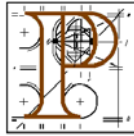


An Bord Pleanála



Inspector's Report

Application under section 146B of the Planning & Development Act 2000 as amended.

Request to alter the terms of the previously permitted National Forensic Mental Health Hospital on lands at St. Ita's Hospital, Portrane, Co. Dublin (application ref: 06F.PA0037)

Planning Authority: Fingal County Council

Requester: Health Service Executive Estates

Location: Portrane, Co. Dublin

Inspector: Tom Rabbette

Site Inspection: 6th July 2016

1.0 INTRODUCTION

The Health Service Executive Estates obtained permission pursuant to section 37E of the Planning and Development Act 2000, as amended, for the construction of the National Forensic Mental Health Service Hospital (hereafter NFMHSH) at St. Ita's Hospital Demesne at Portrane in north County Dublin. A request is now being submitted by HSE Estates, under section 146B of the Planning and Development Act 2000, as amended, seeking to alter the terms of the development of the hospital. The applicant describes the alteration sought as follows:

1. Reduce the depth of excavation across the main campus area west of the Reception Building by one metre, with a consequent upward adjustment by the same amount of the finished floor and roof levels of (a) the Village Centre, (b) the Medium Secure Unit, (c) the high Secure Unit, (d) the MHID Unit, (e) the Female Unit and (f) the Pre-discharge Unit and the assessed ground levels;
2. Undertake re-contouring and infilling with soil of the permitted horticultural area, south of the previously permitted berm, to a maximum level as shown on the drawings with this application, to marry in with the revised levels of the campus;
3. Utilise soil on Compartment 20 East, by spreading to a depth not exceeding 300 mm settled depth, in order to improve its suitability for development of a natural grassland habitat on previously intensively farmed arable lands.

2.0 PLANNING HISTORY

- 2.1 06F.PA0037: The Board granted permission for a 170 bed NFMHSH at St. Ita's Hospital Demesne at Portrane in Co. Dublin. The facility is to replace the existing Central Mental Hospital located in Dundrum, Dublin. The NFMHSH will consist of 10 main buildings. The development included for extensive landscaping and earth works. Additional woodland planting formed part of the development and is to be in accordance with a Woodland Management Plan and a Biodiversity Management Plan. The permission was subject to 14 No. conditions. This parent permission file is attached to current request file.
- 2.2 06F.PF0001: This referral case related to a point of detail regarding compliance with condition 12(iii) of 06F.PA0037. The HSE and the p.a. failed to agree on detailed proposals for the segregation of sports-related activity and construction traffic along part of the temporary construction access road as was required under condition 12(iii) of the parent permission. The Board determined that the proposals as submitted by the applicant were acceptable

subject to some amendment. That referral case is attached to the current request case.

- 2.3 06F.PM0006: The Board granted a request under section 146B of the Planning and Development Act 2000, as amended, to alter the terms of the development that was subject of PA0037. The alteration related to a condition in respect of construction hours. That request file is attached to the current request file.

3.0 APPLICANT'S SUBMISSION

The contents of the report titled 'Planning and Environmental Report' can be summarised as follows:

- Overview of the planning permission as granted is provided.
- Following initiation of site development works, there has been a reassessment of the required excavation needs of the development.
- It has now been determined that there will be an excess of excavated fill material compared with the original assumption.
- As it is not permitted under the terms of the planning permission to remove excavated material from the site a modified approach to the balance of cut and fill across the development is required.
- A description of what is proposed across 3 areas is provided.
- In area 1 it is proposed to reduce the depth of excavation across the main campus area west of the Reception Building by 1 m with a consequent upward adjustment by the same amount of the ffl and roof levels of 6 buildings and the associated ground levels.
- In area 2 it is proposed to undertake re-contouring and infilling with soil of the permitted horticultural area.
- In area 3 it is proposed to utilise soil on Compartment 20 East, by spreading to a depth not exceeding 300 mm settled depth.
- The requester considers that it is open to the Board to make a decision that the proposed alteration is not material in terms of the development.
- The alteration to the ffls of the campus are relatively minor entailing a simple reduction in the depth of excavation of 1 m.
- The re-contouring of the horticultural area will take place behind the permitted berm and will reconcile the levels of this area with the increase in ffls on the main campus.
- The addition of 300 mm of soil to Compartment 20E is a continuation of a process already permitted in other parts of the site.
- If the Board decides that the proposed alteration is material, the requester's report sets out the main environmental issues in relation to the alteration.
- It is shown that the proposed alteration would not be such as to have any significant effects on the environment.
- The site of a church and St. Kenny's Well, in Compartment 20E, are Recorded Monuments (RMP DU012-009) but no trace of these remains above ground.

- It is noted that it is currently proposed by the p.a. to remove the church and well from the RPS (No. 538).
- Parts of St. Ita's demesne are also listed as Nature Development Areas within the CDP.
- The Donabate LAP 2016 does not encompass the lands of St. Ita's but adjoins these to the west.
- The boundary of Portrane Shore pNHA adjoins the lands of Compartment 20E from which it is separated by a footpath and a wall.
- The initial plan in the parent permission PA0037 was to remove excess topsoil, amounting to approx. 20,000 cu.m. and excess subsoil, amounting to approx. 6,000 cu.m. from the site.
- However, after public submissions, in order to reduce the traffic impact on the approach roads and on Donabate in particular, the applicant undertook to retain and reuse all excavated material on site, as stated in the additional information submitted to the Board on the 16/02/15 on the parent permission PA0037.
- As the design was developed further during the tender period, following the grant of permission, it became apparent that the volume of excavated material that would be generated by the project was in fact greater than allowed for at planning stage.
- The requester refers to alternatives considered to address the issue of an increased volume.
- The buildings and associated landscape, west of the Reception Building, are to be raised by 1 m. This has the effect of requiring less cut along the southern edge of this part of the development but it also has the effect of considerably increasing the proposed use of fill along the northern edge by 1 m.
- Raising the finished level of the main campus entails a minor change to visual impact, but has little other effect.
- The changes to the horticultural area improve the orientation of this facility, but generally remain below the level of the permitted berm. There would be some increase in the visibility of the security fencing and lighting around the area.
- The changes proposed for Compartment 20E will be of benefit to the proposals to develop species rich natural grassland in this area, which will enhance the biodiversity of the area.
- These lands (Compartment 20E) have been managed intensively for farming purposes.
- Soil spread will be kept back 5 m from boundaries.
- In terms of a determination on materiality, the principle change sought is a relatively small increase of 1 m in finished levels of the main campus.
- In the context of the location of the site, in a secluded rural area, well removed from the public realm, this is a minor change.
- Much of the site is screened from view by existing trees and further tree planting is proposed.
- If the Board decides that the proposed alteration is material, it must also determine whether the extent and character of the alteration requested would be likely to have significant effects on the environment.

- The requester considers with reference to information submitted that it is sufficient for the Board to determine that the proposed alteration would not be likely to have significant effects on the environment.
- Each chapter of the EIS has been reassessed by the relevant professional in relation to the proposed alteration, the contents of the significant FI submitted to the Board on the parent permission PA0037 have been taken into account.
- Consultations in respect of the proposed alteration have been held with the p.a., the National Monuments Service and Irish Water.
- The Appendix 1 to the report contains a detailed visual impact assessment.
- Requester's submission also includes a 'Landscape Report' by Mitchell & Associates and a 'Report for Screening for Appropriate Assessment' by Faith Wilson Ecological Consultant

4.0 LEGISLATIVE PROVISIONS

- 4.1 Section 146B of the Act provides alteration by the Board of strategic infrastructure development on request made of it.
- 4.2 Initially under the terms of section 146B(2)(a) the Board must decide as soon as possible, 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".
- 4.3 If the Board decides that the alteration proposed would not constitute a material alteration, the Board must proceed to alter the permission (Section 146B(3)(a)).
- 4.4 If, however, as provided for in section 146B(3)(b) the Board decides that the making of the alteration would constitute the making of such a material alteration, it shall then 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.

- 4.5 Section 146B(4), however, provides that before making a determination under subsection (3)(b), the Board shall determine whether the extent and character of the alteration requested under subsection (1), and any alternative alteration under subsection (3)(b)(ii), are such that the alteration, were it to be made, would be likely to have significant effects on the environment.
- 4.6 Under section 146B(8) before the Board makes a determination under sections 146B(3)(b) or 146B(4), it is required to make, or require the requester to make, information relating to the request available for inspection to certain persons and/or the public. Submissions and observations are to be invited and the Board is required to have regard to any such submissions or observations received.
- 4.7 Section 146B(5) provides that If the Board determines that the making of either kind of alteration referred to in subsection (3)(b) is not likely to have significant effects on the environment, it shall proceed to make a determination under subsection (3)(b), or is likely to have such effects, the provisions of section 146C shall apply.
- 4.8 Section 146C relates to the preparation of environmental impact statement for purposes of section 146B and 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 section 146B(3)(b) is likely to have significant effects on the environment.

5.0 SCOPE OF REPORT

The main purpose of this report is to consider the initial requirement as set out in section 146B(2) in relation to a determination of the materiality of the proposed alteration.

6.0 ASSESSMENT

Consideration of materiality

- 6.1 Under the terms of section 146B(2)(a) the Board must decide as soon as practicable, whether or not the making of a proposed alteration would constitute “the making of a material alteration of the terms of the development concerned”.
- 6.2 There are three parts to the alteration as requested, I propose to examine the materiality of each of those parts.
- 1. Reduce the depth of excavation across the main campus area west of the Reception Building by one metre, with a consequent upward adjustment by the same amount of the finished floor and roof levels of (a) the Village Centre, (b) the Medium Secure Unit, (c) the high Secure Unit, (d) the*

MHID Unit, (e) the Female Unit and (f) the Pre-discharge Unit and the assessed ground levels.

- 6.3 Permission was granted for 10 buildings on the site under PA0037. That permission, as per the plans and particulars, specified ground levels, finished floor levels and roof levels across the development. Under Part 1 of the request it is proposed to reduce the depth of excavation on the western part of the campus as granted and this has consequences for the finished floor levels and roof levels of 6 of the 10 buildings on the campus. These 6 buildings will be 1 m higher than originally proposed.
- 6.4 In determining materiality of the proposed changes in ground levels and building height, I consider that the development location is a critical issue. Raising ground levels and the levels of the buildings by 1 m would almost certainly constitute a material change in a dense urban context. However, the context here is rural, the site is well landscaped and the development site is a remove from other developments and the public realm. The development as granted also includes for a considerable amount of further tree planting. In terms of visual assessment and impact, the critical views into the site are the medium to long-distant views. In that regard raising the grounds levels and the levels of the 6 buildings affected by 1 m would be imperceptible. The applicant submitted a detailed visual impact assessment, it is contained within Appendix 1 of the submitted 'Planning and Environment Report' and it analysed photomontages also submitted with the request application. That visual impact assessment concluded that the impacts brought about by the proposed amendments in the 146B application will be imperceptible, I concur with that conclusion. Even after the 6 buildings on the affected part of the site are raised by 1 m, they will still have lower floor levels than the ICRU and CAMH buildings on the eastern unaffected part of the site.
- 6.5 The ground to be raised and the 6 buildings affected are also located on the opposite end of the development site from the complex of protected structures that form the red-brick St. Ita's Hospital. Given the separation distances involved, and the limited extent of the changes to ground and building levels, I do not consider that the proposed alteration as per Part 1 would adversely impact on the character or setting of those protected structures.
- 6.6 Having regard to the above paragraphs relating to Part 1 of the request application, I consider it reasonable to conclude that the reduction in the depth of excavation across the main campus area west of the Reception Building by 1 m, with a consequent upward adjustment by the same amount of the finished floor and roof levels of the 6 buildings listed does not constitute a material alteration of the terms of the development.

6.7 I propose to assess the materiality, or otherwise, of Parts 2 and 3 of the request application in tandem.

2. Undertake re-contouring and infilling with soil of the permitted horticultural area, south of the previously permitted berm, to a maximum level as shown on the drawings with this application, to marry in with the revised levels of the campus;

And

3. Utilise soil on Compartment 20 East, by spreading to a depth not exceeding 300 mm settled depth, in order to improve its suitability for development of a natural grassland habitat on previously intensively farmed arable lands.

6.8 Under PA0037 in order to reduce the traffic impact on the approach roads the applicant proposed, following submissions from the public during the application stage, to retain and reuse all excavated material on site. As per Punch Consulting Engineers Drg. No. 122103-1285 on PA0037 it was proposed, and granted subject to conditions, to spread both excavated topsoil and subsoil at four identified locations across the overall site. The quantum of soil indicated in the aforementioned drawing amount to a total of 38,600 cu.m.

6.9 In the request application an additional 40,550 cu.m. of topsoil and subsoil is to be retained and reused on the site. This is made up of 22,200 cu.m. top soil and subsoil infilling at the horticultural area under Part 2 of the request and 18,350 cu.m. spreading of subsoil on Compartment 20 East under Part 3 of the request. The quantum and locations are as indicated in pages 12 and 13 of the submitted 'Planning and Environmental Report' and Punch Consulting Engineers Drg. No. 122103-1285 Rev. PL1 in the request application. I consider this quantum of soil above that indicated in PA0037 to be significant. I also consider it a significant issue that the two locations that are to be utilised for the infilling and spreading were not proposed for such works under PA0037.

6.10 It is of interest to note at this stage that the infilling proposed under Part 2 of the request in the horticultural area is adjacent the farm buildings that form part of the protected structure that is the St. Ita's Hospital complex. Furthermore, the spreading of the subsoil that is subject of Part 3 of the request in Compartment 20 East is also partially located adjacent the former Isolation Hospital (early C20th) that forms part of the St. Ita's Hospital protected structure, the entire site is also an ACA. In addition there are two recorded monuments, which are also on the RPS, in this Compartment 20 East (i.e. church site/holy well RMP – DU012-009). This Compartment 20 East is also adjacent Portrane Shore pNHA.

- 6.11 Having regard to the quantum of soil to be retained and reused on the site above that permitted pursuant to PA0037 and also having regard to the proposal to dispose of the soil at two locations where no such works were proposed under PA0037, I consider it reasonable to conclude that the works subject of Parts 2 and 3 of the request application would constitute the making of a material alteration of the terms of the development and recommend accordingly to the Board.
- 6.12 If the Board concurs with the above recommendation and decides that the alteration sought is material, the Board can, *inter alia*, determine to make or refuse to make the requested alteration pursuant to s.146B(3)(b) of the Planning & Development Act 2000, as amended. However, prior to such a determination the Board must determine whether the extent and character of the alteration requested would be likely to have significant effects on the environment as required under s.146B(4). And before either of the determinations pursuant to s.146B(3)(b) and s.146(4) can be made, the Board is required pursuant to s.146(8) to: facilitate the inspection of the request application information; notify certain persons or the public that the information is available for inspection; invite submissions or observations in relation to the request, and it must have regard to any such submissions or observations.
- 6.13 The undersigned shall provide, if requested, further advice to the Board on whether to make the alteration or not, and will advise on whether the alteration would be likely to have significant effects on the environment, once any submissions received in response to the Board's obligations pursuant to s.146B(8) have been considered. Likewise with advice on matters pertaining to Appropriate Assessment.
- 6.14 In the interests of clarity and consistency I would recommend that the requester be required to notify all of the prescribed bodies as listed in Appendix 5 attached to the Application Form on PA0037. I further recommend that the requester be required to notify the public of the application. The public and the prescribed bodies should be invited to make a submission or observation within a period as to be determined by the Board.

7.0 RECOMMENDATION

- 7.1 In view of the above, I recommend that the Board make the following determination pursuant to section 146B(2) of the Planning and Development Act 2000, as amended -

Having regard to the quantum of soil to be retained and reused on the site above that permitted pursuant to 06F.PA0037 and also having regard to the proposal to use the soil for infill and to spread the soil at two locations where no such works were proposed under 06F.PA0037,

the Board has decided that the works subject of Parts 2 and 3 of the request application would constitute the making of a material alteration of the terms of the development.

- 7.2 I would further recommend that the Board, pursuant to section 146B(8), require HSE Estates to make all information on file relating to the request available for inspection for a period as determined by the Board. I recommend that the Board require HSE Estates to notify the public and all prescribed bodies as listed in Appendix 5 of the Application Form that accompanied 06F.PA0037 that the information is available for inspection. The Board should also require HSE Estates to invite submissions or observations from the public and the prescribed bodies to be made to the Board within a period to be specified by the Board.

Tom Rabbette
Senior Planning Inspector
6th July 2016