



An
Bord
Pleanála

Inspector's Report ABP-307009-20

Development

Temporary alteration of Condition no. 2 of previously permitted development ABP-302749-18 to permit partial occupation of the permitted student accommodation for tourist and visitor use in the academic year from 1st September 2020 to 31st May 2021. After such times, the original Condition no. 2 will be applicable.

Location

Former Nolan Seafoods Limited,
Rathdown Road, Dublin 7

Planning Authority

Dublin City Council

Applicant

NTM ROI Seed Capital LP

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 20 conditions on the 6th February 2019 (ref. no. ABP-32749-18) under the Strategic Housing Development provisions, involving demolition of existing buildings (circa 2,471.6 square metres) on site and the construction of purpose built student accommodation development comprising:

- 289 number student bed spaces, within 47 number bedroom clusters across two number residential blocks;
- Block A extends to three number storeys and comprises 88 number bed spaces in 11 number eight-bed clusters (gross floor area of circa 2,706 square metres), and provides circa 191.5 square metres of internal amenity space;
- Block B to the east extends to seven number storeys (with enclosed plant at part eight storey level) in the north of the site adjacent to the Luas stop, reducing to five number storeys in the south and comprises 201 number bed spaces in 13 number four-bed clusters, 12 number six-bed clusters and 11 number seven-bed clusters (gross floor area of circa 5,814.8 square metres), and provides circa 347 square metres of internal amenity space;
- Six number disabled access bedrooms are included across the development;
- Amenity space equating to circa 2,140.9 square metres is provided across the site consisting of circa 1,602.4 square metres of external amenity in the form of a central courtyard, roof terrace and balconies;
- Internal amenity space equating to circa 538.5 square metres is provided in the form of a gym, television and study areas, cinema room and lounge areas;
- Provision for 90 number bicycle parking spaces distributed at several locations throughout the scheme and a pedestrian connection to the site immediately adjacent to the north;
- Ancillary single storey Electricity Supply Board substation, switch room and refuse store are provided, comprising circa 74.8 square metres gross floor area;
- Additional associated plant will be located at enclosed roof level within Block B;

- Upgrade of the access laneway from Rathdown Road and provision of a pedestrian access route;
- Associated site and infrastructural works include the provision of foul and surface water drainage, including an attenuation tank located beneath the external amenity courtyard, connection to an existing watermain and all other associated services infrastructure;
- Existing site boundaries to the south and east will be retained;
- The proposal incorporates a pedestrian connection to the adjacent student accommodation scheme to the north at 274 North Circular Road;
- The total gross floor area of the proposed development is circa 8,595.6 square metres.

1.2. None of the conditions imposed by the Board involved any substantial amendments to the proposed development. The following condition of permission is considered relevant to the subject S146B application:

2. The development hereby permitted shall only be occupied as student accommodation, in accordance with the definition of student accommodation provided under section 13(d) of the Planning and Development (Housing) and Residential Tenancies Act 2016, and shall not be used for any other purpose without a prior grant of planning permission for change of use.

Reason: In the interest of residential amenity and to limit the scope of the proposed development to that for which the application was made.

1.3. The permitted development is currently under construction.

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 the following amendments to the development permitted under ABP-302749-18:

- Temporary alteration of Condition no. 2 to permit partial occupation of the permitted student accommodation for tourist and visitor use in the academic year from 1st September 2020 to 31st May 2021. After such times, the original condition 2 will be applicable. No physical alterations are proposed to the development as permitted.

3.2. It should be noted that there is also another current S146B application relating to ABP-302749-18, ref. ABP-306991-20, which seeks to make the following amendments to the permitted development:

- Addition of PV panels (300 sq.m.), air circulation units, roof access and two no. smoke exclusion shafts at roof level of Block B. These will lie atop the mono-pitched roof and will occupy 300 sq.m. (37%) of the roof area. It is also proposed to include roof access hatches, 2 no. smoke exclusion shafts and air circulation units at roof level of Block B;
- Addition of one no. storey to the single storey bin store located at the south eastern corner of the site to provide c. 88 sq.m. of ancillary office space for management purposes, accessed by external staircase and including an open plan office, secondary office and kitchenette with WC also included;
- All associated drainage and infrastructure works.

3.3. In addition, there is a current appeal relating to a similar application for temporary use of student accommodation developments for tourist and visitor use during academic term time at 274 North Circular Road, originally permitted under Reg. Ref. 4262/16 and PL29N.248726, current appeal ref. ABP-306172-29.

4.0 **Board Correspondence**

4.1. The Board informed Dublin City Council on 14th May 2020 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. The first consideration in relation to this request to alter the terms of ABP-302749-18 is to determine if the making of the alterations would constitute the making of a material alteration of the terms of the Strategic Housing Development as granted. I consider that the principal potential impacts relating to the proposed amendments

are the applicant's rationale, principle of development and impacts on residential amenities. These matters may be considered separately as follows.

5.1.2. Rationale of Applicant

The applicant submits that the proposed amendments are not material and makes the following points in support of this statement.

- This proposal is made in light of the current health pandemic and the potential impact of same upon the progression of construction of the permitted development. This may result in the student accommodation not being completed in time for student intake for the 2020 /2021 academic year, with the potential for student numbers being reduced due to travel bans.
- The time period for this temporary use will follow the completion of the development in the remaining part of the 2020 /2021 academic year. It is anticipated that the Covid-19 health concerns will be mitigated by that time.
- The proposal comprises partial use of the scheme for tourist or visitor accommodation, as well as other non-student residents such as business travellers, short term key workers and other professionals, while remaining open to students in accordance with the definition set out in the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended. Therefore, the use of the accommodation will remain consistent with the principle of the permitted development.
- Students and non-student uses will remain segregated within the development, with each area reserved for specific uses. This approach will ensure a safe and harmonious residential environment and will be managed professionally.
- A Management Plan is submitted in support of the proposed amendments.
- The proposed amendment involves no physical changes to the permitted development.
- It is submitted that the grant of permission for student accommodation at the site under ABP-302749-18 established the principle of student accommodation at the development site, and consequent tourist and visitor use is established at the site and therefore acceptable under the site's Z1 residential land use zoning under

the Dublin City Development Plan 2016-2022 and will have no adverse impact on adjoining land uses.

- The applicant notes that similar applications for temporary use of student accommodation developments for tourist and visitor use during academic term time have been permitted recently by Dublin City Council, Reg. Ref. 4100/19, relating to 274 North Circular Road, as originally permitted under Reg. Ref. 4262/16 and PL29N.248726. This decision is currently subject to a third party appeal ref. ABP-306172-29. Permission also granted for a similar development at Nos. 113-115 Upper Mayor Street, Dublin 1 under Reg. Ref. DSDZ4332/18 as extended under Reg. Ref. DSDZ3044/19.
- It is noted that a flexible approach is applied to student accommodation as set out in National Policy Circular PL8/2016 APH 2/2016 issued by the Dept. of Housing, Planning and Local Government and in the National Student Accommodation Strategy 2017.

5.1.3. Principle of Development

Section 13(d) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) defines student accommodation as follows:

(d) as if the following definition were inserted after the definition of “structure”:

“ ‘student accommodation’—

(a) means a building or part thereof used or to be used to accommodate students whether or not provided by a relevant provider (within the meaning of Qualifications and Quality Assurance (Education and Training) Act 2012), and that is not for use—

(i) as permanent residential accommodation, or

(ii) subject to paragraph (b), as a hotel, hostel, apart-hotel or similar type accommodation,

and

(b) includes residential accommodation that is used as tourist or visitor accommodation but only if it is so used outside of academic term times;”

I consider that the proposed temporary use comes within the scope of the above definition, given that it will be outside of the normal academic term time.

5.1.4. Impacts on Residential Amenities

I am satisfied that the proposed amendment will not result in any substantive change to impacts on residential or visual amenities from those of the permitted development, subject to proper management of the premises as per the permitted accommodation management plan, given that the proposed change of use is temporary in nature. As previously identified, the permitted student accommodation scheme can already be used as tourist or visitor accommodation outside of academic term times and as such, the development is already deemed to be acceptable in principle on the site. I also note the submitted Management Plan in this regard.

5.1.5. Assessment of Materiality

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-302749-18, I am of the opinion that the proposed amendment is acceptable in principle and would not result in any substantive change to impacts on 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.

I am of the opinion, having fully considered the proposed alteration and the development as granted under ABP-302749-18, that the Board would not have determined the proposal differently had the proposed amendment 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-302749-18.

5.2. **Environmental Impacts**

- 5.2.1. As outlined above, I consider that the proposed alterations do not constitute the making of a material alteration of the development concerned and in this regard the provisions of Section 146B(3)(a) apply. As such there is no requirement for EIAR

Screening, as there is no material alteration to the scheme and as a result its impact upon the surrounding environment remain unchanged.

5.3. **Appropriate Assessment**

- 5.3.1. An AA Screening Report was submitted with ABP-302749-18 and it was concluded that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any Natura 2000 sites. The AA Screening Report submitted with the subject proposals is also noted.

6.0 **Recommendation**

- 6.1. I recommend that the Board decides that the making of the alteration subject of this request do not constitute the making of a material alteration of the terms of the development as granted permission under ABP-302749-18.

DRAFT ORDER

REQUEST received by An Bord Pleanála on the 27th day of March 2020 from NTM ROI Seed Capital LP under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of the Student Accommodation Strategic Housing Development the subject of a permission under An Bord Pleanála reference number ABP-302749-18.

WHEREAS the Board made a decision to grant permission, subject to conditions, for the above-mentioned development by order dated the 6th day of February 2019,

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:

- Temporary alteration of Condition no. 2 to permit partial occupation of the permitted student accommodation for tourist and visitor use in the academic year from 1st September 2020 to 31st May 2021. After such times, the original condition 2 will be applicable. No physical alterations are proposed to development as permitted.

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-302749-18 for this site, which includes 289 no. student bedspaces within 47 no. bedroom clusters, amenity space and associated site works,
- (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 and temporary nature and scale of the alteration,
- (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 alteration would not be material. In accordance with section 146B(3)(a) of the Planning & Development Act, as amended, the Board hereby makes the said alteration.

Sarah Moran
Senior Planning Inspector
15th June 2020