

**Doina Chiforescu**

Gary D.

**From:** Bord  
**Sent:** Tuesday 6 April 2021 11:35  
**To:** Appeals2  
**Subject:** FW: ABP Ref 309642-21 - Section 5 Referral at Ledwidge Hall, Slane, County Meath  
**Attachments:** Ledwidge Hall S.5 Response - Final.pdf; ABP Letter 10-03-21.pdf

**From:** Stephen Ward <[sward@wardconsult.com](mailto:sward@wardconsult.com)>  
**Sent:** Tuesday 6 April 2021 11:27  
**To:** Bord <[bord@pleanala.ie](mailto:bord@pleanala.ie)>  
**Cc:** Maria Ward <[mward@wardconsult.com](mailto:mward@wardconsult.com)>  
**Subject:** ABP Ref 309642-21 - Section 5 Referral at Ledwidge Hall, Slane, County Meath

Dear Sir or Madam,

Further to your letter dated the 10<sup>th</sup> March 2021 regarding the above matter, attached please find Response of Cheverdale Limited.

I would be obliged if you would email me to acknowledge receipt of this submission and issue formal receipt notification in due course.

Regards,

Stephen Ward.

Stephen Ward Town Planning &  
Development Consultants Ltd  
Jocelyn House  
Jocelyn Street  
Dundalk  
Tel: 0429329791  
Fax: 0429329047  
email: [sward@wardconsult.com](mailto:sward@wardconsult.com)

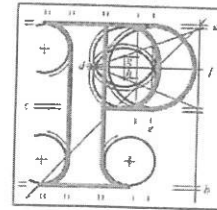
Web: [www.wardconsult.com](http://www.wardconsult.com)

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Our Case Number: ABP-309642-21

Planning Authority Reference Number: LBS52102



An  
Bord  
Pleanála

Cheverdale Limited  
12 Merrion Square North  
Dublin 2  
Dublin 2

Date: 10 March 2021

Re: Whether the imminent use of development LB160659, LB180519 & LB190293 as exclusively Part 5, PDA, housing is or is not development or is or is not exempted development  
Ledwidge Hall Green, Drogheda Road, Slane, Co. Meath

Dear Sir / Madam,


Enclosed is a copy of an appeal under the Planning and Development Act, 2000, (as amended).

As a party to the appeal under section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Board within a **period of 4 weeks** beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the appeal without further notice to you.

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

Yours faithfully,

  
Yvonne McCormack  
Administrative Assistant  
Direct Line: 01-8737151

BP05

Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1890 275 175
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64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902



2<sup>nd</sup> April 2021

An Bord Pleanala,  
64 Marlborough Street,  
Dublin 1.

**By Email – [bord@pleanala.ie](mailto:bord@pleanala.ie)**

Dear Sir / Madam,

**RE: RESPONSE TO REFERRAL UNDER SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED) BY MAIREAD PHELAN AND OTHERS AS TO WHETHER THE IMMINENT USE OF DEVELOPMENT LB160659, LB180519 & LB190293 AS EXCLUSIVELY PART 5, PDA, HOUSING IS OR IS NOT DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

**ADDRESS: LEDWIDGE HALL GREEN, DROGHEDA ROAD, SLANE, CO. MEATH.**

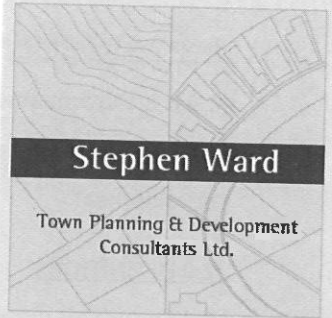
**REFERRAL REF. NO: ABP-309642-21**

### **1.0 INTRODUCTION**

1.1 I refer to your correspondence of 10<sup>th</sup> March 2021 addressed to Cheverdale Limited of 12 Merrion Square North, Dublin 2. Stephen Ward Town Planning and Development Consultants Limited has been engaged to respond to the Referral. Please address all further correspondence in this matter to Stephen Ward Town Planning and Development Consultants Limited, Jocelyn House, Jocelyn St, Dundalk, Co. Louth.

1.2 Cheverdale Limited also wish to state, notwithstanding this submission that it reserves all rights regarding this matter and that this submission is made without prejudice to recourse elsewhere in the matter.

1.3 It is strongly contended that the Referral is not grounded in planning matters including those relating to the proper planning and sustainable development of the area and in this regard it is requested that the Board dismisses the matter. In the event An Bord Pleanala decides to deal with the case then Cheverdale would request An Bord Pleanala prioritises this case for the earliest possible decision as construction is ready to commence for these much needed houses.



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1.4 It is the fundamental premise of this response that Meath County Council were correct in finding that use of a permitted residential development to provide entirely for social and affordable housing does not constitute development.

## **2.0 DEFINITIONS**

2.1 To support our submission that the use of the entire stated development for social and affordable housing is not development we first set out definitions from the Planning and Development Act 2000 as amended.

### **a) Section 2 of the Act -**

Section 2 provides the following definitions –

*“Development has the meaning assigned to it by section 3, and “develop” shall be construed accordingly”.*

*“Works” includes any act or operation of construction, excavation or demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.”*

*“House” a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building”.*

### **b) Section 3 of the Act -**

Section 3 defines development as –

*“the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land”.*

## **3.0 IS THE PROPOSED USE “DEVELOPMENT” AS DEFINED BY THE PLANNING ACTS**

3.1 There are two strands to development and in summary these are “works” and “material change of use”.

**3.2 Does the Use Comprise Works** - It is clear the subject matter of the S5 Referral relates to the use of the buildings and does not relate to physical or operational development. The use of the buildings does not require any works as defined under the Planning and Development Act 2000 as amended. The use is not development under this strand of the definition.

**3.3 Does the Use Comprise a Material Change of Use** - It is submitted that the changing of a tenure of a house does not amount to a material change of use - a residential house occupied for residential purposes is a residential use regardless of tenure. In terms of the proper planning and sustainable development of the area, for an impact to arise it must be a "material" impact. Further to this by reference to planning case law as contained in the book "Planning and Development Law" (Simmons G. Second Edition: 2-19 to 2-27), *"it is not the change but the materiality of the change that requires assessment and the materiality of the change is assessed by reference to its effects"*

3.4 By reference to planning case law specifically Cairnduff v. O'Connell (1986) IR 73, in addition to layout the character of a structure is also derived from - *"shape", "colour", "design" and "ornamental features"*. As pointed out by Herbert J. in Mc Cabe v. Coras Iompair Eireann (2006) IEHC 356 - *"there are undoubtedly exceptional cases in which a single feature of a structure is so outstandingly remarkable or so important from an aesthetic, architectural or engineering perspective, that it could be properly and rationally be said to derive its entire character from that single feature"*. There is no change to the building assemblage and this remains unaltered with the proposed uses in place. In Mc Cabe v. Coras Iompair Eireann, Herbert J. goes on to state the character of the structure should be assessed by *"looking objectively at the entity as a whole"* taking all of the elements that contribute to character into account.

3.5 Tenure is not mentioned in the definition of a house. There is no definition of social or affordable housing in the Planning & Development Act 2000 (as amended).

3.6 It is our strongly held opinion that the use of the houses for "social and affordable" occupants as opposed to "private" does not constitute a material change of use. It is submitted that set against any reasonable test of materiality there is no difference in terms of land use planning (which is what we are restricted to considering in this case). It is submitted there is not even a change of use, much less a material change of use. The buildings will be used for the purposes for which they are designed i.e. houses.

3.7 It is submitted the Referrers would have to show a planning impact which would justify the determination that a "material" change of use will occur. This would require something different by way of a completely different use. By contrast, we submit there is no planning impact simply because of the nature of the tenure of the occupant. For example, and primarily the buildings will still be used as houses. There will be no change in terms of traffic, levels of activity or noise or other such disturbance. These are simply houses and will be used for occupation and for normal activities ancillary to the occupation of the dwellings.

3.8 We note the S5 Referral relates to the overall use of the development for social and affordable housing and we again say that makes no difference in terms of use of the dwellings as dwellings and for the purposes to which they are designed. Indeed, the arguments put forward by the referrers might suggest that they have no objection to the use of a portion of the development for social and affordable houses. But that could lead to the bizarre scenario whereby if the houses were purchased privately and then rented via the HAPS scheme, that a change of use application would have to be made before a person in the HAPS scheme could occupy the dwelling or perhaps a percentage of the development could be occupied by persons availing of the HAPS scheme but after that a change of use application would have to be made. We submit it is not tenable to imagine a scenario that a site notice has to be erected outside a house saying in effect this house is to be occupied by someone that cannot afford to buy a house and the occupants will be of a different “use class” than other people.

3.9 The contention by the appellants that Part V of the Planning and Development Act 2000 (as amended) intentionally differentiates and distinguishes social and affordable housing such that it becomes a distinct and unique form of development in its own right is an interpretation that is simply not grounded in legislation, national/local planning policy, or day-to-day development management. As noted above, there is no definition of social or affordable housing in the Planning & Development Act 2000 (as amended), nor the Planning & Development Regulations 2001 (as amended). The inferences from this is that tenure is irrelevant to the definition of a ‘house’. If it was the intention of the legislature to make a distinction between “social and affordable” housing and “private” housing it would have done so in legislation.

3.10 Part V of the Planning & Development Act 2000 (as amended) exists only to ensure a minimum provision of social and affordable housing which is in the interests over-arching Government objectives regarding social inclusiveness and equality. It does not exist to differentiate social and affordable housing in its own right in planning law terms. Indeed if this were the case then the entire planning system could be described as discriminatory in seeking to single out and marginalise those who might live in housing which may be described as social and affordable. Part V is not designed to put a “cap” on social and affordable housing; rather it is there to ensure a stated minimum provision.

#### **4.0 PLANNING HISTORY**

4.1 The Section 5 referral references several planning permissions which are detailed below along with the development description taken from planning section of the Meath County Council website:

*LB160659: the proposed development will consist of the construction of a total of 23 no. two storey dwellings in a mix of detached and semi-detached form. The development also provides for all associated site development works including alterations to ground levels, internal roads, car parking, footpaths, open space, public lighting, landscaping and boundary treatments. Vehicular access is via the existing Ledwidge Hall residential development.*



LB180519: *construction of 16 no. two story 3 bedroom semi-detached dwellings on site no's 13-28 incl. in lieu of . no. 4 bedroom two story detached dwellings on site no's. 13-23 incl. approved under planning permission LB/160659. This proposal also provides for a turning area opposite units 12 and 13 and a gated access to the lands to the east of the application site with a minimum of a 5m wide strip with 4m wide gates, all on previously approved sites 13-23 incl. (LB/160659) with vehicular access via the existing Ledwidge Hall residential development.*

LB190293: *change of house types only on approved sites 1-6 incl. (Reg. Ref. LB160659) Ledwidge Hall Green from 6 no. 2 storey 4 bedroom detached dwellings to 6 no. detached bungalows comprising 3 no. single story 3 bedroom detached dwellings on sites no's 1-3 incl. and 3 no. single story 2 bedroom detached dwellings on sites no's. 4-6 incl. at sites 1-6 incl.*

4.2 Each of the above applications refers to the number and form of dwellings proposed. The applications were validly made and adjudicated on. It is irrelevant whether the dwellings are to be sold on the private market to be occupied by owners, or leased to tenants by owners, or whether they are to be made available to tenants that qualify under social and affordable housing provisions. The key issue is that the dwellings are occupied for residential purposes irrespective of tenure. Notwithstanding and without prejudice to this contention, it is further noted that it is a condition of the 'parent' permission App. Ref. No. LB160659 that prior to the lodging of a commencement notice that an agreement be entered into with the Local Authority for the provision of social and affordable housing. Such a condition allows for the local authority to agree that the whole scheme be used for social and affordable housing. This point is noted in the Meath County Council S5. Referral report.

4.3 The distinction between housing tenures does not arise in 'day-to-day' development management application and we note several examples below.

**4.4 Part 8 Applications** - It is submitted that Councils' own development proposals, including that of residential development, do not specify the tenure of housing proposed. The majority of Council Part 8 developments are for the purposes of social and affordable housing. There are many Part 8 applications detailed on the Meath County Council website and the development descriptions refer to the number / form of housing units only: <https://www.meath.ie/council/council-services/planning-and-building/planning-permission/view-or-search-planning-applications/council-own-development-consents-part-8s>

4.5 No reference whatsoever is made to whether housing is for private, social, or affordable means.

4.6 It is our experience that other local authorities advertise Part 8 residential developments in a similar manner i.e. without specifying tenure.

**4.7 Part V** Multi residential unit planning applications have in their development descriptions the number and form of dwellings proposed. Development descriptions do not refer to the tenure of housing. It is not a requirement when applying for planning permission to specify tenure, and we note that there are no provisions under the Planning & Development Act 2000 (as amended) or Planning & Development Regulations 2001 (as amended) to do so. Furthermore the nature of Part V provision forms part of the assessment of planning applications with the exact agreement not finalised until a decision is made, and this decision may include provision for the transfer of units on other land within the functional area of the local authority, or the granting of a lease of houses within the functional area of the local authority. Thus it makes no sense to include reference to tenure in development descriptions when the issue of tenure can evolve and change with the assessment and decision on the planning application.

4.8 It is strongly contended that for the planning system to operate whereby the tenure or for that matter the personal or health circumstances or for that matter race of the occupier was part of the assessment of a planning application for residential development would be highly discriminatory and most likely unconstitutional. It really doesn't bear thinking about the direction society would go if the planning system operated on that basis.

**4.9 Rebuilding Ireland** - Under the Rebuilding Ireland policy initiative, local authorities have used CPO powers to acquire vacant housing units, refurbish them and then use them for social housing. This all happens without ever needing to gain planning permission for a change use from a dwelling to use as a dwelling for social/affordable housing purposes.

**4.10 - Call for Housing 2020 A National Call to Property Owners and Developers** - This Government initiative is a 'national call' for property owners and developers with vacant properties to make them available to local authorities who in turn can provide them for those with particularly pressing housing need. This all occurs without needing planning permission – a residential house occupied for residential purposes is a residential use regardless of tenure.

## **5.0 THE APPELLANTS CASE**

5.1 It is the claim of the appellants that the use of the scheme in question entirely for social and affordable housing constitutes development and that no planning permission exists for such development. Meath County Council has issued a S.5 referral decision to the effect that use of the scheme entirely for social and affordable housing is not development.

5.2 This response supports the position of Meath County Council and it is submitted that to determine otherwise is discriminatory and would set a most undesirable precedent that seriously jeopardises the ability to deliver increased housing supply nationwide.

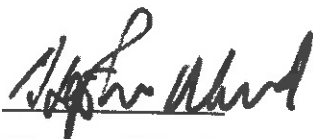
5.3 The case by the appellants is essentially that social and affordable housing is a distinct form (use) of development in its own right. This view suggests that in planning terms those who occupy social and affordable housing do so differently to those who occupy housing by private ownership or private lease. The appellants' view is without substance in legislation, national/local planning policy, or day-to-day development management. The implications of having to state the tenure of housing in planning applications would be significant and would have huge implications for the delivery of housing in the midst of an on-going housing crisis, and not least, would in our opinion be hugely discriminatory and probably unconstitutional. It would be nonsensical to have to make a planning application for a change of use of a residential house from use by private rent occupants, to use by social rent occupants or occupants under an affordable housing scheme. So too would it be nonsensical that planning applications could be objected to on the basis of tenure with the inference that those who are unable to buy their own house or pay market rent are of a lesser stature or different class than those who can.

## **6.0 CONCLUSION**

6.1 The S.5 declaration decision of Meath County Council that use of the scheme in question entirely for social and affordable housing is fully supported. There is no basis in legislation, national/local planning policy, or day-to-day development management to suggest otherwise. The singling out of social and affordable housing as a form of development (use) in its own right would be discriminatory and be at odds with government objectives of increasing housing supply.

6.2 It is our strongly held opinion that this Referral is not grounded in planning matters and should be dismissed. In the alternative it is submitted the uses of the houses at the stated residential development for the purposes of social and affordable houses is not development.

Yours faithfully,



**Stephen Ward**

