



An
Bord
Pleanála

Board Direction
ABP-304692-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on October 10th, 2019.

The Board decided, as set out in the following Order, that the use of student accommodation at Amnis House, Western road, Cork for year-round short term letting is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the use of student accommodation at Amnis House, Western road, Cork for year-round short term letting is or is not development or is or is not exempted development.

AND WHEREAS Irish Hotels Federation, c/o Coakley O'Neill Town Planning of NSC Campus, Mahon, Cork, requested a declaration on this question from Cork City Council, but the Council failed to make a determination within the statutory period.

AND WHEREAS Irish Hotels Federation referred this question for determination to An Bord Pleanála, on the 14th day of June 2019.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Section 138 of the Planning and Development Act 2000, as amended,
- (c) Articles 6, 9 and 10 of the Planning and Development Regulations 2001, as amended
- (d) Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016, and in particular the definition of “student accommodation” as set out in Section 13(d) of that Act,
- (e) The planning history of the subject site and in particular planning permission register reference number 16/36931 (An Bord Pleanála reference number PL28.247182) and condition numbers 2 and 13 of that permission, and
- (f) The documentation on file, including submissions from the referrer and from the owner/occupier, and the Inspector’s report.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The authorised use of the subject premises is for student accommodation, in accordance with the terms and conditions of planning permission register reference number 16/36931 (An Bord Pleanála reference number PL28.247182);
- (b) The use of the subject premises for year-round short term letting would not be consistent with the permitted use, having regard to the statutory definition of student accommodation and having regard to condition numbers 2 and 13 of that permission;

- (c) The use of the subject premises for year-round short term letting would represent a change of use from the permitted use, and such change of use would raise material issues relevant to the proper planning and sustainable development of the area, including differing levels of pedestrian and vehicular traffic, including demand for additional car parking, and the potential for impacts on residential amenity in terms of noise and opening hours and would constitute a material change of use, and would, therefore, be development.

- (d) There are no provisions, in the Planning and Development Act and Regulations made thereunder, whereby such development would constitute exempted development, and in any event, any exemption that might be argued to exist would be restricted in this instance under Article 9 (1)(a)(i) of the Planning and Development regulations, 2001, as amended, by reason of conditions number 2 and 13 of planning permission register reference number 16/36931 (An Bord Pleanála reference number PL28.247182), which limit the use of the subject premises to use as student accommodation and for no other purpose.

- (e) However, for clarity, it is considered that the use of the subject premises for short-term letting as tourist or visitor accommodation, where such use takes place solely outside of academic term times, would be consistent with the authorised use of these premises and within the scope of the definition of “student accommodation” as defined in Section 13 (d) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, and therefore would not represent a change of use from the authorised use, and would not be development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(b) of the Planning and Development Act, 2000, as amended, hereby decides that the use of student accommodation at Amnis House, Western Road,

Cork for year-round short term letting is development and is not exempted development.

Note 1. The Board concurred with the Inspector and decided not to dismiss the referral, as requested by the owner/occupier, as Section 5 of the Act provides for the determination of “any question” that has arisen in a particular case and accordingly it is legitimate to consider a hypothetical question, and the Board did not consider that the referral was without substance or foundation, but rather raised a significant issue.

Note 2. In reaching its decision, the Board did not accept the recommendation of the Inspector to re-word the question from the wording that had been posed by the referrer, as this fundamentally altered the nature of the issue raised. Accordingly, the Board considered the question as it had been submitted, which related to year-round short term letting, and therefore differed from the conclusion reached by the Inspector. However, the Board also decided, for clarity, and having regard to the content of the submission made by the owner/occupier, to decide whether the use of the subject premises for short term letting as tourist or visitor accommodation, solely outside of academic term times, would or would not be development.

[Please issue a copy of this Direction to the parties with the Board Order.]

Board Member

Date: 10th October 2019

Philip Jones