



An
Bord
Pleanála

Inspector's Report ABP-303356-18

Development

Request to make alterations to mixed use development of 462 no. dwellings including the refurbishment of Gate Lodge (a Protected Structure), 483 no. student accommodation bedspaces, crèche, café, gym and retail unit and all associated site works and services.

Location

Mariavilla, Moyglare Road and Dunboyne Road, Maynooth, Co. Kildare

Planning Authority

Kildare County Council

Applicant

Cairn Homes Properties Ltd.

Type of Application

Section 146B - Request to alter previously approved Strategic Housing Development

Inspector

Sarah Moran

1.0 Introduction

1.1. The request is to alter a project which the Board granted permission subject to 29 conditions on the 3rd July 2018 (ref. no. ABP-301230-18) under the Strategic Housing Development provisions comprising:

- 462 no. dwellings comprising 69 no. houses and 142 no. apartments;
- Refurbishment of existing Gate Lodge (a Protected Structure) at Moyglare Road to provide 1 no. residential unit;
- 483 no. student accommodation bedspaces in 6 no. blocks;
- Neighbourhood centre containing a crèche, café, gym and retail unit at the Moyglare Road;
- New 800m link street with 1 no. pedestrian / vehicular bridge across the Lyreen River, new access junctions onto Moyglare Road and Dunboyne Road;
- Demolition of existing 2 storey building adjacent to 'Divine Word Missionaries' on the Moyglare Road;
- All associated site works and services.

The application was accompanied by an EIAR and a NIS.

2.0 Legislative Basis

2.1. Section 146B of the Planning and Development Act 2000 (as amended) provides for a person carrying out or intending to carry out a Strategic Housing Development to make a request to alter the terms of a development, the subject of a planning permission under the Act. Section 146B(2)(a) provides that:

As soon as practicable after the making of such a request, the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned.

Section 146B(2)(b):

Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board

considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation.

Section 146B(3)(a):

If the Board decides that the making of the alteration would not constitute the making of a material alteration of the terms of the development concerned, it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration.

The provisions of section 146B(3)(b) to section 146B(9) set out the procedures where the Board decide that the making of the alteration would constitute a material alteration, including section 146B(3)(b) which allows the Board to require the requester to submit the information specified in Schedule 7A of the Planning and Development Regulations 2001 and section 146B(8) which requires that the request shall be made available for inspection and that the requester shall notify certain persons or the public that the information is so available and invite submissions or observations to be made within the specified period.

3.0 Proposal

- 3.1. The proposal is seeking to make amendments to the development granted permission under file ref. ABP-301230-18. Condition no. 3(g) of the permission states:

All rear gardens shall be bounded with concrete block walls, which shall be a minimum of 1.8 metres high, and shall be suitably capped and rendered on both sides, except where bounding public open spaces or roads, when the walls shall be 2 metres in height. Post and timber fences shall not be used for any rear garden boundaries.

The proposed amendment to Condition no. 3(g) would state:

All rear gardens of houses shall be bounded with concrete post and base with concrete panel fencing, which shall be a minimum of 1.8 meters high, except where

bounding public open spaces and roads, where the walls shall be 2 meters in height and either capped and rendered or have a brick finish.

3.2. The applicant's cover letter submits that the proposed amendment is not material. The following supporting points are made:

- The applicant, Cairn, is actively building new homes on 13 no. sites throughout the Greater Dublin Area. None of the developments under construction contain a similar condition, including 2 within the jurisdiction of Kildare County Council, i.e. Elismore and Oak Park, both in Naas.
- The condition is considered to be unnecessarily restrictive and the applicant requests an alternative boundary treatment to be permissible.
- The applicant's preferred treatment is concrete post and base with concrete panel fencing for the site boundaries between rear gardens. The request is accompanied by a site layout indicating the location of the proposed boundary treatments and details of the proposed brick finish.
- The proposed boundary treatment is consistent with section 17.4.5 of the Kildare County Development Plan 2017-2023 in that it will be high quality, solid construction with no gaps. The proposed boundary detail is acknowledged industry wide to be structurally sound, of high quality and requires minimum maintenance.
- The applicant submits details of a development at Churchfields, Ashbourne, Co. Meath, where a similar boundary treatment to that currently proposed has been approved and constructed.
- Whilst it is acknowledged that viability is not necessarily a planning concern, the applicant notes that block walls cost c. €3,500 per house more than concrete post and base with concrete panel fencing. This additional cost will ultimately be passed on to the customer on the price of the houses and therefore approving the alternative design will enable more affordable homes to be delivered.
- The applicant would like flexibility for walls bounding public open spaces or roads to enable a low maintenance brick finish, consistent with nearby housing, to be permissible. The applicant submits details of a similar finish as constructed.

- The applicant is of the opinion that the proposed alteration does not constitute a material alteration.

4.0 Board Correspondence

- 4.1. The Board informed Kildare County Council on 29th January 2019 of the request received and enclosed a copy of the request which, it was advised, may be made available for public inspection. The planning authority was not invited to make any submission at this stage.

5.0 Assessment

5.1. Consideration of Materiality

5.1.1. Nature of Proposed New Boundary Treatment

The first consideration in relation to this request to alter the terms of ABP-301230-187 is to determine if the making of the alteration would constitute the making of a material alteration of the terms of the Strategic Housing Development as granted.

The original rear boundary treatments proposed under ABP-301230-18 comprised concrete post and timber fencing between rear gardens and 1.8m high brickwork walls bounding public open spaces, ref. drawing no. 17316-2-111 of that application. As noted above, condition no. 3(g) of the permission required 1.8m high concrete block walls to all rear gardens and 2m high concrete block walls to public open spaces and roads. The condition specifically excluded the use of post and timber fences for any rear garden boundaries.

The site layout now submitted indicates the proposed 1.8m high concrete post and panel fence between rear gardens and a 2m high brick fronted wall to public roads and open spaces. The proposed alterations will not require alterations to the overall site layout or associated infrastructure.

I consider that the substantive issue is whether the proposed boundary treatments are materially different compared with those subject to the previous assessment.

I consider that the principal potential impacts relating to the proposed boundary treatments are visual impacts, ecological impacts and lifecycle issues. These matters may be considered separately as follows.

5.1.2. Visual Impact

The proposed concrete post and panel fencing to rear garden boundaries will have limited visibility from the public realm. The details submitted indicate that the change in outlook from the rear gardens of individual units is minimal. The proposed use of brick faced walls for public areas is satisfactory. I do not consider that the proposed amendment will not result in any significant change to the overall appearance of the proposed scheme or to the nature or scale of the visual impacts as assessed in EIAR Chapter 9.0 of ABP-301230-18. I therefore do not consider that there is a material change in terms of visual impact.

5.1.3. Ecological Impacts

Having regard to the EIA carried out in the course of ABP-301230-18, I do not consider that the proposed amended boundary treatments would result in any significant changes to environmental impacts from those assessed in the EIAR. The proposed alteration would therefore not alter the findings of the EIA in relation to ecological impacts or require any amendment to proposed mitigation measures. I therefore consider that there would be no significant ecological impacts other than those already considered by the Board and addressed by mitigation and condition.

5.1.4. Lifecycle Issues

The proposed boundary treatments would have a similar lifecycle to the concrete block walls as required by condition no. 3(g) of ABP-30120-18.

5.1.5. Conclusion

I submit that no new considerations arise in relation to impacts on the environment which were not considered in the assessment of impacts for ABP-301230-18. Any impact on landscape and visual amenities, as referred to above, would be marginal.

I am of the opinion, having fully considered the proposed alterations and the development as granted under ABP-301230-18, that the Board would not have determined the proposal differently had the proposed boundary treatments of concrete post and panel fencing and brick finish walls formed part of the said application. In that regard, I consider it reasonable to conclude that the proposal

subject of this request does not constitute the making of a material alteration of the development as granted under ABP-301230-18.

I have considered the provisions of section 146B(2)(b) which provides for, at the Board's discretion, the invitation of submissions from persons, including the public. Having considered the nature, scale and extent of the alteration, the information on file and the nature, scale and extent of the development granted under ABP-301230-18, I am of the opinion that the proposed amendment would not result in any substantive change to impacts on visual or residential amenities and that the inviting of submissions from the public in this instance is not necessary and is not required for the purposes of the Board in determining the matter.

5.2. Appropriate Assessment

5.2.1. A NIS was prepared and submitted as part of the application in relation to ABP-301230-18. The Board completed an Appropriate Assessment in relation to one Natura 2000 site within a 15 km radius of the application site, i.e. Rye Water / Carton SAC (site code 1398). In addition, the following 4 no. sites > 15 km from the development were screened in using the precautionary principle, on the basis that the Rye Water is a tributary of the River Liffey at Leixlip and therefore there is a pathway to Natura sites in Dublin Bay:

- South Dublin Bay and River Tolka Estuary SPA (site code 4024)
- South Dublin Bay SAC (site code 0210)
- North Dublin Bay SAC (site code 0206)
- North Bull Island SPA (site code 4006)

All other designated sites within 15 km were considered to be of a sufficient distance so as not to be affected by the proposal having regard to the nature of the development. The Board concluded that the proposed development, by itself, or in combination with other plans or projects, would not be likely to adversely affect the integrity of this European Sites in view of the sites' conservation objectives.

Having considered the Board's determination on Appropriate Assessment on ABP-301230-18, section 12.0 of the Inspector's Report on ABP-301230-18, the nature, scale and extent of the proposed alteration relative to the development subject of and approved under ABP-301230-18, and the information on file which I consider

adequate to carry out AA Screening, I consider it reasonable to conclude that the alterations proposed, individually or in combination with other plans or projects, would not be likely to have a significant effect on the European sites in view of the sites' conservation objectives.

6.0 Recommendation

- 6.1. I recommend that the Board decides that the making of the alterations subject of this request do not constitute the making of a material alteration of the terms of the development as granted permission under ABP-301230-18.

DRAFT ORDER

REQUEST received by An Bord Pleanála on the 18th day of December 2018 from Cairn Homes Properties Ltd. under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of the Mariavilla Strategic Housing Development the subject of a permission under An Bord Pleanála reference number ABP-301230-18.

WHEREAS the Board made a decision to grant permission, subject to conditions, for the above-mentioned development by order dated the 3rd day of July 2018,

AND WHEREAS the Board has received a request to alter the terms of the development, the subject of the permission,

AND WHEREAS the proposed alteration is described as follows:

Alter the boundary details associated with the approved housing within the development and Condition 3(g) of the permission which states:

All rear gardens shall be bounded with concrete block walls, which shall be a minimum of 1.8 metres high, and shall be suitably capped and rendered on both sides, except where bounding public open spaces or roads, when the walls shall be 2 metres in height. Post and timber fences shall not be used for any rear garden boundaries.

AND WHEREAS the Board decided, in accordance with section 146B(2)(b) of the Planning and Development Act 2000, as amended, not to invite submissions or

observations from the public in relation to whether the proposed alteration would constitute the making of a material alteration to the terms of the development concerned,

AND WHEREAS the Board decided, in accordance with section 146B(2)(a) of the Planning and Development Act 2000, as amended, that the proposed alteration would not result in a material alteration to the terms of the development, the subject of the permission,

AND WHEREAS having considered all of the documents on file and the Inspector's report, the Board considered that the making of the proposed alteration would not be likely to have significant effects on the environment or on any European Site,

NOW THEREFORE in accordance with section 146B(3)(a) of the Planning and Development Act, 2000, as amended, the Board hereby alters the above mentioned decision so that the permitted development shall be altered in accordance with the plans and particulars

REASONS AND CONSIDERATIONS

Having regard to:

- (i) the nature and scale of the Strategic Housing Development permitted under An Bord Pleanála Reference Number ABP-301230-18 for this site, which includes 462 no. dwellings including the refurbishment of the Gate Lodge (a Protected Structure), 483 no. student accommodation bedspaces and all associated site works and services,
- (ii) the examination of the environmental impact, including in relation to Natura 2000 sites, carried out in the course of that application,
- (iii) the limited nature and scale of the alterations,
- (iv) the absence of any significant new or additional environmental concerns (including in relation to Natura 2000 sites) arising as a result of the proposed alterations, and
- (v) the report of the Board's inspector, which is adopted,

It is considered that the proposed alterations would not be material. In accordance with section 146B(3)(a) of the Planning & Development Act, as amended, the Board hereby makes the said alterations.

Sarah Moran

Senior Planning Inspector

26th March 2019