



An  
Bord  
Pleanála

# S. 146B of Planning and Development (Housing) and Residential Tenancies Act 2016

## Inspector's Report ABP-311499-21

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### Strategic Housing Development

Alterations to previously permitted strategic housing development ABP-306569-20 to include design changes to permitted scheme, change to residential mix and changes to fenestration

### Location

42A Parkgate Street, Dublin 8

### Planning Authority

Dublin City Council

### Prospective Applicant

Ruirside Developments Ltd

### Type of Application

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

### Inspector

L. Dockery

## 1.0 Introduction

- 1.1 A request has been made to alter the terms of a development the subject of a planning permission for a mixed-use development at 42A Parkgate Street, Dublin 8 under Section 146B of the Planning and Development Act, 2000, as amended.
- 1.2 A SPLIT DECISION issued on 28<sup>th</sup> May 2020 under reference ABP-306569-20 for this development under the provisions of the SHD legislation. Permission was REFUSED for proposed Block A with permission GRANTED for the remainder of the development. 321 no. BTR residential units were permitted, together with retail, commercial office, café/restaurant and other associated site works.
- 1.3 The applicant is making a request to An Bord Pleanála for alterations relating to the permitted development (ABP-306569-20). The alterations can be broadly summarised as including works at roof level (provision of heat pump/chiller unit; omissions of decorative glass structures within amenity area; reduction of PV panels and associated cumulative reduction in green roof area); increase in size of internal substation, change to residential mix (19 units) and associated works to fenestration.

## 2.0 Legislation

- 2.1 Section 146B of the Planning and Development Act 2000 (as amended) – 146B(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.

- 2.2 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’.
- 2.3 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”.

### 3.0 Proposed Changes

- 3.1 A request has been made to alter the terms of a development the subject of a planning permission for a residential development at 42A Parkgate Street, Dublin 8 (ABP-306569-20). The application seeks the following alterations:
- **Addition of a combined heat pump / chiller unit (plant), with associated screening, on the roof of Block C3.**
    - The roof of Block C3 is the optimum location for a combined heat pump / chiller unit, in terms of operational requirements for intake and exhaust air
    - located in the western part of the development site, replacing the permitted PV panels at this location

- will be approximately 3.5m above the permitted finished roof level
  - Location was considered and chosen so as to have minimal visual impact in views of the consented scheme. A number of alternative locations were considered but the proposed location on the roof of Block C is the only viable option
  - Applicants consider that the proposed alteration does not materially alter the character of the external appearance of the affected apartment building
  - noise levels are within the relevant criteria at the nearest sensitive receptors both outside and inside the consented development
  - no likely new or additional significant environmental effect arising from the proposed amendment
- **Omission of decorative glass structures within the landscaped rooftop amenity areas at Level 8 Block C2 and Level 9 Block B1**
    - result in minor change to the landscape design detail at roof level
    - removal does not have any effect on the location, quantity or quality, including usability or safety, of the consented communal open space
    - no likely new or additional significant environmental effect arising from the proposed amendment
- **Increase in size of internal substation from c.51 sq m to c.56.8 sq m, at ground floor of Block B1.**
    - Further ESB requirements were identified at detailed design stage. It has been identified that the size of the permitted substation at the ground floor of Block B1 needs to increase to accommodate ESB requirements. This has been facilitated by the proposed internal alterations, with no attendant building footprint or external elevation changes to the consented scheme.
    - The increased size of the substation is accommodated within an area already identified for plant and circulation associated with the consented scheme.

- does not lead to any reduction in the size and availability of residential amenity space at ground floor level
- no likely new or additional significant environmental effect arising from the proposed amendment
- **Cumulative reduction of PV panel areas, from c.488 sq m to c.92 sq m, and associated cumulative reduction in green roof area by c.453 sq m, at roofs of Blocks C3 and B2.**
  - a lower number of panels are required for the consented scheme than was originally envisaged
  - the consequent reconfiguration and reduction in green roof area does not alter the efficiency of the permitted surface water drainage for the permitted development.
  - the proposed development does not impact the site energy performance strategy of the permitted scheme.
  - no likely new or additional significant environmental effect arising from the proposed amendment.
- **Minor change in residential unit mix (19no. units affected), achieved through floor plan efficiencies, as follows:**
  - 8 no. permitted studio units (38 sq m GFA each) change to 8 no. 1-bed units (45.4 sq m GFA each); at mezzanine to 7th floor levels in Block C3.
  - 8 no. permitted 2-bed, 3 person units (63.1 sq m GFA each) change to 8 no. 2-bed, 4 person units (74 sq m GFA each); at mezzanine to 7th floor levels in Block C2.
  - 1 no. permitted 1-bed unit (63 sq m GFA) changes to 1 no. 2-bed, 3 person unit (63 sq m GFA); at 9th floor level in Block B1.
  - 1 no. permitted 1-bed unit (45.1 sqm GFA) changes to 1 no. studio unit (38 sqm GFA) and 1 no. permitted studio unit (38 sqm GFA) changes to 1 no. 1-bed unit (45.1 sqm GFA) at 8th floor level, Block C3.

The applicant states that:

- the proposed design alterations stemmed from the detailed design process and the floor plan efficiencies identified at this stage.
  - identified that a number of rooms can be easily altered to provide larger units to those originally permitted, as well as provide a more varied mix of apartment units.
  - No change to the permitted building footprint is required to deliver these larger units.
  - The overall number of apartments and mix of uses is unchanged and all apartments, including those subject to the proposed amendments, meet the minimum floor area requirements set out the Apartment Guidelines (2020)
  - Some minor adjustment to fenestration on the building elevation arises, but in the applicants opinion not so as to materially change the external appearance of the consented scheme.
  - no likely new or additional significant environmental effect arising from the proposed amendment.
- **Minor associated changes to fenestration as follows: (i) Western elevation of Block C3 (ii) Courtyard (east) elevation of Block C3 & C2 and (iii) Courtyard (east & west) elevations of Block B1.**
    - Additional windows and adjusted window placement are detailed
    - A Daylight and Sunlight Assessment was submitted which states that there is no reduction in daylight availability for the development as a result of the proposed amendments
    - no likely new or additional significant environmental effect arising from the proposed amendment

3.2 The applicants are of the opinion that the proposed alterations are non-material or minor in nature and do not give rise to any material change to the consented scheme or any significant new planning or environmental impacts. They state that in forming their opinion, they have had regard to the ABP 306569-20 permission, its associated Environmental Impact Assessment and Natura Impact Statement, the mitigation measures identified in the application documents, and any other relevant

assessments that informed that permission or are attached with the current S146B application.

## 4.0 Assessment

4.1 The proposed amendments and the justification for same are noted. As indicated in the preceding section, the first consideration in relation to this request to alter the terms of ABP-306569-20 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. The permitted development allowed the provision of a combination of different apartment sizes, residential amenity facilities and car/cycle parking. There will be no change to the overall scheme layout and most changes happen within the envelope of the buildings. I consider that an adequate justification has been put forward in this regard.

4.2 The applicants are proposing alterations as detailed above. Most of the amendments proposed are within the footprint of the permitted building and at roof level. No change of use is proposed. The percentage of non-residential uses to residential uses remains in compliance with the SHD legislation. No change is proposed to the number of permitted apartment units or to compliance with the residential and apartment design standards at local and strategic level. The change to mix of units is detailed as follows:

	Studio	1-Bed	2-Bed (3P)	2-Bed (4P)	Total
Permitted Development (ABP-306569-20)	42 (13%)	189 (59%)	12 (4%)	78 (24%)	321 (100%)
Proposed Development (ABP-311499-21)	34 (11%)	196 (61%)	5 (1%)	86 (27%)	321 (100%)

4.3 This revised mix is considered acceptable and not material in nature. The greater number of larger four-person units is welcomed. The proposed alterations would not result in any impact on the permitted SuDS design or drainage system. The proposed amendments do not generate substantial additional car parking requirements and do not alter the overall quantum of permitted car parking spaces. The alterations are primarily to the internal layout and at roof level, with minor

elevational changes proposed to accommodate these internal works. The proposed amendments do not alter the permitted communal or public open space within the consented scheme, or have any significant impact on these areas. The proposed alterations do not alter the height of the permitted buildings.

- 4.4 The amendments are not, in my opinion, material, in that they affect primarily the internal layout, do not affect the external appearance of the building to any significant extent, with the changes required to the layout not significantly impacting on the building as a whole or on other permitted elements of the scheme. Furthermore, I am of the opinion that the relevant planning issues would not be considered differently to any material extent with the layout as now proposed, and it is considered that no other planning issues would arise, had the layout as now proposed formed part of the plans at application stage.
- 4.5 I consider, therefore, 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.
- 4.6 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. Having considered the nature, scale and extent of the alterations and the nature, scale and extent of the development granted under ABP-306569-20, 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.
- 4.7 Environmental Impact Assessment: 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.
- 4.8 Appropriate Assessment: A Natura Impact Statement was submitted with the application under ABP-306569-20 and it was concluded that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the relevant European sites North Bull Island SPA; South Dublin Bay and River Tolka Estuary SPA; South Dublin Bay SAC and North



Dublin Bay SAC, or any other European site, in view of the site's Conservation Objectives.

- 4.9 Having considered the Board's determination on Appropriate Assessment on ABP-306569-20 and section 11 of the Inspector's Report on ABP-306569-20, in addition to the minor nature, scale and extent of the alterations relative to the development, and the information on file (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 any European sites, in view of the sites' conservation objectives.

## **5.0 Recommendation**

- 5.1 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-306569-20 and that the permitted development shall be altered in accordance with the plans and particulars received by An Bord Pleanála on 28<sup>h</sup> September 2021.

## RECOMMENDED DRAFT BORD ORDER

**REQUEST** received by An Bord Pleanála on the 28<sup>th</sup> day of September 2021 from Stephen Little & Associates on behalf of Ruirside Developments Ltd. under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of the Strategic Housing Development at the lands at 42A Parkgate Street, Dublin 8, which is the subject of a permission under An Bord Pleanála reference number ABP-306569-20.

**WHEREAS** the Board made a decision to grant permission, subject to conditions, for the above-mentioned development by order dated the 28<sup>th</sup> day of May 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:

- Addition of a combined heat pump / chiller unit (plant), with associated screening, on the roof of Block C3.
- Omission of decorative glass structures within the landscaped rooftop amenity areas at Level 8 Block C2 and Level 9 Block B1
- Increase in size of internal substation from c.51 sq m to c.56.8 sq m, at ground floor of Block B1
- Cumulative reduction of PV panel areas, from c.488 sq m to c.92 sq m, and associated cumulative reduction in green roof area by c.453 sq m, at roofs of Blocks C3 and B2.
- Minor change in residential unit mix (19no. units affected), achieved through floor plan efficiencies, as follows:
  - 8no. permitted studio units (38 sq m GFA each) change to 8no. 1-bed units (45.4 sq m GFA each); at mezzanine to 7th floor levels, Block C3.
  - 8no. permitted 2-bed, 3 person units (63.1 sq m GFA each) change to 8no. 2-bed, 4 person units (74 sq m GFA each); at mezzanine to 7th floor levels, Block C2.

- 1 no. permitted 1-bed unit (63 sq m GFA) changes to 1 no. 2-bed, 3 person unit (63 sq m GFA); at 9th floor level, Block B1.
- 1 no. permitted 1-bed unit (45.1 sqm GFA) changes to 1 no. studio unit (38 sqm GFA) and 1 no. permitted studio unit (38 sqm GFA) changes to 1 no. 1-bed unit (45.1 sqm GFA) at 8th floor level, Block C3.
- Minor associated changes to fenestration in the following areas:
  - Western elevation of Block C3.
  - Courtyard (east) elevation of Block C3 & C2
  - Courtyard (east & west) elevations of Block B1.

**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 the Board on the 28<sup>th</sup> day of September 2021.

## **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard.

## **REASONS AND CONSIDERATIONS**

Having regard to:

- (i) the nature and scale of the Strategic Housing Development permitted under An Bord Pleanála Reference Number ABP-306569-20 for this site,
- (ii) 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.

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Lorraine Dockery

Senior Planning Inspector

14<sup>th</sup> June 2022