

Planning and Development Acts 2000 to 2020

Amendment of Board Order

Planning Authority: Dublin City Council

Development Concerned:

A planning permission for a strategic housing development at a site (circa 0.5 hectares), at numbers 36, 38 and 40 Herbert Park and 10 Pembroke Place, Ballsbridge, Dublin 4. The site is principally bounded by Herbert Park (road) to the west, Herbert Park (public park) to the south, the Herbert Park Hotel to the east, and Pembroke Place to the north.

The proposed residential development, at numbers 36, 38 and 40 Herbert Park, comprises an apartment building (circa 10,465 square metres gross floor area), at modulating height of four, six, eight and 12 storeys, over a basement (three split levels), accommodating: 105 number dwellings (37 number one-bed, 66 number two-bed and two number three-bed apartment units), all with private balconies; and, internal residential amenity space (circa 210 square metres gross floor area) at basement Level -01. Ancillary external amenity open space is at ground level and at sixth floor roof garden (total circa 1,852 square metres).

The proposed commercial development (circa 600 square metres gross floor area), at 10 Pembroke Place, comprises 10 number aparthotel bedroom suites (circa 440 square metres), guests' common room and lobby (circa 160

square metres), accommodated in two number new floors to the existing permitted aparthotel building, resulting in a six-storey aparthotel building (over podium) with fifth floor set back. And, all associated and ancillary site development works, hard and soft landscaping, external lighting and boundary treatment works, to serve the proposed residential development, including:

- a) demolition of existing detached house at number 40 Herbert Park;
- b) modification of one number existing vehicular site entrance, at number 40 Herbert Park, to access proposed residential basement car park;
- c) incorporation of two number existing pedestrian entrances on the western Herbert Park (road) site boundary;
- d) 84 number residential car parking spaces (three number at surface level and 81 number at basement levels);
- e) 130 number residential bicycle parking spaces at surface level;
- f) one number Electricity Supply Board substation and switch room;
- g) ancillary plant, bin storage and stores at basement levels;
- h) ancillary plant and telecommunications antennae at roof level (Level 12);
- i) ancillary public realm and surface water drainage infrastructure works including in the public road at Herbert Park, Pembroke Place and Ballsbridge Terrace.

The demolition of the buildings at numbers 36 and 38 was carried out under planning permission (An Bord Pleanála Ref:300976; Dublin City Council Register Reference 3970/17) and the current application seeks to amend that permission by proposing to complete the development of the site in accordance with the plans and particulars lodged with this application in the context of the proposed development as set out above.

WHEREAS the Board made a decision to grant permission, subject to conditions, in relation to the above-mentioned development by Order dated the 8th day of September 2020:

AND WHEREAS the judgment of the High Court in case 2020 No. 761 JR, delivered on the 16th day of June 2021, and the supplemental judgment delivered on the 29th day of July 2021, and the submissions on this file were considered at a Board meeting held on the 1st day of September 2021.

AND WHEREAS 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 the 8th day of September 2020, and to seek submissions/observations from the parties.

AND WHEREAS 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 the 14th day of September 2021 the Board invited submissions on the proposed amendment by 5.30pm on the 27th day of September 2021. The letter included the text of the proposed draft amendment. The Board received three valid submissions.

AND WHEREAS at a meeting of the Board held on the 14th day of October 2021 the Board considered the submissions received in accordance with Section 146A(3) of the Planning and Development Act 2000, as amended, 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 Judicial Review, delivered on the 16th day of June 2021, and the supplemental judgment delivered on the 29th day of July 2021, the Dublin City Development Plan and the Dublin City Council Development Contribution Scheme 2020-2023 made under section 48 of the Planning and Development Act 2000, as amended.

AND WHEREAS the Board decided that;

- (1) it would be appropriate to amend its Order dated the 8th day 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.

AND WHEREAS 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.

NOW THEREFORE in accordance with the provisions of Section 146A(1)(b)(iii) of the Planning and Development Act 2000, as amended, the Board hereby amends its Order of the 8th day 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

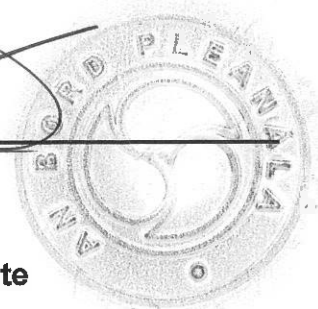
Contribution Scheme 2020-2023 made under Section 48 of the Planning and Development Act 2000, as amended' as follows:

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.


Paul Hyde

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.



Dated this 18th day of OCTOBER 2021.