Assessment Report ('EIAR')

Article 2(1) of Directive 2011/92 (as amended by Directive 2014/52/EU) governs the relationship between giving consent and the assessment of the environmental effects:

“Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment...”

The EIAR is inadequate and deficient and does not permit an assessment of the potential environmental impacts of the proposed development.

- (i) The process provided for under the 2016 Act contravenes the requirements of the EIA Directive and the public participation requirements set out at Art.6 in circumstances where the public concerned are deprived of the opportunity to view and consider relevant statutory reports and advices obtained by the Board, such as the report from the Planning Authority/Chief Executive (a statutory consultee under the 2016 Act), prior to the making of observations/submissions on the proposed development – which such reports contain relevant information in relation to EIAR.
 - (ii) The Board lacks ecological and scientific expertise and/or does not appear (in light of the information available on the Board’s website) to have access to such ecological/scientific expertise in order to examine the EIA Screening Report as required under Article 5(3)(b) of the EIA Directive, which states that in order to ensure the completeness and quality of the environmental impact assessment report, *inter alia*, “*the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report.*”
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- (iii) The criteria considered in the EIAR does not comply with the requirements of the Planning and Development Act 2000, 2016 Act and the associated Regulations. The Application, and application documentation, does not comply with the mandatory requirements of the Planning and Development Regulations 2001 (as amended).
- (iv) The Proposed Development, and documentation submitted, including the Planning Report, does not comply with the requirements of the Planning and Development Act 2000, the Planning and Development Regulations 2001, or the EIA Directive. The information submitted by the developer is insufficient and contrary to the requirements of the EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) and the provisions of national law, including the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).
- (v) Having regard to the potential cumulative impacts arising from the proposed development and other similar SHD Developments, and noting the size of the proposed development, the EIAR has failed to provide a comprehensive cumulative assessment of the project in the EIAR.
- (vi) The Population and Human Health chapter of the EIAR is inadequate in that it fails to assess the impact of an increased population in the area on services including schools, childcare and medical care.
- (vii) The impact on biodiversity and human health arising from the proposed development, during both the construction and operational phases, is inadequate and lacking in terms of detail – the EIAR is deficient in this regard.
- (viii) Inadequate consideration has been given to Climate Change in the EIAR.

Appropriate Assessment

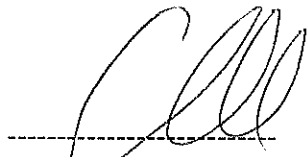
By way of general summary, the information presented by the Developer is insufficient, contains lacunae and is not based on appropriate scientific expertise – as such the Board cannot comply with the requirements of the Habitats Directive and relevant provisions of national law under the Planning and Development Act 2000. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects (see Case C-461/17, *Holohan & Ors v. An Bord Pleanála, Preliminary Reference*, 7 November 2018, para.33; see also Case C-243/15, *Lesoochránárske zoskupenie VLK*, 8 November 2016, para.42; *Commission v. Spain*, Case C-404/09, 24 November 2011, para. 99; and *Grüne Liga Sachsen and Others*, Case C-399/14, 14 January 2016, paras. 49 and 50). An Appropriate Assessment carried out under Article 6(3) may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.

- (i) The Proposed Development does not comply with the requirements of the Planning and Development Act 2000 (as amended) (*under Part XAB of the 2000 Act (ss.177R-177AE)*) and the Habitats Directive. Due to inadequacies and lacunae in the AA Screening Report prepared by the Developer the Board does not have sufficient and/or adequate information before it to carry out a complete AA Screening in relation to the proposed development.
- (ii) The AA Screening assessment does not provide sufficient reasons or findings, as required under Art.6(3) of the Habitats Directive and national law, to the requisite standard – the conclusions/statements made therein do not identify any clear methodology and no analysis is offered in respect of the AA Screening conclusions in respect of the protected sites “screened out” at the said AA Screening stage.
- (iii) The Screening Assessment is further flawed insofar as it rules out certain protected sites on the basis of mitigation measures.

- (iv) The NIS is flawed insofar as it does not consider all aspects of the proposed development – including relevant aspect arising during the construction phase, such as construction compounds and haul roads etc.
- (v) Insofar as the NIS seeks to rely on an assessment of collision/flight risks in the EIAR – this is impermissible and non-compliant with the nature of assessment required under the Habitats Directive.
- (vi) Insufficient surveys have been carried out to assess the potential impacts arising from bird collision/flight risks insofar as the proposed development may impact bird flight paths.
- (vii) The “Zone-of-Influence” referred to in the NIS is not reasoned or explained – it is unclear how such a zone was so determined – the criteria for determining a “zone-of-influence” has no basis in law. Furthermore, the limitation of the consideration of protected sites to a 15km radius is not explained and it is unclear how such a limitation was determined.
- (viii) The NIS fails to identify and consider all potential impacts on protected bird species – including by reference to potential collision flight risk during both the construction and operation phase of the proposed development.
- (ix) No regard and/or inadequate regard has been given to the cumulative effects of the proposed development, in combination with other development in the vicinity, on the protected sites.
- (x) Insufficient site visits (3 no.) were carried out so as to assess to the requisite legal standard the development site and the potential impact of the proposed development on conservation objectives of protected sites. There is an absence of detail as to the methodology utilised for the site visits.
- (xi) The Board cannot grant permission for the proposed development without ensuring all necessary protections are in place to protect designated species – it is noted that the main channel of the River Dargle is designated as a Salmonid Water under the European Communities (Quality of Salmonid Waters) Regulations, 1988 (S.I. No. 293/1988). It is further noted that badger activity has been recorded on the site and bat activity.

- (xii) Reliance on an NIS submitted for a different project, Shanganagh WwTP, is impermissible and contrary to the requirements of the Habitats Directive.
- (xiii) We submit that Build-to-Rent projects do not play a role in implementing Rebuilding Ireland: the Action Plan for Housing and Homelessness or the Housing for all Plan. Build-to-Rent (BTR) accommodation is built specifically for the purpose of long-term renting, in an attempt to address the shortage of houses in Ireland today and not for the long term housing crisis Ireland is facing with homelessness.

Yours faithfully,



Christine O' Connor,
BKC Solicitors