



An
Bord
Pleanála

Inspector's Report ABP-300092-17

Development	Change of use of part of the existing student accommodation in Block 1, to 30 temporary classrooms outside of the academic term times amending permission An Bord Pleanála Ref.: PL29S.117164.
Location	Block 1 at the Halls of Residences, Trinity Hall, Dartry, Dublin 6
Planning Authority	Dublin City Council Sth
Planning Authority Reg. Ref.	3645/17
Applicant(s)	Paul Mangan (Trinity College Dublin).
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	<ol style="list-style-type: none">1. Richview Residents Association2. Rathmines Initiative3. James F Kennedy
Observer(s)	<ol style="list-style-type: none">1. Rathgar Residents Association

Date of Site Inspection

03rd of April 2018.

Inspector

Karen Hamilton

1.0 Site Location and Description

- 1.1. The subject site forms part of the Trinity Hall Student Residence in Dartry, Dublin 6. Trinity Hall is the main halls of residence for first year undergraduate students of Trinity College and comprises of three blocks accommodating 832 no. bedrooms. Blocks 2 & 3 front onto Dartry Road and Block 1, which is the subject of this application, adjoins the original Trinity Hall and Purser House, Protected Structures, in the centre of the site.
- 1.2. Block 1 is 7 stories in height and supports a range of services including restaurant, shop, reception, administrative offices and 273 no. bedrooms in upper floors. The application relates to the temporary change of use of 6 apartments located within the western annex of Block 1, 30 no apartments in total.

2.0 Proposed Development

- 2.1. The proposed development would comprise of:
 - Change of use of existing student accommodation (30 bedrooms) in Block 1 to 30 temporary classrooms outside the academic term.
 - Amendment to permission PL29S.117164.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 5 no conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission and refers to the extensive planning history on site, the third party submissions and the principle of development for education on the site. The planner notes that the current block of student accommodation does not appear to be built as per the parent permission although it has been operating as student accommodation for many years.

3.2.2. Other Technical Reports

Conservation Officer- No objection.

Drainage Department- No objection subject to conditions.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

A number of third party observations were submitted from both the appellants, observers and residents in the vicinity of the site and the issues raised have been addressed in the grounds of appeal.

4.0 Planning History

PL29S.RL2839 (2011)

Section 5 Declaration to state that the use of bedrooms of student residence as classrooms by an external operator is not exempted development.

PL29S.202698 (Reg Ref 0577/03)

Permission granted for the temporary amendment of condition No 3 (PL29S.117164) to permit occupancy from 01/06/2003 to 15/06/2003 by persons involved with the Special Olympics World Summer Games.

PL29S.117164 (Reg Ref 1101/99)

Permission granted for the construction of new student Halls of Residence at Trinity Hall for c. 25,00m² of development for three number student residences with 832 no. bedrooms, new central support facilities and refurbishment of Trinity Hall and new sports facility and associated works.

Condition No 2; required the reduction of the western arm of building No 3 by the omission of the first floor.

Condition no. 3; refers to the use of the accommodation only as a place of residence and support facilities by students enrolled in educational course at the University of Dublin, Trinity College.

Condition no 4; the proposed central facilities shall only be the sole use of the occupants of the student apartments at Trinity Hall.

Condition no 5; no organised social events would cause music or other amplified sounds to be emitted onto the nearby public roads.

5.0 Policy Context

5.1. Planning and Development (Housing) and Residential Tenancies Act 2016

Section 2 (d) Student accommodationincludes residential accommodation that may be used as tourist or visitor accommodation but only if it is so used outside of academic term times.

5.2. Rebuilding Ireland: Action Plan for Housing and Homelessness.

Pillar 4: Streamlining planning for student accommodation

New planning policy guidance will be issued to local authorities and An Bord Pleanála on the use of student accommodation complexes outside of the academic year, as their use during these periods provides a potential additional income-stream, thereby aiding the overall viability of these projects.

5.3. Circular PL 8/2016 APH 2/2016 (Department of Housing, Planning, Community and Local Government, DHPCLG *"Identifying Planning Measures to Enhance Housing Supply"*)

- A flexible approach should be applied in respect of any planning conditions related to use/occupation of student accommodation. Such an approach would recognise the need to establish a steady rental income for such student accommodation throughout the year in order to ensure the deliverability of development projects from a funding point of view and recognise that student accommodation complexes can play an important role in providing affordable accommodation for tourists and visitors in major urban areas during peak summer demand periods.

- Therefore, planning authorities should aim to avoid making permissions for student accommodation complexes subject to restrictions on alternative summer or holiday uses, while at the same time ensuring that student accommodation is:
 - (1) not used for residential accommodation of a permanent nature;
 - (2) safeguarded for use by students and other persons related to the HEI during the academic year; and
 - (3) capable of being used for legitimate occupation by other persons/groups during holidays periods, when not required for student accommodation purposes.
- Appendix 1 provides a sample condition for student accommodation relating to use.

5.4. Dublin City Development Plan 2016-2022

The site is located on lands zoned for Z1, Sustainable Residential Neighbourhoods, where it is an objective “*To protect, provide and improve residential amenities*”, and partially for Z2, Residential Neighbourhoods (Conservation areas), where it is an objective “*To protect and/or improve the amenities of residential conservation areas*”

- Education is a permissible use in Z1 and open for consideration in Z2.

The relevant sections of the City Development Plan include:

5.5.12 Student Accommodation, sets out a broad policy statement in relation to the expansion of the student accommodation sector.

QH31: Support for high-quality, professionally managed and purpose built third-level student accommodation on campuses or in appropriate locations close to the main campus, in the inner city or adjacent to high-quality public transport corridors.

CEE19: (i) To promote Dublin as an international education centre/student city, as set out in national policy, and to support and encourage provision of necessary infrastructure such as colleges (including English language colleges) and high-quality, custom-built and professionally managed student housing. **(ii)** To recognise that there is a need for significant extra high-quality, professionally-managed student

accommodation developments in the city; and to facilitate the high-quality provision of such facilities.

Section 16.10.17 Guidelines for student accommodation

Purpose built student accommodation shall:

- respect the residential amenity,
- be accompanied by documentation to indicate how they are to be managed, confirm students will be registered with a third-level education institution and;
- support the local community through design and layout.

Appendix 21 Definition of Student Accommodation

A professionally managed residential building, or part thereof, built either on or off campus, for the purpose of accommodating students over the duration of the academic year.

Car parking Standards

The site is included in Zone 2 where car parking is restricted on account of the proximity of these locations to public transport.

Table 16.1- Minimum car-parking standards.

Student Hostel/ Student Accommodation- 1 per 20 bed -spaces

Youth Hostel- 1 per 30 bed-spaces

Residential Institution- 1 per 20 bed-spaces

Schools- 1 per classroom

5.5. Natural Heritage Designations

The site is located 3.6km to the west of South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted by residents' associations and residents of properties in the vicinity of the site and the issues raised are summarised below:

Principle of Development

- The proposed development is intensification on the site.
- The development description does not fully describe the proposed development and therefore does not comply with the requirements of the Regulations and the application is invalid.
- The pre application meeting raised the need for justification for the proposed change of use and the rationale for accommodating foreign language students is not justified.
- The proposed development would involve the change of character of the Halls of Residence and it contradicts the original claims that the student halls were required to provide accommodation for students of Trinity.
- It is unclear as to the precedent which will be set for the site if this educational use is permitted.
- The present proposal contradicts the original claims that the student halls were required to provide accommodation for students of Trinity.

Built Heritage

- The site is on the Old Rathmines Castle, one of the most important historical sites in Ireland which the proposal should have regard.

Planning History

- Condition No. 2 (PL29S.117164), restricting the use on site outside academic term, was included by the planning authority and the Board to control uses on the site.
- The proposal is a material contravention to the original permission and the 2009 conditions should remain the same.

- The initial permission included conditions restricting the occupancy and use on the site and a referral to the Board considered the classrooms a material change of use from student accommodation.
- The conditions imposed do not relate to the regulation or operation of the proposed use.
- There have been unauthorised activity on the site, including residence by foreign students which was reported to the Planning Authority.
- There have been submission of details to the planning authority in relation to compliance of conditions, which include the construction of classrooms, even though these are in breach of Condition No. 3.
- Compliance documents were not made available for public inspection and plans submitted for the fire safety certificate do not correspond with the planning documents. These plans included the use of bedrooms as classrooms.
- A background of legal proceeding in relation to unauthorised development and in turn Section 5 declaration, in relation to the use of bedrooms as classrooms, is provided. Details of correspondence in relation to dealings with the Council and the Ombudsman are provided.
- The term “*temporary classrooms*” remains undefined in the application, therefore an invalid development description.
- It is unclear if the classrooms are to be used for students staying in the halls (as per concurrent application) or available for others.
- The planning authority or Board has no powers to grant permission until the unlawful position has been rectified and material alterations have occurred to the buildings permitted.
- Reference to legal case law i.e *Gregory v Dun Laoghaire/ Rathdown County Council* and *O’ Connor v Dublin City Council and Borg Developments* is quoted as evidence of non-compliance with conditions of a permission and there is a current Section 160 appeal waiting to be heard by the Supreme Court.

- Documentation and maps relating to planning compliance have been included with the submission.

Concurrent Application

- This application should be determined with another application (3645/17) which is for 234 bedrooms as tourist accommodation.
- This concurrent application is intrinsically linked to this proposal and the relationship between this is not assessed.

Residential Amenity

- Guidelines for student accommodation in the development plan state they should have respect to the residential amenity.
- The proposal would have a negative impact on the residential amenity and depreciate the value of property in the vicinity.
- The use of the site for second level students will lead to the development of a boarding school of which the management or operation cannot be controlled.
- There is no management plan submitted with the application.
- The suitability of the site for fire safety has not been demonstrated.
- The previous unlawful use of the site for classrooms had an adverse effect on the residents during the summer.

Planner's Assessment

- There have been no details submitted on the fit out of the classrooms, the hours of use and no assessment of the suitability of the facility was included in the planners report.
- There is serious issue as to the reporting to third party submissions as per Section 6.5 of the Development Management Guidelines.
- There is no assessment to state that no structural works are required.
- An overview by the planning authority of the concerns at local level in conjunction with the implementation of national policy would have led to a different conclusion.

Traffic

- In the absence of a Traffic Assessment it is unclear if the proposal would cause a material intensification on the site.
- Traffic implications have not been assessed and a report was not requested by the Councils transport department.

6.2. **Applicant Response**

A submission from an agent on behalf of the applicant has been submitted and is summarised below:

Principle of development

- Students attending the classrooms will be second level, foreign language students outside the academic term time.
- National policy on enterprise, tourism and housing provides support for the use of student accommodation outside term time.
- The provision of the operator is not a material consideration in planning terms.
- The academic calendar changes yearly therefore it is not possible to specify exact dates for the use as classrooms.
- No more than 15 students will attend each classroom and a condition restricting use by the Board will be accepted.
- The proposed development is not classified as a “school” and the use will be outside the academic year and will be mainly for a high quality English Language teaching.
- The rooms will have accommodation removed and seats temporarily installed, wardrobes will remain in the rooms, the bathrooms used by students and there will be a maximum of two sessions per day.
- The current activity from students on site is not of relevance to this application and Trinity College is unaware of any anti-social activity.
- The issue on uncertainty and timing of the use on site is raised and the period may vary slightly yearly.

- The issues of funding, code of conduct of Dublin City Council and complaint against Trinity College are not relevant to this appeal.

Development Plan

- The Z1 zoning permits education use, therefore the proposal is acceptable in principle.
- Appendix 21 of the development plan in relation to Student Accommodation refers to use of accommodation over the duration of the academic year and the strategic objectives of the development plan.
- There are no works proposed on site which would have an impact on the Z2 zoning or the protected monument on the site.

Planners' Assessment

- The validity of the application has been dealt with by the planning authority and the application complied with the Development Management Guidelines.

Planning History

- The application is seeking to vary the conditions attached to previous permissions and it is noted that a previous Section 5 declaration was not deemed exempt development for the same development.
- It is accepted that the change from bedroom to classroom is a material change of use, hence the application.
- Students attending Trinity College Dublin main Campus in the summer and the proposed classrooms may also stay in the Halls of Residence as per compliance with condition No 3 of the parent permission.
- The purpose of the application is to vary the parent permission and those conditions which were included.
- A number of historic issues are raised in the grounds of appeal and previous unauthorised use for on site for classrooms has ceased.
- A judgement by Mr Justice Feeney in the High Court *Kenny vs Trinity College*, attached) found in favour of Trinity College and the notice of appeal have been lodged.

Traffic

- The rationale for the classrooms also relates to the use of the rest of the halls for visitor accommodation as they will be coming from abroad and stay close to the rooms, therefore preventing additional traffic.
- The numbers attending the site will not change, comparable to the current use, and therefore a mobility management plan is not required. A full breakdown of the car parking compliance with the development plan has been provided.
- The site is located within Zone 2 of the plan due to the proximity to the Luas and parking is restricted. The proposed development is for parking outside term time when students will not be on site.

Residential Amenity

- The site is set back substantially from the edge of the Dartry Road and it is only proposed to use 30 classrooms for the proposed use.
- Condition No 3 currently restricts the use of the site as student residences for those persons attending Trinity.
- It is intended that only those staying on the site (concurrent visitor accommodation application) would use the classrooms for classes.
- The proposed development will not have a negative impact on the residential amenity as the site will be used by those staying on the site and there will be less movement around the site.

6.3. Planning Authority Response

None received.

6.4. Observations

Observation received from Rathgar Residents Association as summarised below:

- Submission supports the grounds of appeal.

- The proposal will be for a commercial activity 4 months of the year and is not connected to the student accommodation.

6.5. Further Responses

None received.

7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Planning History
- Concurrent Planning Application
- Development Plan Compliance
- Impact on the Residential Amenity
- Other
- Appropriate Assessment

Principle of Development

7.2. The proposed development includes the change of use of 30 no bedrooms, for use as temporary classrooms outside the academic term, located within 6 apartments of Block 1 of the Student Halls of Residence for Trinity College Dublin. The grounds of appeal, submitted by various residents associations and residents of properties in the vicinity of the site, find the proposal an unacceptable use at this location and raise concern in relation to the principle of the use on the site and the actual physical works required for the classroom use.

7.3. The site is located on lands zoned Z1, residential, where it is an objective to “To protect, provide and improve residential amenities”, education is a permissible use within this zone. The response from the applicant in relation to the grounds of appeal state that the beds will be removed, wardrobes remain and moveable chairs with attached desks used for students, with approximately two sessions per day. I consider these works sufficient to allow the rooms to remain as student

accommodation for the majority of the year, and I consider the reference to the proposal as temporary reasonable.

- 7.4. Therefore, having regard to the scale and nature of the proposed development and the zoning on the site, I have no objection to the principle of the use of classrooms outside the academic term, subject to complying with other planning requirements as addressed in the following sections.

Planning History

- 7.5. PL29S.117164, granted in 2009, included permission for three student accommodation blocks, with 832 no. bedrooms and associated facilities, and Condition No 3 specifically restricted occupation of these Halls “as a *place of residence and support facilities by students enrolled in education course at the University of Dublin, Trinity College.*” A Section 5 declaration (PL29S.RL2839) issued by Dublin City Council on foot of unauthorised development of the use of bedrooms as classrooms outside the academic term, was declared not exempt development. The Board also found the proposal not exempt having regard to the material change of use and the use expressly in conditioned in the permission PL29S.117164, namely condition no. 3. The grounds of appeal refer to the planning history on the site and consider the proposal is a not in keeping with previous decisions and is a material contravention of those conditions which were included on previous permissions.
- 7.6. Appendix 21 of the development plan includes the definition of student accommodation as “*A professionally managed residential building, or part thereof, built either on or off campus, for the purpose of accommodating students over the duration of the academic year.*” It is of note that specific reference is provided to the duration of the use over the academic year. The national guidance “Rebuilding Ireland” and accompanying circular issued to the Board (PL 8/2016 APH 2/2016) recognises the need for student accommodation to establish a steady rental income throughout the year to ensure deliverability of projects. I do not consider it reasonable that all student accommodation should remain unoccupied for a substantial amount of time over the year. As stated above, the principle of the use is acceptable on the site and based on the intention to retain the student accommodation as the primary use and reference to student accommodation in the

current development plan and the national guidance, I do not consider the proposed development is a material contravention of the conditions imposed on PL29S.117164.

Concurrent Planning Application.

- 7.7. An application, PL 300133-17 for the use of Block 1, 2 & 3 of Trinity Student Halls as visitor accommodation outside the academic year and other on Trinity Students within the academic year, has been submitted concurrently with this application for proposed development. The grounds of appeal are concerned the proposed development has not been properly considered or assessed in conjunction with this application. The response from the applicant states that it is intended that students using the classrooms will also stay in the accommodation. I do not consider the applicant was required to submit the full details of the concurrent application as part of this proposal and I consider the supporting statement from Trinity College is clear of the intention for development on the site. Although I do not consider either application is necessarily dependant on the other, I have fully considered the cumulative impact of both proposals throughout my assessment and provided cross referencing were appropriate.

Development Plan Compliance

- 7.8. The grounds of appeal are concerned that the proposed development does not comply with the use on the site and as such is not in compliance with the development plan and to permit would set an undesirable precedence for similar future development on the site.
- 7.9. Student Accommodation guidance: As stated above, the principle of education use is acceptable and I have assessed the compliance of the use within the definition of student accommodation provided in the development plan (Appendix 21). Section 16.10.17 requires student accommodation to respect the residential amenity, be properly managed, confirm that students are registered with a third level education institution and support the local community through design. The proposed development does not include any physical alterations to Block 1 and the temporary use outside the academic term will not alter the primary use of the site as student accommodation, therefore I consider the proposal is in compliance with the guidelines for student accommodation in the development plan.

- 7.10. Built Heritage: The Z2 zoning, includes two protected structures along the east of the site and refers to educational use as open for consideration. Block 1 is not located within the Z2 zoning and I do not consider the proposed development will have any significant impact on the Z2 land use zoning or protected structures on the site. Therefore, I do not consider the proposed development will have any significant negative impact on the built heritage on the site.
- 7.11. Car parking: There are 88 parking spaces on site and it is not proposed to amend the amount of spaces. The site is located in Zone 2, for the purpose of car parking requirements, where a maximum amount of spaces are permitted due to the provision of high quality public transport. The site is located c.600m from a Luas stop. The grounds of appeal are concerned the additional visitors to the site outside the academic term cannot be accommodated on site and the movement of traffic will cause congestion. Table 16.1, of the development plan, refers to the maximum permitted car parking provision and I note the requirement for student accommodation and residential institution is both 1 per 20 bed-spaces and youth hostel is less at 1 per 30 bed spaces. Therefore, the change of use for visitor accommodation in the concurrent application would not require a significant alteration to the provision of parking spaces. The proposal would require 1 space per classroom (30 spaces) and having regard to supporting documentation referring to the students staying in the accommodation on site, the location of the site in Zone 2 and the maximum spaces allowed in the development plan, I do not consider the cumulative impact would have a significant negative impact on the traffic flow in the vicinity.
- 7.12. Having regard to the information in the development plan and the size, nature and location of the site, I consider the proposed development complies with the policies and guidance of the development plan.

Impact on Residential Amenity

- 7.13. The site is located in the Trinity Halls Student Accommodation and includes the use of 30 bedrooms as classrooms. The grounds of appeal argue that, in conjunction with the concurrent application (PL300133- 17), use of the site for visitors outside the academic term, there will be a negative impact on the residential amenity of those residents of the surrounding area.

- 7.14. Noise and disturbance: The proposed development will not increase the number of occupants of the student accommodation. The supporting information refers to the use of the classrooms by those staying in the accommodation, as applied in PL300133-17, mainly for second level students. I note the site will still be in the ownership of Trinity College and the response to the applicant for the concurrent application refers to the current “Conditions of Occupancy” which visitors must adhere to. I note the Inspectors Report on the parent permission refers to any noise emanating from the building as a matter of control by the College and no conditions relating to the management were imposed. I consider it reasonable that the College would control any disturbance from the site.
- 7.15. Traffic and Parking: The grounds of appeal are concerned that a Mobility Management Plan has not been submitted with the proposal, therefore the full extent of both this and the concurrent application cannot be fully assessed. The parent permission did not include a mobility management plan as the Inspectors Report referred to the impact of traffic as not significant. As stated above, the response from the applicant states that the students will also be staying on the campus, therefore restricting any additional traffic flow, which I consider reasonable.
- 7.16. Having regard to the location of the site and the scale and nature of the proposed development, I do not consider the proposed development would have a significant negative impact on the residential amenities of the occupants of property in the vicinity of the site.

Other

- 7.17. Procedural: The grounds of appeal are concerned the development description is misleading and as such the planning authority should not have validated the application. The reference to the temporary use of the site outside the academic term is included and I note the applicant’s response refers to the alterations in the dates for academic terms on a yearly basis which precludes overly descriptive times. I consider the development description and the supporting information is sufficient to undertake an assessment of the proposal.
- 7.18. Legal: Legal proceedings were undertaken by an objector in relation to drawings submitted to Dublin City Council for compliance of condition No 3, compliance drawings for Block 2 and enforcement action for unauthorised development on the

site. The applicants response to this appeal and the concurrent application refers to the decision of the High Court, *Kenny v Trinity College*, found in favour of Trinity College. The observer refers to a current appeal of this High Court decision with the Supreme Court. It is of note that any enforcement proceedings under Section 160 of the Act are a matter of the Planning Authority. This aside, I consider the proposed development, specifically the alteration of a condition on a previous permission for the use of the bedrooms for classrooms is not impacted by these legal proceedings.

- 7.19. Having regard to the facts of the case, I do not consider it necessary to enquire further into the matter of the dispute over compliance drawings as the applicant is required under other mechanisms to ensure they have all the necessary rights in place before undertaken the proposed development.

8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the Z1 and Z2 zoning in the Dublin City Development Plan, 2016-2022 and the policies and objectives, the planning history on the site, the scale and nature of the proposed development and the retention of the student accommodation as the primary use on the site and the pattern of development in the vicinity it is considered that the proposed development would not have a negative impact on the character and setting of a protected structure or national monument, seriously injure the residential or visual amenity of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The use of the site for classrooms shall be strictly outside the academic terms and shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.

Reason: In order to safeguard the student accommodation use on the site and the amenities of property in the vicinity.

Karen Hamilton
Planning Inspector

18th of April 2018