Validation Checklist

An Bord Pleanála

Lodgement Number : **LDG-071216-24**
Case Number: **ABP-319500-24**
Customer: **Fiona Murray**
Lodgement Date: **11/04/2024 12:08:00**
Validation Officer: **Mary Tucker**
PA Name: **South Dublin County Council**
PA Reg Ref: **LRD23A/0011**
Case Type: **Appeal - LRD**
Lodgement Type: **Appeal - LRD**

Validation Checklist	Value
Confirm Classification	Confirmed - Correct
Confirm PA Case Link	Confirmed-Correct
Confirm ABP Case Link	Confirmed-Correct
Fee/Payment	Valid – Correct
Name and Address available	Yes
Agent Name and Address available (if engaged)	Yes
Subject Matter available	Yes
Grounds	Yes
Sufficient Fee Received	Yes
Received On time	Yes
3rd Party Acknowledgement	Yes
Eligible to make lodgement	Yes
Completeness Check of Documentation	Yes
Valid Lodgement Channel	Yes

LRD01 to Appellant (encl. receipt)

LRD05 to Applicant (encl. copy of appeal)

LRD07 to Planning Authority (encl. copy of appeal)

Pink file with white cover sheet and LRD printed on top of file.

Keep copy of letters

✓

CF
15/4/24.

Run at: 12/04/2024 16:38

LRD

Lodgement Cover Sheet - LDG-071216-24

An Bord Pleanála

3rd v Grant

Details

Lodgement Date	11/04/2024
Customer	Fiona Murray
Lodgement Channel	In Person
Lodgement by Agent	Yes
Agent Name	Paul C. Mealy Architects Limited
Correspondence Primarily Sent to	Agent
Registered Post Reference	

Lodgement ID	LDG-071216-24
Map ID	
Created By	Andrea Caraus
Physical Items included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	

Categorisation

Lodgement Type	Appeal
Section	Processing

LRD23A/0011.

PA Name	South Dublin County Council
Case Type (3rd Level Category)	

Fee and Payments

Specified Body	No
Oral Hearing	No
Fee Calculation Method	System
Currency	Euro
Fee Value	0.00
Refund Amount	0.00

Observation/Objection Allowed?	
Payment	PMT-055498-24
Related Payment Details Record	PD-055367-24

Appeal

Decision date: 19/03/2024.

Last day for an appeal: 15/04/2024.

DA - 018630-24

ABP - 319500-24

Run at: 11/04/2024 12:09

Run by: Andrea Caraus

PA Case Details Manual	
PA Case Number	
PA Decisi	
PA Decision Date	
Lodgement Deadline	
Development Description	
Development Address	

Appeals Type	

Run at: 11/04/2024 12:09

Run by: Andrea Caraus

Directors:
Paul C. Mealy
Aliki H. Mealy

Co. Reg. 337035

PAUL C. MEALY ARCHITECTS LIMITED
11, The Courtyard, Friar's Hill, Wicklow,
County Wicklow. A67 Y718

Tel: 086 2571096 **e-mail:** info@pcmealy.ie

The Secretary
An Bord Pleanala,
64, Marlborough Street,
Dublin 1
D01 V902

AN BORD PLEANÁLA
LDG- 071216-24
ABP-
11 APR 2024
Fee: € 220.00 Type: Chq
Time: 11:53 By: hand

My Ref: 2574-05
Date: 10/04/2024

RE PLANNING APPEAL RE SOUTH DUBLIN CO. CO'S PLANNING REG. LRD23A/0011

PROPOSED DEVELOPMENT: PHASE 2B OF A MIXED RESIDENTIAL DEVELOPMENT AND ANCILLARY SITE DEVELOPMENT WORKS

LOCATION: WITHIN THE TOWNLAND OF NEWCASTLE SOUTH, NEWCASTLE AND ALONG ATHGOE ROAD & HAZELHATCH ROAD (R405) TO (GROUND INVESTIGATION IRELAND PREMISES) COUNTY DUBLIN

APPLICANTS: CAIRN HOMES PROPERTIES LIMITED

Dear Sirs,

(A) I represent Fiona Murray of Moyvalley, County Kildare who is the registered owner of lands comprising Folio DN 105779F which is located (a) immediately south/south west of the Cairn Homes Properties Limited's site the subject of the above Planning Application and (b) land off Main Street North of the application's site and east of St. Finian's Way.

(B) A submission was made to South Dublin County Council within the prescribed period and copies of the Council's acknowledgment, and our submission are attached. See Schedule of attachments

(C) Attached is my client's cheque for €220. 00

GROUNDS FOR APPEAL

1. 00 "THE AGREEMENT"

1. 02 Full details of "The Agreement" and the background history is set out in the submission made to South Dublin Council and as attached to this appeal.

1. 03 "The Agreement" sets out conditions precedent which must be complied with by the applicant before their site can be developed. In summary, the conditions include:-

(a) Access to Ms. Murray's lands from the public road via the applicant's new road system:

(b) Connections to the applicant's services and infrastructure suitable for the full development potential for Ms. Murray's lands.

(c) The construction of a new wall and or fence along the entire boundary of Ms. Murrays lands with that of the applicants'.

(d) All the above to have Ms. Murray's agreement prior to commencement of development.

1. 04 In our submission to South Dublin County Council, it was stressed that if Planning Permission was to be granted, it should be compatible with the conditions of the "The Agreement" as failure to comply would have legal consequences preventing development proceeding.

1. 05 It was further submitted that the absence of Ms. Murray's prior agreement, the applicant does not have sufficient title to make a valid planning application.

2. 00 LRD PROCEDURES.

2. 01 Appendix 1 – The LRD Arrangements – Page 6 includes a paragraph stating, *"It is intended that the detailed LRD pre-application consultation arrangements will minimise the need for "further information" requests at the subsequent planning application stage".*

2. 02 It is questionable if the pre-application consultation has actually led to a stage that a planning application could be validly made when, on considering the application, South Dublin County Council considered it necessary to seek further information on no less than thirty separate issues.

2. 03 On receipt of the Applicant's responses, which included adjustment to layouts, reduction in units numbers etc. it is surprising that the Council determined that the responses, which would impact on third parties, were not "Significant" and requiring that the application be re-advertised and allowing further submissions from Third Parties.

2.04 The designation as not "Significant" of the additional information is in conflict with the statement in the Record of Executive Business and Chief Executive's Orders which states on Page 61 that *"a significant change to the scheme is proposed ....."*

3. 00 SOUTH DUBLIN COUNTY COUNCIL'S DECISION.

3.01 It defies explanation that the Council considered the Applicant's responses to the Further Information requests and did not seek clarification.

3. 02 The inadequacy of the response is clearly demonstrated by the Council's decision which requires *"prior to commencement of the development"* submissions for their written approval for some twenty five of the thirty four planning Conditions. Many of these Conditions have sub-headings resulting of up-ward of some sixty matters requiring *"prior to"* written agreement from the Council.

3. 03 The consequence of the Council's decision is that these outstanding matters are to be resolved between the Council and the Applicant only and to the exclusion of third parties who might be negatively impacted by the decision/s.

3.04 This of particular concerning to Ms. Murray who, based on the Council's decision, will have no input into (a) the position of and type of access to her lands, including the one acre site off Main Street to and from the proposed development including services (b) a requirement to clearly identify that the points of access are for future development and thereby alerting potential purchases of the Cairn units that further development which may impact on them is likely to occur (c) it is unacceptable to Ms. Murray that direct access is denied to a large section of her lands due to the Council's requirement for continuity linear part (d) the design of the boundary between Ms. Murray's land and the applicant's. As part of the pre-planning submissions, it would appear that a two metre high concrete block wall was proposed (without the consent of Ms. Murray) but subsequently omitted at the request of the Council and agreed to by the Landscape Architects. No alternative has been proposed or conditioned.

3. 05 It is noted that the statement contained on Page 20 of the Record of Executive Business and Chief Executive's Report (REBCER) essentially been ignored in the Council's decision. *"It is noted that some third-party submissions request that consideration is given to provision of future links outside of the site and to mitigate the potential for ransom strips to be created as part of his proposal. In the event of a grant of permission, a* ***condition*** *to this effect will be applied."* No explanation has been given for this omission.

4. 00 MS. MURRAY'S POSITION

4. 01 Ms. Murray has always made her position clear in that she is not opposed to the development of the applicant's site but only in so far as the proposed development is compatible with the terms and conditions of the "Agreement".

4. 02 In their numerous discussions with Ms Murray and her Agents, the applicant has always maintained that they cannot give an unconditional agreement to comply with the "Agreement" as it might conflict with conditions of a Planning Permission.

4. 03 This ignores what is, in our opinion, the legal reality, that compliance with the "Agreement" takes precedent over compliance with a Planning Permission. Failure to comply with the "Agreement" means that any Planning Permission cannot be implemented.

4. 04 An Bord can structure an Appeal Grant that enables compliance the "Agreement" that will allow development to proceed, and we urge An Bord to recognise this reality and grant an appropriate permission.

Yours faithfully,

Paul C. Mealy FRIAI.

DOCUMENTS ATTACHED

1. Letter/Submission to South Dublin County Council including.
2. The "Agreement"
3. Site Layout Plan with required points of access identified.
4. Tailte Eireann Map showing access point to Murray Land by Newcastle Main Street
5. South Dublin County Council's receipt T4/0/759932
6. Acknowledgement from SDCo.Co. re submission.

Directors
Paul C. Mealy
Mikel H. Mealy

Co. Reg. 337935

PAUL C. MEALY ARCHITECTS LIMITED
11, The Courtyard, Friar's Hill, Wicklow, County Wicklow. A67 Y718

Tel: 086 2571096 **e-mail:** info@pcmealy.ie

South Dublin County Council
Planning Department,
County Hall,
Town Centre,
Tallaghyhr
Dublin 24.

My Ref: 2574-04
Date: 22/11/2024

RE SUBMISSION/OBSERVATION RE PLANNING REG. LRD23A/0011
PROPOSED DEVELOPMENT: PHASE 2B OF A MIXED RESIDENTIAL DEVELOPMENT AND ANCILLARY SITE DEVELOPMENT WORKS
LOCATION: WITHIN THE TOWNLAND OF NEWCASTLE SOUTH, NEWCASTLE AND ALONG ATHGOE ROAD & HAZELHATCH ROAD (R405) TO (GROUND INVESTIGATION IRELAND PREMISES) COUNTY DUBLIN
APPLICANTS: CAIRN HOMES PROPERTIES LIMITED

Dear Sirs,

I attached South Dublin County Council's Receipt for €20. 00 reference no. T4/0/759932

1. 00 I represent Fiona Murray of Moyvalley, County Kildare who is the registered owner of lands comprising Folio DN 105779F which is located (a) immediately south south west of the Cairn Homes Properties Limited site the subject of the above Planning Application and (b) land off Main Street North of the application's site and east of St. Finian's Way.

2. 00 Ms. Murray is the former owner of the applicant's site which was sold by her to Tenbury Developments Limited in 2000 and was subsequently acquired by Cairn Homes Propertied Limited in July 2016 – Folio DN 212796F

3. 00 The Development Plan relating to Newcastle in 2000 envisaged that a new road/bye-pass of Newcastle Village would be constructed basically along the line separating the lands being transferred to Tenbury Developments Limited by Fiona Murray and the lands being retained by her.

4. 00 As part of the sale of the lands, Tenbury Developments Limited entered into an "Agreement" dated 6th April 2000 containing specific clauses requiring Tenbury Developments Limited to provide access and services to the lands retained by Ms. Murray and for physical boundaries to be erected between the respective properties. All details require Ms. Murray's prior agreement.

5. 00 The "Agreement" also conditioned that in the event that the Local Authority abandons its then proposal for the road/bye-pass that alternative arrangements be made by and at Tenbury Developments Limited's expense to access and service the retained lands from **the public road.**

6. 00 Ownership of the site was transferred to Cairn Homes Properties Limited (Folio DN212796) together with the terms and conditions of the Tenbury/ Murray "Agreement" and which is detailed in Part 3 – Burdens and Notices of Burdens – Particulars No. 1 of the Folio.

7. 00 Ms. Murry recognises and accepts the current zoning status of the applicant's site and part of her retained lands as being Development Objective RES-N and is supportive of the proposed development in principle. She is concerned that the requirements of the legal "Agreement" referred to above are not adequately addressed in the current application.

8. 00 Her principle concern relate to

(a) The suggest points of access illustrated on the application drawings do not all extend to her boundary leaving potential ransom strips. The "Agreement" contemplated/assumed that the new bye-pass would abut her boundary and would afford access to her land anywhere along the road. The applicant's proposed location of roads denies access as originally contemplated. As a compromise, it is considered reasonable for the proposed roads adjacent to her boundary be extended to the boundary. They should also be identified as future access points on the submitted documents.

(b) The proposed utilities layout does not indicate extending to her boundary

(c) The designed sewage requirement indicated in the application calculations do not appear to take account of the additional requirements to support development of Ms. Murray's retained lands.

(d) The proposed access onto the Athgoe Road and the required improvements approved by South Dublin County Council do not appear to take account of safe access to/from Ms. Murray's lands. It is to be noted that the "Agreement" requires Ms. Murray's lands be access from the **public road.** The applicant's proposal only provides access via their development which may not be available for years.

(e) No provision is made by the applicant for access from their site to/from the part of the Murray site fronting onto the Main Street. This site is only accessible from Ms. Murray's south boundary via the applicant's site and it is imperative that access is maintained for now and for the future consistent with the

terms and conditions of the "Agreement". This has been brought to the attention of the applicant on many occasions with no solution forthcoming.

(g) We have not identified any reference to the "Agreement" in the pre-planning or planning application documents.

(h) The "Agreement" requires that Ms. Murray's consent prior to submission of a Planning Application. Although discussions have taken place between the parties. **Ms. Murray has not consented to the current or past applications.**

9. 00 Ms. Murray is submitting this observation to request that South Dublin County Council in granting Planning Permission ensures that the terms and conditions of the "Agreement" are not compromised. It would be a pointless exercise for the Council to Grant permission in conflict with the Agreement. Ms. Murray has received written assurances from the applicant that they will honour the "Agreement" subject to South Dublin County Council planning decision. Such assurances are worthless unless a Planning Permission is compatible with the "Agreement".

10. 00 To avoid conflict. it is suggested that the Council request Cairn Homes Properties Limited to submit Additional Information with revisions to demonstrate compliance with the Agreement including written confirmation/agreement from Ms. Murray. Alternatively. suitable and unambiguous conditions be included in any grant of permission.

Yours faithfully.

Paul C. Mealy FRIAI.

DOCUMENTS ATTACHED

1. The "Agreement"
2. Site Layout Plan with required points of access identified
3. Tailte Eireann Map showing access point to Murray Land by Newcastle Main Street
4. South Dublin County Council's receipt T4/0/759932

Dated the day of April 2000

TENBURY DEVELOPMENTS LIMITED

One Part

AND

FIONA MURRAY

Other Part

WAYLEAVE AGREEMENT

JOHN GLYNN & COMPANY,
Solicitors,
Law Chambers,
The Village Square,
Tallaght,
DUBLIN 24

Murray.Fiona.Agt

THIS AGREEMENT made the 6th day of April 2000 **BETWEEN TENBURY DEVELOPMENTS LIMITED** having their registered office at 222/224, Harolds Cross Road, Dublin 6 (hereinafter called "the Grantor" which expression shall where the context so admits or requires include their successors and assigns) of the one part **AND FIONA MURRAY** of 1, Ellensborough Green, Kiltipper Road, Tallaght, in the County of Dublin (hereinafter called "the Grantee" which expression shall where the context so admits or requires include her executors administrators and assigns) of the other part

WHEREAS The parties hereto are party to a Transfer dated the 6th day of April 2000.

WHEREAS in consideration of the sale referred to therein and the sum of £1 (the receipt of which is hereby acknowledged) the Grantor hereby agrees and undertakes with the Grantee as follows:

A. In the event of the Local Authority abandoning its proposal for the said possible road so that it is not located on either the Sold Land or the Retained Land, then the Grantor shall construct at his own expense and in consultation with the Grantee or her Architect/Engineer, a roadway to the standard required by South Dublin County Council giving the Grantee access from the public road to the Retained Land and shall grant to the Grantee a right of way for all purposes over such roadway and a right of access to connect into same. The Grantee shall undertake all responsibility for the said road and shall keep same in a safe and useable condition until it shall have been taken in charge by the Local Authority and shall keep the Grantee fully and effectually indemnified in respect thereof until the same is taken in charge by the Local Authority.

B. Should the Local Authority require the Grantor to construct the said roadway or part thereof, or should the Local Authority itself construct

the said roadway or part thereof, the Grantee retains to herself her executors administrators and transferees rights:

(i) of access to the Sold Land to enter the land and connect into the said road so as to provide access to the Retained Land, and

(ii) to build the said connecting roadway on the Sold Land if necessary and the Grantor shall grant to the Grantee her heirs executors and transferees a right of way for all purposes over the said land along the said roadway.

C. There shall be excepted and reserved unto the Grantee for the benefit of the lands retained by her the full and unrestricted easement to lay services and/or to connect into services to be provided by the Grantor within the perpetuity period of the property. It is the intention of the parties hereto that the services to be laid by and at the expense of the Grantor shall be in a manner sufficient and adequate to enable the lands retained by the Grantee as are presently enjoyed or as may be developed in the future to be serviced thereby and for this purpose the Grantor as soon as may be but in any event before applying for Planning Permission submit to the Grantee's Architect/Engineer full details of the services therein provided for and shall accommodate the requirements of the Grantees Architects/Engineers so that the said services shall be sufficient for the purpose of serving the lands retained by the Grantee.

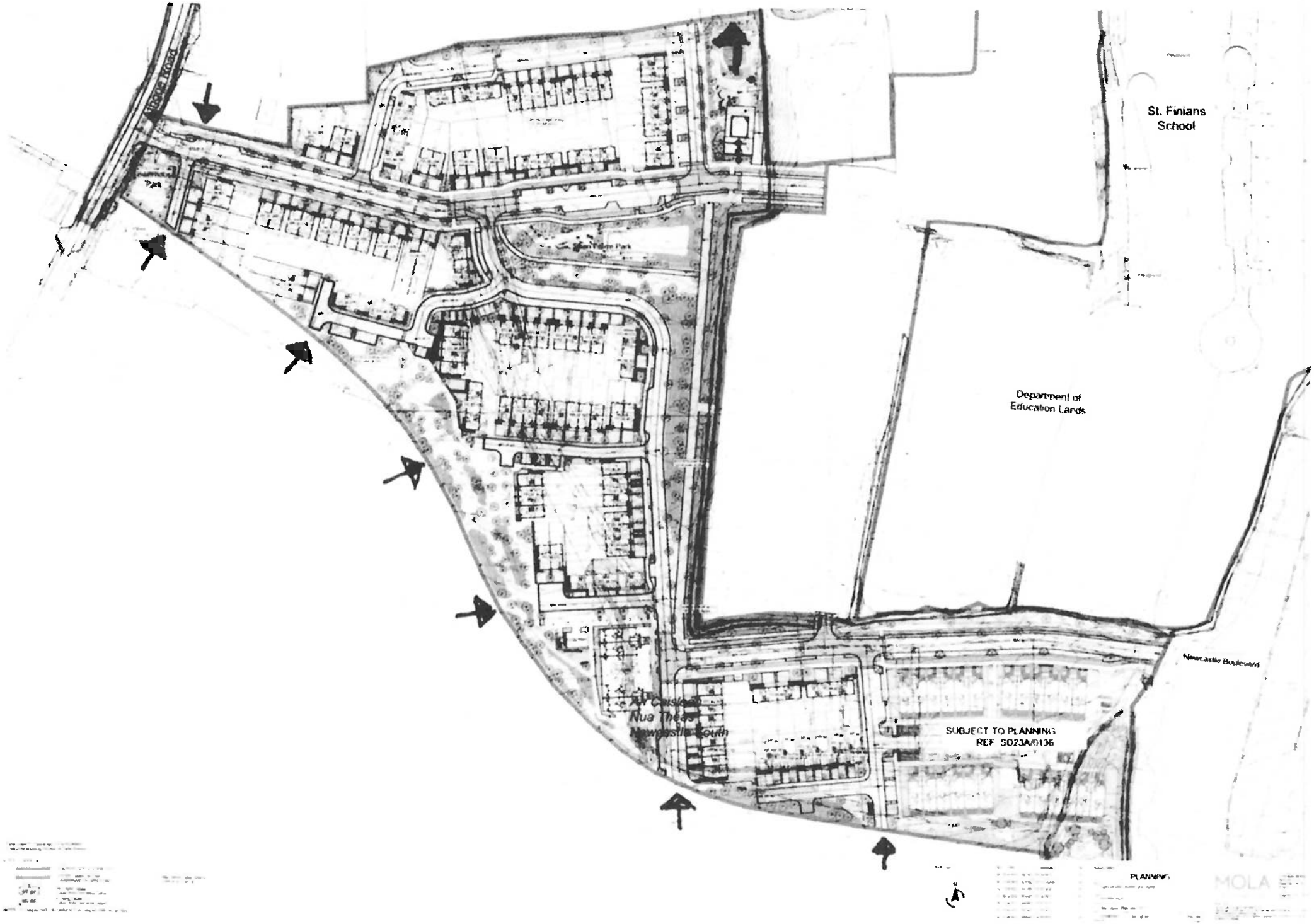
D. The Grantor shall erect boundary walls and /or fences prior to the commencement of the development of the Sold Property to separate the Sold Land from the Retained Land. The form of such boundary walls and/or fences to be agreed in writing by the Architect/Engineer retained by the Grantee prior to any preparatory, exploratory or development work commencing on the site and the form of such boundary wall or fence shall be of stock proof quality.

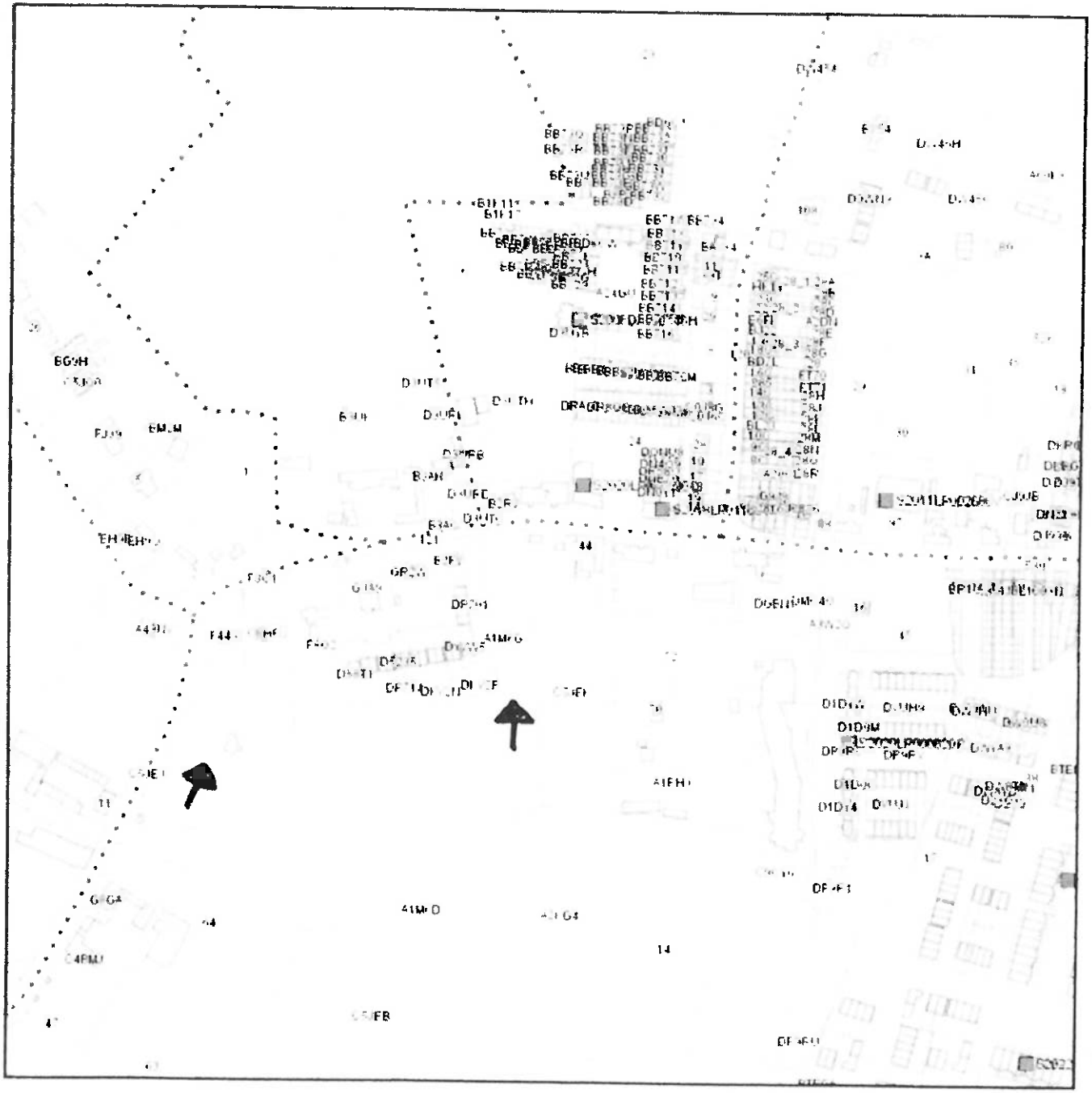
E. The Grantor grants unto the Grantee the right to use the Sold Lands for grazing purposes until the commencement of development of the said lands. The Grantor shall give four weeks notice in writing to the Grantee of the commencement date of development.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals the day and year first herein Written.

PRESENT when the Common Seal of the Grantor was affixed hereto:

SIGNED SEALED AND DELIVERED by the Grantee in the presence of:


St. Finians School
Department of Education Lands
Newcastle Boulevard
SUBJECT TO PLANNING
REF SD23A/0136
PLANNING
MOLA



Creation Date 21 November 2023 13:33:39

Tailte Éireann

Official Tailte Éireann Registration Map

This map should be read in conjunction with the folio

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Freehold

Leasehold

SubLeasehold

'S' Register

Burdens

Right of Way / Wayleave

Turbine

Pipeline

Well

Pump

Septic Tank

Soakaway

(see Section 85 of the Registration of Title Act 1964) As inserted by Section 62 of the Registration of Deed and Title Act 2006

An Rannóg Talamhúsáide, Pleanála agus Iompair
Land Use, Planning & Transportation Department

Telephone: 01 4149000 Fax: 01 4149104 Email: planningdept@sdublincoco.ie

Comhairle Contae Átha Cliath Theas
South Dublin County Council

Paul C Mealy (FRIAI)
11, The Courtyard
Friar's Hill
Co. Wicklow
A67 Y718

Date: 22-Nov-2023

Dear Sir/Madam,

Register Ref: LRD23A/0011

Development: The proposal comprises the 2nd phase (phase 2B) of a 2 phase development (first phase [phase2A] under planning reg. ref SD23A/0136 will comprise 48 no. duplex dwellings and phase 2 of Taobh Chnoic public park of c.1.74 hectares of open space, along with car parking and ancillary infrastructure) to result in an overall Phase 2 development of 179 no. dwellings (consisting of 119 no. 2 storey houses and 60 no apartments / duplex apartments in 5 no. 3 storey duplex buildings, and ancillary infrastructure). The phase 2B development will consist of the construction of 131 no. dwellings and open space as follows: A) 119 no. 2 storey houses (10 no. 2 bedroom houses, 95 no. 3 bedroom houses, 13 no. 4 bedroom houses and 1 no. 5 bedroom house. B) 12 no. apartments / duplex apartments in 1 no. 3 storey building - (6 no. 2 bedroom apartments and 6 no. 3 bedroom duplex apartments) all with terrace. C) Open space (c. 1.34 ha. in a series of open space areas) hard and soft landscaping (including public lighting & boundary treatment), communal open space for duplex apartments and apartments; along with single storey bicycle/bin stores and ESB substations; D) Vehicle access from the Athgoe Road from a new signalised junction along with upgrades to footpath and pedestrian crossing (on the Athgoe Road) as well as provision of vehicular/pedestrian/cycle link to permitted 'Graydon' (TA06S.305343) 'Newcastle Boulevard' to the East as well as 237 no car parking spaces and 94 no. bicycle spaces (4 no. motorcycle space) and all internal roads, cycleways, green routes and paths. E) Provision of surface water attenuation SuDs measures connection to water supply and provision of foul drainage infrastructure as well as an underground local pumping station (in northern part of site) to Irish Water specifications and all ancillary site development / construction / landscaping works. F) The proposal also includes upgrades (to provide surface water pipe upgrades) to the surface water network along Athgoe Road and Hazelhatch Road (for c. 1.2 km).

Location: Within the townland of Newcastle South, Newcastle, And along Athgoe Road & Hazelhatch Road (R405) to (Ground Investigations Ireland premises), Co. Dublin.

Applicant: Cairn Homes Properties Limited

Application Type: Permission

Date Rec'd: 20-Oct-2023

Comhairle Contae Átha Cliath Theas
South Dublin County Council

I wish to acknowledge receipt of your submission in connection with the above planning application. The appropriate fee of €20.00 has been paid and your submission is in accordance with the appropriate provisions of the Planning and Development Regulations 2001(as ended). The contents of your submission will be brought to the attention of the Planning Officer during the course of consideration of this application.

This is an important document. You will be required to produce this document to An Bord Pleanala if you wish to appeal the decision of the Council when it is made. You will be informed of the decision in due course. Please be advised that all current applications are available for inspection at the public counter and on the Council's Website, www.sdublincoco.ie.

You may wish to avail of the Planning Departments email notification system on our website. When in the ***Planning Applications*** part of the Council website, www.sdublincoco.ie, and when viewing an application on which a decision has not been made, you can input your email address into the box named ***"Notify me of changes"*** and click on ***"Subscribe".*** You should automatically receive an email notification when the decision is made. Please ensure that you submit a valid email address.

Please note: If you make a submission in respect of a planning application, the Council is obliged to make that document publicly available for inspection as soon as possible after receipt. Submissions are made available on the planning file at the Planning Department's public counter and with the exception of those of a personal nature, are also published on the Council's website along with the full contents of a planning application.

Yours faithfully,

M. Furney
for **Senior Planner**