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|  | Memorandum |
| ABP-310753-21 |
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| To: | Rachel Kenny, DP | |
| From: | Karen Hamilton, SPI | |
| Re: | Section 146B application | |
| Date: | 02nd of August 2021 | |
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1. Introduction
   1. A request has been made by Downey Planning, Chartered Town Planners, on behalf of Randelswood Holdings Ltd, to alter the permission granted for a residential development at Lands at Palmerstown Retail Park, Kennelsfort Road Lower, Palmerstown, Dublin 20, under Section 146B of the Planning and Development Act, 2000, as amended.
   2. Permission was granted on 26th of August 2020 under reference ABP-307092-20 for a residential development under the provisions of the SHD legislation for 250 no. Build to Rent (BTR) apartments in 5 no. blocks (ranging from 3-8 storeys over basement in height), with a café and ancillary residential amenity facilities and associated works.
   3. Non-material alterations were approved by the Board under ABP-309899-21 to include elevational changes, apartment layouts, communal spaces, landscaping, basement plan layout and ESB substation. The alterations permitted relate to external and internal alterations to Block A and B and changes to the basement area and communal open space for all Blocks (A-E).
   4. The applicant is making a request to An Bord Pleanála for alterations relating to that development. The alterations in question are set out by the applicant as follows:

* Proposed external and internal alterations to previously permitted Blocks C, D & E only including elevational changes; reduction in site levels; increase in height to accommodate construction method requirements including lift shaft overrun, AOV and parapet; minor increase in footprint/floor plans of Blocks C, D & E to accommodate construction method requirements and revised apartment mix/layouts;
* Proposed alterations to previously permitted apartment layouts and communal spaces within Block C, a proposed additional setback floor (i.e. proposed 7 storey building) comprising 7 no. additional units (6 no. 1 beds and 1 no. 2 bed), with alterations also proposed to the previously permitted apartment unit mix within this block, resulting in an overall increase of 8 no. units in total i.e. from 30 no. 1 beds and 17 no. 2 beds (47 no. units) to now provide 37 no. 1 beds and 18 no. 2 beds (55 no. units);
* Proposed alterations to previously permitted apartment layouts and communal spaces within Block D, a proposed additional setback floor (i.e. proposed 8 storey building) comprising 5 no. additional units (2 no. 1 beds and 3 no. 2 beds), with alterations also proposed to the previously permitted apartment unit mix within this block, resulting in an overall increase of 8 no. units in total i.e. from 33 no. 1 beds and 34 no. 2 beds (67 no. units) to now provide 38 no. 1 beds and 37 no. 2 beds (75 no. units);
* Proposed alterations to previously permitted apartment layouts and communal spaces within Block E, a proposed additional setback floor (i.e. proposed 9 storey building) comprising 7 no. additional units (6 no. 1 beds and 1 no. 2 bed), with alterations also proposed to the previously permitted apartment unit mix within this block, resulting in an overall increase of 8 no. units in total i.e. from 40 no. 1 beds and 23 no. 2 beds (63 no. units) to now provide 47 no. 1 beds and 24 no. 2 beds (71 no. units). This results in an overall total increase of 24 no. units from the previously permitted 250 no. units (134 no. 1 beds and 116 no. 2 beds) to now provide 274 no. units (147 no. 1 beds and 127 no. 2 beds);
* Proposed alterations to previously permitted ESB sub-station.
* Proposed alterations to previously permitted landscaping proposals to accommodate minor increase in footprint of Blocks C, D & E.
* Proposed alterations to previously permitted basement plan layout and configuration including minor increase in size and provision of an additional 24 bicycle parking spaces and 26 car parking spaces.
  1. The planning documentation does not conclude or provide an opinion if the amendments proposed are material or non-material. It is submitted that no new considerations arise in relation to the impacts on the environment which were not considered in the assessment for the proposed SHD scheme ABP-307092-20 and ABP-309899-21.
  2. The application is also accompanied by*, inter alia*, the following documents:
* Planning Report,
* Architecture- Urban Design Statement,
* Eye Level Photomontages,
* Updated Housing Quality Assessment (HQA),
* Potential Daylight and Sunlight Impact of Proposed Alterations,
* Traffic and Transport Assessment,
* Mobility Management Plan,
* Stage 1/ 2 Flood risk Assessment Report,
* Landscape Report,
* Environmental Impact Screening Report,
* Appropriate Assessment Screening Report.

1. Legislation

Section 148B

* 1. S146B(1) Subject to *subsections (2) to (8) and section 146C*, the Board may, on the request of any person who is carrying out or intending to carry out a strategic infrastructure development, alter the terms of the development the subject of a planning permission, approval or other consent granted under this Act.

(2) (a) 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.

(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.

* 1. Section 146B(3)(b) 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), 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.

(4) Before making a F466 **[**determination under *subsection (3)(b)(ii)***]**, the Board shall determine whether the extent and character of—

(*a*) the alteration requested under *subsection (1)*, and

(*b*) any alternative alteration it is considering under F467 **[***subsection (3)(b)(ii)(II)***]**

are such that the alteration, were it to be made, would be likely to have significant effects on the environment (and, for this purpose, the Board shall have reached a final decision as to what is the extent and character of any alternative alteration the making of which it is so considering).

(5) If the Board determines that the making of either kind of alteration referred to in F469**[**in *subsection (3)(b)(ii)***]**—

(*a*) is not likely to have significant effects on the environment, it shall proceed to make a determination under F470**[***subsection (3)(b)(ii)***]**, or

(*b*) is likely to have such effects, the provisions of *section 146C* shall apply.

(8) (a) Before making a determination under F474[a determination under subsection

(3)(b)(ii)] or (4), the Board shall—

(i) make, or require the person who made the request concerned under subsection (1) to make, such information relating to that request available for inspection for such period,

(ii) notify, or require that person to notify, such person, such class of person or the public (as the Board considers appropriate) that the information is so available, and

(iii) invite, or require that person to invite, submissions or observations (from any foregoing person or, as appropriate, members of the public) to be made to it in relation to that request within such period,

as the Board determines and, in the case of a requirement under any of the preceding subparagraphs, specifies in the requirement; such a requirement may specify the means by which the thing to which it relates is to be done.

Section 146(C)

146C.— (1) This section applies to a case where the determination of the Board under section 146B(4) is that the making of either kind of alteration referred to in F477[section 146B(3)(b)(ii)] is likely to have significant effects on the environment.

1. Proposed Alterations
   1. **Overview**

The applicant in their submission has elaborated on the proposed alterations and how they differ from the parent permission in terms of height, unit numbers, unit mix, parking and amenity space. Reference is included to both the original permitted scheme ABP-307092-20 and the recent alterations permitted under ABP-309899-21.

Overall, the alterations relate to 3 no. Blocks (C, D & E) and may be summarised as follows:

* The number of units has increased by 24 units, from permitted 250 units to 274 units.
* The change in the mix of units to include an increase of 19 no one bed units (from 103 to 122) and an increase of 5 no 2 bed units (from 74 to 79) with a total of 147 no. 1 beds and 127 no. 2 beds.
* Car parking spaces have increased by 26 no. spaces and bicycle spaces increased by 24 no. spaces and increase basement to accommodate changes.
* Increase in the height of all Blocks (C, D & E) to accommodate and additional floor and lift shaft overrun, AOV and parapet.
* Minor increase in the footprint of all Blocks (C, D & E) to accommodate construction method requirements.
* Residential Amenity area is to remain the same and includes the increase in space permitted under alterations ABP- 309899-21.

I have elaborated further on each aspect of the proposed alterations hereunder, for clarity.

* 1. **Alterations to Previously Permitted Blocks C, D & E**

Block C alterations include:

* Additional set back floor (increase from 6 storey to 7 storey).
* Increase in height to accommodate additional floor and construction method requirements including lift shaft overrun (825mm).
* 7 no. additional units (6 no. 1 beds and 1 no. 2 bed).
* Change to the previously permitted mix to include 8 no units (previously 57 no. units and now 55 no. units).

Block D alterations include:

* Additional set back floor (increase from 7storey to 8 storey).
* Increase in height to accommodate additional floor and construction method requirements including lift shaft overrun (825mm).
* 5 no. additional units (2no. 1 bed and 3 no. 2 beds).
* Change to previously permitted mix to include 8 no. additional units (previously 67 no units and now 75 no units).

Block E alterations include:

* Additional set back floor (increase from 8 storey to 9 storey).
* Increase in height to accommodate additional floor and construction method requirements including lift shaft overrun (825mm).
* 7 no. additional units (6 no. 1 beds and 2 no. 2 beds).
* Change to previously permitted mix to include 8 no. additional units (previously 63 no units to 71 no. units).
  1. **Alterations to Site Levels and Increase in Height**

The Architectural- Urban Design Statement includes a breakdown of the height changes. Each apartment block (C, D & E) will have an extra floor and additional height to accommodate the lift shaft overrun, AOV and parapet. Overall, each of the blocks (C, D & E) will increase in height by c. 6m although having regard to the site level changes proposed the alterations to the Finished Floor Levels (FFL) of each of the Blocks will be + c.6.2m for C, +c.6.8m for D and + c.6.8m for E.

An updated verified views/ photomontage is included. Ten views are chosen for the photomontages. Views 1 & 2 provide an illustration of the impact of the alterations from the Lucan Road to the north include the existing dwellings on the Lucan Road Old. These photomontages are taken at eye level. Dwellings in Rose View estate are not included in any photomontages.

Objective H7 and UC6 SLO1 of the South Dublin County Development Plan 2016 -2022, restricts heights to 3 storeys. The Board, in its assessment of the original permission ABP-307092-20 undertook a material contravention of the development plan and had regard to Criteria 3.2 of the Urban Development and Building Heights Guidelines for Planning Authorities and the photomontages submitted.

An updated Daylight Sunlight Internal Light Analysis Report accompanied the amendments. The analysis uses the BRE guidance document and the BS 8026-2 2008 to assess the sunlight and daylight. All the rooms in the ground, first and second floors of Block C, D & E were assessed, and all can meet the minimum Annual Daylight Factor (ADF) standards for habitable rooms (2% for kitchens and living rooms, 1.5% for living rooms and 1% for bedrooms). In relation to the impact on the adjoining residential amenity, rest point locations on Rose View 4a & 5a are chosen as those which may be impacted. All the windows assessed will have no perceivable reduction in Vertical Sky Component (VSC) as the minimum criteria can be met (the existing VSC is in excess of 27%). One of the dining/ kitchen windows in 5a Rose View will not meet the Annual Probable Sunlight Hours (APSH) in the winter. This APSH assessment was not included in the original daylight and sunlight impact assessment.

* 1. **Elevational Changes**

Design alterations to each of the blocks include additional floors for the penthouses with overhanging balconies on the external private amenity space. A new material (bronze aluminium cladding) is included for the new floor. The lift shaft overrun, AOV and parapet also alters the overall appearance of the 3 no blocks. Minor alterations to the elevations on Blocks C, D and E are proposed to accommodate the changes to the internal layouts and apartment mix.

The main alterations relate to the additional floor with the introduction of a new design element. The applicant’s Architectural- Urban Design Statement provides an overview of the design concept and considers the new scheme is fully compliant with the principles of the Universal Design and the 12 criteria of the Urban Design Manual.

* 1. **Proposed Alterations to Previously Permitted Landscaping Proposals &** **Alterations to the ESB Sub-station**

Condition No. 11 of the permitted schemes in ABP 307092-20 requires the open space area to be landscaped in accordance with the scheme submitted and the design of the children’s play areas to be submitted for the written approval of the PA and designed in accordance with relevant standards. Alterations permitted to the landscape scheme under ABP 309899-21 were minor in nature and mostly relating to the integration of vents for the basement parking area.

The applicant states that landscaping alterations to the overall scheme are included to accommodate the increase in footprint of Blocks C, D & E. The details included are, *inter alia*:

* New bike parking shelters.
* List of trees species and examples of ornamental planting.
* Examples of paving materials.
* Details for the 2 no children’s play area (proposed equipment, ground finishes etc);
* Boundary treatments.

The Landscape report notes these details and further elaborates on four general planting areas with a green boundary fringe, Communal open space, public open space and roof gardens.

The ESB substation is located along the north of the site, beside the boundary wall. The building is 2.7m in height with a brick finish.

* 1. **Alterations to the layout, and Change to Unit Mix**

The applicant states in the submitted documentation that the number of units has increased from permitted 250 units to 274 units.

The unit mix permitted for Block C, D & E includes 103 one bed units and 74 two bed units. The units mix proposed includes 122 one bed units and 79 two bed units. The “Planning Report” notes compliance with SPPR 1-8 of the *Sustainable Urban Housing: Design Standards for New Apartments’*. SPPR 8 removes any restriction on dwelling mix. Two additional units in Block C at 6th floor Level are proposed for Part V compliance.

The majority of these additional units are accommodated in the addition floors in Blocks C, D & E. Having regard to construction methods the applicant has applied for an increase in the floorspace of each block, where the footprint of C and D is increased by 15m2 and the footprint of Block D by 18m2. Overall, corridors are reduced in size to 1250mm, smoke shafts included, balconies made deeper to accommodate upstand beam increase and additional insulation included. The applicant submits all alterations are design in accordance with the development plan standards and ‘*Sustainable Urban Housing: Design Standards for New Apartments’* Guidelines.

* 1. **Car Parking and Bicycle Parking and Basement Alterations.**

An increase in 26 no. car parking spaces (from 125 no. spaces to 151 no. spaces) and an increase of 24 no. cycle parking spaces.

The application is accompanied by a Traffic and Transport Assessment which includes an assessment of the incremental impact of the additional 24 no units proposed and concludes there is no adverse impact on the road network.

No alterations are proposed to the vehicular, pedestrian or cycle accesses into or throughout the site.

In relation to the cycle parking spaces, the initial application ABP-307092-20 includes 276 no. spaces. No alterations to this quantum of cycle spaces were proposed in the alterations in ABP-309899-21. The proposed amendments include an additional 24 no. space. The Traffic and Transport Assessment notes 290 cycle parking spaces provided which is 10 no. cycle parking spaces less than the supporting documentation states. The applicant submits the cycle parking provision is in excess of the development plan requirements for 84 spaces.

Alterations to the basement are permitted under ABP 309899-21 and include alterations to the size and layout of the basement. An increase in the size of the basement, under Block E is included for additional parking spaces.

* 1. **Mobility Management Plan**

Condition No 16 required the submission of a Mobility Management Strategy to be submitted to and agreed by the planning authority. Where applicable compliance with the DMURS Interim Advice Note – Covid Pandemic Response (May, 2020) was required.

A Mobility Management Plan is submitted and includes an assessment of the characteristics of the proposed development, an analysis of the travel patterns and targets for modal shifts. Mobility Management measures integrated into the scheme include appointing a Mobility Management Coordinator (MMC) a welcome package for new tenants, new website and promotion of sustainable forms of travel.

* 1. **Residential Amenity Facilities**

In terms of residential amenity provided to comply with SSPR 7 of the “*Sustainable urban Housing: Design Standards for New Apartments”*, the applicant sets out in the planning report that the increase in residential amenity proposed under the alterations for (change in plant and gym in the basement of Block A for use as residential amenity).

The applicant notes there was 9 no units permitted in the original permission with no private amenity space (6 of which are in Block D). The proposed additional setback on Block D includes 1 additional unit without private amenity space. The applicant refers to the apartment guidelines in relation to resident amenity facilities and alterations permitted under ABP-309899-20.

The quantum of total residential amenity facilities for the overall BTR scheme is not included.

* 1. **Alteration to Basement and Site Levels**

The applicant states that alterations to the finished floor levels of the buildings is necessary to accommodate minor revisions to the proposed invert levels of the sewers, manholes and chambers serving the permitted scheme. No changes to the sewer designs are proposed.

An updated Stage 1/ 2 Flood Risk Assessment Report accompanied the alterations and concluded that although the residential use would be classified as highly vulnerable the likelihood of flooding would be extremely low and the site is in Flood Zone C.

1. Conclusion
   1. Are the Changes Material?

I consider that the proposed alterations are material. The alterations result in an increase in the number of apartments permitted by 25, with the alterations resulting in a change in the permitted unit mix, an impact on the layout and quantum of car parking and cycle parking, increased heights and associated design alterations to Blocks C, D and E and the introduction of new materials. Such alterations would give rise to impacts on the development and on the surrounding area that would require a level of planning assessment and consultation above that previously considered for a lesser number of units. It can be concluded, therefore, that the Board would have considered the relevant planning issues differently to a material extent, had the development as now proposed formed part of the original planning application.

I have considered the provisions of Section 146B(2)(b) which provides for, at the Board’s discretion, the inviting of submissions from persons, including the public, in determining whether the matter is material. Having regard to the increase height and new documentation submitted relating to the daylight and sunlight assessment, I consider the terms of section146B (8) apply. Having considered the nature, scale and extent of the alterations and the nature, scale and extent of the development granted under ABP-307092-20 and ABP-309899-21, I am of the opinion that the inviting of submissions from the public, in this instance is not required for the purposes of the Board determining whether the matter is material.

Prior to making a determination on the proposed alterations as allowed for under section 146B(3)(b)(ii), section 146B(8)(a) of the act applies.

Nature and extent of alteration and how would it affect the environment

An Environmental Impact Assessment (EIA) Screening Report was submitted with the original application (ABP-307092-21) which concluded that an Environmental Impact Assessment Report was not necessary. An EIA Screening report was also submitted with the proposed amendments under ABP-309899-21 which concluded that having regard to the nature, scale and location of the proposed development, by itself or in combination with other plans and projects, is not likely to have significant effects on the environment, it was considered that an EIA was not required. I note the Inspector’s Report and the Board’s Direction on both the original application and the amendments, that the proposed development would not be likely to have significant potential effects on the environment.

An Appropriate Assessment Screening Report was submitted under ABP-307092-20 and the Board carried out an Appropriate Assessment screening of the implications of the proposed development for the nearby European sites of Rye Water Valley/Carton SAC (site code 001398), Glenmasmole River Valley SAC (site code 001209), South Dublin Bay and River Tolka Estuary SAC (site code 000210), South Dublin Bay and River Tolka Estuary SPA (site code 004024), North Bull Island SPA (site code 004006), North Dublin Bay SAC (site code 000206), Wicklow Mountains SPA (site code 004040), Wicklow Mountains SAC (site code 002122), in view of the sites’ conservation objectives. The Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the sites’ conversation objectives. A revised screening report accompanied the proposed amendments under ABP-309899-21 which concluded that given the nature of the proposed alterations they will not, either individually or cumulatively in combination with the other identified plan or projects, adversely effect the integrity of any European Site.

The applicant has submitted a revised EIA screening integrating Schedule 7A information, and an AA screening Report incorporating the alterations into both assessments. The reports consider there will, overall, be no significant effects on the environment and that there is no potential that the proposed development could have any significant effect on any European site either in itself or in combination with any other plan or project.

Prior to making a determination, as to whether such alterations would be likely to have significant effects on the environment, section 146B(8)(a) applies.

* 1. Public Consultation

Given the materiality of the proposed alterations, as decided upon under section 146B(2)(a), and prior to making a determination under section 146B(3)(b)(ii) and prior to making a determination under section 146B(4), it is recommended, as per section 146B(8)(a), that the Board direct the requester to publish notices of the proposed request, to make information regarding the request available for inspection, and to invite submissions upon it to be made to the Board.

The information which is made available should include:

* A planning report which sets out any changes to the daylight and sunlight on the existing residential properties between the permitted scheme and the proposed alterations.
* A report that sets out how the amended development would comply with the various requirements of the 2018 Guidelines on Design Standards for New Apartments, including its specific planning policy requirements and the quantum of residential amenity space for the entire scheme.
* Additional Computer-Generated Images (CGIs) illustrating the proposed development and the full context of the rear of the properties along Old Lucan Road and Rose View, above eye level.
* Full specification of type and location of all planting proposed.
* Details of all changes to bicycle parking.

The information which is made available should also include a set of drawings that clearly compares and contrasts the proposed alterations with the development as permitted.

The planning authority should also be informed of the request and invited to make submissions upon it.