#### Home of the new.



Glenveagh Homes Limited Block C Maynooth Business Campus Straffan Road Maynooth Co. Kildare

Planning Department Wicklow County Council County Buildings Whitegates Wicklow Town Co. Wicklow

3<sup>rd</sup> October 2024

To Whom it May Concern,

## Re: Letter of Consent to Lodge a Planning Application for Development

We, Glenveagh Homes Ltd., of Block C, Maynooth Business Campus, Straffan Road, Maynooth, Co Kildare, consent to Marshall Yards Development Company Limited lodging a Planning Application for a 'large-scale residential development' on lands in our ownership in Blessington, Co. Wicklow.

Yours faithfully,

Roger Browne Director

Glenveagh Homes Ltd

## Querist: Glenveagh Homes Ltd.

#### **OPINION**

- 1. I am instructed that Glenveagh Homes Ltd is the registered owners of lands at Blessington County Wicklow comprised within Folio 38064F of the Register of Freeholders County Wicklow. This holding was acquired by Glenveagh's predecessor in title, Targeted Investments Opportunities plc ("TIO") pursuant to a deed of transfer of the 7th of July, 2014 between (1) TIO and (2) Cookehill Ltd (in receivership) acting by its joint receivers James Meagher and Adrian Trueick. TIO and its successors in title were also granted certain easements over the vendor's adjoining lands comprised in Folios 25702F and 28494F of the Register of Freeholders County Wicklow ("the adjoining lands").
- 2. Glenveagh proposes to carry out a development which will necessitate ancillary work on the adjoining lands. I am satisfied for the reasons detailed below that Glenveagh has sufficient legal interest in the adjoining lands to make an application for large scale residential development that includes permission for such works on the adjoining lands and to implement any such permission.
- 3. The easements granted over the adjoining lands are more particularly set forth in the second schedule to the deed of 2014 are rights of way and rights of conduit. The rights of way are described as follows:
  - "1. The right to pass and repass over any roadways and footpaths laid either now or in the future on the Retained Lands and each and every part thereof to the public road and vice versa at all times by day and by night on foot and with motor vehicles for all purposes connected with the use and enjoyment of the Sold Lands.
  - 2. The right to enter upon the Retained Lands with workmen and others and all necessary equipment for the purposes of maintaining and repairing the Sold Lands and (without any obligation to do so) any roadways and footpaths on the Retained Lands which serve the Sold Lands or any kerbs, grass margins, lighting, railings, or street furniture on the Retained Lands making good any damage thereby occasioned to the Retained Lands but not being responsible for any temporary inconvenience caused by such works."

Reciprocal rights in similar terms were reserved in the deed over the Glenveagh lands for the benefit of the adjoining lands.

- 4. I am instructed Glenveagh proposes to enter onto the adjoining lands to extend an existing entrance onto a road, to drop kerbs to facilitate access to several residential units, to create a new entrance and extend pedestrian connectivity from the site across the adjoining lands via footpath connections and to upgrade the existing Blessington Inner Relief Road (BIRR) roundabout, and to create a new pedestrian crossing. Glenveagh has obtained a report from DBFL Consulting Engineers dated the 11th of September, 2024 ("the DBFL report") which includes a more detailed summary of the proposed works to the adjoining lands works at Appendix A hereto.
- 5. The right of way is for the benefit of the Glenveagh lands. It was intended to facilitate the development of that site. It extended beyond existing routes to any route that may be built. A right of way granted in these circumstances carries with it by implication an ancillary right to connect. The right of way is not of any utility unless that connection can be achieved. An objection to that which is reasonably required to make the grant of the right of way effective amounts to a derogation from that grant, and thus an interference with it.
- 6. The dominant owner of a right of way may enter onto a servient tenement for the purpose of making that right of way effective, such as by constructing a way which is suitable for the right granted to him.¹ The extent of the works permitted are determined in the light of the particular circumstances of the right of way.² So, for example, a right of way for all purposes can entitle the dominant owner to construct the way, as explained by Jessel MR in *Newcomen v. Coulson.*³ The right is therefore not just to do the minimum of what is required to make a right of way effective, but extends beyond that minimum standard.
- 7. It would be logically inconsistent if Glenveagh was entitled to enter onto the adjoining lands and build the roads, if the owner of the adjoining lands had failed to do so, but that it would not be entitled to enter onto the adjoining lands merely to connect to existing roads.
- 8. I am satisfied that Glenveagh can extend any road or footpath from its lands that is reasonably required to conveniently connect to the existing road and footpath. Glenveagh is not limited to the access points existing at the time of the grant on the proper construction of the deed of 2014. There is no indication in the deed of 2014 that cuts back Glenveagh's *prima facie* right to connect at any point subject to not unduly interfering with the use of the road by the servient owner and any others entitled. The extent of the use of the adjoining lands that is required is limited only to meeting the requirements of the planning authority to ensure road safety in respect of access to and from the Glenveagh lands when developed.
- 9. I am instructed that the original Blessington Inner Relief road was designed as an urban road alignment as described by the Design Manual for Urban Roads and Bridges ("DMRB"), but that DMRB no longer applies to urban roads and streets save for

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<sup>&</sup>lt;sup>1</sup> Newcomen v. Coulson (1887) 5 Ch. D. 133 at 143 per Jessel M.R.

<sup>&</sup>lt;sup>2</sup> Nationwide Building Society v. James Beauchamp (A Firm) [2001] EWCA 275.

<sup>&</sup>lt;sup>3</sup> (1887) 5 Ch. D. 133 at 143-4 per Jessel M.R.

exceptional circumstances. I am instructed that any future planning application will be considered by reference to the Design Manual for Urban Roads ("DMURS"). The design objectives for developing a scheme adjacent to the relief road will include the requirement to achieve permeability and avoid severance. It will be necessary to comply with DMURS specifications as more particularly detailed in the DBFL report to secure planning permission for the proposed development. There should not therefore be any issue as to the necessity, standard and consistency of matters such as kerbing and road surface and finish. Although the requirements of the planning authority are not dispositive of the issue of convenience and reasonableness, they will be strong evidence of those matters.

- 10. Glenveagh is also entitled to carry out landscaping works that are a necessary consequence of providing connections to the road and pathway on the adjoining lands.
- 11. Glenveagh proposes to upgrade a roundabout pedestrian crossing on the servient tenement as such is required by the DMURS. As this also necessary consequence of the exercise of the right to connect to the roads and pathways on the servient tenement, in that the development of the Glenveagh lands within the contemplation of the parties to the grant is dependent on it, it follows that Glenveagh is entitled to carry out these works.

Nothing further occurs.

Peter Bland SC

Dated this 20th day of October, 2024.

The Law Library, Four Courts, Inns Quay, Dublin 7.



11 September 2024

Justin Farrelly Glenveagh Homes Ltd, Block C, Maynooth Business Campus, Straffan Road, Maynooth, Co. Kildare

## RE: 230199 - Application Blessington LDR, Blessington, Co Wicklow

## Dear Justin

DBFL Consulting Engineers were appointed by Glenveagh Homes Ltd to provide Civil / Structural & Transportation Services on their proposed development site at Blessington, Co. Wicklow including advice in respect of site access, connectivity and compliance with the Design Manual for Urban Roads & Streets.

Planning policy and planning history for the area requires the provision of high-quality linkages between lands west of the Blessington Inner Relief Road (BIRR) and the Town Centre. This was provided for in the planning permission Ref.00/3687 (granted in 2009), which required a footbridge to be constructed over the BIRR adjoining the roundabout, which has not been constructed to date.

Since then, the policy position and best practice has changed, leading to the publication of the Design Manual for Urban Roads and Streets (DMURS) by the Department of Transport, Tourism & Sport. DMURS, published in 2013 and subsequently updated in 2019, serves as the principal design manual for urban roads and streets in Ireland.

We note that the original Blessington Inner Relief Road was designed as a Design Manual for Roads and Bridges (DMRB) Urban Road Alignment, and we assume complied with same at that time. The DMRB no longer applies to urban roads and streets other than in exceptional circumstances. However, it is clear that the Inner Relief Road, in any future planning application(s) would now be reconsidered in the context of DMURs. In developing a compliant scheme adjacent to the BIRR, one would seek to promote a greater level of permeability and in all cases avoid severance.

The BIRR would be classified as an Arterial Street in the context of DMURs.

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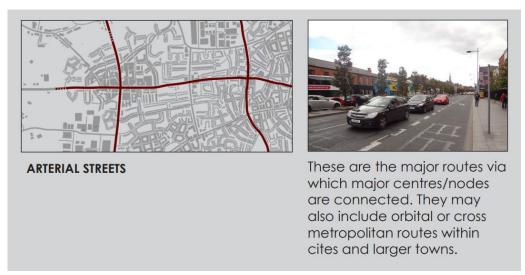












**Figure 1: Definition of Arterial Streets from DMURS** 

The proposed pedestrian/cycle overbridge, as per planning permission Ref. 00/3687, includes significant ramp structures necessary for both cycle and universal access. However, in this instance, it would be considered non-compliant with the design philosophy outlined in DMURS. Section 4.3.2 of DMURs provides specific details about pedestrian crossings on Arterial and Link streets:

- Signalised crossings should be provided on busy Arterial and Link streets and/or where cyclists are likely to cross.
- Zebra crossings provide pedestrian priority and may be used where formal crossing facilities are desirable and where a fully signalised crossing is not warranted. They may also be appropriate on Arterial and Link streets within lower speed environments, such as Centres and/or where both levels of pedestrian and vehicular activity are more moderate.

We would also note that DMURs states that well designed and frequently provided crossings are critical to the balancing of movement priorities. The design of crossings, and the frequency at which they are provided, in the spirit of DMURs has a significant impact on pedestrian / cyclist mobility and comfort and the flow of vehicular traffic within the Urban area.

At grade signalised pedestrian crossings are commonly used on high-capacity urban roads in the large urban centres as opposed to overbridges or similar. The recent upgrades to the Oak Drive Roundabout (also located on the BIRR), located 250m north of the subject development site is a relevant example of atgrade signalised crossings being introduced at an existing junction as shown in **Figure 2** below.

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Figure 2: Recently Installed At-Grade Signalised Crossings at Oak Drive Roundabout

Furthermore, it is noted that a recent planning application (Planning Ref: 20184) for the subject site was granted permission in October 2020 which incorporated upgrades to the crossing facilities at the BIRR roundabout. These upgrades comprised at-grade raised zebra crossings over each arm of the roundabout.

Based on the above background information including national planning policy requirements such as DMURs and the recently published Cycle Design Manual (NTA, 2023) (CDM), we have identified the following key Transportation actions in terms of developing the subject site.

1. Interventions are required to redefine the section of the BIRR adjacent to the site as a Link Street or similar. One of the measures we propose to achieve this improvement is to modify the existing roundabout to create a roundabout compliant with the recently published CDM.

TL703 of the CDM provides a standard layout for a Segregated Roundabout with Shared Active Travel Facilities, as illustrated in **Figure 3** below. The CDM notes that this type of arrangement is suitable in urban areas for traffic capacities up to 25,000 vehicles per day. This arrangement comprises single lane approaches, with raised combined zebra crossings on all arms.

A recently constructed example of this arrangement at the Main Road Roundabout, Tallaght, is shown in **Figure 4**.

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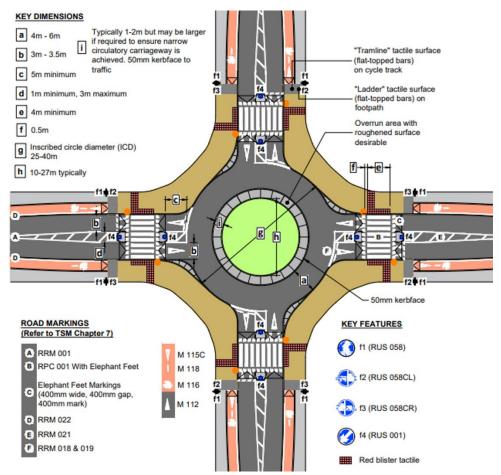


Figure 3: Segregated Roundabout with Shared Active Travel Facilities

(Source: TL703 - Cycle Design Manual, NTA 2023)

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Figure 4: Main Road, Tallaght (Source: Google Maps & CDM)

- 2. Provision of a DMURs compliant access from the development onto the BIRR will require alterations and amendments to the existing DMRB designed site access arrangement. This needs to include an entrance treatment with tighter junction radii, continuous raised pedestrian crossing platform and in general a narrower entrance.
- 3. Provision of a Toucan Crossing to the north of the site to allow the creation of a safe crossing point on the BIRR for residents to access the existing schools / Blessington GAA Grounds and new parklands located on the opposite side of the road.
- 4. The provision of residential units directly overlooking and fronting onto the existing Local Street which connects the BIRR Roundabout to the Town Centre. The provision of same would assist in delivering an active street edge and strong sense of enclosure which is a key design element within DMURS.
- 5. Provision of secondary access to the site via the existing Local Street connecting more directly to the town centre and providing the required permeability noted within DMURs. This access also includes a DMURs style entrance treatment with tighter junction radii, continuous raised pedestrian crossing platform etc.
- 6. Pedestrian and cycle connectivity from the site to the BIRR to promote permeability at strategic locations.
- 7. Provision of a pedestrian crossing to the southeast of the site to create a complete connection between the proposed cycle/pathway and the opposite footpath.

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8. Provision of appropriate boundary treatments, particularly along the southeast edge of the subject site, to ensure pedestrian permeability along the edge.

Please also note the following key services actions in terms of developing the subject site;

- 1. Watermain Connection A connection to the existing 150mm diameter watermain is required to the south of the subject site at the southern vehicular access point. Please refer to DBFL Watermain Layout Drawing X-05-Z00-DTM-DBFL-CE-1331 provided in Appendix A for location.
- 2. Surface Water Outfall A connection to the existing Wicklow County Council Surface Water Manhole is required to the southwest of the subject site adjacent to the roundabout in the footpath to service the subject lands. Please refer to DBFL Site Services Layout Drawing X-05-Z00-DTM-DBFL-CE-1301 provided in Appendix A for location.
- 3. Foul Sewer Outfall A new foul Manhole is required to be constructed on the existing Uisce Eireann 300mm diameter foul sewer to the west of the subject lands at the vehicular access point. Please refer to DBFL Site Services Layout Drawing X-05-Z00-DTM-DBFL-CE-1301 provided in Appendix A for location.

We suggest consideration is given to all of the above as we are of the view that both Wicklow Co. Co. and An Bord Pleanála will want to see the inclusion of same within any planning application for the subject site.

Yours sincerely,

Aimee Dunne Associate

**DBFL CONSULTING ENGINEERS** 

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# **APPENDIX A**

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