

Strategic Housing Unit  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902

20<sup>th</sup> July 2022

**Re: Strategic Housing Development Application for planning permission for the construction of 1,243 residential units and commercial and community units; and all associated infrastructure and ancillary site development works at Barberstown, Barnhill and Passifyoucan, Clonsilla, Dublin 15**

Dear Sir, Madam,

We act on behalf of the Applicant, Alanna Homes (Registered Business Name of Garlandbrook Limited) and Alcove Ireland Four Ltd. and wish to submit the enclosed Strategic Housing Development (SHD) planning application for the above-mentioned development to An Bord Pleanála under the provisions of the Planning and Development (Housing) and Residential Tenancies Act, 2016. The application is made following Pre-Application Consultation and the receipt of a Notice of Pre-Application Consultation Opinion issued by An Bord Pleanála dated 01<sup>st</sup> April 2022 under ABP-312005-21.

Please find enclosed 2 no. hard copies and 3 no. electronic copies of the following documentation and information, as required under articles 297 and 298 of the Planning and Development Regulations 2001 to 2017, as amended, and in accordance with the additional information sought in the Board's Notice of Pre-Application Consultation Opinion:

The Barnhill Local Area Plan (LAP) was adopted in February 2019. The validity of the LAP is currently being challenged under the judicial review process. A legal opinion of counsel has been prepared by Douglas Hyde BL and Eamon Galligan SC and is attached at **Appendix A** of this cover letter. The opinion of counsel notes that this judicial review process does not prevent An Bord Pleanála from determining this application.

Please note that as part of Chapter 9 Biodiversity within the Environmental Impact Assessment Report, a confidential figure (Figure 9.6) has been prepared which shows the location of a badger sett. In line with best practise intended to avoid persecution of badgers, this figure is not for public viewing and has therefore only been provided with the hardcopy application packs at **Appendix B** of this cover letter to An Bord Pleanála, Fingal County Council and the Prescribed Bodies.

## Schedule of Documents and Drawings

Documents and Drawings	Prepared By:
Cover Letter and Schedule of Documents & Drawings and includes: <ul style="list-style-type: none"> <li>▪ Appendix A: Opinion of Counsel, prepared by Douglas Hyde BL and Eamon Galligan SC</li> <li>▪ Appendix B: Confidential Figure</li> </ul>	McCutcheon Halley Planning Consultants
Completed SHD Application Form	
Letter of Consent from Dragonglen Ltd.	Dragonglen Ltd.
Letter of Consent from Alcove Ireland Four Ltd.	Alcove Ireland Four Ltd.
Letter of Consent from Fingal County Council	Fingal County Council
Letter regarding Land Ownership	AMOSS Solicitors
Site Notice	McCutcheon Halley Planning Consultants
Newspaper Notice – Template	
Newspaper Notice – Irish Examiner	
Response to ABP Opinion including: <ul style="list-style-type: none"> <li>▪ Attachment: Letter from AMOSS Solicitors regarding Land Ownership</li> </ul>	
Planning Report	
Statement of Consistency	
Material Contravention Statement	
Part V Proposal & Costs	
Part V Letter from Fingal County Council	Fingal County Council
Social Infrastructure Report including: <ul style="list-style-type: none"> <li>▪ Appendix 1: Supporting Retail Information <ul style="list-style-type: none"> <li>○ Retail Report</li> <li>○ Letter from Sherry Fitzgerald</li> <li>○ Expression of Interest from Retail Operator</li> </ul> </li> </ul>	McCutcheon Halley Planning Consultants
Childcare Demand Report including: <ul style="list-style-type: none"> <li>▪ Appendix 1 Letter of Interest from Creche Operator</li> </ul>	
School Demand Report <ul style="list-style-type: none"> <li>▪ Appendix 1: Letter from Department of Education</li> </ul>	
Schedule of Areas and Accommodation	
Universal Design Report	Delphi Architecture + Planning

Architectural Design Statement including: <ul style="list-style-type: none"> <li>▪ Appendix 10.1: Housing Quality Assessment</li> <li>▪ Appendix 10.2: Building Life Cycle Report</li> </ul>	
Site Location Maps @ 1:1000 and 1:2500, as per attached drawing register	
Architectural Drawings and Drawing Register including: <ul style="list-style-type: none"> <li>▪ Combined Site Drawings</li> <li>▪ Site Layout Plans</li> <li>▪ Site Sections</li> <li>▪ Floor Plans, Elevations and Sections</li> </ul>	Delphi Architecture + Planning C+W O'Brien Architects CDP Architecture
Natura Impact Statement	AECOM
Wind Microclimate Assessment	
Daylight and Sunlight Assessment Report	3D Design Bureau
Landscape Design Statement	Gannon + Associates
Landscape Drawings as per attached Document Issue Sheet including Taking in Charge Layout and Phasing Drawings	
Arboricultural Impact Assessment and Tree Protection Plan, BRHL-ARBTS-001, Rev. C	Arbor Care
Traffic & Transport Assessment including: <ul style="list-style-type: none"> <li>▪ DMURS Statement of Consistency provided at Section 7.</li> <li>▪ Compliance with the National Cycle Manual provided at Section 7.</li> </ul>	Clifton Scannell Emerson Associates (CSEA)
Mobility Strategy	
Stage 1 Road Safety Audit	PMCE
Flood Risk Assessment	McCloy Consulting
Engineering Report	Clifton Scannell Emerson Associates (CSEA)
Confirmation of Feasibility Letter	Irish Water
Statement of Design Acceptance	
Pumping Station – Sizing and Design Methodology	
SuDS Strategy Report	
Engineering and Infrastructure Drawings, as per attached	
Outline Construction Environmental Management Plan including Outline Construction Traffic Management Plan and Outline Construction & Demolition Waste Management Plan	Alanna Homes
Outline Operational Waste Management Plan	

Water Management & Conservation Plan	
Part B Fire Safety Compliance Letter	Maurice Johnson & Partners
Part B Fire Safety Compliance Statement	Jensen Hughes
EV Charging Strategy Report	Go Charge
Energy Statement	McElligott Consulting Engineers
Outdoor Lighting Report for Grids 1, 2, 5, 8, 9 & 10	Sabre Electrical Services Ltd.
Outdoor Lighting Report for Grids 3, 6 & 12	
Outdoor Lighting Report for Grids 4, 7, 12 – 18	
Public Lighting Drawings: <ul style="list-style-type: none"> <li>▪ Public Lighting Layout, SES 09121, Sheet 1, Issue 6</li> <li>▪ Public Lighting Layout, SES 09121, Sheet 2, Issue 6</li> </ul>	
Site Services Drawings: <ul style="list-style-type: none"> <li>▪ ESB Site Services, Drawing no. E-001</li> <li>▪ EIR Site Services, Drawing no. E-003</li> <li>▪ Virgin Media Site Services, Drawing no. E-005</li> </ul>	McElligott Consulting Engineers
Environmental Impact Assessment Report: Volume I Non-Technical Summary Volume II Environmental Impact Assessment Report Volume III Appendices	McCutcheon Halley Planning Consultants  With input from Aecom, SLR, CSEA, Jon Cronin & Associates, John Purcell and Delphi Architecture + Planning
EIA Portal Confirmation Notice	Department of Housing, Local Government and Heritage
Copy of Notification Letters sent to Prescribed Bodies and Fingal County Council	McCutcheon Halley Planning Consultants
ESRI shapefile	Delphi Architecture + Planning
Application fee for €80,000.00 paid via EFT to An Bord Pleanála.	Applicant

A dedicated project website has also been established, and can be accessed at:

[www.barnhillgardenvillageshd.ie](http://www.barnhillgardenvillageshd.ie)

The Board requested that the following prescribed bodies be advised of the planning application:

1. Irish Water
2. Transport Infrastructure Ireland
3. Nation Transport Authority
4. Irish Rail
5. Commission for Railway Regulation
6. Waterways Ireland
7. Minister of Housing, Local Government and Heritage
8. Heritage Council
9. An Taisce
10. Department of Education and Skills

11. Coras Iompair Éireann
12. Fingal Childcare Committee
13. Meath County Council
14. Kildare County Council

Please note that 6 no. hard copies and 1 no. electronic copy of the SHD application have also been provided to Fingal County Council.

We trust this SHD application is to the satisfaction of An Bord Pleanála. Please contact the undersigned if you require any further details.

Yours sincerely,



**Màiri Henderson**  
McCutcheon Halley

# Appendix A: Opinion of Counsel

## OPINION OF COUNSEL

**Querist:** Alanna Homes and Alcove Ireland Four Ltd (“the applicants”)

**Agent:** Alan Adams, AMOSS Solicitors

1. I am instructed that the applicants intend to apply for permission to An Bord Pleanála (“the Board”) in July 2022 for a strategic housing development (“SHD”) on residentially zoned lands at Barnhill and environs in Fingal County, and that the applicants’ site lies mainly within the Barnhill Local Area Plan 2019 lands (“the LAP lands”).
2. In 2019, a Mr. O Cairbre initiated judicial review (JR) proceedings challenging the validity of the Barnhill LAP, *O Cairbre v. Fingal County Council*, record no. [2019/208 JR]. There have been two interim Commercial Court judgments in *O Cairbre v. FCC*. In his first interim judgment in August 2020, O’Moore J. said he had “...decided the main point in dispute before [him] in favour of Fingal County Council, ....”. In his second interim judgment in February 2022, O’Moore J. said:

*“I have decided [that] a reference to the CJEU is not required in order to allow me to decide any issue raised by Mr. O’Cairbre in these proceedings...The parties will be notified when my full judgment is to be circulated.”*

3. The full judgment(s) in respect of both interim judgments have not been circulated as yet but the principal issues in the proceedings in the High Court would appear to have been determined. Mr. O Cairbre did not apply for an order of the Court to stay the operation of the Barnhill LAP pending the outcome of the proceedings and the Court did not make such an order. There remains the possibility of an application to the High Court judge for a certificate of appeal so that the case cannot be regarded as finally determined.
4. The applicants have asked for Counsel Opinion on whether the Board may grant a valid planning permission pending delivery of the final Commercial Court judgment, i.e. while the challenge to the validity of the LAP has not finally been determined. The purpose of this opinion, therefore, is to address the possibility that the Barnhill LAP could be set aside on appeal in the current *O’Cairbre* proceedings, although a certificate of appeal from the trial judge would be required for that purpose.
5. The site of the intended application at Barnhill is at Barnhill and adjoining townlands, Clonsilla, Co. Dublin, and is zoned “RA” in the Fingal County Development Plan 2017 –

2013 with the zoning objective to “provide for new residential communities subject to the provision of the necessary social and physical infrastructure”. The zoning objective contains no requirement for the preparation or implementation of an LAP for the Barnhill lands. In the Fingal County Development Plan, there is a separate objective (objective PM13) relating to the preparation of LAPs and an objective (objective Blanchardstown18) specifically referring to the requirement for the preparation of an LAP for Barnhill.

6. In the Fingal County Development Plan, there are two objectives relating to the preparation of LAPs.
7. First, Objective PM13 provides: “Prepare Local Area Plans for areas designated on Development Plan maps in cooperation with relevant stakeholders, and actively secure the implementation of these plans and the achievement of the specific objectives indicated.”
8. The Fingal Development Plan *Map Sheet 13 –“ Blanchardstown South”* shows the designation “LAP 13.A” together with hatching on the Barnhill LAP lands. In the legend on Map sheet 13, under the heading “Specific Objectives”, the words “Subject to Local Area Plan” are included beside the words “LAP 13.A” for the relevant hatched area.
9. The wording of the “RA” objective (and the other zoning objectives) are shown in the legend on Map sheet 13 under the heading “Zoning Objectives”.
10. Second, Objective BLANCHARDSTOWN 18 provides:

*“Prepare and/or implement the following Local Area Plans and Masterplans during the lifetime of this Plan .....Barnhill Local Area Plan (see Map Sheet 13, LAP 13.A ....”.* The following wording is also included:

*“The main elements to be included in a number of the Local Area Plans and Masterplans are provided below. The list is not intended to be exhaustive.*

.....

*Barnhill Local Area Plan • Construction of houses on these lands will be dependent on the delivery of the proposed new road and bridge over the railway. • Ensure the provision of pedestrian access between Barberstown/Barnhill and the Hansfield SDZ by means of a new pedestrian overbridge integrated with adjoining development including the proposed Hansfield rail station. • Adoption of the Local Area Plan shall be dependent on the rail station at Hansfield being open, accessible and serviced by train.”*



11. The above extracts from the Written Statement of the Fingal County Development Plan, together with the relevant information from Map Sheet 13 show clearly that the Specific Objective which provides for the preparation of the Barnhill LAP is separate to the Zoning Objective “RA” which relates to the lands. We are also instructed that the infrastructure which the Barnhill LAP is required to provide for (as referred to above) has either already been delivered or has been provided for in the intended SHD application.
12. It should be noted that the obligation to prepare and adopt a LAP is imposed on the planning authority and not on an applicant for permission. An applicant for permission is entitled to have its application determined and neither the planning authority nor the Board are entitled to refuse to determine an application on the basis that the Council has not implemented an objective under its development plan to prepare a LAP or because, although it had implemented the objective, the LAP was subsequently set aside.
13. Furthermore, under section 9 of the SHD Act, the Board has power to grant permission in material contravention of all objectives of the development plan, other than those in relation to the zoning of the land. Thus, even if the intended SHD application could be regarded as being in material contravention of the objective for the adoption of a LAP for Barnhill, the Board has power to materially contravene that objective as it does not relate to the zoning of land. The pursuit by Mr O Cairbre of judicial review proceedings challenging the validity of an LAP does not, of itself, stay the operation of the LAP, and, in light of the provisions of s. 9, SHD Act 2016, the Board has power to grant permission for the SHD whether or not the Barnhill LAP remains in place.
14. The SHD application will have to address the consistency of the proposed application with the provisions of the Barnhill LAP in a Statement of Consistency, the validity of which has so far been upheld by the High Court and which continues to enjoy the presumption of validity notwithstanding the existence of the proceedings and the possibility of appeal. Any issue of material contravention of the Barnhill LAP will be addressed in a Material Contravention Statement.
15. In the event that the LAP, were to be quashed as a result of an appeal in the present *O’Cairbre* proceedings, those parts of the Statement of the Consistency and/or Material Contravention Statement addressing the Barnhill LAP could no longer be considered relevant to the determination of the application as the LAP would no longer have any legal effect. However, this would in no way affect the Board’s obligation to assess the application in light of the Development Plan and all other relevant planning policy considerations.

16. The Board, as a statutory body, is required by law to comply with its obligations under the 2016 Act. In this context, under s. 9(9) of the 2016 Act, the Board is under very strict time constraints to deal with an application made under s. 4 of the 2016 Act for permission for a strategic housing development. The Board has no statutory power to halt that process pending the determination of any proceedings, (see, for example, *Christian Morris v. An Bord Pleanála* [2020] IEHC 276.).
17. In summary, even if the decision of the High Court to reject the principal grounds of challenge to the validity of the Barnhill LAP in the *O’Cairbre* proceedings were to be reversed as a result of an appeal (for which a certificate of the trial judge would be required), there would be no legal impediment to An Bord Pleanala granting permission for the intended SHD application in the absence of a Barnhill LAP.

**Douglas Hyde BL**

**Eamon Galligan SC**

5<sup>th</sup> July, 2022

**Appendix B: Confidential Figure (not for public viewing) and only provided with hardcopy of application**