



An
Bord
Pleanála

Memorandum

Legal File GL1439

To: Erika Casey, Director of Planning

From: 1. Pierce Dillon, Senior Administrative Officer, Legal Affairs Section.
2. Regina Fitzgerald, Executive Officer, Legal Affairs Section.
3. Eva Pierce, Executive Officer, Legal Affairs Section.

Re: Keldrum Limited v ABP

(ABP-322476-25, previously ABP-319137-24)

Large scale residential development: construction of 220 houses and 132 apartments; provision of new section of Rathnew Inner Relief Road; associated vehicular and pedestrian access, carriageways, paths and junctions; provision of new vehicular entrance and gates along eastern portion of Tinakilly Avenue and all associated site development works. The planning application is accompanied by an Environmental Impact Assessment Report and Natura Impact Statement. Site of c. 16.8 ha at Tinakilly, Rathnew, Co. Wicklow

Date: 16th May 2025

The above-mentioned Large Scale Residential Development relates.

Five third party appeals were lodged with the Board, against the PA decision to grant permission for this LRD development. Whilst the Board's inspector recommended that permission be granted, the Board was not satisfied on the facts of the case, as set out in the application and appeal documents, that the proposed LRD development was actually on land the zoning of which, facilitated its use for the purposes, proposed in the application, as required, under section 32A(1) of the Planning & Development Act 2000, as amended, and accordingly the Board, decided to refuse permission (see Board Direction, **Tab A**).

On the 25th September, 2024, a judicial review was lodged by Keldrum Limited, the developer, against the Board's decision, citing 3 Core Grounds (**Tab B**).

1. A misinterpretation/misapplication of Section 32A(1) and/or Section 32A(2) of the PDA 2000, in particular, the meaning of the text "the zoning of which facilitates its use for the purposes proposed in the application", which resulted in the Board acting ultra vires and/or erring in refusing permission for the proposed development ("CG1").
2. The Board erred in holding that it was precluded from granting permission by reason of its conclusion that Section 32A of the PDA 2000 applied to the application for planning permission, and/or fettering its discretion and/or in abdicating its function to consider whether to grant permission for the development ("CG2").
3. The Board erred in holding that the development was premature and contrary to proper planning, pending the making of a local area plan, for the overall settlement in which the proposed development is located. In doing so, it is alleged the Board failed to have adequate regard to Section 3.5 of the Wicklow County Development Plan 2022-2028 and fettered its discretion to grant permission, where the development was consistent with proper planning and sustainable development ("CG3").

At the hearing of this case on the 11th April, 2025, the Court expressed a view, that zoning in the expired Local Area Plan 2023-2019, carried over, having regard to the County Development Plan (see email of 11th April, 2025 and attached transcript from 12:33 onwards, i.e. pages 113 onwards – **Tab D**- CG3).

The Court rose and the Board's legal counsel sought direction from the Board as to whether or not, to consent to a no-fault certiorari, for the matter to be remitted back to the Board, to the point immediately after the Inspector's report, but before further information is sought (**Tab D**).

The matter then resumed and the Court was informed that there was an agreement between the parties that the matter be remitted for reconsideration, without the Board accepting it was in error (**Tab D**).

The Board decision of 2nd August, 2024, was quashed by order of the High Court on the 11th April, 2025 and perfected on the 6th May, 2025 (**Tab E**).

*The order states that the file is to be remitted back to the Board, to the point after the Inspector's Report has been prepared for further consideration and determination in accordance with law. That the Board invite the applicant for JR to make submissions on the planning application, the subject of these proceedings (a further information notice) within two weeks of the perfection of the order (i.e. **19th May, 2025**). That the Board make a new decision within 16 weeks of the perfection of the order, dated the 6th May, 2025 (i.e. **25th August, 2025** - **Tab E**).*

All documents produced after that date, by the Board are set aside and held of the Board's legal file GL1439.

Remittal:

Having regard to the foregoing the following actions have now been completed.

A new file no. ABP-322476-25 has been assigned and ICT has been informed.

A new file cover has been inserted over the old file cover (thereby maintaining the old file cover as a record).

The following documentation in relation to the Board's decision have been removed from the case file and placed on Legal File GL1439.

1. Board Order, dated, 2nd August, 2024.
2. Board Direction dated 1st August, 2024.
3. Letter of 29th July, 2024 to Henry Clarke and Aoife Clarke & Others
- elaboration on observations.
4. Memo, dated 17th July, 2024
5. Applicant's response to Article 73A letter on the 8th July, 2024.
6. PA response to s132 on 5th July, 2024.
7. Section 126 notices of 17th June, 2024.
8. Request for FI to PA, under s132, on the 17th June, 2024.
9. Request for FI to applicant, under Article 73A(1)(a) on the 17th June, 2024.
10. Board Direction of 10th June, 2024.

A copy of the High Court Order has been placed on the remitted file.

Please see the following relevant emails and documents:-

- Board Direction, (Tab A)
- Statement of Grounds (Tab B).
- Letter from Fieldfisher, dated 21st November, 2024 (Tab C)
- Email of 11th April, 2025 from Fieldfisher and attached transcript of hearing (Tab D).
- Perfected Order (Tab E).
- Board Minutes (Tab F).
- Legal advice, received from Fieldfisher, dated 16th May 2025 (Tab G)
- Proposed Variation No.2, Wicklow County Development Plan 2022-2028 (Tab H)
- Wicklow Town-Rathnew Local Area Plan 2025, Map No. 1B – Proposed Material Amendments to Land Use Zoning Objectives (Tab I)
- Legal Opinion (general) of Brian Foley SC, dated 9th May 2025 (Tab J)
- Legal Opinion (discrete) of Brian Foley SC, dated 9th May 2025 (Tab K)

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Remittal Steps:

As directed by the Courts, this LRD file shall be remitted back to the point in time, following completion of the Inspector's Report of the 30th May, 2024, that the applicant be invited to make a submission on the LRD application ("Further Information Notice"), within two weeks of the perfected of the order (**by 19th May, 2025**). The Board has been directed to make a decision within 16 weeks of the perfected order of 6th May 2025 (**25th August, 2025**).

It should be noted that on 12th May 2025, Variation No.2 to the Wicklow County Development Plan 2022-2028 came into effect. Variation No. 2 integrates the land use zoning map and key development objectives from the Wicklow Town – Rathnew Local Area Plan 2025 into the County Development Plan.

Legal advice was received from Fieldfisher on 16th May 2025, with regards to the remittal of this case (**Tab G**). It has been advised that although Variation No. 2 is not yet available on the Councils website, the Board should ask for submissions on the documents that are available, namely the proposed variation (**Tab H**) and the interim land use map (**Tab I**).

To expedite the case, it is considered that in the first instance, the file be forwarded to you, in your capacity as Director of Planning, for a written direction on its further processing and further information to be requested. Please consider the following and any other matters you deem applicable: -

- The Board shall exercise its statutory powers and provide the developer, with an opportunity to make submissions on the planning application (a "Further Information Notice") and in particular on Variation No. 2 to the Wicklow County Development Plan 2022-2028, under Article 73A(1)(a). This should provide the shortest time period possible for the applicant to make submissions.
- The developer shall be reminded of its obligations under Article 20A (3) of the LRD Regulations, to make a standalone website available for the duration of the appeal.
- Upon receipt of Further Information from the applicant, all other participants be advised of the quash and remit and invited to make submissions/observations on the remitted case under s131. All participants shall be circulated with the Further Information Notice and any submission

from the applicant. All participants shall be invited to make submissions in respect of this documentation.

- It is suggested that draft copies of these notices be shown to Legal Affairs prior to being issued, because of the complexity of the case.

A copy of the High Court Order shall be attached to any letters issued upon reactivation and a copy of any notice issued to other participants for information purposes only.

Upon completion of the above-mentioned circulation process, Processing Section, will return the file to you, for a direction on the further processing of the case, including allocation of file, for the preparation of an addendum report. In that regard, the original inspector was Paul O'Brien.

Legal advice was received from Brian Foley SC with regards to this case and also *Cairns Homes Properties Limited*) on 9th May 2025. This was delivered as two separate Legal Opinions. The first 'General Opinion' was in respect of zoning in the Wicklow County Development Plan 2022-2028 (**Tab J**). The second legal advice 'Discrete Opinion' was in regard to the remittal of these cases generally (**Tab K**). Within these legal opinions it is stated that the only plausible reading of the Wicklow County Development Plan 2022-2028 is that it was drafted with the intention that zoning in the Wicklow Town-Rathnew Development plan 2013-2019 would continue pending review.

Consideration should be given to this advice when deciding these cases.

The Board shall also consider any legislation, or policies, guidelines, development plans or local area plans, that have come into effect since the original application was submitted. Consideration should also be given to the Climate Action Plan 2024 and the Climate Action Plan 2025 (published on the 15th April, 2025).

Given the point of remittal, the Board's section 126 notices were removed from the case file. If the decide by date is not met, new notices can issue.

The reactivated file, following the actions undertaken, as detailed above, shall be submitted to the Board for reconsideration in accordance with the terms of the High Court Order of the 11th April, 2025

Regina Fitzgerald

Eva Pierce

Pierce Dillon