



An
Bord
Pleanála

Inspector's Report ABP-308957-20

Development

Alterations to previously permitted
SHD ABP-303435-19

Location

The former Dulux Factory site, Davitt
Road, Dublin 12

Planning Authority

Dublin City Coucil

Applicant

Durkan (Davitt Road)

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 25 conditions on the 17th April 2019 (ref. no. **ABP-303435-19**) under the Strategic Housing Development provisions comprising:

- 265 no. 'Build-To-Rent' apartments in 4 no. 3-7 storey blocks with a basement level.
- Ancillary uses comprising a retail/café unit and a residents' gym.
- 119 no. basement car parking spaces, internal semi-public paths, public and private open spaces and all communal facilities (including refuse storage space and 560 no. bike parking spaces at basement and ground level).
- The breakdown of units is as follows:
 - Block A – Comprises a total of 107 no. units as follows:
 - a) 43 no. 1 bed apartments;
 - b) 11 no. 2 bed 3 person apartments;
 - c) 53 no. 2 bed 4 person apartments.
 - Block B – Comprises a total of 99 no. units as follows:
 - a) 46 no. 1 bed apartments;
 - b) 6 no. 2 bed 3 person apartments;
 - c) 47 no. 2 bed 4 person apartments.
 - Block C – Comprises a total of 30 no. units as follows:
 - a) 20 no. 1 bed apartments;
 - b) 10 no. 2 bed 4 person apartments.
 - Block D – Comprises a total of 29 no. units as follows:
 - a) 18 no 1 bed apartments;
 - b) 11 no. 2 bed 4 person apartments.
- Each unit in Block A, B, C and D has associated private open space in the form of a ground floor terrace or a balcony, along with dedicated communal open

space. Two large private courtyards of c. 920 sq.m. and of c. 770 sq.m. incorporating children's play areas are also located between Block A and C and Blocks B and D for the benefit of all residents of the four blocks. A central public open space of c. 1,516 sq.m. and pedestrian link is also provided connecting Davitt Road and Galtymore Road.

- Block B provides communal facilities and amenities for all residents comprising a reception, media centre, gymnasium, games room, business centre, shared party room, shared kitchen, and a retail/café unit. A communal lounge is provided at 5th floor level of Block A with a balcony on the north, south and western elevation.
- The development will have 1 no. vehicular access to basement level from Galtymore Road. Pedestrian access will be provided from both Galtymore Road and from Davitt Road. The associated site and infrastructural works include foul and surface water drainage, attenuation tanks, landscaping, boundary fences, ESB Substations and internal hard landscaping including footpaths.

1.1.1. Dublin City Council granted permission on 10th September 2020 for alterations to the scheme permitted under ABP-303435-19 under Ref. Ref. **2747/20** comprising:

- a) Alteration to window format at 3rd and 4th floor level on east and west elevation to provide windows to corridor only;
- b) Window format altered at 6th floor level of south elevation of Blocks A and B;
- c) Balconies and windows removed from eastern elevation of 4 no. apartments at 5th and 6th floor level of Block B due to internal layout requirements related to fire safety;
- d) Extension of elevator and lift core within Block A from 4th floor to 5th floor level for fire safety purposes, giving an overall height increase of 3.7 m;
- e) Communal lounge extended by 3 sq.m. to connect to extended lift/stair core at 5th floor level;
- f) ESB Kiosk (approx. 23.47 sq.m.) at Galtymore Road elevation relocated approximately 6m to the east and redesigned to ESB standards;
- g) Bin store added to internal layout of ESB substation building (approx. 7.09 sq.m.);
- h) Bin store (approx. 9.77 sq.m.) added to eastern courtyard;

- i) Accessible rest room added to guest room at 5th floor level;
- j) Glazed balconies converted to brick at ground floor level of south elevation and east and west internal courtyard elevations;
- k) Alteration to glazing at street level of Block B fronting Davitt Road;
- l) Alterations to selected balconies (8no.) at 3rd and 5th floor to convert from cladding to glazed treatment; and
- m) Unit layouts of apartments 104 and 110 at 1st and 2nd floor of block B, fronting Davitt Road, reconfigured to allow sufficient separation distance between proposed balconies and ground floor ESB substation entrance.

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 requester seeks to make the following alterations to the development permitted under ABP-303435-19 (as altered under Reg. Ref. 2747/20):

- Relocation of entrance to ground floor residents' amenity space at Davitt Road frontage of Block B to suit occupier requirements. Removal of 1 no. entrance to residents' amenity space.
- Block B elevation to eastern courtyard squared off to facilitate ease of access and activation of courtyard space.
- Reconfiguration of Block B core, including external realignment of glazing and entry points at ground floor level to meet fire safety requirements including escape route. Block B core B1 reconfigured to allow additional lobby and escape route in accordance with fire safety requirements, which results in 2 no. apartment units revised from 2 bed, 4 person units to 2 bed, 3 person units.
- Minor alterations to internal layouts of apartment units as a result of Part M and fire safety requirements.
- Block A stair core A2 reconfigured in accordance with Part M and fire safety requirements.
- Basement boundary set back from Davitt House boundary.

- High level periscope vents provided at basement level along Davitt Road and Central Courtyard in accordance with fire safety requirements. The vents do not extend above ground level and are not visible in the elevation view.
- Basement floor level and ramp configuration revised reduce the extent of excavation needed and to comply with the submitted Flood Risk Assessment.
- Bin stores at basement level relocated to enhance accessibility from stair/lift cores.
- Additional fire lobbies added to stair cores at basement level in accordance with fire safety requirements.
- Water tanks relocated under basement ramps as part of detailed design and optimisation of space.
- Additional floor area of 58 sq.m. at basement level required for rearranged parking layout to comply with fire safety requirements.

The requester submits a rationale for the proposed alterations. The following points of same are noted:

- The external alterations are limited and do not alter the overall visual impression of the development. They are not considered to be a significant change from that granted permission.
- The alterations to the internal layout are as a result of detailed design work, particularly for Part M accessibility requirements and fire safety measures.
- The apartment reconfigurations result in a slight reduction in some apartment sizes but an increase in floor area in other units. Minimum apartment floor areas as required under the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities are maintained in all units.
- Apartment units with relocated windows are associated with bedrooms that are north facing and therefore do not have an impact on sunlight and daylight provision as the main living areas within these units are south facing with good access to natural illumination.

- Other alterations are primarily limited to basement level and stair/lift cores, where additional fire safety measures are required, and enhanced accessibility was considered necessary. These alterations do not have any overall impact on the general consistency of the development with that granted under ABP-303435-19.
- The internal alterations do not result in any net reduction in the residential amenity provided within the development and do not have any significant impact on the external appearance of the building.

4.0 Board Correspondence

- 4.1. The Board informed Dublin City Council on 21st January 2021 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-303435-19 (as amended) 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.
- 5.1.2. The proposed alterations do not involve significant alterations to the quantum of residential accommodation provided, to the overall site layout or to site services. I consider that the substantive issue is whether the alterations are materially different compared with those subject to the previous assessment. I consider that the principal potential impacts relating to the proposed alterations are the quality of residential accommodation and impacts on visual and residential amenities. I note in this regard that the proposed alterations will not result in any significant change to roads, parking, site services or surface water drainage. The relevant matters may be considered separately as follows.

5.1.3. Quality of Residential Accommodation

I am satisfied that the proposed apartments, as altered, are generally consistent with the provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities. I consider that the proposed alterations would not result in any significant change / reduction in the quality of residential development such as would be considered material.

5.1.4. Impacts on Visual and Residential Amenities

The proposed alterations involve minor changes to the elevations of apartment Blocks A and B. I am satisfied that they will not result in any significant change from the permitted development in terms of impacts on visual or residential amenities. I therefore do not consider that there is a material change in terms of these issues.

5.1.5. Assessment of Materiality Conclusion

I am of the opinion, having fully considered the proposed alterations and the development as granted under ABP-303435-19 and the alterations granted by Dublin City Council under Reg. Ref. 2747/20, that no new planning issues arise and that the Board would not have determined the proposal differently had the proposed alterations 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-303435-19.

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-303435-19, I am of the opinion that the proposed alterations 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. **Environmental Impact Assessment**

- 5.2.1. The development as originally permitted under ABP-303435-19 was sub-threshold for mandatory EIA as per item 10 of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended). As outlined above, I consider that the

proposed alterations do not constitute the making of a material alteration of the development proposed and in this regard the provisions of Section 146B(3)(a) apply.

- 5.2.2. I therefore conclude that no new considerations arise in relation to impacts on the environment which were not considered in the assessment of impacts for ABP-303435-19.

5.3. Appropriate Assessment

- 5.3.1. An AA Screening Report was submitted with ABP-303435-19. The Board completed AA Screening in relation to the potential effects of the permitted development on designated European Sites, taking into account the nature, scale and location of the development (being a redevelopment of land within a zoned and serviced university campus in an urban area), the AA Screening Report submitted with the application and the Inspector's report and submissions on file. The Board concluded that, by itself or in combination with other development in the vicinity, the development would not be likely to have a significant effect on any European Site in view of the sites' conservation objectives, and that a Stage 2 Appropriate Assessment was not, therefore, required.
- 5.3.2. I note from section 11.7 of the Inspector's Report of ABP-303435-19 that the development site is not located within any European site. The site is not immediately connected to any habitats within European sites and there are no known indirect connections to European Sites. Potential impacts on Natura 2000 sites from the development are restricted to the discharge of surface and foul water from the site, which are fundamentally unchanged from those of the permitted development. Having considered the Board's determination on Appropriate Assessment on ABP-303435-19, section 11.7 of the Inspector's Report on ABP-303435-19, the nature, scale and extent of the proposed alterations relative to the development subject of and approved under ABP-303435-19, 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, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

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-303435-19.

DRAFT ORDER

REQUEST received by An Bord Pleanála on the 18th day of December 2020 from Durkan (Davitt Road) under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of the Strategic Housing Development the subject of a permission under An Bord Pleanála reference number ABP-303435-19.

WHEREAS the Board made a decision to grant permission, subject to conditions, for the above-mentioned development by order dated the 17th day of April 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:

Alterations to previously permitted strategic housing development ABP-303435-19 comprising:

- Relocation of entrance to ground floor residents' amenity space at Davitt Road frontage of Block B to suit occupier requirements. Removal of 1 no. entrance to residents' amenity space.
- Block B elevation to eastern courtyard squared off to facilitate ease of access and activation of courtyard space.
- Reconfiguration of Block B core, including external realignment of glazing and entry points at ground floor level to meet fire safety requirements including escape route. Block B core B1 reconfigured to allow additional lobby and escape route in accordance with fire safety requirements, which results in 2 no. apartment units revised from 2 bed, 4 person units to 2 bed, 3 person units.

- Minor alterations to internal layouts of apartment units as a result of Part M and fire safety requirements.
- Block A stair core A2 reconfigured in accordance with Part M and fire safety requirements.
- Basement boundary set back from Davitt House boundary.
- High level periscope vents provided at basement level along Davitt Road and Central Courtyard in accordance with fire safety requirements. The vents do not extend above ground level and are not visible in the elevation view.
- Basement floor level and ramp configuration revised reduce the extent of excavation needed and to comply with the submitted Flood Risk Assessment.
- Bin stores at basement level relocated to enhance accessibility from stair/lift cores.
- Additional fire lobbies added to stair cores at basement level in accordance with fire safety requirements.
- Water tanks relocated under basement ramps as part of detailed design and optimisation of space.
- Additional floor area of 58 sq.m. at basement level required for rearranged parking layout to comply with fire safety requirements.

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-303435-19 for this site, which includes 265 no. Build to Rent apartments, retail/cafe unit 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 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

28th April 2021