



An
Bord
Pleanála

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

Inspector's Report ABP-311164-21

Strategic Housing Development

Alterations to previously permitted development ABP-305619-19 to include the amalgamation of unit no. 2 and unit no. 3 and the inclusion of an area for provision of an off-licence.

Location

Site within the Townlands of Portmarnock and Maynetown, Portmarnock, Co. Dublin

Planning Authority

Fingal County Council.

Applicant

St. Marnock's II Designated Activity Company

Date of Site Inspection

13th January 2020

Inspector

Ronan O'Connor

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1.0 Introduction

- 1.1. 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-305619-19 describes the site as follows:

The site is part of an emerging suburban area in north Co. Dublin. It is 12km north-east of the city centre beside the railway station at Portmarnock, c900m west of the village centre and c500m west of the head of the estuary at Baldoyle. It has a stated area of 4.59ha and consists of 2 pieces of non-contiguous areas of land, which are generally flat in nature. One part of the site is on the southern side of Station Road and is bounded by a surface car park serving Portmarnock Rail Station to the west, Station Road to the North, Phase 1B (under construction) of the St. Marnock's Bay development to the east, and the existing St. Marnock's Bay development to the south. A temporary marketing suite for the overall St. Marnock's Bay development is located on the part of the site for the Local Centre. The larger part of the site is c150m to the south along the access road on the far side of the existing housing. It is generally bounded by the St. Marnock's Bay development to the west (referred to as Phase 1A), by Dún Si at St. Marnock's Bay (Phase 1B currently under construction and part complete) to the north, the existing townland boundary/hedgerow to the east and undeveloped LAP lands to the south. Works are ongoing on the land on the eastern side of the access road.

3.0 Planning History

ABP Ref. 305619-19 – Phase 1C- Permission **Granted** under the Strategic Housing Development provisions for a development consisting of 153no. residential units (113no. houses and 40no. apartments), 3no. retail / café / restaurant units, medical unit (i.e. the 'Local Centre') and associated site works all on a site of approximately 4.6 Ha.

ABP Reg. Ref. 311472-21 – Amendments to Phase 1C Local Centre – **Current 146B Application;**

Permission sought by St. Marnock's II Designated Activity Company for alterations to the permitted Phase 1C development, in accordance with section 146B of the Planning and Development Act 2000, as amended. The proposed 'non-material' alterations consist of alterations to house type changes affecting 8 no. units of previously permitted development ABP-305619-19.

4.0 Requested Alterations

- 4.1.1. The proposed alterations will only affect Unit 2 (c. 152.5 sq. m) and Unit 3 (c. 136.4 sq. m) at ground floor level of the permitted Local Centre located on Station Road, adjacent Portmarnock Train Station.
- 4.1.2. The proposed minor alterations include: -
- The amalgamation of Unit 2 (c. 152.5 sq. m) and Unit 3 (c. 136.4 sq. m) by removing the dividing partition wall to create 1no. unit (c. 327 sq. m).
 - Inclusion of an area for the provision of a small off-licence (c. 29.4 sq. m) for the sale of wine, beer and spirits within the amalgamated unit.
- 4.1.3. The request is accompanied by drawings and the following documents: Planning Report; Screening for Appropriate Assessment and Landscape & Biodiversity Statement; Dwgs as per drawing register.

5.0 Requester's Submission

- 5.1. The requester's submission can be summarised as follows:
- Applicant has entered into an agreement with an established operator to lease the Unit 2 and Unit 3. The amalgamation of the units will provide a convenience store of a sufficient scale to serve the immediate community / catchment area (primarily the existing and future residents of St. Marnock's Bay residential area).
 - Inclusion of a small off-licence area (ancillary to the primary retail use) is considered a minor but intrinsic piece of a local convenience store that will provide a suitable offering benefiting existing and future residents. The proposed

off-licence area is located internally within the amalgamated units away from the main entrance of the units so that it is not visible to people passing by.

- There are no changes to the permitted external elevations of the Local Centre permitted under ABP Ref. ABP-305619-19 and no changes to the permitted material finishes are proposed.
- There are no changes to permitted Unit 4 (c. 151 sq. m) at ground floor level of the Local Centre.
- There are no changes to the permitted number of apartments or the size of apartment / private open space located above ground floor level (13 no. in total).
- There are no changes to the permitted public realm adjacent Unit 2 and 3. The landscaping remains as permitted under ABP Ref. ABP-305619-19.
- Proposals will remain consistent with the Fingal County Development Plan 2017-2023 and with the Portmarnock South Local Area Plan 2013.

6.0 Legislative Basis

- 6.1. Section 146B of the Planning and Development Act 2000 (as amended) provides for a person carrying out or intending to carry out a Strategic Housing Development to make a request to alter the terms of a development, the subject of a planning permission under the Act. Section 146B(2)(a) provides that:

As soon as practicable after the making of such a request, the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned.

Section 146B(2)(b):

Before making a decision under this subsection, the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so); the Board shall have regard to any submissions made to it on foot of that invitation.

Section 146B(3)(a):

If the Board decides that the making of the alteration would not constitute the making of a material alteration of the terms of the development concerned, it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration.

The provisions of section 146B(3)(b) to section 146B(9) set out the procedures where the Board decide that the making of the alteration would constitute a material alteration, including section 146B(3)(b) which allows the Board to require the requester to submit the information specified in Schedule 7A of the Planning and Development Regulations 2001 and section 146B(8) which requires that the request shall be made available for inspection and that the requester shall notify certain persons or the public that the information is so available and invite submissions or observations to be made within the specified period.

7.0 Assessment

7.1. Consideration of Materiality

- 7.1.1. The first consideration in relation to this request to alter the terms of ABP-305619-19 is to determine if the making of the alterations would constitute the making of a material alteration of the terms of the Strategic Housing Development as granted. I consider that the substantive issue is whether the requested alterations are materially different compared with those subject to the previous assessment. I consider that the principal potential impacts relating to the requested alterations are compliance with the zoning objectives pertaining to the site and surrounding residential amenity.
- 7.1.2. The Local Centre which is the subject of this application is located within lands which are zoned 'RA – Residential Area' in the current Fingal County Development Plan, the objective of which is to: "Provide for new residential communities subject to the provision of the necessary social and physical infrastructure'. Retail (Convenience ≤ 500 sq. m gfa) is permitted on lands zoned RA – Residential Use.
- 7.1.3. The proposed unit will total 327 sq. m. in area and hence is below the 500 sq. m referred to above, and as such remains permitted in principle on these RA zoned lands. I concur with the view of the applicant that the proposed off-licence area is

ancillary to the primary retail use with the area of the off-licence area occupying an area of c. 29.4 sq. m), equating to approximately 10% of the retail floor area.

Therefore the use is still in accordance with the zoning objective pertaining to the site.

7.1.4. I am not of the opinion that the amalgamation of the two units nor the inclusion of an ancillary off-licence area would have a material impact on surrounding residential amenity, over and above that permitted under 305619-19.

7.1.5. As such, having regard to the submitted plans, elevations and sections, I am satisfied that the requested alterations will not raise any issues in terms of consistency with zoning objectives pertaining to the site nor will the alterations raise any issues in relation to surrounding residential amenity.

7.1.6. Having regard to the above, the alterations are not, in my opinion, material. I am satisfied that the relevant planning issues would not be considered differently to any material extent with the amalgamation of the two units and the inclusion of an ancillary off-licence now proposed, and it is considered that no other planning issues would arise, had the amalgamation of the two units and the inclusion of an ancillary off-licence now proposed formed part of the plans at application stage.

7.2. Conclusion

7.2.1. Having considered the requested alterations and having considered the development permitted under ABP-305619-19, I consider that the Board would not have determined ABP-305619-19 any differently had the requested alterations been included in that development at 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-305619-19. 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-305619-19, and the information on ABP-305619-19 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 outlined above, I consider that the requested 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.

7.4. Appropriate Assessment

- 7.4.1. Under ABP-305619-19, the Board completed an Appropriate Assessment. In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European sites, having regard to the sites' conservation objectives. In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of European sites in view of the sites' conservation objectives.
- 7.4.2. Having considered the Board's determination on Appropriate Assessment on ABP-305619-19 and the submitted AA Screening Report dated 13th July 2021, the nature, scale and extent of the requested alterations relative to the development subject of and approved under ABP-305619-19-19, 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-305991-19 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 16th August 2021 from St. Marnock's II Designated Activity Company under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of the Strategic Housing Development at Site with the Townlands of Portmarnock and Maynetown, which is the subject of a permission under An Bord Pleanála reference number ABP-305619-19.

WHEREAS the Board made a decision to grant permission, subject to conditions, for the above-mentioned development by order dated the 30th January 2020,

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:

The proposed alterations will only affect Unit 2 (c. 152.5 sq. m) and Unit 3 (c. 136.4 sq. m) at ground floor level of the permitted Local Centre located on Station Road, adjacent Portmarnock Train Station.

The proposed minor alterations include: -

- The amalgamation of Unit 2 (c. 152.5 sq. m) and Unit 3 (c. 136.4 sq. m) by removing the dividing partition wall to create 1no. unit (c. 327 sq. m).
- Inclusion of an area for the provision of a small off-licence (c. 29.4 sq. m) for the sale of wine, beer and spirits within the amalgamated unit.

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 16th August 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-305619-19 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.

Ronan O'Connor
Senior Planning Inspector
6th April 2022