



An
Bord
Pleanála

Inspector's Report

ABP-309632-21

Development

Section 146B application for alterations to condition 1 of previously permitted ABP-300325-17 to allow alterations to the screening provided on windows of the southern elevation of Block D and associated works.

Location

The Former Crow's Nest Site,
Junction of Carrigrohane Road and
Victoria Cross Road, Cork.

Planning Authority

Cork City Council

Requester

University College Cork

Type of Application

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

Inspector

Una Crosse

1.0 Introduction

- 1.1. An application has been made to alter the permission granted for a student accommodation development at the Former Crow's Nest site, Junction of Carrigrohane Road and Victoria Cross Road, Cork under Section 146B of the Planning and Development Act, 2000, as amended. The development was permitted under Ref. ABP-300325-17 on 6 March 2018.
- 1.2. The proposed alteration is for the provision of a new screening proposal to the windows on the southern elevation of Block D of the permitted development.
- 1.3. The request includes correspondence from Cork City Council dated 3rd May 2020 in respect of a compliance submission for the proposed development which details acceptability of the details submitted in relation to Conditions 2(a), 2(b) and 4. It states that in relation to the alterations to the screening on the south facing façade of Block D – the alterations are deemed to be outside the scope of Condition 1 of the ABP decision as the alteration was not something required as per a condition of the decision and are a material alteration to the permitted development. It is stated that as such the proposed alteration cannot be addressed by way of a compliance submission.
- 1.4. The request submission includes the following:
 - Alterations Report
 - Drawings as follows:
 - Site Local Map (1:1000)
 - CN-P-031-P02 – Context South Elevation, as permitted
 - CN-G-161.1 – Context South Elevation, as proposed
 - CN-G-170-3-2 – Block D South Elevation, as proposed
 - CN-G-200.1 – Window Screening Detail, as permitted
 - CN-G-200.2 – Window Screening Detail, as proposed
 - CN-G-166-3-2 – Block B South Elevation (compliance drawing as agreed with Cork City Council)

- CN-G-170-2-2 – Block D East Elevation (compliance drawing as agreed with Cork City Council)
- Letter from Cork City Council

2.0 Planning History/Permitted Development

2.1. Ref. ABP-300325-17

Permission was granted by the Board on 6 March 2018 (Ref. ABP-300325-17) for a student accommodation development under the provisions of the SHD legislation for the following:

- Demolition of the existing structures onsite (totalling 734 square meters), Crow's Nest public house and restaurant, 4 number two storey dwellings at 1-4 Victoria Terrace and the existing machinery shed and yard.
- Construction of a student accommodation complex with an overall gross floor area of 8,664.1 square meters comprising 4 residential blocks above a single storey podium varying in height from 8 to 10 floors above ground level with a fifth low level gateway block is included at the main entrance onto Victoria Cross comprising one 2 bed apartment, seven 3 bed apartments and 58 x 4 bed apartments, providing a total of 255 bedspaces to be used for student/university related accommodation and ancillary student support facilities located at ground floor level including laundry, administration office and meeting room, common rooms, and communications rooms.
- Healthcare facility/wellness centre (totalling 462.4 sq.m) at ground floor level.
- Commercial/café units at ground floor level of 125.2 sq.m.
- 125 bicycle parking spaces, plant room, switch room and sub-station, and a new vehicular entrance from the Carrigrohane Road to serve as a service entrance and taxi drop-off point, and
- All ancillary works including landscaped areas comprising internal courtyards, a public open space at street level and a private open space at first floor podium level, foul and surface water sewers, works to the public footpath and all other associated site services, site infrastructure and site development works.

The following conditions are of note in the context of the subject request:

Condition 1 of the permission states the following:

The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

Condition 2 of the permission states the following:

The proposed development shall be amended as follows:

(a) Screening shall be provided on the east facing windows on the eastern elevation of Block D as they correspond to the revised plans – First floor 01.022, 01.023, Second Floor 02.031, 02.032, Third Floor 03.031, 03.032, Fourth Floor – 04.031, 04.032, Fifth Floor - 05.031, 05.032, Sixth Floor - 06.031, 06.032, Seventh Floor - 07.031, 07.032, Eighth Floor - 08.021, 08.022, Ninth Floor - 09.011, 09.012.

(b) Block B shall be revised such that screening shall be provided on the windows of bedrooms and common rooms on the southern elevation from first floor and above. Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual and residential amenity.

Condition 4 of the permission states the following:

Details and samples of the materials, colours and textures of all the external finishes to the proposed development including pavement finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

3.0 Proposed Changes

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

- Alteration to the screening proposed on the windows on the south elevation of Block D from that in the permitted development.

4.0 Requester's Submission

The requester's submission can be summarised as follows:

- Purpose and structure of the report outlined.
- Parent permission including conditions 1, 2 & 4 of same outlined.
- Condition 2 required screening be provided on specific areas where screening was not shown in drawings at application stage and Inspector considered potential for overlooking.
- Screening had been shown on southern elevation of Block D comprising of aluminium fins coloured to match the windows and aluminium cladding on outside of the windows to provide a visual baffle from the inside.
- As screening had been proposed for the southern elevation of Block D a condition was not included requiring any additional or amended screening.
- Applicant has been in active compliance discussions with City Council in relation to Conditions 1,2 & 4 including for revised screening on southern elevation of Block D.
- Detailed drawings submitted showing replacement of permitted aluminium fins with a ceramic dotted pattern of fritting to the glass.
- This design alteration came about during construction process when identified that ceramic frit would provide a lighter and less dominant effect from the outside than original fin pattern and from inside would be lighter while still providing privacy and preventing overlooking.
- Amended screening would be consistent with screening proposed for remainder of scheme but City Council deemed the alterations to the screening on the southern elevation of Block D to be outside the scope of Condition 1 of the permission and a material alteration of permitted development.
- Copy of compliance letter from Cork City Council attached.
- Requested that Board alter terms of permitted development to allow screening on southern elevation of Block D (figures 1 & 2 refer).
- No other change proposed to the permitted development and screening treatment now proposed agreed with City Council for those areas specified by the Board in Condition 2.
- Screening permitted (aluminium fins) on south elevation of Block D would be inconsistent with screening agreed for other elevations with ceramic fritting now

proposed considered to be more in keeping with remainder of permitted development, providing a high-quality finish.

- EIA screening undertaken for parent permission with student accommodation not a 'project' or class for purposes of EIA with sub-threshold not considered necessary as adequate measures were proposed to avoid, reduce or mitigate any likely impact.
- Proposed alteration minor in nature and not likely to have significant effects and does not need to be considered under Section 146B(4) of the Act.
- AA screening report prepared for parent application concluding proposal would not impact on conservation objectives of European sites and NIS was not required.
- Board Order confirmed same noting proposal would not be likely to have a significant effect on any European site in view of the sites' conservation objectives.
- Proposal involves minor changes to the screening treatment on southern elevation of Block D with no changes to building layout or number of units or impacts on services with no significant effects on the most proximate European sites with no requirement to prepare an AA screening of the proposed alteration.

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-300325-17 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 permitted development incorporated aluminium fins coloured to match the windows and aluminium cladding on the outside of the of the windows in order to provide a visual baffle from the inside to prevent overlooking and create privacy. This was clearly outlined in the drawings and details accompanying the application documentation.
- 6.1.3. Conditions of the permission sought screening be provided on some windows on the eastern elevation but as it had been proposed on the southern elevation a condition in respect of this elevation was not required. In seeking to comply with this requirement, the applicant proposed to Cork City Council that on those windows in the eastern elevation of Block D and Block B which required screening, a ceramic dotted pattern of fritting to the glass would be proposed. In order to create a consistent approach the applicant also proposed to amend the permitted aluminium fins on the southern elevation of Block D to the same ceramic dotted pattern of fritting to the glass. The City Council accepted the proposed ceramic dotted pattern of fritting to the glass on the eastern elevation of Block D and Block B as this was required by Condition 2 but considered amending the treatment on the southern elevation of Block D to be material as it would be outside the scope of Condition 1.
- 6.1.4. The proposed alteration comprises a change from the inclusion of aluminium fins in front of clear glazing within the window opes to the use of fritted glass in the window ope without the aluminium fins in front of the window ope. The applicant has submitted the compliance drawings agreed with Cork City Council for Block B and Block D eastern elevation. I consider that the fritted glass with the dotted pattern works well and I consider that using the same pattern on the southern elevation of Block D would certainly be more consistent and create a more visually pleasing effect than having a different treatment.
- 6.1.5. The test however is whether altering from the aluminium fin to the fritted glass would be material and in my opinion it would not. The fenestration pattern remains the same on the elevation and while there is a change to the detail on the elevation with the removal of the narrow fins and providing a detailed windowpane a minor alteration and could not in my opinion be considered to be a material alteration. I would also note that the removal of the fins would potentially make the rooms more amenable with more natural light able to penetrate through the opes while maintaining the privacy and preventing overlooking which was the rationale for the screening in the first instance. Therefore, the residential amenity of adjoining residents and future occupants would be maintained.

6.2. Conclusion

- 6.2.1. Having considered the proposed alterations requested and having considered the proposal as granted under ABP-300325-17 I consider that the Board would not have determined ABP-300325-17 differently had the elevations and other details as now proposed in the alterations formed part of ABP-300325-17 at parent 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-300325-17. 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-300325-17, and the information on ABP-300325-17 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 report, supported by the documentation submitted by the applicant, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment*". The requester outlines that student accommodation is not a class for the purposes of EIA. Given the nature of the proposed alteration, amending the treatment of the window opens on one elevation of

one block of the development, I do not consider that there is any doubt in respect of the absence of any significant environmental impacts.

6.4. Appropriate Assessment

6.5. Under ABP-300325-17 the Board completed an Appropriate Assessment Screening exercise in relation to Natura 2000 sites and accepted and adopted the screening assessment and conclusion carried out in the Inspector's report that by itself or in combination with other development in the vicinity, the proposed 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 required.

6.6. The requester has addressed the matter of Appropriate Assessment in the 'Alterations Report' noting that the requirement for an NIS for the parent permission was screened out. On this basis and given the nature of the proposed alteration which seeks to amend the treatment of window opes on one elevation of one block of the development I consider that the matter has been appropriately addressed.

6.7. Having considered the Board's determination on Appropriate Assessment on ABP-300325-17, section 10.7 of the Inspector's Report on ABP-300325-17, the nature, scale and extent of the proposed alteration relative to the development subject of and approved under ABP-300325-17 which itself was not considered likely to have a significant effect, I conclude that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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-300325-17.

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

DRAFT ORDER

REQUEST received by An Bord Pleanála on the 8th day of March 2021 University College Cork care of McCutcheon Halley, 6 Joyce House, Barrack Square, Ballincollig, Co. Cork under section 146B of the Planning and Development Act,

2000, as amended, to alter the terms of the student accommodation development, a strategic housing development the subject of a permission granted under An Bord Pleanála reference number ABP-300325-17.

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

- Alterations to the screening proposed on windows on the southern elevation of Block D.

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 8th day of March 2021.

Una Crosse

Senior Planning Inspector

May 2021

