



An  
Bord  
Pleanála

**Board Direction**  
**BD-009255-21**  
**ABP-307197-20**

**Re: Amending Board Order**

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

The judgment of the High Court in case 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 the 1<sup>st</sup> of September 2021. At the meeting it was decided in the light of the judgments of the Court to propose an amendment to Condition 26 of its Order dated 8<sup>th</sup> of September 2020, and to seek submissions/observations from the parties.

Having regard to the provisions of Section 146A(3) of the Act, the Board decided to invite submissions in relation to the proposed amendment of the Board Order from any person who had made submissions or observations to the Board in relation to the permission. By letter dated 14<sup>th</sup> September 2021 the Board invited submissions on the proposed amendment by 5.30pm on 27<sup>th</sup> September 2021. The letter included the text of the proposed draft amendment. The Board received three valid submissions.

At a meeting of the Board held on the 14<sup>th</sup> of October 2021 the Board considered the submissions received in accordance with Section 146A(3) of the Act and the other submissions on file, including the report of the Chief Executive of Dublin City Council, the judgments of the High Court in case 2020 No. 761 JR, delivered 16 June 2021, and the supplemental judgment delivered 29 July 2021, the Dublin City Development Plan and the Dublin City Council Development Contribution Scheme 2020-2023 made under s.48 of the Act.



The Board decided that;

- (1) it would be appropriate to amend its Order dated the 8<sup>th</sup> of September 2020 in order to facilitate the operation of the permission or decision through the provision of a financial contribution (in lieu) towards the provision of improvements to an existing park and/or enhancement of amenities (having regard to the City's Parks Strategy), and
- (2) 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.

The Board had regard to and concurred with the opinion of the Chief Executive of Dublin City Council and with its own Senior Planning Inspector that, whilst the proposed development does not incorporate any public open space on site, the existing provision in the vicinity of public open space, namely Herbert Park, immediately contiguous to the site, it was considered more appropriate to seek a financial contribution in lieu as provided for in Section 16.10.3 of the Dublin City Development Plan. The Board further considered that the needs of the local population would be better served through the enhancement/ upgrade of the existing park and the enhancement of open space and landscape in the locality, as set out in the City Council Parks Programme, in fulfilment of this objective

The Board had regard to the views expressed in two of the three valid submissions received in relation to complaints made to An Garda Síochána and ongoing investigations into the circumstances of the demolition of 40 Herbert Park. The Board noted the absence therein of any comment on the identified technical error in Condition 26 or the terms of the proposed amendment and, notwithstanding the other matters raised, considered that it is appropriate in the light of the judgments of the High Court, the submissions received, and the circumstances of the case to amend the Board Order.

Accordingly, the Board in accordance with the provisions of Section 146A(1)(b)(iii) of the Act hereby amends its Order of the 8<sup>th</sup> of September 2020 by amending Condition 26 thereof 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 made under Section 48 of the Planning and Development Act 2000, as amended' as follows:

26 In accordance with sections 9(4), 9(7) and 9(8) 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, made 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 and An Bord Pleanála to be too small or inappropriate 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:** 14/10/2021



