

Our Ref: 2034 – Adelaide Bray Referral Response

Mr. Liam Halpin
Administrative Assistant,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.
D01 V902

AN BORD PLEANÁLA	
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ABP-	_____
29 OCT 2021	
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29th October 2021

Re: Response to Referral on Whether a change of use of residential units at Dargan Hall, Station Road, Bray, Co. Wicklow permitted under PRR18/1166 from 10% Part V units to 100% Part V units is or is not development or is or is not exempted development.

**An Bord Pleanála Reference: ABP-311048-21
Wicklow County Council Ref. 37/2021**

Dear Mr. Halpin,

We are instructed by our client, Glenveagh Homes Ltd., Maynooth Business Campus, Maynooth, Co. Kildare, W23 W5X7 to lodge this submission in response to a Referral submitted by Mr. Denis O'Sullivan, 3 Florence Terrace, Bray, Co. Wicklow in respect of the Declaration by Wicklow City Council under Ref. 37/2020.

This correspondence is made in response to An Bord Pleanála's letter of 4th October 2021, which invited comment to be made on the Third Party Referral to the Board.

The rebuttal of the Referral, together with the reasons, arguments and considerations on our client's behalf are set out below, by Mac Cabe Durney Barnes, 20 Fitzwilliam Place, Dublin 2.

We wish to confirm that prior to responding to this Submission we have reviewed the letter prepared by Gerard I. Lambe, Solicitor, Wicklow County Council's Declaration dated 14/7/21 and the pertinent planning permission referred to in the Declaration under Ref. 18/1166 (71 apartment units at Dargan Hall, Station Road, Bray).

At the outset, the applicant wishes to highlight that this Referral refers a development that has been fully approved through the statutory planning process is currently nearing completion of construction on site. It refers to a matter of compliance with a condition, which requires agreement between the Planning Authority and the developer.

The agreement between the parties is not an interpretation of planning law or regulations. As such it is submitted, that the application of Section 5 of the Planning and Development Act, 2000 (as amended) is entirely inappropriate. It is evident that no development has occurred and that the enhanced lease for the remaining 64 no. units on top of the agreed 7 no. Part V units is fully within the terms of the permission granted.

The Planning Authority responded to Mr. O'Sullivan's query on the matter in correspondence dated 11th June 2021 and it is clear the matter should have ended there. It is completely unacceptable for a Third Party to seek to undermine a statutory decision of the planning authority by use of Section 5 of the Planning Act 2000 (as amended) and if accepted, would set an alarming precedent for development in this country, with onerous and material implications for conveyancing and occupation of dwellings. It is respectfully submitted that the case should be decided by the Board with great urgency do discourage such vexatious cases and ensure there the Third Party is not allowed to delay occupation of dwelling units.

Appeal Case

The Third Party submission is essentially based on the premises that the agreement made in compliance with Condition 5 (prior to commencement) was subsequently revised (in agreement with the Planning Authority) and therefore it is alleged that the permission was altered 'significantly' resulting in a material change to the development. The Third Party alleges that there is non-compliance with the permission on the basis that the new agreement was made subsequent to commencement of construction.

Declaration of Wicklow County Council

Wicklow County Council has already provided its Declaration on the same query, dated 14th July 2021, which determined that the change is not development and that no material change of use arises (Declaration Ref. 37/2021). The WCC Director of Services Order no. 1229/2021 states:

Having regard to:

- *The details received with this Section 5 application (EX 37/2021) on the 28th June 2021*
- *Planning Registry Reference 18/1166*
- *Sections 2 and 3 of the Planning and Development Act 2000 (as amended)*
- *Section 96 of the Planning & Development Act 2000 (as amended) and Wicklow County Council Part V Policy*

Main Reasons with respect to Section 5 Declaration

A development comprising of 10% Part V units (whereby 7 of 71 permitted units are for Part V housing) provides for the housing needs of the general population)

A development comprising of 100% Part V units (whereby 71 of 71 permitted units are for Part V housing) provides for the housing needs of the general population

Both types of accommodation provide for the housing needs of the general population. The type of accommodation is the same and the user group is the same. Therefore there is no material change of use and "development" is not carried out.

The planning Authority considers that a change of use of the residential units permitted under PRR18/1166 from 10% Part V units (i.e. 7 units) to 100% Part V units (i.e. 71 units) is NOT development.

The appeal of Wicklow County Council's Declaration to An Bord Pleanála provides no new or additional planning rationale that would challenge this conclusion.

Overview of the Section 5 Mechanism & Provisions of the Acts

Under Section 5 of the *Planning and Development Acts 2000 (as amended)*, any person, on payment of the prescribed fee, may request in writing from the Planning Authority a Declaration as to what in any particular case is or is not development or exempted development within the meaning of the Acts.

The subject Section 5 Referral queries whether 'development' has occurred. No question is raised around the 'works' carried out, rather, the query relates to 'use' and whether a material change of use has occurred based on the class of person using the units.

In planning terms, the use of the 71 no. apartments at Dargan Hall is residential. This remains the case irrespective of the social status of the occupants and therefore no development/ material change of use has occurred.

The Planning Acts do provide for limited circumstances whereby permission can be restricted to use by persons of a specific class or description as per Section 39(2) of the Acts. Such restrictions are embodied in an agreement under Section 47 of the Acts, attached as a condition of permission. No such condition is attached to permission Reg. Ref. 18/1166 and therefore there is no restriction on the occupancy of the development beyond the initial Part V agreement. The Section 5 Referral submitted on behalf of Mr O'Sullivan is therefore without basis.

Regarding compliance with Condition 5 of the permission – to enter into a Part V agreement in advance of commencement of development – this condition was complied with, and in no way restricts the use of the remaining apartments by a particular social class (as suggested).

Tenancy Under Permission Reg. Ref. 18/1166

The Part V agreement under Section 96 of the Acts and Condition 5 of the permission requires minimum provision for social housing within all new developments of 10%. The purpose of this provision is to counteract undue segregation in housing between persons of different social backgrounds. Those provisions do not apply to prevent additional social housing provision within a development but rather act as a base provision, particularly in locations such as this that are not classified as disadvantaged and have above average affluence (Bray ED No. 2).

The terms of the Condition 5 Part V agreement have been met and do not serve to limit or restrict occupancy of the remaining apartments to individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing. Tenancy of the remaining apartments under an enhanced lease falls within the terms of the permission.

Accordingly, in terms of the query as to whether 'development' or a material change of use has occurred, it is clear that there has been none as the building and all 71 no. apartments remain in residential use – no development has occurred.

Review of Part V agreement in Compliance with implementation of planning permission

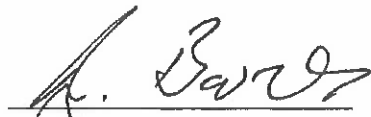
Finally, we address the Third Party's allegations regarding the timing of the agreement. It is emphasised that an Agreement was reached between *the applicant or any other person with an interest in the land to which the application relates and the Planning Authority* before any

development commenced. This is clearly documented on the planning file and the agreement reached was to transfer ownership of 7 no. apartments to the Council.

However, this does not entail that any additional arrangements within the scope of the planning permission (i.e. to lease additional units) would render that there is 'non compliance with a condition' and by quite a stretch of logic that there is subsequently 'no permission' (as alleged by Third Party). Given that the nature of the agreement or enhanced lease does not alter the material nature of the planning permission, it clearly does not affect the status of the permission itself.

We invite An Bord Pleanála to dismiss this Referral and confirm that no development has occurred on foot of compliance with Condition 5 of PRR18/1166 as alleged.

Yours sincerely



Jerry Barnes

Director

MACCABE DURNEY BARNES

