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**LARGE RESIDENTIAL
DEVELOPMENT
CORRESPONDENCE FORM**

Appeal No: ABP 319137-24

As Flynn

Please treat correspondence received on 8/7/24 as follows:

1. Update database with new agent for Applicant/Appellant _____	
2. Acknowledge with LRD <u>23</u>	1. RETURN TO SENDER with LRD _____
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Amendments/Comments
<u>Applicant response to Art 73A</u>

4. Attach to file (a) SHD/LRD Unit <input type="checkbox"/> (b) Inspector <input type="checkbox"/>	RETURN TO EO <input type="checkbox"/>
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	Plans Date Stamped <input type="checkbox"/> Date Stamped Filled in <input type="checkbox"/>
EO: <u>[Signature]</u>	AA: <u>Catherine Flynn</u>
Date: <u>17/7/24</u>	Date: <u>17-7-24.</u>

200
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James Sweeney

From: Evan Walsh <evan@brockmcclure.ie>
Sent: Monday 8 July 2024 11:13
To: Appeals2
Cc: Laura Brock
Subject: ABP Ref. 139137-24 - Applicant Additional Information Submission Following Invitation from An Bord Pleanála
Attachments: ABP FI Request.pdf; 240703 ardale re rathnew(67243865.5).pdf; ABP FI Request Response (ABP-319137-24).pdf

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Dear Sir/ Madam,

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin, are instructed by our client, Keldrum Limited, 18 Church Road, Glenageary, Dublin A96 TP66, to submit additional information associated with An Bord Pleanála case number ABP-139137-24 (WCC Ref. 2360219), following a request issued by An Bord Pleanála on June 17th 2024.

Please find attached the following documents:

- Additional Information Request Letter as issued by An Bord Pleanála (17th June 2024).
- Response Cover Letter – Brock McClure Planning & Development Consultants.
- Legal Response – McCann Fitzgerald LLP.

An Bord Pleanála have confirmed that this suite of information requested can be submitted via email to appeals@pleanala.ie. This submission is made before the noted deadline of 5.30 pm 8th July 2024.

I would be grateful if you could please confirm receipt of this submission via return email. We ask that all correspondence regarding this appeal case is forwarded to our offices at 63 York Road, Dun Laoghaire, Dublin.

Evan Walsh

Senior Executive Planner



Brock McClure
Planning & Development Consultants
63 York Road
Dún Laoghaire
Co. Dublin

evan@brockmcclure.ie

Office: +353 1 559 3859
Direct: 01 514 3286

Handwritten marks in the top right corner, including a circled '1' and some illegible scribbles.



**Brock
McClure**
PLANNING & DEVELOPMENT CONSULTANTS

Administrative Officer,
An Bord Pleanála,
64 Marlborough Street,
Rotunda,
Dublin 1 (D01 V902)

8th July 2024

**Additional Information Response:
An Bord Pleanála Case No: ABP-319137-24
Wicklow County Council Ref. 2360219**

Dear Sir/ Madam,

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin, are instructed by our client, Keldrum Limited, 18 Church Road, Glenageary, Dublin A96 TP66 to submit this pack containing additional information associated with An Bord Pleanála case number ABP-139137-24 (WCC Ref. 2360219). On the 17th of June An Bord Pleanála requested the following additional information be submitted, as this was deemed necessary for the purpose of enabling the Board to determine the appeal:

The Board noted that this application is made under the applicable legislation for large scale residential development. Specifically the Board noted Section 32A (1) and (2)(b)(ii) of the Planning and Development Act 2000, as amended, which refers to large-scale residential development on land 'the zoning of which facilitates its use for the purposes proposed in the application'.

In this regard the Board noted that the Wicklow Town-Rathnew Development Plan 2013-2019 states that this plan, 'will remain valid for six years from the date of adoption by both Wicklow Town Council and Wicklow County Council, subject to any review, variations, extensions or alterations made in the future'.

To enable the Board to deal with this appeal, please provide any further information confirming that the Wicklow Town-Rathnew Development Plan 2013-2019 (including the zoning objective set out therein), continues to remain in force and if so, by what specific legislative provision, and provide any further information clarifying the valid zoning status of the subject site, noting that the site falls within the area of the above-mentioned Development plan.

Please provide any further information, for example any relevant provision of the current Wicklow County Development Plan 2022-2028, or any other relevant matter in accordance with the applicable legislation for large scale residential development, which you consider might assist the Board in clarifying its ability to deal with this appeal.

In accordance with the letter received from An Bord Pleanála, the additional information requested is now submitted to An Bord Pleanála for consideration before the noted deadline of close of business 8th July 2024.

We now confirm that Legal Advice on the matter has been sought by Keldrum Limited from McCann Fitzgerald LLP, and is now submitted for the consideration of An Bord Pleanála in determining the appeal. For the benefit of An Bord Pleanála, the key considerations of the provided Legal Advice are summarised as follows:

The subject LRD application is valid, the proposal is for more than 100 houses and the development is proposed on land *“the zoning of which facilitates its uses for the purposes proposed in the application”*. The board is therefore obliged to deal with the appeal.

There is nothing in any County or Development Plan that is in force to describe any objectives for the zoning of land for particular purposes at Rathnew. Therefore, notwithstanding the many policies relevant to the requirement for residential development at Rathnew, the entire Rathnew might be described as “white” lands. It would not be appropriate to label them de-zoned or similar negative label.

As such, the application cannot be described as a material contravention or be in conflict with a zoning objective, and an assessment of proper planning and sustainable development must be completed without a plan that provides statutory zoning.

The Tinakilly Action Area Plan 2021 was approved by Wicklow County Council and shows the will of the elected members with respect to the zoning of the lands. These plans are often considered in the courts. The AAP must be a relevant consideration in the assessment of proper planning and sustainable development.

It is considered that the Wicklow County Development Plan 2022-2028 facilitates residential development at Rathnew. The Council housing strategy could not be achieved without facilitating residential development at this location, and it is considered that the council could only satisfy its obligation under section 94 of the Planning Acts to provide *“for the housing of the existing and future population of the area”* by relying on the zoned land in the Wicklow – Rathnew Development Plan 2013-2019 or the 2021 Tinakilly Area Action Plan.

We refer An Bord Pleanála to the prepared Legal Advice document provided by McCann Fitzgerald LLP for details.

In addition to the Legal Advice received from McCann Fitzgerald in respect of the matter, we Brock McClure Planning & Development Consultants wish to note to An Bord Pleanála that the development as granted by Wicklow County Council on the Tinakilly lands was subject to extensive pre planning consultations with Wicklow County Council throughout the Large Scale Residential Development process, and the formal required pre planning consultations were completed in respect of the scheme by means of an initial Section 247 Pre Planning meeting and a Section 32B LRD meeting.

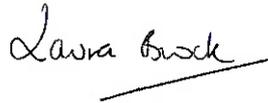
The applicant and design team carefully considered objectives, policies and standards outlined in the Wicklow County Development Plan 2022-2028 in the scheme design. Where there was conflict between the policies and objectives included in the Wicklow Rathnew Development Plan 2013 – 2019 and the Wicklow County Development Plan 2022 – 2028, the applicant and design team adopted the standards for development as outlined in the current Wicklow County Development Plan 2022 – 2028.

The council was consulted and informed of the applicant’s development plans for the site from concept stage through to full application stage. The expiry of the Wicklow Rathnew Development Plan 2013 – 2019 was not raised as a concern by Wicklow County Council throughout the Large-Scale Residential Development process, or in the conditions attached to the grant of planning permission.

We trust that An Bord Pleanála will take the applicants prepared response documentation into consideration when determining the appeal.

We confirm that we act for Keldrum Limited and request that all future correspondence in relation to this matter be directed to this office. If you have any queries, please contact me directly.

Yours sincerely,

A handwritten signature in cursive script that reads "Laura Brock". A horizontal line is drawn underneath the signature.

Laura Brock
Brock McClure
laura@brockmcclure.ie

McCann FitzGerald LLP

Riverside One
Sir John Rogerson's Quay
Dublin 2
D02 X576

Tel: +353-1-829 0000
Email: inquiries@mccannfitzgerald.com
Dx 31 Dublin
www.mccannfitzgerald.com

MCCANN FITZGERALD

OUR REF	YOUR REF	DATE
BNMS\67243865.5	ABP-319137-24	3 July 2024

BY EMAIL - laura@brockmcclure.ie
Ms Laura Brock
Brock McClure
Planning & Development Consultants
63 York Road, Dún Laoghaire
A96 T0H4

Private, Confidential and Privileged Legal Advice

Pending appeal against the decision of Wicklow County Council to grant permission for proposed residential development of approx. 352 no. homes at Tinakilly, Rathnew, County Wicklow By Email

Large-scale Residential Development

Our mutual client - Keldrum Limited (part of the Ardale Property Group)

**Wicklow County Council ref. no. 23/60219
An Bord Pleanála ref. no. ABP-319137-24**

Dear Ms Brock,

On 2 February 2024, Wicklow County Council (the "Council") granted permission for proposed residential development of approx. 352 no. homes at Tinakilly, Rathnew, County Wicklow (Council ref. no. 23/60219). The decision to grant has been appealed to An Bord Pleanála (the "Board") (Board ref. no. ABP-319137-24).

On 17 June 2024, the Board wrote to you requesting information in accordance with article 73A(1)(a) of the Planning and Development Regulations 2001 (as amended) (the "Planning Regulations"). The request is made "to enable the Board to deal with this appeal" and to "assist the Board in clarifying its ability to deal with this appeal". Specifically, the Board has asked for information about the zoning status of the land, in particular context of the legislation regarding "large-scale residential development" ("LRD").

Stephen Holst (Managing Partner), Mark White (Chair), Roderick Bourke, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Helen Kilroy, David Lydon, Colm Fanning, Paul Lavery, Alan Fuller, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Rosaleen Byrne, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O Raghallaigh, Barrett Chapman, Mary Brassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Darragh Murphy, Brian Quigley, Stephen FitzSimons, David Hurley, Philip Murphy, Fiona O'Beirne, Garreth O'Brien, Gary McSharry, Alan Heuston, Josh Hogan, Richard Leonard, Rory O'Malley, Lisa Smyth, Brendan Slattery, Tom Dane, Catherine Derrig, Megan Hooper, Shane Sweeney, Adam Finlay, Iain Ferguson, Jennifer Halpin, Stuart McCarron, Stephen Proctor, Michael Coonan, Emily Mac Nicholas, Brendan Murphy, Shane O'Brien, Éamon Ó Cúiv, Eleanor Cunningham, Gill Lohan, Ciara Ryan, Niall Best, Richard Gill, Douglas McMahon, Laura Treacy, Laura Deignan, Stephen Fuller, Niall McDowell, John Neeson, David O'Dea, Orlaith Sheehy, Sean Carr, Morgan Dunne, Donal Hamilton, Ian Payne, Bébhinn Bolland, Amy Brick, Jamie McGee, Ruairi Stewart, Deirdre Barnicle, Conor Cunningham, Paula Fearon, Clare Gillett, Aidan Gleeson, Sinead Martyn, Anna Moran, Ciara O'Herlihy, James Quirke, Gerard Sadlier, Simon Walsh.
Consultants: Catherine Austin, Sean Barton, Eleanor MacDonagh (RA), Ference McCrann, Peter Osborne, Tony Spratt (RA).
Company Secretarial and Compliance Services: Ray Hunt.

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Executive Summary

For reasons explained in more detail below, we are firmly of the view that the application for LRD is valid. Section 32A *must* apply to the proposed development. We are satisfied that the application is for the development of more than 100 or more houses where the development is proposed on land “the zoning of which facilitates its use for the purposes proposed in the application”.

The Board is entitled, nay obliged, to deal with the appeal. The assessment of proper planning and sustainable development must be completed without the helpful guidance of a plan identifying that the lands are necessary and appropriate for housing by way of formal statutory zoning.

As of today, there is nothing in any county plan or local area plan that is in force to describe for Rathnew any objectives for “the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses)”, as contemplated by section 10(2)(a) of the Planning and Development Act 2000 (as amended) (the “Planning Acts”), or “objectives for the zoning of land for the use solely or primarily of particular areas for particular purposes”, as contemplated by section 19(2)(a) of the Planning Acts.

Colloquially, notwithstanding the many policies relevant to the requirement for residential development at Rathnew, the entire of Rathnew might be described as “white” lands. It would not be appropriate to label them de-zoned or similar negative label.

That is plainly relevant to the assessment of the planning merits of any application. Helpfully, it means the application cannot be described as a material contravention or to be in conflict with a zoning objective. Instead, the assessment of proper planning and sustainable development must be completed without the helpful guidance of a plan identifying that the lands are necessary and appropriate for housing by way of formal statutory zoning.

On 20 September 2021, the Council approved the Tinakilly Action Area Plan 2021 (the “2021 plan”), a plan that includes the subject lands. This action area plan comprises an expression of the will of the elected members of the Council with respect to the zoning of the lands. Indeed, the courts have often considered such plans, and accepted arguments that respect for this species of plan is required. The 2021 plan must be a relevant consideration in the assessment of proper planning and sustainable development.

On 12 September 2022, the Council adopted the Wicklow County Development Plan 2022 to 2028 (the “2022 plan”), which took effect on 23 October 2022.

The only sensible reading of the 2022 plan is that it does facilitate residential development at Rathnew. It would be impossible for the Council to secure the housing strategy without facilitating residential development in Rathnew. Indeed, the Council could only satisfy its obligations under section 94 of the Planning Acts to provide “for the housing of the existing and future population of the area” by relying on the zoned land in the Wicklow Town-Rathnew Development Plan 2013 to 2019 or the 2021 plan. This is clear from paragraph HS3 of the housing strategy, where the statement there is adequate zoned land refers to the housing yield of land zoned at Wicklow-Rathnew. This can only be read to facilitate residential development at this Core Region – Key Town, where growth rates of c. 35% have been identified in the Regional Spatial and Economic Strategy.

Each of these issues is considered in more detail below. It is necessary to explain the spatial planning framework for Rathnew, before considering its relevance to the LRD planning application process.

Spatial Planning Framework for Rathnew

The site of the pending appeal at Tinakilly, Rathnew is within the boundary of the Wicklow Town-Rathnew Development Plan 2013 to 2019 (the "2013 plan").

The 2013 plan was made before Wicklow Town Council, and other town councils, were abolished under the Local Government Reform Act 2014. Strictly, the 2013 plan is a development plan made under section 12 of the Planning Acts. It is not a local area plan made under section 20 of the Planning Acts. It is a development plan made by Wicklow Town Council and Wicklow County Council. The Council adopted the 2013 plan on 2 September 2013; the Town Council did the same on 4 September 2013. The plan came into effect on 1 October 2013. A ministerial direction on the plan was issued on 3 December 2013.

In its request, the Board correctly observes that the 2013 plan, at § 1.1, provides that the plan shall "remain valid for six years from the date of adoption by both Wicklow Town Council and Wicklow County Council subject to any review, variations, extensions or alterations made in the future".

For reasons explained below, the application remains a valid application for LRD permission, and must be assessed by reference to proper planning and sustainable development.

There is scope for debate about the relevance to planning of the 2013 plan. The better view is that the plan is no longer in force. It remains as the last formal statutory expression of a spatial planning framework for the town.

Had the 2013 plan been a local area plan, section 19(1)(d) would have allowed the Council to extend the period for which the plan is to remain in force by up to five years. There is no equivalent for a development plan.

Instead, the Council has taken the following two steps.

First, on 20 September 2021, the Council approved an "Area Action Plan" that includes the subject lands, all within the Tinakilly action area (the "2021 plan").

Strictly, the 2021 plan is not one made by the Council under section 12 or 20 of the Planning Acts. As such, it is not a formal statutory plan, i.e., it is not a development plan or a local area plan. That said, it does comprise an expression of the will of the elected members of the Council with respect to the zoning of the lands. Indeed, the courts have often considered such plans, and accepted arguments that respect for this species of plan is required. Specifically, in *Deerland Construction Ltd* [2008] IEHC 289, the High Court found that the Aquaculture Licenses Appeal Board had not properly given reasons for departing from an Area Action Plan for Wexford harbour. In *Duffy v. Waterford Corporation* [1999] IEHC 241, the High Court considered the meaning and effect of Action Area Plan for the north western suburbs of Waterford, before concluding that no material contravention of that plan could be found.

The 2021 plan must be a relevant consideration in the assessment of proper planning and sustainable development, but must *not* be considered a replacement for the statutory development plan.

Second, on 12 September 2022, the Council adopted the Wicklow County Development Plan 2022 to 2028 (the "2022 plan"), which took effect on 23 October 2022.

Wicklow-Rathnew is described as one of five “major towns” in the County. More specifically (at Table 3.3), it is identified as the only “Core Region – Key Town”, at level two in the settlement hierarchy, second only to Bray. The town is described as: “Large economically active service and/or county towns that provide employment for their surrounding areas and with high-quality transport links and the capacity to act as growth drivers to complement the Regional Growth Centres.”

As one of only two Key Towns, the population allocation is justified in the core strategy (at section 3.4) as follows: “Key Towns are identified for growth rates of c. 35% having regard to their identification in the [Regional Spatial and Economic Strategy] RSES as towns suitable for higher levels of growth.”

The core strategy of the 2022 plan provides housing and population targets for all 21 no. settlements in Wicklow, including at Rathnew. For Wicklow-Rathnew, the total housing growth *target* of 2,392 homes is given for the period 2016 to 2031. However, the 2022 plan only provides a spatial planning framework for 13 of these 21 no. settlements. The remainder, including at Wicklow Town-Rathnew, are described (at section 1.2) as follows:

“Separate Local Area Plans are in place, which will be reviewed after the adoption of this plan, for the following towns / areas: Bray Municipal District, Wicklow Town - Rathnew, Arklow, Greystones - Delgany - Kilcoole and Blessington. These Local Area Plans are reviewed and made under Sections 18, 19 and 20 of the Planning and Development Act, and as such do not form part of the CDP. However, the CDP does provide the key parameters for these Local Area Plans such as the future population and housing targets and sets out the broad strategy for the future economic and social development of these towns.”

The 2022 plan commits (at section 3.5) to make new local area plans in the period 2022-2024 in a specific order for priority, with Wicklow Town -Rathnew listed first in the priority order. In July 2023, the Council gave notice of its intention to prepare a new local area plan for Wicklow Town – Rathnew. The plan-making process is ongoing, and not yet complete.

Even so, the core strategy tables (at Table A) describe the development capacity of “existing zoned land” at Rathnew. The express policy (at chapter 4) is that: “the settlement should provide housing for people from across the County and region”, because it is a Core Region – Key Town. Indeed, with respect to the vacant site levy (at CPO 6.35), the 2022 plan makes clear that lands at Rathnew with the zoning “RE, R1, R2, R3, R4” are to be considered in scope for that site activation measure.

It follows that, as of today, there is nothing in any county plan or local area plan that is in force to describe for Rathnew any objectives for “the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses)”, as contemplated by section 10(2)(a) of the Planning Acts, or “objectives for the zoning of land for the use solely or primarily of particular areas for particular purposes”, as contemplated by section 19(2)(a) of the Planning Acts.

Colloquially, notwithstanding the many policies relevant to the requirement for residential development at Rathnew, the entire of Rathnew might be described as “white” lands.

That is plainly relevant to the assessment of the planning merits of any application. Helpfully, it means the application cannot be described as a material contravention or to be in conflict with a zoning objective. Instead, the assessment of proper planning and sustainable development must be completed without the helpful guidance of a plan identifying that the lands are necessary and appropriate for housing by way of formal statutory zoning.

Relevance of zoning to strategic housing development

From July 2017 to December 2021, zoning was also very relevant to the choice of planning application process.

Specifically, the so-called "fast track" planning process that allowed certain applications for strategic housing development ("SHD") to be made direct to An Bord Pleanála (the "Board") under the Planning and Development (Housing) and Residential Tenancies Act 2016 (the "SHD Act") was limited to development "on land zoned for residential use or for a mixture of residential and other uses".

Section 3 of the SHD Act included the following definition for "strategic housing development":

"(a) the development of 100 or more houses on land zoned for residential use or for a mixture of residential and other uses,

(b) the development of student accommodation units which, when combined, contain 200 or more bed spaces, on land the zoning of which facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon,

(ba) development –

(i) consisting of shared accommodation units that, when combined, contain 200 or more bed spaces, and

(ii) on land the zoning of which facilitates the provision of shared accommodation or a mixture of shared accommodation thereon and its application for other uses,

(c) development that contains developments of the type to which all of the foregoing paragraphs, or any two of the foregoing paragraphs, apply, or

(d) the alteration of an existing planning permission granted under section 34 (other than under subsection (3A)) where the proposed alteration relates to development specified in paragraph (a), (b), (ba) or (c),

each of which may include other uses on the land, the zoning of which facilitates such use, but only if [the gross floor space and use met certain thresholds]".

It is immediately clear that the zoning of land was relevant to whether residential development satisfied the definition of SHD, and that it was relevant in different ways for different types of residential development, or use.

For houses, the land had to be "zoned for residential use or for a mixture of residential and other uses".

For student accommodation, the language was more flexible. It was sufficient that the zoning of the land "facilitates the provision of student accommodation or a mixture of student accommodation and other uses thereon". It was the same for shared accommodation (co-living), and for any proposed non-residential uses.

Put simply, for the development of houses, the requirement was more strict. It literally and expressly required the land to be “zoned for” the proposed use. None of the lands in Rathnew would satisfy this requirement, today.

Where lands did not satisfy the statutory definition of SHD, no application direct to the Board under section 4 of the SHD Act could be made. As explained by the High Court in *Dublin Cycling Campaign v. An Bord Pleanála* [2020] IEHC 587: “An application under s. 4 is confined to applications for permission for a strategic housing development which meet the statutory definition contained in s. 3. As a consequence, the Board had no jurisdiction to grant permission for the development under s. 9 of the 2016 Act. This means that the decision of the Board was ultra vires its powers under the 2016 Act and must be quashed for that reason.”

Relevance of zoning to large-scale residential development

The SHD Act was repealed on 17 December 2021 by the Planning and Development (Amendment) (Large-scale Residential Development) Act 2021 (the “LRD Act”), with transitional provisions to address pending applications and ongoing pre-application consultations.

The LRD Act amended the Planning Acts to change the planning application process for certain large-scale residential development or LRD. An application for LRD permission is, in truth, an application for ordinary planning permission. However, the applicant for permission and the planning authority must comply with specific pre-application formalities, and respect specific requirements during the application assessment process that are designed to ensure timely decision-making.

There is no escaping these pre-application formalities, where they apply.

Section 32A(1) of the Planning Acts (as inserted by the LRD Act) prohibits the intended applicant for permission from making an application for permission for LRD unless those formalities have been satisfied. Subsection (2), in turn, obliges the planning authority to refuse to consider an application for permission unless those formalities have been satisfied.

These prohibitions engage with the zoning of land. This is similar to the way, under the SHD Act, the definition of SHD engaged with the zoning of land. However, there are important differences.

Section 2 of the Planning Acts has the following definition of large-scale residential development. It means a development that includes:

- “(a) the development of 100 or more houses,
- (b) the development of student accommodation that includes 200 or more bed spaces,
- (c) both the development of 100 or more houses and of student accommodation, or
- (d) both the development of student accommodation that includes 200 or more bed spaces and of houses,

where the LRD floor space of –

- (i) in the case of paragraph (a), the buildings comprising the houses,
- (ii) in the case of paragraph (b), the student accommodation,
- (iii) in the case of paragraphs (c) and (d), the buildings comprising the houses and the student accommodation,

is not less than 70 per cent, or such other percentage as may be prescribed, of the LRD floor space of the buildings comprising the development”.

It is immediately striking that, unlike the definition of strategic housing development under the SHD Act, there is no reference to zoning in the definition.

Put simply, the proposed development at Rathnew is “large-scale residential development”, regardless of how the lands are zoned.

Zoning is instead relevant to the prohibitions under section 32A that force an intended applicant for permission, unless excused by the planning authority, to complete section 247 pre-application consultations, and obtain an LRD Opinion, before making an application for permission.

The prohibitions at subsections (1) and (2) of section 32A are worth reciting in full:

“(1) A person who intends to apply for permission under this Part –

(a) for large-scale residential development,

(b) on land –

(i) that is not located in a strategic development zone, and

(ii) the zoning of which facilitates its use for the purposes proposed in the application,

(referred to in this Act as a “prospective LRD applicant”) shall not make the application unless at that time he or she holds an LRD opinion, or written confirmation referred to in section 247(7), in relation to the proposed LRD provided not more than 6 months before the date of the application.

(2) A planning authority shall refuse to consider an application for permission –

(a) for large-scale residential development,

(b) on land –

(i) that is not located in a strategic development zone, and

(ii) the zoning of which facilitates its use for the purposes proposed in the application,

unless it is satisfied that the applicant holds an LRD opinion, or written confirmation referred to in section 247(7), in relation to the proposed LRD provided not more than 6 months before the date of the application.”

Before the prohibitions apply, the proposed development must satisfy the definition of LRD, i.e., exceed the thresholds for house numbers, or bedspaces in the case of student accommodation. The development must be on land that is not located in a strategic development zone ("SDZ"), so the right for the developer to elect between the benefits of SDZ and SHD is not retained. Subparagraph (b)(ii) is central: it must be on land "the zoning of which *facilitates its use* for the purposes proposed in the application" (emphasis added).

That language is strikingly different from the SHD Act, where applications for houses could only satisfy the definition of SHD where on land "zoned for residential use or for a mixture of residential and other uses" (emphasis added).

That was a deliberate choice made by the Oireachtas. When repealing the SHD Act, and replacing the "fast track" SHD process with the LRD Act, the Oireachtas must be presumed to have been alert to the importance of this change. It cannot be dismissed as inadvertent.

The chosen language is familiar: it is similar to the lower threshold that applied to the student accommodation and shared accommodation elements of the definition of SHD (i.e., "which facilitates the provision of" those use types). There is a subtle difference. The SHD Act required zoning to facilitate *provision* of the student and shared accommodation use types. The LRD Act requires zoning to *facilitate* "its use for the purposes proposed in the application". It does not matter to this opinion, but that threshold appears even lower than was required in any part of the definition of SHD.

It is abundantly clear, therefore, that, unless the LRD pre-application formalities are satisfied, the planning authority must refuse to consider an application for the development of more than 100 or more houses where the development is proposed on land "the zoning of which facilitates its use for the purposes proposed in the application".

The pre-application formalities were *required* to be, and *have been*, satisfied for this application. The section 247 meeting was held on 29 April 2022. The LRD opinion meeting was held on 26 January 2023, and the LRD opinion was given on 23 February 2023 (Council ref. no. LRD PF22/40). The Council formed a view that the documentation previously submitted constituted a reasonable basis for an application for LRD.

Whether the zoning of the lands at Rathnew facilitates its use for residential purposes

If the lands at Rathnew were zoned so that residential use was "not permitted", the prohibition under section 32A(2) – which forces an application for LRD – would *not* apply. In that event, an application for ordinary permission could be made, but, of course, that application would have limited prospects for success, as the proposed development would be a material contravention of the development plan.

That is certainly *not* the case. There is no spatial planning framework, and no zoning matrix that excludes use for residential development from these lands.

As noted, this is an accident of timing, arising from expiry of the period when the 2013 plan was in force, and the absence of any replacement plan. It does not mean the county plan should be read to exclude residential development on the lands.

Does that mean the county plan “facilitates” residential development? The word “facilitates” means to make something easier, less difficult, or possible. The etymology of the word traces back to the Latin adjective *facilis*, meaning “easy”.

Certainly, if the lands were “zoned for” residential development, the prospect of securing permission for that use would be much easier, a lot less difficult and more possible. However, the Oireachtas did not choose to retain that language, “zoned for”. It chose “facilitates”, and this must be read to mean something different from “zoned for”.

Perhaps the Council could have done more to make it easier to secure permission, and might yet do more under the expected replacement local area plan, but that does not mean the county plan does not facilitate residential development on “white” lands.

The only sensible reading of the county plan, the 2022 plan, is that it does facilitate residential development.

Wicklow-Rathnew is described as one of five “major towns” in the County. More specifically (at Table 3.3), it is identified as the only “Core Region – Key Town”, at level two in the settlement hierarchy, second only to Bray.

As one of only two Key Towns, the population allocation is justified in the core strategy (at section 3.4) as follows: “Key Towns are identified for growth rates of c. 35% having regard to their identification in the [Regional Spatial and Economic Strategy] RSES as towns suitable for higher levels of growth.”

The core strategy of the 2022 plan provides housing and population targets for Wicklow-Rathnew, where the total housing growth *target* of 2,392 homes is given for the period 2016 to 2031.

The core strategy tables (at Table A) describe the development capacity of “existing zoned land” at Rathnew. The express policy (at chapter 4) is that: “the settlement should provide housing for people from across the County and region”, because it is a Core Region – Key Town. Indeed, with respect to the vacant site levy (at CPO 6.35), the 2022 plan makes clear that lands at Rathnew with the zoning “RE, R1, R2, R3, R4” are to be considered in scope for that site activation measure.

Also, on 20 September 2021, the Council approved the 2021 plan, an action area plan that includes the subject lands. This comprises an expression of the will of the elected members of the Council with respect to the zoning of the lands. Indeed, the courts have often considered such plans, and accepted arguments that respect for this species of plan is required. The 2021 plan must be a relevant consideration in the assessment of proper planning and sustainable development, but *not* a replacement for the statutory development plan.

It would be impossible for the Council to secure the housing strategy without facilitating residential development in Rathnew. Indeed, the Council could only satisfy its obligations under section 94 of the Planning Acts to provide “for the housing of the existing and future population of the area” by relying on the zoned land in the 2013 plan and 2021 plan. This is clear from paragraph HS3 of the housing strategy, where the statement there is adequate zoned land refers to the housing yield of land zoned at Wicklow-Rathnew. This can only be read to facilitate residential development at Rathnew.

Certainly, there is no sensible reading of the county plan that could suggest it makes residential development difficult, or impossible.

Absent a prohibition on residential use, the better view is that the county plan does facilitate use for the purposes proposed in the application, namely, residential development.

Conclusion

For the reasons given, we are firmly of the view that the application for LRD is valid.

The Board is entitled, nay obliged, to deal with the appeal.

For completeness, we consent to the release of this opinion, as part of your response to the request made by the Board.

Yours sincerely

(sent by email, so bears no signature)

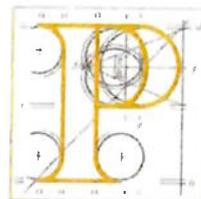
Brendan Slattery
McCann FitzGerald LLP

Direct Dial: +353 1 511 1672
Email: brendan.slattery@mccannfitzgerald.com

ur Case Number: ABP-319137-24

Planning Authority Reference Number: 2360219

Your Reference: Keldrum Limited



An
Bord
Pleanála

Brock McClure
Planning & Development Consultants
63 York Road
Dun Laoghaire
Co. Dublin



Date: 17 June 2024

Re: 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. The application can be viewed at <https://tinakillydemesneird.ie>.
Site of c. 16.8 ha at Tinakilly, Rathnew, Co. Wicklow

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned large-scale residential development appeal.

It is a statutory objective of the Board to ensure that every appeal received is determined within sixteen weeks beginning on the date of receipt of that appeal. This is in accordance with section 126A(1)(a) of the Planning and Development Act 2000, as amended. Where it appears to the Board that it would not be possible or appropriate to determine a particular appeal within this period, a notice must be sent to the parties in accordance with section 126B(2) of the Act.

The Board hereby serves notice under section 126B(2) that it will not be possible to determine the case within the statutory objective period due to the necessity of the Board to issue a statutory notice.

Yours faithfully,

Mary Tucker
Executive Officer
Direct Line: 01-8737132

LRD90 - Registered Post

Tel
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1800 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

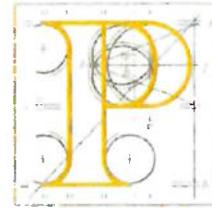
64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
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Site of c. 16.8 ha at Tinakilly, Rathnew, Co. Wicklow

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned large-scale residential development appeal.

The Board has examined the appeal and is of the opinion that certain information is necessary for the purpose of enabling it to determine the appeal.

In accordance with article 73A(1)(a) of the Planning and Development Regulations 2001, as amended, you are required to submit, on or before **8th July 2024**, the following information:

The Board noted that this application is made under the applicable legislation for large scale residential development. Specifically the Board noted Section 32A(1) and (2)(b)(ii) of the Planning and Development Act 2000, as amended, which refers to large-scale residential development on land 'the zoning of which facilitates its use for the purposes proposed in the application'.

In this regard the Board noted that the Wicklow Town-Rathnew Development Plan 2013-2019 states that this plan, 'will remain valid for six years from the date of adoption by both Wicklow Town Council and Wicklow County Council, subject to any review, variations, extensions or alterations made in the future.'

Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

To enable the Board to deal with this appeal, please provide any further information confirming that Wicklow Town-Rathnew Development Plan 2013-2019 (including the zoning objective set out therein), continues to remain in force and if so, by what specific legislative provision, and provide any further information clarifying the valid zoning status of the subject site, noting that the site falls within the area of the above-mentioned Development Plan.

Please provide any further information, for example any relevant provision of the current Wicklow County Development Plan 2022-2028, or any other relevant matter in accordance with the applicable legislation for large scale residential development, which you consider might assist the Board in clarifying its ability to deal with this appeal.

If the information required is not received before the end of the specified period, the Board will dismiss or otherwise determine the appeal without further notice to you in accordance with section 133 of the 2000 Act. Your submission in response to this notice must be received by the Board not later than **5.30 p.m. on the date specified above.**

Please quote the above appeal reference number in any further correspondence.

Yours faithfully,



Mary Tucker
Executive Officer
Direct Line: 01-8737132

BP71 Registered Post

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