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**LARGE RESIDENTIAL
DEVELOPMENT
CORRESPONDENCE FORM**

Appeal No: ABP -319657-23Mrs FlynnPlease treat correspondence received on 16/08/2024 as follows:

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| <p>1. Update database with new agent for Applicant/Appellant _____</p> <p>2. Acknowledge with LRD <u>23</u> _____</p> <p>3. Keep copy of Board's Letter <input type="checkbox"/></p> | <p>1. RETURN TO SENDER with LRD _____</p> <p>2. Keep Envelope: <input type="checkbox"/></p> <p>3. Keep Copy of Board's letter <input type="checkbox"/></p> |
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Amendments/Comments

Applicant's response to Article 73A(1)(a)

4. Attach to file

(a) SHD/LRD Unit ☐ (b) Inspector ☐RETURN TO EO ☒Plans Date Stamped ☐Date Stamped Filled in ☐EO: Karen ByrneAA: [Signature]Date: 23/08/2024Date: 26.8.24.

Lisa Quinn

From: Bord
Sent: Friday, August 16, 2024 5:17 PM
To: Appeals2
Subject: FW: ABP-319657-23 - Large scale residential development within the townlands of Blessington Demesne, Newpaddocks and Santryhill, Blessington, Co. Wicklow [ACOX-CE-CA688-008-105]
Attachments: 240816 AC to ABP - ABP-319657-23.pdf

From: David Ryan <David.Ryan@arthurcox.com>
Sent: Friday, August 16, 2024 4:42 PM
To: Bord <bord@pleanala.ie>
Cc: Danielle Conaghan <danielle.conaghan@arthurcox.com>; Jacinta Conway <Jacinta.Conway@arthurcox.com>; Jane Reddin <Jane.Reddin@arthurcox.com>
Subject: ABP-319657-23 - Large scale residential development within the townlands of Blessington Demesne, Newpaddocks and Santryhill, Blessington, Co. Wicklow [ACOX-CE-CA688-008-105]

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 colleagues

Please see attached correspondence, which has also been issued by registered post.

Kind regards
David

David Ryan

Associate

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Our Reference: 3478//CA688/008

16 August 2024

BY REGISTERED POST AND EMAIL: bord@pleanala.ie

An Bord Pleanála
64 Marlborough Street
Dublin 1
V01 V902

Re: ABP-319657-23 (Wicklow County Council Planning Reg. Ref 23689)
Large scale residential development within the townlands of Blessington Demesne, Newpaddocks and Santryhill, Blessington, Co. Wicklow

Our client: Cairn Homes Properties Limited

Dear colleagues

We refer to your correspondence dated 30 July 2024 addressed to our client requesting further information in respect of the above-mentioned third-party appeal against Wicklow County Council's notification of decision to grant permission.

1. Overview

At the outset, we would like to take the opportunity to reconfirm that our client's application has already met the requirements to be defined an "LRD application". These requirements were met at the pre-application stage. Wicklow County Council (the "**Council**") subsequently confirmed this by issuing its LRD opinion. There is no provision in the Planning and Development Act 2000 (the "**2000 Act**") which allows the Board to revisit either this status or the LRD opinion. Further information in this regard is set out at section 2 below.

Our client's request of the Board, as detailed further in this letter, is:

- (a) to proceed to determine the appeal as an ordinary section 37 appeal. We have set out the legal basis for this in section 2 below;
- (b) if the Board is not willing to determine the appeal now as a section 37 appeal, it should pause the determination until the draft Blessington Local Area Plan 2024-2030 is published. We have set out the legal basis for this in section 3 below; and
- (c) if the Board is not willing to proceed with either of the above requests, our client requests that the Board make its determination once the final Local Area Plan is published. We have set out the legal basis for this in section 3 below.

2. **Section 32A of the Planning Act**

As the Board's letter of 30 July notes, this application was made under the Planning and Development (Amendment) (Large-Scale Residential Development) Act 2021 (the "**2021 Act**"). The Council confirmed its status as an "LRD application", as is evidenced by the LRD Opinion issued on 9 May 2023.

Given the proposed development comprises of 329 residential units, Cairn Homes was required to obtain an LRD opinion under section 32A of the 2000 Act. Sections 32A(1) and 32A(2)(b)(ii) of the 2000 Act refer to applying for permission on land "*the zoning of which facilitates its use for the purposes proposed in the application*". However, the legal requirements of these provisions are that: (1) a prospective LRD applicant must hold an LRD opinion before applying for permission, and (2) the planning authority cannot consider the application unless the applicant holds an LRD opinion. The full context of the provisions is as follows:

- (a) Section 32A(1) prohibits a person from making an LRD application on land "*the zoning of which facilitates its use for the purposes proposed in the application*" unless they hold an LRD opinion (or written confirmation under section 247(7)); and
- (b) Section 32A(2)(b)(ii) prohibits a planning authority from considering an LRD application on land "*the zoning of which facilitates its use for the purposes proposed in the application*" unless the applicant holds an LRD opinion (or written confirmation under section 247(7)).

Our client obtained an LRD opinion in accordance with the requirements of the 2000 Act before it submitted its application. Once an LRD opinion has been obtained, section 32A has no relevance to the determination of a particular LRD. After that point in time, zoning is not a prerequisite and/or absolute requirement for the determination of an LRD application.

The specific requirements of section 32A only apply at the pre-application stage and there is no provision in the 2000 Act to revisit the LRD opinion once it issues. The requirement to obtain an LRD opinion is a preliminary procedural step in the LRD decision-making process. Once the opinion is obtained, the LRD planning process proceeds as if the application is made under section 34 of the 2000 Act.¹

Therefore, the Board is required to consider the LRD application as an ordinary appeal in accordance with section 37 of the 2000 Act.² If the Board considers that the 2013 Blessington LAP is not currently in force, this renders the relevant land unzoned. The Board is not precluded

¹ See section 32D(2A) of the 2000 Act), subject to the additional requirements specified in the Planning and Development (Large-Scale Residential Development) Regulations 2021 (S.I. No.716 of 2021).

² Section 37(1)(b) states that subsections (1), (2), (3), (4), and (4A) of section 34 shall apply, subject to any necessary modifications.

from granting permission on unzoned land. The Board is required to make a decision on the appeal in accordance with proper planning and sustainable development and is entitled to determine the application having regard to the Wicklow County Development Plan 2022-2028 (the “**Development Plan**”). Section 3.5 of the Development Plan sets out four principles for zoning:

- (a) Compact growth: a minimum of 30% of the targeted housing growth shall be directed into the built up area of Level 1 to 4 settlements.
- (b) Delivery of housing and population targets: Zonings will be structured to deliver the core strategy housing targets.
- (c) Higher densities: Zonings will be delivered in accordance with higher densities in Ministerial Guidelines.
- (d) Sequential approach: Priority 1 (town centre/brownfield), priority 2 (RSES strategic sites), priority 3 (infill within existing CSO town boundary), priority 4 (greenfield: tier 1 serviced and sequentially adjacent to town boundary; tier 2 unserviced and sequentially adjacent to town boundary).

The Chief Executive’s Report of 2 April 2024 supporting the material contravention of core strategy elements of the Development Plan concluded that the proposed development was in “*substantial compliance with the requirements and standards of the County Development Plan 2022-2028*”. We note that the Council unanimously resolved to approve the proposed development in material contravention of the Development Plan on 8 April 2024 (as recorded in the Chief Executive’s Order dated 12 April 2024). The Council would have considered all relevant provisions of the Development Plan, including section 3.5.

If the Board considers that a material contravention arises, we refer to section 37(2)(a) of the 2000 Act which empowers the Board to grant permission notwithstanding any material contravention where the Council itself has decided to grant permission. The criteria in section 37(2)(b) therefore do not apply in this case.

3. **The forthcoming LAP**

If, notwithstanding the above, the Board is of the view that a question remains in relation to the zoning of the subject lands, we request that the Board postpones its determination of the appeal pending the publication of the draft Blessington LAP 2024-2030 (the “**2024 LAP**”). In this regard, we bring the following to your attention:

- (a) Section 126B(2) of the 2000 Act enables the Board to postpone an LRD decision beyond the ordinary statutory time limits where a decision is not possible because of the particular circumstances of an LRD appeal. If the Board considers that further information on the zoning in the LAP is necessary, then this cannot be fully answered until the draft 2024 LAP is published. Our client has been informed by the Council that the draft 2024 LAP is due to be published in Q4 2024. Given that the timing of the adoption of an LAP is entirely outside our client’s control, it would be appropriate and in the interests of natural justice for the Board to exercise its power to the extent necessary. Should the Board do so, our client confirms that it waives any entitlement to payment that may otherwise arise³ on the basis that the paused timelines would resume once the draft 2024 LAP is published.
- (b) Section 18(3)(a) of the 2000 Act expressly provides that the Board has the power to “*consider any relevant draft local plan which has been prepared but not yet made in*

³ Pursuant to section 126B(4) of the 2000 Act.

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accordance with section 20". The Board is therefore legally entitled to, and we respectfully suggest should, proceed to determine the appeal once it has taken into consideration the draft 2024 LAP. The 2013 Blessington LAP included a residential zoning for the subject lands. While section 19(6) states that there shall be no presumption in law that any land zoned in a particular local area plan shall remain so zoned in any subsequent local area plan, Cairn Homes has a reasonable expectation that that the lands will retain a residential zoning once the 2024 LAP is adopted and exercise its power to postpone the LRD decision until then. In this regard, Cairn Homes is not aware of any change of circumstances that would require a change in zoning and the Development Plan does not preclude the retention of the zoning in the LAP.

- (c) If, despite its power to do so, the Board for any reason is not willing to determine the appeal taking into consideration the draft 2024 LAP, our client request's that the Board makes the determination of the Appeal when the final 2024 LAP is published.

In the circumstances, we consider that it would be appropriate for the Board to circulate this response to the appellants and the Council for comment.

We have reviewed the Council's response of 15 August 2024. We respectfully submit that there is no information in that response that would preclude the Board from proceeding with any of the three requests made by our client at the outset of this letter.

Yours faithfully



ARTHUR COX LLP