



An  
Bord  
Pleanála

## Inspector's Report

**ABP-309531-21**

### Development

Section 146B application for alterations to previously permitted ABP-301693-18 for works at the northern perimeter of the site at Upper Newcastle Road to improve and provide safe pedestrian access to the permitted retail/café unit at Block A.

### Location

The Former Westwood Hotel, Dangan, Upper Newcastle Road, Galway.

### Planning Authority

Galway City Council

### Requester

NTM ROI Seed Capital LP

### Type of Application

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

### Inspector

Una Crosse

Decision Quashed

## 1.0 Introduction

- 1.1. An application has been made to alter the permission granted for a student accommodation development at the Former Westwood Hotel, Dangan, Upper Newcastle Road, Galway City under Section 146B of the Planning and Development Act, 2000, as amended. The development was permitted under Ref. ABP-301693-18 on 4 September 2018.
- 1.2. The proposed alteration is for works at the footpath at the northern perimeter of the site at the Upper Newcastle Road to improve and provide safe pedestrian access to the permitted retail/café unit at Block A.
- 1.3. The parent permission has been altered previously by the Board under ABP-307039-20 and by Galway City Council under a number of Section 34 applications.
- 1.4. As outlined by the applicant's agent in their cover letter, the works subject of this alteration were undertaken by the applicant on the understanding that they formed part of the parent SHD permission which specified 'works to the public footpath' within the development description. It is stated that following the implementation of the works in 2020, which provides facilitating level access to the retail/café unit at Block A (which was permitted under Ref. 19/197), and the submission to Galway City Council of a proposal to install a safety barrier to the Upper Newcastle Road, the applicant received a warning letter under Section 152 of the Planning and Development Act 2000, as amended, from the Planning Authority alleging the works are unauthorised. In response to same, the applicant agreed to seek permission via Section 34 to the Planning Authority for an amended access to the retail/café unit to the western elevation and subject to a grant of permission, the reinstatement of the footpath as it previously existed prior to any development on site, unless the applicant obtained permission for works to the footpath as implemented. To fulfil the obligations to GCC, the applicant has submitted the application to amend the entrance location of the retail/café unit to Galway City Council (Ref. 20/357) which was pending when the Section 146B application was made but I note was granted permission on 24 February 2021. In the agreement with GCC the applicant sought to rectify the planning situation for the pathway works as carried out and currently implemented and consulted with ABP in January 2021 to seek an opinion on this

basis to be told by the Board that any alterations to an SHD application should be made to the Board under Section 146B which is the basis for the subject alteration application.

1.5. The request submission includes the following:

- Cover Letter
- Planning and Environmental Report
- Stage 3 Road Safety Audit
- Appropriate Assessment Screening Report
- Architectural Drawings
- Engineering Drawings

## 2.0 Planning History/Permitted Development

### 2.1. Ref. ABP-301693-18

Permission was granted by the Board on 4 September 2018 (Ref. ABP-301693-18) for a student accommodation development under the provisions of the SHD legislation for the following:

- Demolition of the existing Westwood Hotel (5,253 square metres);
- Redevelopment of the proposed site for a student accommodation scheme to include 63 apartments with 394 bedrooms comprising 23 four-bed apartments, one five-bed apartment, one six-bed apartment, 13 seven-bed apartments and 25 eight-bed apartments arranged in five blocks which vary in height from three to five storeys
- Ancillary facilities including a reception area, social spaces, study areas, storage areas, associated signage and plant areas (gross floor area 12,112 square metres). Café/restaurant space (150 square metres) and outdoor seating area on the ground floor of Block A.
- Site landscaping including the provision of three courtyard garden areas and the provision of new pedestrian and cyclist links to the Thomas Hynes Road and the N59 Upper Newcastle Road.

- Vehicular and emergency access to the development via the N59 Upper Newcastle Road with 24 car parking spaces provided comprising 10 permanent parking spaces (including two disabled access spaces), along with 14 temporary (summer use) spaces within a games area with hard surface and designated coach set down area and 140 cycle parking spaces in 11 sheltered racks.
- All ancillary works including foul and surface water sewers; works to the public footpath; and all other associated site services, site infrastructure and site development works.
- The complex is to be used as visitor or tourist accommodation on a temporary basis outside of academic term times.

## 2.2. **Amendments to the Scheme since Parent Permission Granted**

### 2.2.1. **Amendment Sought from ABP under Section 146B**

**ABP-307039-20** – Alteration permitted to the parent permission (14 July 2020) to allow short term tourist and visitor lets at the development on a temporary basis between 1 September 2020 and 31 May 2021 following the expiry of same, Condition 2 of the parent permission will apply. (Implemented)

### 2.2.2. **Amendments Sought from Galway City Council under Section 34**

While as noted above, an alteration to the parent permission was sought from the Board under Section 146B, a number of applications have been made to Galway City Council under Section 34 seeking to amend elements of the proposed development. As noted in the documentation submitted with the application, the applicant's agent have stated that they were advised in January 2021 that any applications to amend the SHD permission should be made to An Bord Pleanála under Section 146B. The section 34 applications are summarised as follows:

**Ref. 19/197** – Permission granted (October 2019) for extension and change of use from café/restaurant use to retail/café/restaurant use incorporating a seated café area on ground floor of Block A. (Implemented)

**Ref. 19/242** – Permission granted (November 2019) for a shrouded multi-operator telecommunications installation at roof level. (Implemented)

**Ref. 20/152** – Permission granted (September 2020) for the construction of roof level PV panels at Blocks A, B & C and associated balustrades. (Not yet Implemented – February 2021)

**Ref. 20/204** – Permission granted (January 2021) for construction of plant at rooftop level. (Implemented).

**Ref. 20/357** – Permission granted (February 2021) to amend the layout of the retail unit to provide access from the western elevation as opposed to northern elevation as exists (application made following agreement with GCC and referenced within this report).

### 3.0 Proposed Changes

The alteration proposed as part of the subject request is as follows:

- Works at the footpath at the northern perimeter of the site at the Upper Newcastle Road to improve and provide safe pedestrian access to the permitted retail/café unit at Block A. The proposal seeks to upgrade and improve the footpath at the eastern part of the northern perimeter of the site including the installation of a safety barrier at the roadside and construction of c.24m of footpath at appropriate levels to facilitate access to Block A. The works as implemented are outlined as follows:
  - Appropriate levels to allow universal access to the operation of the Spar store;
  - Finishes in concrete at the shopfront
  - Tarmac finish to east implemented at the request of GCC Roads Section.
  - Kerbing approved by GCC Roads Section.
  - Tractile paving and reflective strips.
- The extent of the subject works are confined to the footpath and do not impact or encroach on the grass verge to the south. The works are stated to provide universal access and the safety of pedestrians using the Spar and footpath preventing children or others exiting the shop and entering the roadway while guiding users to the nearest controlled pedestrian crossing to the east preventing inappropriate crossing of the road at the entrance to the shop.
- Letter accompanying the application from CS Consulting Engineers outlines the rationale for the design and notes that the proposal is not in conflict with principles in DMURS and has no effect on current movements, turning capacities or the nearby signalised junction.

- It should be noted that the works have been implemented with the applicant outlining that the works were undertaken under the parent permission which specified works to the public footpath. Alteration application seeks permission for the authorisation of these works to facilitate safe and universal access to the development as constructed and to ensure the safe use of the footpath for pedestrians and road users on the N59 Upper Newcastle Road. Galway City Council by way of the warning letter are seeking that the footpath is reinstated to its former condition with Figures 4.2 & 4.3 of the Planning and Environmental Report detailing the former and current situation. The current proposal is submitted following the issuing of the warning letter, seeking permission to regularise the works which it is considered will make a positive contribution to the overall development.

#### 4.0 Requester's Submission

The requester's submission can be summarised as follows:

- Introduction/Executive Summary provided as is site location and context and planning history.
- Works to the public footpath included in the public notice and details associated with parent permission and subject works undertaken in good faith and to a high standard on this basis but following same, warning letter issued from Galway City Council who considered works were unauthorised and sought the reinstatement of the footpath to its original level prior to the works.
- Current proposal as submitted, following the issuing of the warning letter, is seeking permission to regularise the works which it is considered will make a positive contribution to the overall development.
- Detailed description of proposal provided (as outlined in Section 3 above).
- Works as implemented subject to discussion with Roads Section of GCC with improvements implemented following completion of Stage 2 Road Safety Audit requested by GCC.
- Stage 3 Road Safety Audit completed in February 2021 (attached) with minor improvements proposed to the finishes of the tactile paving and a road gully with applicant committed to implementing these changes. No issues around road safety or improvements to the layout, levels or access raised.

- Letter accompanying the application from CS Consulting Engineers which outlines the rationale for the design and notes that the proposal is not in conflict with principles in DMURS and has no effect on current movements, turning capacities or the nearby signalised junction.
- Timelines of events culminating in the Section 146B application outlined including as part of the parent permission the provision of pedestrian/cyclist links and ancillary works to the public footpath and the permissions sought and granted for the extension of the shop unit to make it viable for an operator.
- Noted that when the application for the amended shop unit was made the floor levels of the development including the commercial unit had already been constructed with the extension of the unit tying into same which required that the levels of the public footpath needed to be raised in certain locations to allow access and to comply with building regulations and safety standards.
- Provision of pedestrian safety barrier to the edge of the footpath opposite shop entrance recommended by Engineers for protection of people exiting the shop.
- When need for safety barrier identified agreement of City Council sought with Council considering design proposed not permitted by permission with applicant advised to undertake Stage 2 Road Safety Audit with minor recommendations made (tactile paving and reflectors) which were incorporated.
- While engagement continued with GCC to find a solution GCC continued to express concerns of a non-specific nature and applicant was unable to reach mutually acceptable solution.
- In December 2020, GCC agreed to development and footpath being completed as designed provided applicant agreed to make an application to GCC to move the entrance of the commercial unit to the western elevation of the unit and lower the footpath implementing same unless permission granted to retain footpath design as implemented.
- If pathway were to be reinstated would require that commercial unit and westbound lane of N59 closed for 4-6 weeks and would have an inferior surface to implemented design.
- Safety barrier would also be recommended for reinstated former path as it prevents pedestrians spilling onto the road at a busier location given the nature of proposed development.



- Given serious difficulties encountered trying to engage with GCC, applicant consulted with ABP to explore an alternative and were advised that any proposed changes to the parent permission should be made to the Board.
- Works considered acceptable in planning terms contributing positively to the setting and operation of the development.
- Provisions of Section 146B outlined.
- Noted that previous Section 146B application was not considered to be material alteration.
- Works considered minor in nature encompassing c.24m of footpath at northern perimeter of the site to ensure safe and universal access to the development and retail unit and has comprised of an existing footpath prior to the development and reasonably considered proposal is not a material alteration.
- Characteristics of proposal detailed with no change to the permitted development identified.
- Location of proposed development in relation to the environmental sensitivity if geographical areas outlined with no change to permitted development predicted.
- Types and Characteristics of Potential Impacts outlined with none identified.
- Request included Appropriate Assessment Screening Report which concludes no significant effect on conservation objectives of relevant European sites.
- Warning Letter and Response from applicant legal agent included.
- Photos of pathway as it now exists and previous views.

## 5.0 Legislative Provisions

- 5.1. Section 146B of the Act provides for the alteration by the Board of a strategic infrastructure development in response to a request made of it. The Board should note that since the previous request for alterations under Section 146B on this SID permission that the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018) has provided for a number of amendments to Section 146B of the Act and these amendments are reflected in the following outline of the legislative provisions.
- 5.2. Initially under the terms of section 146B(2)(a) the Board must decide as soon as practicable after the making of such a request, whether or not the making of a

proposed alteration would constitute “the making of a material alteration of the terms of the development concerned”. Section 146B(2)(b) provides that “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”.

- 5.3. Alteration not a material alteration - Section 146B(3)(a) states that “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”.
- 5.4. Alteration is a material alteration - Section 146B(3)(b) provides that if the Board decides that the making of the alteration would constitute the making of such a material alteration, it shall - “(i) by notice in writing served on the requester, require the requester to submit to the Board the information specified in Schedule 7A to the Planning and Development Regulations 2001 in respect of that alteration, or in respect of the alternative alteration being considered by it under subparagraph (ii)(II), unless the requester has already provided such information, or an environmental impact assessment report on such alteration or alternative alteration, as the case may be, to the Board, and
- (ii) following the receipt of such information or report, as the case may be, determine whether to —
- (I) make the alteration,
- (II) make an alteration of the terms of the development concerned, being an alteration that would be different from that to which the request relates (but which would not, in the opinion of the Board, represent, overall, a more significant change to the terms of the development than that which would be represented by the latter alteration), or
- (III) refuse to make the alteration”.

## 6.0 Assessment

### 6.1. Consideration of Materiality

- 6.1.1. As indicated in the preceding section, the first consideration in relation to this request to alter the terms of ABP-301693-18 is to determine if the making of the alteration would constitute the making of a material alteration to the terms of the development as granted.
- 6.1.2. The subject alteration has come about as a result of amendments to and extension of the proposed commercial unit permitted by GCC with the front elevation of the retail unit extended towards the footpath on the Upper Newcastle Road. The finished floor levels had been set by the parent development and extending the commercial unit provided that the finished floor levels were also extended towards the path which required that in order to tie in with the path that the level of pathway had to be increased for a short extent in order to facilitate universal access from the pathway to the commercial unit. In addition a safety barrier was provided along the edge of the path to prevent people moving directly from the commercial unit onto the road. The alterations to the footpath were implemented in order to provide safe and universal access to the unit. As outlined in the documentation the works have been implemented. While it is not clear why some amendments were applied for under Section 34 and another under Section 146B, I note that permission was granted by Galway City Council for a revised entrance arrangement to the west of the unit presumably on the basis that the development subject of the current alteration would be reinstated as per the warning letter. I also note the issues that were stated to arise in respect of engagement with the City Council on this matter.
- 6.1.3. The proposed alteration relates to a level change to the pathway in front of the permitted retail unit for a distance of c.24m and the provision of a safety barrier as outlined in the drawings submitted. I note the rationale for same as outlined. I would also note that the applicant has submitted a Stage 3 Road Safety Audit in respect of the footpath amendment. It is stated that no safety problems were identified during the audit. They provided a number of observations on the use of tactile paving and a blocked gully which are noted but which are minor design matter. I would also note that given the commercial use of the unit and the increased pedestrian activity arising in front of this unit which adjoins the N59 that a safety barrier would have

been required by the Road Safety Audit as part of the 'works to the public footpath' notwithstanding any extension to the commercial unit.

- 6.1.4. The central consideration in this alteration relates to a change in the level of the footpath for c.24m and the provision of a safety barrier and whether these elements are material. I note the reference in the parent permission to works to the public path and I would also note that the parent permission changed the urban edge of the site both in terms of the location of the building and the nature and level of activity adjoining this pathway as referenced above. The parent permission changed the public realm and facilitated works to the public pathway on this basis. I do not consider that either the level change to the path, which provides for universal access to the commercial unit, and the safety barrier along the edge of the path are material. The safety barrier would have been reasonably expected in the context of the parent permission and the change in level of the pathway is a result of the requirement to provide safe and universal access to the permitted extension to the retail unit. In this regard I do not consider that they could be considered a material alteration of the permission.

## 6.2. Conclusion

- 6.2.1. Having considered the proposed alterations requested and having considered the proposal as granted under ABP-301693-18 I consider that the Board would not have determined ABP-301693-18 differently had the site layout plans, elevations and other details as now proposed in the alterations formed part of ABP-301693-18 at that application stage. I consider it reasonable to conclude that the proposal subject of the request does not constitute the making of a material alteration of the development as granted under ABP-301693-18. Therefore, I consider that the Board can determine under Section 146B(3)(a) that the making of the alteration would not constitute the making of a material alteration of the terms of the development concerned and in that 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.
- 6.2.2. I have considered the provisions of s.146B(2)(b) which provides for, at the Board's discretion, the inviting of submissions from persons, including the public. Having considered: the nature, scale and extent of the alteration; the information on file; the nature, scale and extent of the development granted under ABP-301693-18, and the

information on ABP-301693-18 including the submissions from the public, I am of the opinion that the inviting of submissions from the public in this instance is not necessary and is not required for the purposes of the Board determining the matter.

### 6.3. Environmental Impact Assessment

- 6.3.1. As I outline 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.
- 6.3.2. I would also note that the parent application was not accompanied by an EIAR and the Board did not undertake an EIA but rather, as per the Board Order on the parent permission, EIA Screening was undertaken and it was stated that *“the Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening Document submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment. The Board concluded that the proposed development, having regard to its nature and scale, would not be likely to have significant effects on the environment. The Board decided, that an environmental impact assessment report for the proposed development was not necessary”*. The requester outlines that owing to the scale and nature of the proposal, as well as its established use as a footpath, is it not considered to have any significant effect on the environment.
- 6.3.3. However, if the Board are of the opinion that the proposed alterations would constitute a material alteration the provisions of Section 146B(b) apply which require that the requester submit to the Board the information specified in Schedule 7A of the Planning and Development Regulations 2001 as amended unless the information has already been provided. The requester has as part of the Planning and Environmental Report provided the relevant information which details the characteristics of the proposed alterations and the location of same. The report also addresses the characteristics of potential impacts of the alterations noting no change to the permitted scheme. It is concluded that no new considerations arise in relation to impacts on the environment which were not considered in the Environmental Report prepared for the original application which screened the proposal. It is also noted that the proposal comprises works to the levels of a c.24m stretch of footpath to facilitate access to the existing development with no impacts upon the environment considered to be likely. I would concur with this opinion. I consider the

requester's further review of the potential impacts arising from the alterations proposed to be reasonable and robust.

#### 6.4. **Appropriate Assessment**

##### Stage 1 - Screening

- 6.5. Under ABP-301693-18 the Board completed an Appropriate Assessment Screening exercise in relation to Natura 2000 sites and accepted and adopted the screening assessment stating in the Board Order that *"the Board noted the Appropriate Assessment Screening Report submitted by the applicant and the Appropriate Assessment Screening determination carried out by the Inspector. The Board concurred with the Inspector's determination and adopted the conclusions and recommendations in this regard. The Board was therefore satisfied, having regard to the nature, location and scale of the subject development, that the construction of the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any other European sites, in view of the sites' conservation objectives"*.
- 6.6. The requester has submitted an AA Screening Report in relation to the alterations that are the subject of this section 146B request. The sites that were subject of the AA Screening in the parent application are again considered in the context of the alterations subject of this section 146B request. The AA Screening report on file states that there are no Natura 2000 sites within the zone of influence of the development and concludes that there is no pathway for the proposal to result in any significant effect on any European site. It is stated that it can be concluded beyond reasonable scientific doubt, in view of best scientific knowledge, on basis of objective information and in light of the conservation objectives of the relevant European sites, that the proposed project individually or in combination with other plans and projects, will not have a significant effect on any European site.
- 6.7. Having considered the Board's determination on Appropriate Assessment Screening on ABP-301693-18, Section 10.11 of the Inspector's Report on ABP-301693-18, the nature, scale and extent of the proposed alterations relative to the development subject of and approved under ABP-301693-18, and the information on file including the AA Screening Report prepared in respect of the subject alterations, 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.

## 7.0 RECOMMENDATION

- 7.1. 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 to the terms of the development as granted permission under ABP-301693-18.

(Draft Order for the Board's consideration provided below)

### DRAFT ORDER

REQUEST received by An Bord Pleanála on the 25th day of February 2021 from NTM ROI Seed Capital LP care of John Spain Associates, 39 Fitzwilliam Place, Dublin 2 under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of a strategic housing development the subject of a permission granted under An Bord Pleanála reference number ABP-301693-18.

WHEREAS the Board made a decision to grant permission, subject to conditions, for the above-mentioned development by order dated the 4th day of September 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:

- Works at the footpath at the northern perimeter of the site at the Upper Newcastle Road to improve and provide safe pedestrian access to the permitted retail/café unit at Block A

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 received by An Bord Pleanála on the 25th day of February 2021.

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Una Crosse

Senior Planning Inspector

May 2021