



An
Bord
Pleanála

Inspector's Report ABP-309277-21

Development

Alterations to previously permitted student housing development ABP-302749-18 as amended by ABP-307009-20 and ABP-306991-20.

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

- 289 no. student bed spaces, within 47 no. clusters across 2 no. residential blocks;
- Block A extends to 3 no. storeys and comprises 88 no. bed spaces in 11 no. 8 bed clusters (GFA c. 2,706 sq.m.), and provides c. 191.5 sq.m. of internal amenity space;
- Block B to the east extends to 7 no. storeys (with enclosed plant at part 8 storey level) in the north of the site adjacent to the Luas stop, reducing to 5 no. storeys in the south and comprises 201 no. bed spaces in 13 no. 4 bed clusters, 12 no. 6 bed clusters and 11 no. 7 bed clusters (GFA c. 5,814.8 sq.m.), and provides c. 347 sq.m. of internal amenity space;
- 6 no. disabled access bedrooms are included across the development;
- Amenity space equating to c. 2,140.9 sq.m. is provided across the site consisting of c. 1,602.4 sq.m. of external amenity space in the form of a central courtyard, roof terrace and balconies;
- Internal amenity space equating to c. 538.5 sq.m. is provided in the form of a gym, television and study areas, cinema room and lounge areas;
- Provision for 90 no. 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 ESB substation, switch room and refuse store are provided, comprising c. 74.8 sq.m. GFA;
- 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 c. 8,595.6 sq.m.

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 request:

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. **S146B ABP-306991-20**

1.3.1. The following alterations were requested under ABP-306991-20:

- Addition of PV panels (300 sq.m.), air circulation units, roof access and two no, smoke exclusion shafts 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;
- All associated drainage and infrastructure works.

The Board determined on 14th July 2020 that the requested alterations would not be likely to have significant effects on the environment or any European Site and that they would not be material. The parent permission was altered accordingly.

1.4. **S146B ABP-307009-20**

1.4.1. The following alteration was requested under ABP-307009-20:

- 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.

The Board determined on 14th July 2020 that the proposed alterations would not be likely to have significant effects on the environment or any European Site and that they would not be material. The parent permission was altered accordingly.

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 Request

3.1. The request is seeking to make the following alteration to the development permitted under ABP-302749-18 (as altered):

- Temporary alteration of Condition 2 to permit partial occupation of the permitted student accommodation for tourist and visitor use in the academic year from 1st September 2021 to 31st May 2022. After such times, the original condition 2 will be applicable. No physical alterations are proposed to the development.

4.0 Board Correspondence

4.1. The Board informed Dublin City Council on 9th February 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-302749-18 (as altered) 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. Rationale of Requester

5.1.3. The requester submits that the alterations are not material. It is noted that the Board considered the same requested temporary use during the period from 1st September 2020 to 31st May 2021 to be not material as per ABP-307009-20. The requester submits a similar rationale as was made in that case, i.e. that the request is made in light of the Covid 19 pandemic and the potential impact of same upon the normal use of the permitted development. As in the previous case, the request 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. It is also noted that the definition of student accommodation as set out at section 13(d) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) includes '*residential accommodation that is used as tourist or visitor accommodation but only if it is so used outside of academic term times*'. The requester submits that the development is currently in use as requested under ABP-307009-20, and the requester now seeks to temporarily continue the use.

The Board is advised to read this report in conjunction with that of ABP-307009-20, which sets out the requester's rationale in further detail.

5.1.4. 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 (as altered), I am of the opinion that the requested alteration is acceptable in principle and 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.

I am of the opinion, having fully considered the requested alteration and the development as granted under ABP-302749-18 (as altered), that the Board would not have determined the requested alteration differently had it 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. I note in particular in this regard that the Board did not consider the same use at the subject development to be material under ABP-307009-20, and that the requester seeks to continue this use.

5.2. Environmental Impacts

- 5.2.1. As outlined above, I consider that the requested alteration does 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 request is also noted.

6.0 Recommendation

- 6.1. I recommend that the Board decides that the making of the alteration subject of this request does 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 22nd day of January 2021 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 as amended by ABP-307009-20 and ABP-306991-20.

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 2021 to 31st May 2022. 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

26th March 2021