



An
Bord
Pleanála

S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016

Inspector's Report ABP-310271-21

Strategic Housing Development

Amendments to the internal layout of the ground floor of the neighbourhood centre and provision of pump station within the public open space of previously permitted strategic housing development ABP-305058-19.

Location

Lands at Southern Cross Road, Bray Co. Wicklow.

Planning Authority

Wicklow County Council

Applicant

1 Southern Cross Lands Ltd.

Inspector

Stephen Rhys Thomas

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1.0 Introduction

This is an assessment of a request for proposed alterations submitted under section 146B of the Planning and Development Act 2000 to a permitted strategic housing development permitted by the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

2.0 Site Location and Description

2.1. The Inspector's Report relating to ABP-305058-19 describes the site as follows:

The subject site, that has a stated area of 3.57 hectares, is located about 3km south of Bray Town Centre on the Southern Cross Road. Bray is a large town, south of Dublin and situated at the northern end of County Wicklow.

The site is bounded to the north by the rear gardens of Mountainview Drive housing estate, to the south by the Southern Cross Road (R768), to the east by undeveloped lands zoned for employment use (SLO6) and to the west by Árd na Gréine road and residential dwellings further to the west. The area north and west of the Southern Cross Road is characterised by traditional cul-de-sac residential development. To the south of the Southern Cross Road there is an area of employment uses located in an IDA Business Park, directly south of the subject site.

The entire site has been cleared of all major standing vegetation, specifically the lands to the south west of the subject site are currently undergoing construction works associated with a supermarket development. The southern boundary of the site comprises a loosely grassed bank. A pedestrian footpath and wide grass verge separate the site from the road. A bus lay-by and bus shelter are also located on the road to the front of the site. The site is undulating with a moderate level change from the road edge onto the site and across the middle of the site.

3.0 Planning History

ABP-305058-19 - Permission was granted by the Board for the construction of 208 dwellings, crèche and retail/commercial units, the detail comprises:

Parameter	Site Proposal
Application Site	3.57 ha
No. of Units	208 30 houses 178 apartments (including duplex units)
Unit Breakdown	18 – three bed houses 12 – four bed houses 24 – one bed apartments 147 – two bed apartments 7 – three bed apartments
Other Uses	Childcare Facility - 360 sqm Community Service Units - 438 sqm Retail Units - 515 sqm
Car Parking	282 (amended by condition 3 to 185 spaces)
Bicycle Parking	438 spaces
Vehicular Access	Single access point from the Southern Cross Road.
Part V	21 units
Density	58 units/ha

- 3.1. The submitted request is for amendments to the internal layout of the ground floor of the neighbourhood centre and the provision of a pump station within the public open space. Permission was granted by the Board, subject to 26 conditions, on 12th November 2019 under the Strategic Housing Development provisions. The permission was granted after the Board concluded that an environmental impact assessment report for the proposed development was not necessary, and that after screening for appropriate assessment concluded that a Stage 2 Appropriate Assessment was not required.

3.2. The following conditions are of note:

1. 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, such issues may be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

13. (a) All foul sewage and soiled water shall be discharged to the public foul sewer.

(b) Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

Reason: In the interest of public health.

14. The applicant or developer shall enter into water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

15. The landscaping scheme as submitted to An Bord Pleanála shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

4.0 **Proposed Changes**

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

1. Amendments to the internal layout of the ground floor of the neighbourhood centre. The transferal of retail space at unit 3 to childcare use and the change of retail unit 2 to use as veterinary clinic.
2. The provision of a pump station on an area of 48 sqm of hardstanding behind hedged screening within the public open space.

5.0 Requester's Submission

5.1. The requester's submission can be summarised as follows:

Internal Changes – Neighbourhood Centre

Changes to the internal layout of the ground floor of the neighbourhood centre, relate to the amalgamation of retail unit 3 with the crèche. The crèche use will increase by 141 sqm to a total floorspace of 501 sqm, space for 84 children. Flexibility in the terms of use for retail unit 2 to retail or veterinary clinic. The site is zoned 'neighbourhood centre' under the Bray Municipal District LAP 2018, health and ancillary uses would be considered appropriate at this location. The proposed amendments to the ground floor units 2 and 3 of the neighbourhood centre will not alter the:

- Permitted building envelope of the neighbourhood centre.
- Overall footprint or floor area within the neighbourhood centre.
- Internal first floor layout of the neighbourhood centre.
- Permitted elevations of the neighbourhood centre.
- Landscaping around the neighbourhood centre or within the wider development area.

Retail Unit 1, the outdoor creche area and permitted car parking spaces remain unchanged.

Pump Station

After consultation with Irish Water, a capacity issue in the network was identified. An optimal design solution was agreed and it is to provide a pump station within the site to serve the permitted development. The proposed amendment relates to the provision of a pump station and two associated kiosks within the central public open

space. The infrastructure will comprise an underground tank, two kiosks (2m and 0.8m high), and hardstanding area. A revised landscape plan has been prepared and the relocation of a pathway has allowed the play space and MUGA to remain as permitted under ABP 305058-19. The provision of this pump station and kiosks will be integrated into the landscaping and are minor in nature and will not be a material alteration of the development.

The proposed modification minor in nature and will not materially affect the overall layout of the development. This is a non-material amendment which will not impact on either any existing neighbours to the site or future occupants of the proposed development.

- The increased creche area will allow the childcare facility to cater for more children and ensure the creche will be a sustainable and viable business in the long-term. The creche will cater for both the residents of the permitted SHD development and the wider area.
- The flexibility in the use of Retail Unit 02 will ensure that the retail unit can be rented out to an available retailer or veterinary clinic.
- The proposed pumping station will ensure that the appropriate infrastructure is provided for the permitted development.

The requester as included the following documentation: covering letter/report, schedule of areas, architectural, landscaping and engineering drawings, scope of works and car parking requirements report.

6.0 **Legislative Basis**

- 6.1. 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.

- 6.2. 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”.
- 6.3. 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”.
- 6.4. 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”.

7.0 Assessment

7.1. Consideration of Materiality

- 7.1.1. As indicated in the preceding section, the first consideration in relation to this request to alter the terms of ABP-305058-19 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.
- 7.1.2. The permitted development allowed for a neighbourhood centre, a two storey standalone block with a combination of commercial (retail and crèche) and community health/office space. These are a combination of uses defined as Class 1, 3 and 8 of the Planning and Development Regulations 2001 (as amended). A detailed landscaping plan was also prepared and condition 15 requires its completion in accordance with the plans submitted. The proposed location of the pump station in this request will be on a large area designated as kickabout space defined by formal hedges and ornamental planting. Other relevant conditions relate to water services, conditions 13 and 14 refer. Lastly, condition 1 refers to the carrying out and completion of development in accordance with the plans and particulars lodged with the application.
- 7.1.3. The proposed alteration in relation to the uses within the neighbourhood centre will not alter its external appearance in any way and only minor internal re-arrangement will take place. In terms of the uses now planned for the neighbourhood centre, the childcare use will expand and a retail use will offer flexibility as a medical use (veterinary). These uses have already been permitted on the site, a community medical unit is located on the first floor, so there is no new use being introduced.
- 7.1.4. The test however is whether altering the uses within the neighbourhood centre would be material and in my opinion it would not. The neighbourhood centre was designed to accommodate a range of uses that are permitted within the current land use zoning. The transfer of retail floorspace to the floor area of the crèche would bring about an increase in clientele and this can be accommodated for on the site in terms of access and parking because the former retail use of unit 03 will not be advanced. The flexibility to change a retail unit to medical/veterinary would operate in a similar

fashion to a retail unit and again access and parking arrangements remain the same. There will be no changes to the external appearance of the neighbourhood centre building, it remains the same. The neighbourhood centre is a standalone building a sufficient distance from residential units and so I anticipate no change to residential amenity as originally assessed. I consider all these changes to be a minor alteration and could not in my opinion be considered to be a material alteration.

7.1.5. In terms of the location and installation of a pump station in an area of proposed public open space on land zoned new residential/neighbourhood centre in the LAP, I note the requirements of condition 13 and 14 that relate to public health and the safe disposal of foul sewage. I note the requirements of Irish Water and the need for a suitable solution to waste water services. In this regard, post permission, a capacity issue at the planned connection point with a 225mm pipe was identified by Irish Water. The solution reached with Irish Water is to connect to a 375mm pipe west of the site, but this requires a pump station to overcome a change in level. Irish Water have confirmed the suitability of the design and have issued the Connection Offer for the development. Foul sewage will still leave the site via the Irish Water network as planned, permitted and required by conditions 13 and 14 in the Board Order of ABP-305058-19.

7.1.6. I note the specifications of the pump station that requires an area of hardstanding (8m x 6m, an area of 48 sqm), two kiosks (one 0.8m high and the other 2m high), a 6m high vent pipe, underground tank and the reposition of a footpath (8m in length). The small compound has been designed with a comprehensive and revised landscaping plan to ensure its integration into planned public open space. The above ground structures are minimal in scale and the design and specifications of the pump station were carried out in consultation with Irish Water and a connection offer has issued based upon these plans. I do not consider the pump station compound to be an obtrusive, incongruous, or out of place development. I anticipate no adverse residential amenity impacts from its design and scale, and I am satisfied that the overall landscape plan for the site remains unaffected and of a high quality. The landscape plan has been amended to redirect a small length of footpath further westwards and hedging will screen all sides of the proposed compound. There will be a very minor loss to the overall planned public open space (from 4,300 sqm to 4,252 sqm, just over 1%) and key items such as the multi-use games area,

playground, and primary circulation/green route all remain as planned. The Board should note that the entire site is zoned new residential and neighbourhood centre under the Bray Municipal District Local Area Plan 2018 – 2024, no part of the subject site is identified for open space objectives in that plan. Foul sewage will still leave the site via the Irish Water network as planned. I consider all of these changes to be a minor alteration and could not in my opinion be considered to be a material alteration. All of these changes have been designed to ensure, the residential amenity of future occupants would be maintained.

7.2. Conclusion

- 7.2.1. Having considered the proposed alterations requested and having considered the proposal as granted under ABP-305058-19 I consider that the Board would not have determined ABP-305058-19 differently had the use of retail unit 2 been for a veterinary clinic or that retail unit 3 was part of a larger crèche or that a pump station was planned in an area of planned public open space, as now proposed, if the alterations had formed part of ABP-305058-19 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-305058-19. 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.
- 7.2.2. 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-305058-19, and the information on ABP-305058-19 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.

7.3. Environmental Impact Assessment

- 7.3.1. 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.
- 7.3.2. 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 Statement submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.”. Given the nature of the proposed alterations, amending the use of a retail unit, transferring retail floorspace to childcare use and the installation of a pump station, I do not consider that there is any doubt in respect of the absence of any significant environmental impacts.

7.4. Appropriate Assessment

- 7.4.1. Under ABP-305058-19 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.
- 7.4.2. Having considered the Board’s determination on Appropriate Assessment on ABP-305058-19, section 11 of the Inspector’s Report on ABP-305058-19, the nature, scale and extent of the proposed alterations relative to the development subject of and approved under ABP-305058-19 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.

8.0 Recommendation

- 8.1. I recommend that the Board decides that the making of the alteration which is subject of this request does not constitute the making of a material alteration of the terms of the development as granted permission under ABP-305058-19 and that it makes the alteration under section 146B(3)(a) of the Planning and Development Act, as amended.

DRAFT ORDER

REQUEST received by An Bord Pleanála on the 19th May 2021 from 1 Southern Cross Lands Ltd under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of the Strategic Housing Development at Lands at Southern Cross Road, Bray Co. Wicklow, which is the subject of a permission under An Bord Pleanála reference number ABP-305058-19.

WHEREAS the Board made a decision to grant permission, subject to conditions, for the above-mentioned development by order dated the 12th November 2019,

AND WHEREAS the Board has received a request to alter the terms of the development which is the subject of the permission,

AND WHEREAS the proposed alteration is described as follows:

- Amendments to the internal layout of the ground floor of the neighbourhood centre and provision of a pump station within the public open space of previously permitted strategic housing development ABP-305058-19

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 19th May 2021.

REASONS AND CONSIDERATIONS

Having regard to:

- (i) the nature and scale of the Strategic Housing Development permitted under An Bord Pleanála Reference Number ABP-305058-19 for this site,
- (ii) the screening for appropriate assessment carried out in the course of that application,
- (iii) the limited nature and scale of the alterations, and
- (iv) the absence of any significant new or additional environmental effects (including those in relation to Natura 2000 sites) arising as a result of the proposed alterations, and
- (v) the absence of any new or significant issues relating to the proper planning and sustainable development of the area arising from the proposed alterations,

(vi) the report of the Board's Inspector 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.

Stephen Rhys Thomas
Senior Planning Inspector

6th September 2020