

**APPENDIX A - Briefing Note for City Council Meeting on 24/04/18.**

**Strategic Housing Development: ABP – 300559-18**

**Land East of St. Pauls College, Raheny, Dublin 5;**

1. On 28<sup>th</sup> March 2018, An Bord Pleanála (ABP) under Strategic Housing Development legislation, granted Planning Permission for 536 residential units (104 houses and 432 Apartments) on a 6.4 Ha site, zoned for Z15 purposes in the city Development plan 2016 – 2022 (for institutional and community purposes). A separate planning application for 2 all weather playing pitches and a sports hall (3777/17) was refused permission by the Planning Authority on 27<sup>th</sup> March, with no notification of an appeal to date.
2. On the 26<sup>th</sup> February, the Chief Executive submitted a report to ABP, as required by the SHD legislation, following consultations with the Area Committee. In essence, while the Chief Executives Report considered the provision of housing accommodation to be acceptable in principle, refusal was recommended on the grounds that the proposed development lacked detail in relation to timetables for the use of the playing fields, and that it had not been demonstrated that the proposal secures the retention of the main community uses including space for expansion of such uses. The Planning report concluded there was a shortfall in the 25% publicly open space objective (to 18.7%). Furthermore, the Chief Executives report was not satisfied that the proposed development would maintain the favourable conservation condition of light-bellied Brent Geese and would not affect the integrity of the North Bull Island SPA (Special Protection Area).
3. However, the Inspector and the Board reached different conclusions from those of the Planning Authority in their interpretation of Development Plan Policy and environmental considerations. In essence the Board took the view that the institutional zoning objective on the wider Z15 lands is being retained (in St. Pauls College). This view is supported by the Department of Education which indicated it has no objection to the proposal. In relation to the 25% open space objective, the Board considered that the shortfall could be compensated for by the c1000m<sup>2</sup> gym, and community facilities and the amount of recreational lands in the locality. This included site visits to St. Anne's Park which showed not all the pitches were in use (albeit based on one observation on Sunday 25 February 2018 at 1pm.) Condition 23 of the Board's Decision requires a S48 financial contribution to be made to the PA, in lieu of the provision of open space. With regard to Brent Geese, the Board carried out an Appropriate Assessment, and concluded that the proposed development, either by itself or in combination with other development in the vicinity is not likely to have any impact on the integrity of the European sites. It was concluded that there are some 132 feeding areas for the Brent Geese across the Dublin area, and that there is capacity for the feeding areas to absorb the loss of St. Paul's.
4. The Planning Authority and the Board have taken what is clearly a different interpretation of the weight to be given to various aspects of Development Plan Policy in this particular case. In this respect there are two areas which need to be considered, (i) whether there are grounds for judicial review, and (ii) whether the policy objectives of the Development Plan need to be reviewed in relation to institutional and community uses.
  - (i) The validity of a decision taken by the Board may only be questioned by making an application for judicial review pursuant to Section 50, 50A and 50B of the Planning and Development Act 2000 and Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). It should be noted that any challenge taken by way of judicial review may

question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A(3) states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria. This is a high bar that any applicant must cross in order to seek leave from the High Court to a challenge a decision of a planning authority.

In this particular case, while there are different interpretations of planning policy, it is considered there are no reasonable grounds for taking a judicial review against An Bord Pleanála.

- (ii) With regard to Development Plan policy for Z15 lands, it is noted that the current wording takes account of High Court Judgement 2011 No. 56 Judicial Review, which found there were insufficient planning reasons to justify removing residential from being open for consideration in all cases. At present the Z15 zoning objective requires that any proposed housing development shall be required to demonstrate “how the proposal is in accordance with and assists in securing the aims of the zoning objective; how it secures the retention of the main institutional and community uses on the lands, including space for any necessary expansion of such uses; how it secures the retention of existing functional open space e.g. school playing fields; and the manner in which the nature and scale of the proposal integrates with the surrounding lands.” In addition the 25% area must show how the space will be designed to protect existing sporting and recreational uses that are available predominantly for community uses.

It would appear that the main reason for the difference in interpretation of this policy between the Planning Authority and the Board is due to local circumstances, including the proximity of St. Anne’s Park. Each proposal on Z15 lands must be assessed on its own particular merits. The Planning Authority is not opposed to the delivery of high quality residential development on this part of St Paul’s subject to the satisfactory resolution of the zoning objective and biodiversity issues. The provision of 500+ residential units in an area well served by public transport and a range of community facilities is in accordance with broader policies aimed at addressing the housing crisis.

Given the above considerations, the Chief Executive is minded not to initiate Judicial Review proceedings against An Bórd Pleanála in this case. Having said that, it may be prudent to ascertain legal opinion as to whether there are further options and refinements to the Z15 policy which may be made which will ensure community facilities on institutional lands are retained insofar as is legally possible.

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