

Our Ref: 2112 Cairn

Forward Planning,
Wicklow County Council,
Station Road,
Wicklow Town,
A67 FW96.

25th May 2022

Re: Material Amendments to Draft Wicklow County Development Plan 2022-2028 - Submission

Dear Sir/Madam

We wish to make a submission on behalf of Cairn Homes Properties Ltd in relation the Material Amendments to the Draft Wicklow County Development Plan 2022-2028. Cairn Homes has been engaged over a long period of time in significant residential development in County Wicklow at Enniskerry, Archers Wood Delgany, Glenherron Greystones, Hawkins Wood, Greystones, Blessington Demesne and Coolagad Greystones. Alongside this Phase one of the Greystones Business Park is under construction at Weaver Buildings, Greystones.

Cairn is an Irish homebuilder founded in 2014 with a clear strategy to deliver high-quality new homes with an emphasis on design, innovation, and customer service. Following a successful initial public offering (IPO) in June 2015 to raise funds to finance the development of new homes in Ireland, Cairn is actively engaged in the delivery of some 15,000 homes over the coming years. To date, Cairn have delivered over 5,500 new homes across the Greater Dublin Area in the space of 5 years. Cairn aim to deliver 2,500 new homes before the end of 2022. To date Cairn have delivered 345 new homes in Wicklow with an additional 432 new homes due for completion by the end of 2022. Cairn's remaining land in Wicklow has capacity for c.1,000 new homes. In addition, Cairn has been involved in assisting in the delivery of 2 new schools in Greystones, community and sports facilities and enterprise units. Cairn is committed to working with Wicklow County Council in the delivery of much-needed new homes together with the associated infrastructure necessary to deliver new communities with improved and high-quality amenities.

The points of our submission are detailed below. Requested additions are highlighted in red and omissions with a strikethrough.

By way of preliminary observation, we remind the Council of the core obligations of its elected members when making the plan, and considering proposed amendments to the draft plan:

- under s. 12(11) of the Planning and Development Act 2000, as amended, (the "Planning Acts"), to restrict themselves *"to considering the proper planning and sustainable development of the area to which the development plan relates, the statutory obligations of any local authority in the area and any relevant policies or objectives for the time being of the Government or any Minister of the Government"*; and,

- under s. 10(2)(a) of the Planning Acts, to include objectives for the zoning of land “*where and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated*”.

Furthermore, Section 95 of the Planning Acts require:

- “*In conjunction with the inclusion of the housing strategy in its development, a planning authority shall, having regard to the overall strategy for the proper planning and sustainable development of the area of the development plan referred to in section 10, ensure that sufficient and suitable land is zoned for residential use, or for a mixture of residential and other uses, to meet the requirements of the housing strategy and to ensure that a scarcity of such land does not occur at any time during the period of the development plan.*”

The proposed amendments must be tested for compliance with these three core obligations.

For reasons elaborated below, we do not believe the proposed amendments comply with these core obligations.

1. AMENDMENT V1-5 - CHAPTER 3 - SECTION 3.4 POPULATION AND HOUSING ALLOCATIONS

The proposed amendments to the Core Strategy are restructured to reflect observations made at the draft stage, particularly the submission made by the OPR. The high growth rate of 35% for Level 1 and 2 towns of Bray and Wicklow-Rathnew is maintained. Table 3.4 of the Draft Plan establishes population targets to Q2 2028 for settlements in County Wicklow. A new table 3.5 sets out the aggregate settlement housing targets Q2 2028 to Q4 2031

The ‘Housing Supply Target Methodology for Development Planning, Guidelines for Planning Authorities’ (December 2020) and Housing Need & Demand Assessment (HNDA) Tool was provided to local authorities by the Department of Housing, Local Government & Heritage, with the purpose of enabling authorities calculate housing estimates and ultimately the quantum of zoned land. The conclusions of the Guidelines and HDNA are being rigidly enforced by the OPR who have challenged all authorities whose plans involve zoning for more units than baseline scenarios in the Guidelines and HNDA tool. The HNDA approach evolved from the Guidelines and the associated ESRI report on demographics and housing demand at a County level prepared in December 2020. However, it is noted that the reliability of assumptions made in the ESRI report regarding key parameters, such as internal migration, household size, international migration and obsolescence have been challenged, notably by economist Ronan Lyons, with the consequence that estimates of housing need according to Lyons, have been substantially understated.

The application of the HNDA so far appears to have been based on an assumption by the OPR that numbers are maximums rather than minimums and furthermore the timing at which the OPR assumes zoning translates into the construction of new homes is not reflective of actual patterns. Given the challenges to the baseline data upon which the housing projections on a county wide basis have been made, it would appear prudent that these projections should not be taken as definitive and at best merely illustrative of housing need. Where pressures emerge, local authorities should be able to reflect this as required in development plans. Given that flawed HNDA outputs are now taken as binding by the OPR, it is imperative that a more realistic range of

estimates are applied by local authorities, and we would therefore encourage Wicklow County Council to re-evaluate their response to the OPR submission accordingly.

Submission

Our original submission made the case that growth targets should be shifted from Bray to other settlements in Wicklow, as there were, and there remain, capacity constraints in Bray which will inhibit delivery. Indeed, this is illustrated in Table 3.5 which shows that only 265 units were delivered in the period 2017- Q2 2022, which is an annual rate of 53 units per annum. The housing target growth indicates that there will be 4,026 units delivered in the plan period or Q3 2022 – Q2 2028, or an annual delivery rate of 805 units. This is a remarkable assumed 15-fold increase (53 v. 805) in delivery over the Plan period for Bray. Table 3.5 also illustrates that in Arklow there was also only 265 units delivered in the same period of 2017-Q2 2022, (53 units per annum) while there is a target of 790 units over the Plan period, or 131 per annum. This spreadsheet exercise ignores reality on the ground or the take-up of zoned lands. The Chief Executive’s (CE) Report on our submission acknowledges this point in relation to Bray and states:

“The majority of the population and housing growth allocation for Bray is ring-fenced for this settlement (as per NPO68 of the NPF and RSES), and notwithstanding any possibility of delays in delivering the number of units targeted, it is not possible to ‘re-allocate’ this growth to alternative settlements. Therefore no change is recommended, although changes to the Core Strategy, which will impact on the targets for Bray and other settlements, are recommended on foot of other submissions.”

The CE considers that the Council is constrained by the NP068 of the NPF which allows up to 20% of the targeted growth in the city being transferred to other settlements in the MASP, including Greystones which is well served by public transport. There is no doubt that this will doom the plan to failure on delivery of the required housing. The Council is not so constrained as it fears. The constraint is on transferring targeted growth from the City to other towns within the MASP area. However, the Council is at liberty to transfer existing previously identified growth from Bray to Greystones-Delgany, which is within the MASP area.

We therefore submit that growth be reallocated from Bray to Greystones-Delgany for the Plan period.

There is confusion between Table 3.5 of the plan and the Housing Strategy. Table 3.5 indicates that a total of 3,230 units were completed in the County between 2017 and 2020 and that it is anticipated that a further 1,404 units would be completed in the 2021 to Q2 2022 period. However, section 1.3 of the Housing Strategy states: *“Between Q1 2017 and Q4 2021, 3,230 units have been completed.....”*. The 1,404 units which the draft estimated would be completed in 2021 and the first two quarters of 2022, should be reallocated to within the period for the new plan.

We submit that an additional 1,404 units should be allocated to the period Q3 2022 to Q2 2028.

2. AMENDMENT V1-6 - CHAPTER 3 - SECTION 3.5 – ZONING – LAPS

The Draft Development Plan provides for zoning of lower level settlements in tiers 4-10. However, the amended section 3.5 indicates that the zoning for the following towns will be determined during the LAP preparation process between 2022 and 2024 in order of priority

1. Wicklow Town – Rathnew,
2. Greystones-Delgany-Kilcoole,
3. Blessington,

4. Arklow & Environs and
5. Bray Municipal District (including Enniskerry and Kilmcanogue)

The LAPs would be prepared to reflect the provisions of Table 3.7 (which is considered in further detail below).

The draft plan acknowledged that there will necessarily be some delay before the work on preparation of revised LAPs can be completed. That being so, the draft plan sensibly provided that: *“Until such a time as new LAPs are adopted, the current plans for these towns are herewith subsumed into this County Development Plan.”*

The sentence is deleted in the Proposed Amendments; it seems this was done following a recommendation from the OPR.

Submission

The Proposed Amendment that deletes this sentence might not appear significant, but we fear it can be read to mean the lands could be considered unzoned or not zoned from the date when the new plan is in force. That is surely not the intended effect, where the Council must rely on these lands to deliver the necessary dwelling unit targets, and where the recent and relevant Government policy, Housing for All (2021) identifies housing supply as a matter of “crisis”, and commits to provide many more homes during the new plan period.

The Council cannot make the Proposed Amendment without falling into breach of the three mentioned core obligations. The Council would breach s. 10(2)(a), by failing to zone the land that is required to achieve the identified housing need, dwelling unit targets and core strategy. The Council would breach s. 12(11), by failing to restrict itself to, and to show respect for, proper planning and the relevant Government policies.

The Proposed Amendment would also introduce unintended conflict between the LAPs for Arklow and Environs and Bray Municipal District, and other LAPs. The first two are regulated under s. 18(4)(b) of the Planning Acts, but the others are not. This gives rise to confusion, where only the Arklow and Bray LAPs are subject to the protection that inconsistent provisions “cease to have effect”. The expression of policy within the others is not constrained in the same way. The only effective method to ensure equivalent treatment for these settlements is for all to be subsumed into the new plan.

The Council cannot simply postpone making decisions about zoning, where the plan must include zoning and where dwelling units are required under other provisions of the plan and under Government policy. By not subsuming the existing LAP zonings into CDP, there will be no zoning framework to start with for the new Plan. We refer to s. 10(2) of the Planning Acts, which states that

“a development plan shall include objectives for—

(a) the zoning of land for the use solely or primarily of particular areas for particular purposes (whether residential, commercial, industrial, agricultural, recreational, as open space or otherwise, or a mixture of those uses), where and to such extent as the proper planning and sustainable development of the area, in the opinion of the planning authority, requires the uses to be indicated;” (our underlining)

It is therefore a mandatory requirement for the CDP to include zoning for particular areas. CPO 6.1 of the Draft Plan indicates that new housing development shall be required to locate on suitable zoned or designated land in settlements. However, the land use zoning is effectively deferred for all of the main settlements in County Wicklow, as detailed above. The removal of the sentence indicating that LAPs are subsumed into the Development Plan would potentially result in an interpretation that there is no zoning framework for all of the main towns in Wicklow County after the adoption of the new CDP, effectively removing all zoning for large areas of the County.

This will give rise to huge uncertainties in the development and investment process and have consequences in terms of the ability to deliver much needed development, particularly housing, and also other retail, employment and community uses. It will potentially prevent the determination of applications. The Council itself will not be able to bring forward any of its own social housing projects, and Part V would not apply.

We note that it is also a mandatory requirement under s. 19(1)(b) of the Planning Acts to make a local area plan in respect of an area which (i) is designated as a town in the most recent census of population, ii) has a population in excess of 5,000; and iii) is situated within the functional area of a planning authority which is a county council. This section of the Act applies to all five settlements detailed above.

New LAPs are free to alter zonings in order to align with the core strategy, but this should be done in accordance with s. 19 (2) of the Act. This should be done for all settlements listed above within 2 years of the adoption of the CDP. The provisions of the current LAPs will not be in conflict with the new CDP core strategy within this 2 year period. Any inconsistencies in relation to housing target numbers are only likely to emerge after 2026.

The significant legal and other problems in relation to deferring major strategic zoning decisions until the LAPs are prepared is recognised in the Draft Development Plan – Guidelines for Planning Authorities (2021), where they state in paragraph 6.2.1

“...It is recommended that in most cases, that land-use zoning decisions should not be deferred to subsequent local area plan processes. This is to avoid a scenario whereby the development plan core strategy may be subject to challenge and effectively undermined in a separate statutory process.

There are clear practical advantages to aligning the core strategy, settlement strategy and principal residential zoning functions in a single, integrated development plan process

including:

(i) Transparency and coherence in the decision-making process, with the full extent of residential zoning set out for the six-year period of the development plan;

(ii) Ensuring certainty by avoiding a scenario whereby lands are not zoned or inappropriately zoned in separate statutory processes;

(iii) Providing clarity, especially where there may be a risk due to the time delay in preparing a number of subsequent local area plans; Enabling planning authority resources to focus on plan implementation and monitoring;

(iv) Enabling local area plan preparation to concentrate on detailed planning for layout, design, community facilities, transport, recreational amenities, etc. at a local level.

Accordingly, land-use zoning should principally be undertaken as part of the development plan process in tandem with the preparation of the directly-related core and settlement strategies, informed by a Settlement Capacity Audit.”

The only appropriate course of action is to retain the zoning contained in the existing LAPs.

Insofar as the OPR can be read to have a concern that some policy conflict might arise between the new development plan and the LAPs, the clear evidence is that any conflict will not arise until after the new LAPs will have been adopted. Put simply, there is no evidence for the policy basis to adopt the approach recommended by the OPR. The Council can resolve the concern of the OPR without significantly undermining the zoning framework provided in the LAPs and without this fundamentally prejudicing the development potential for lands of our client and others.

Finally, without prejudice to the foregoing, it is noted that in its submission on the draft development plan, the OPR requested the inclusion of *“policy objectives which provide a greater level of clarity on the timing and priority for the preparation of the local area plans for the settlements listed in section 3.5 which takes account of the settlement hierarchy designation and expiry dates of the currently adopted dates for these settlements.”* Put simply, even the OPR acknowledge that mere blunt deletion of the sentence about subsuming the LAPs would not be lawful, or consistent with proper planning.

In response to this, the draft plan states, taking into account proposed amendments:

“New Local Area Plans will be made for the following settlements in the period 2022-2024 in the following order of priority:

- 1. Wicklow Town – Rathnew*
- 2. Greystones - Delgany - Kilcoole*
- 3. Blessington*
- 4. Arklow and Environs*
- 5. Bray Municipal District (including Enniskerry and Kilmacanogue)”*

It is submitted that this does not provide a sufficient degree of clarity with regard to the timing of the making of the new LAPs. As noted above, the timing of the new LAPs is of great importance, as it is unlikely that any conflict will arise with regard to housing target numbers until 2026. If the new LAPs listed above will be made in advance of any conflict arising, then this further supports the inclusion of the sentence temporarily subsuming the LAPs into the new development plan.

We strongly submit that the following sentence which is deleted in the Proposed Amendments must be retained:

“Until such a time as new LAPs are adopted, the current plans for these towns are herewith subsumed into this County Development Plan.”

3. AMENDMENT V1-7 - CHAPTER 3 - SECTION 3.5 ZONING PRINCIPLES

Four principles are set out for future zoning. We highlight above the issues arising from deferring decisions on zoning.

Principle 1 – Compact Growth – the proposed amendment relates to deleting reference to the built-up area of the town and that there would be no quantitative restriction on town centre/infill/brownfield sites.

Submission

This amendment appears to be inconsistent with the tables in the core strategy, which do indeed set a quantitative restriction on the development of lands within the respective settlements. Furthermore, there is no definition of ‘built up area’ within the Plan.

We submit that the following sentence should be omitted:

~~“... there shall be no quantitative restriction inferred from this Core Strategy and associated tables on the number of units that may be delivered on town centre regeneration / infill / brownfield sites.”~~

We further submit that a definition of ‘built up area’ be inserted into the Plan.

Principle 2 – Delivery of Population and Housing Targets – The amendment indicates that where targets set out in the tables of the Plan can’t be fulfilled due to lack of infrastructure, priority will be given to fulfilling targets within Local Area Plans and Small Town Plans where infrastructure is available. Reference is retained to ‘compact growth boundary’ notwithstanding that the Tables 3.9 and 3.10 which refer to ‘compact growth boundary’ and have been replaced by Core Strategy Table A: LAP Towns and Table B: Towns/Aggregate Town Groups/ Rural Area, which refer to ‘built up area’.

Submission

We welcome this intended degree of flexibility, but consider that there should be specific scope for shifting allocation between local area plans to ensure that overall County housing targets are met. There is a lack of clarity on terminology and the definitions of ‘built up area’ (highlighted above) and ‘compact growth’.

We submit that the following revision should be made to the amendment:

*“Where the targets set out in the tables above can’t be fulfilled within the quantum of land identified **within a particular settlement** due the lack of infrastructure as set out in Appendix 9, consideration ~~prioritisation~~ will be given to fulfilling the **county** targets set out in the tables above on land identified within **other** Local Area Plans and Small Town Plans where infrastructure is or will be available and based on the sequential approach set out in Principle 4.”*

We also suggest that terminology, use and definition of ‘compact growth boundary’ should be provided or reviewed.

Principle 4 – Sequential Approach – The amendment introduces a requirement for detailed ‘infrastructural assessments’ in accordance with NPO72 and the methodology for a Tiered Approach to zoning.

Submission

We consider that a single infrastructural assessment for all settlements should be undertaken at the start of the LAP review process. This will facilitate the identification of strategic infrastructural constraints and allow for an appropriate reallocation to other settlements to achieve county housing targets over the period of the Plan.

We suggest that the amendment be revised as follows:

“A Detailed ‘Infrastructural Assessments’ in accordance with NPO 72 and the methodology for a Tiered Approach to Zoning set out under Appendix 3 of the NPF shall be carried out for all lands proposed to be zoned and de-zoned in future Local Area Plans.”

4. AMENDMENT V1- 8 CORE STRATEGY TABLES

The core strategy tables for LAP towns can be read to suggest a significant surplus of zoned land outside the ‘existing built up area’. It indicates that the following top tier settlements have surplus zoning

- Bray – 40 ha
- Wicklow-Rathnew – 55 ha
- Arklow – 78 ha
- Greystones-Delgany – 30 ha
- Blessington – 31 ha
- Enniskerry – 5ha

Submission

It is not clear if intended, but downzoning of this quantum of zoned land could have very significant impact upon our client’s land bank in Greystones, Blessington and Enniskerry. We do not know for sure if it does have that consequence. We say that because there is a lack of clarity on definitions and methodology, which means that it is not possible to determine the implications at this stage. We expect the Council does not mean to deprive stakeholders of the reasonable prospect to help it secure the worthy objectives of the plan and Government policy to deliver housing in the County. The points above in relation to the definition of the ‘built up area’ are relevant here, but will not be repeated, other than to say the lack of a definition in the CDP and resulting uncertainty could prejudice property rights.

We would also repeat and highlight our submission above relating to the legal and practical difficulties of deferring zoning decisions until the new LAPs are introduced in 2023-2025 period. There will also be significant implications if this timeframe is not met, which will be challenging given the number of LAPs which will have to be prepared. We accept that the Council is required to comply with the higher level population and housing targets as set out NPF and relevant guidelines. However, restrictive and spreadsheet based approach to zoning and housing delivery is sure to give rise to significant bottlenecks and constraints on supply, at the very time when Government policy requires the reverse.

Critically, these tables do not take into account infrastructural constraints, and there is a requirement to undertake an infrastructure assessment as part of any rezoning. The proper allocation of dwelling units throughout the County requires consideration of the impact on material assets, including the necessary social and physical infrastructure for new settlements, and the zoning of lands throughout the County. It would not make sense to make a substantial reduction in

targets, without any consideration of the impact of that reduction on infrastructure such as roads, schools and wastewater. This would introduce a profound disconnect between, on the one hand, the dwellings targets, and, on the other hand, both the infrastructure currently being (and proposed to be) built and other sections of the County Plan (including the zoning of lands throughout the County).

Fundamentally, proper planning and sustainable development of settlements with a reduced dwelling unit allocation cannot be considered without attention to the impact on the required social and physical infrastructure and/or the impact on various other sections of the plan (including the zoning of lands throughout the County). The investment in social and physical infrastructure may be misplaced and redundant, no longer justified and/or no longer possible to fund by development contributions that have been calculated for sharing among a greater number of developments. Without a full assessment of the impact on all supporting social and physical infrastructure should be completed before sweeping changes, the proposed amendment must be considered a breach of s. 12(11).

We submit that the calculations and contents of Table A: LAP Towns and Table B: Other town are only provisional and subject to an 'infrastructural assessment' as required under zoning Principle 4.

5. AMENDMENT V1- 17 - SECTION 6.4 HOUSING OBJECTIVES

The amendment introduces a new objective which prohibits the sale of all developments of residential units, whether houses, duplexes *or apartments*, to commercial institutional investors

Submission

In principle, forward planning should not be concerned about, or attempt to interfere with, tenure and ownership.

To the extent there is Government policy supporting any such interference, that guidance is limited. The *Guidelines Regulation of Commercial Institutional Investment in Housing – Guidelines for Planning Authorities (2021)*, only restricts sale of houses and duplexes to institutional investors. They do not apply to apartments.

The proposed amendment to the Draft Plan would remove the potential for institutional investment in BTR and other apartment development, which is an unwarranted interference in the market. It amounts to a de facto ban on apartments, as commonly those can only be developed where a single institutional entity will provide finance. There is no evidential, policy or legal basis for such a ban.

We submit that the following should be omitted:

~~*“CPO 6.X The sale of all developments of residential units, whether houses, duplexes or apartments, to commercial institutional investment bodies shall be prohibited.”*~~

CONCLUSIONS

With the requested that the above revisions be made to the amendments to ensure a legally robust Development Plan, which will improve the potential for implementation.

Yours sincerely

MacCabe Durney Barnes

MACCABE DURNEY BARNES