



An
Bord
Pleanála

Board Direction
BD-009005-21
ABP-307197-20

Re: Amending Board Order

S146A of the Planning and Development Act, 2000, as amended

The judgment of the High Court in the proceedings entitled *Pembroke Road Residents Association v. An Bord Pleanála, the Minister for Housing, Local Government and Heritage, Derryroe Limited and Dublin City Council* (High Court Record Number: 2020 No. 761 JR), delivered 16 June 2021, and the supplemental judgment delivered 29 July 2021, and the submissions on this file were considered at a Board meeting held on 01/09/2021.

The Board decided that it would be appropriate to propose to amend the Board's Order dated 8th September 2020 in accordance with s.146A(1)(b)(iii) of the Planning and Development Act 2000, as amended, to facilitate the operation of the permission or decision.

The Board considered that, in the light of the judgments and the submissions on file, including the report of the Chief Executive of Dublin City Council, Condition 26 should be amended by removing the reference to a financial contribution '*as a special contribution under section 48(2)(c)*' and by the insertion of '*in accordance with the Dublin City Council Development Contribution Scheme 2020 – 2023, published under section 48 of the Planning and Development Act 2000*'.

The Dublin City Development Plan provides that, where a site is considered to be too small or inappropriate (because of site shape or general layout) to fulfil useful purpose in this regard, then a financial contribution towards provision of a new park in the area, improvements to an existing park and/or enhancement of amenities shall be required (having regard to the City's Parks Strategy). The Scheme applies €4,000 per unit as the financial contribution in lieu of public open space. The Chief Executive's Report records that the Council considered that a financial contribution in lieu of public open space would be acceptable in this instance, given the proximity of the proposed development to Herbert Park and all of the facilities within.

Accordingly, the Board considers that the proposed amendment of the Board Order would not result in a material alteration of the terms of the development the subject of the permission or decision, and that it would facilitate the operation of the permission or decision, as intended.

The Board decided to invite submissions on the proposed amendment from any person who had made submissions or observations to the Board on the application for permission.

Proposed Amendment

The Board proposes to exercise its powers under section 146A(1)(b) of the Planning and Development Act 2000, as amended, to amend its Order of the 8th of September 2020 by omitting Condition 26 and attaching a new Condition 26 as follows:

26 In accordance with section 9(4) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, the developer shall pay to the planning authority a financial contribution in lieu of the provision of public open space within the site in accordance with the Dublin City Council Development Contribution Scheme 2020 – 2023, published under section 48 of the Planning and Development Act 2000. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should pay a financial contribution in lieu of the provision of public open space within the site where the site is considered by the planning authority to be too small or inappropriate (because of site shape or general layout) to fulfil useful purpose in this regard, given the proximity of the proposed development to Herbert Park and all of the facilities within. .

Board Member:



Paul Hyde

Date: 01/09/2021

