



An
Bord
Pleanála

Inspector's Report ABP-304692-19

Question

Whether the use of student accommodation at Amnis House, Western Road, Cork for year-round short term letting constitutes a material change of use.

Location

Amnis House, Western Road, Cork

Declaration

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

R515/19

Applicant for Declaration

Irish Hotels Federation

Planning Authority Decision

None

Referral

Referred by

Irish Hotels Federation

Owner/ Occupier

Western Road Student Ireland Ltd –
Irish Student Fund (Cork) IV

Observer(s)

None

Date of Site Inspection

2nd October 2019

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located to the west of the city centre and off the southern side of the Western Road (N22). This site lies within a mixed-use area within which visitor accommodation and university buildings predominate. It is surrounded on its curved south eastern side by the southern course of the River Lee.
- 1.2. The site is of roughly triangular shape and it extends over an area of 0.32 hectares. This site was recently redeveloped to provide a multi-storey building, which is known as Amnis House and which bears signage stating “Uninest Student Residences”.

2.0 The Question

- 2.1. The question asked by the referrer is as follows:

Whether the use of student accommodation at Amnis House, Western Road, Cork for year-round short term letting constitutes a material change of use.

3.0 Planning Authority Declaration

3.1. Declaration

The period for a decision passed without one being made.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information was sought from the owner of the subject property with respect to the following:

- Any information relevant to the referral question with respect to letting arrangements for Amnis House.
- Clarification as to whether the building is in use for short term letting accommodation/any use other than student accommodation and include whether this use is limited to certain times of the year and specify these dates if applicable.

3.2.2. Other Technical Reports

None

4.0 Planning History

The baseline planning permission for this referral was granted to application 16/36931 at appeal PL28.247182 on 11th January 2017, subject to 17 conditions.

This application was for the following proposal:

The development will consist of student accommodation development comprising the construction of 30 no. apartments (ranging in size between four to eight bedrooms), with reception, management facilities, media and meeting/communal areas and all associated ancillary development including plant and equipment, sub-station, switchroom, recycling/refuse storage, landscaping, vehicular and pedestrian access, bicycle and car parking. The proposed development ranges in height from four to six storeys, all at the site of the former Muskerry Service Station, Western Road, Cork.

Two of the 17 conditions attached to the permission are relevant to this referral and so they are set out below:

2. This permission is for student accommodation¹ (and ancillary uses², as permitted) only. No permission is granted for any other type of use, and no change of use shall take place – including change of use to other types of residential accommodation – without a prior grant of permission from the planning authority or An Bord Pleanala.

Reason: In order to define the scope of the permission and in order to comply with Objective 6.5 of the Cork City Development Plan 2015 – 2021.

13. The development hereby permitted shall only be occupied as student accommodation, and for no other purpose, without a prior grant of planning permission for change of use. Such application for permission shall make provision for such additional car parking/communal open space as may be specified by the planning authority.

Reason: In the interest of residential amenity and to limit the scope of the proposed development to that for which the application was made.

¹ The submitted Operational Management Plan stated that the student accommodation was to be made available during July and August to students who wish to stay on over the summer and those on summer courses.

² Ancillary uses comprise the following: the reception, concierge area and bag storage area, management offices, student facilities, including office facilities and a leisure common room and laundry facilities.

5.0 Policy Context

5.1. Development Plan

Under the Cork City Development Plan 2015 – 2021 (CDP), the site is zoned ZO4, wherein the Objective is “To protect and provide for residential uses, local services, institutional uses and civic uses...”

Objective 6.5 of the CDP originally stated the following:

Any change of use from student accommodation to any other type of accommodation shall require permission. Generally such applications shall be restricted unless it can be adequately demonstrated that an over provision of student accommodation exists in the city.

Under Variation No. 5 to the CDP, which was adopted on 9th July 2018, the equivalent to the aforementioned Objective is set out in Section 16.69 and states the following:

Student accommodation developments shall only be used for accommodation for students of a tertiary/higher education institute, including residential accommodation that is used as tourist or visitor accommodation only outside of academic term times. Such developments shall not be used as permanent residential accommodation or...as a hotel, apart-hotel or similar use.

5.2. Natural Heritage Designations

- Great Island Channel SAC (site code 001058)
- Cork Harbour SPA (site code 004030)

6.0 The Referral

6.1. Referrer’s Case

- As of June 219, the referrer advises that Amnis House is being advertised for short term lets on booking.com and expedia.com, i.e. 3 room types: double bed en-suite and four-bed and six-bed apartments. The former website indicates that it has been welcoming guests to this House since February

2019 and the latter website indicates that it is available between 31st May and 26th August annually as an apart-hotel.

- Attention is drawn to the above paragraph, conditions 2 and 13 attached to the permission authorising the subject property, Departmental Circular Letters PL12/2016 & PL10/2017, and several previous cases dealt with by the Board³. This permission does not include use as short-term letting and so a change of use has occurred.
- The said change of use would generate additional traffic and associated movements and potential impacts on residential amenity, in terms of noise and opening hours, and so it would be a material change of use.
- Accordingly, the incidence of year-round short term letting constitutes a material change of use, which is not exempted development, and so it requires planning permission.
- The view is expressed that, under Objective 6.5 of the CDP, there is no over provision of student accommodation in Cork City. Instead, as of Q2 2018, the National Student Accommodation Strategy reports a demand for 815 bedspaces. Thus, to permit any application with respect to the above cited material change would not be justified.

6.2. Planning Authority Response

None

6.3. Owner's response

Section 138(1)(a) & (b) of the Planning and Development Act, 2000 – 2019:

- Under Section 138(1)(a), the Board is requested to dismiss this referral, as it is without substance or foundation, due to the fact that Amnis House has not been used for year-round short term letting and the owner has no intention that it be so used. In this respect, the owner has submitted no evidence to indicate that such usage is occurring.

³ Nos. PL29S.RL3490, PL06D.RL2317, PL29S.300996, and PL29N.302862.

- Under Section 138(1)(b) and in the light of the preceding paragraph, the Board is requested to dismiss this referral, as it is completely hypothetical and irrelevant.
- Under Section 13(d) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, student accommodation is defined to include short term lettings during vacations and the use of Amnis House comes within this definition.

Responses to the referrer's case:

Amnis House is not being used for year-round short term letting.

- Attention is drawn to screen shots that illustrate the non-availability of short-term letting accommodation in Amnis House outside the months of June, July, and August. Thus, the expedia.com website advises that rooms are unavailable at other times of the year and the booking.com website responds to searches against these times by reloading with other options in the said months.
- Attention is also drawn to the referrer's submitted guest review log, which is for June 2019, a vacation month.
- The Departmental Circulars cited are not relevant, as they refer to residential, as distinct from student accommodation.
- The referrer quotes from the Operational Management Plan for Amnis House. While this Plan refers to possible student use of the accommodation during summer months, this does not preclude short term lettings as well, especially as it also cites such usage explicitly on Page 4.

The use of Amnis House as tourist/visitor accommodation outside of academic term times is not development:

- The question posed should be revised to relate to the vacation only short-term lettings that are occurring. Thus, the permission authorising Amnis House is conditional on its use as student accommodation and, under Section 13(d) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, the definition of such accommodation includes short term lettings during vacations. Thus, no change of use has occurred and so no development has

occurred. (By extension the question of exempted development does not arise).

- Notwithstanding the foregoing paragraph, conditions 2 and 13 attached to the permission in question seek to restrict the use of Amnis house to student accommodation only. These conditions are only valid insofar as any change of use, which would otherwise be allowed, would have serious adverse impacts upon either the environment or amenity. The short-term lettings in question would not have such impacts.

6.4. Further Responses

The referrer has responded to the owner's response to his case as follows:

- Dismissal of this referral is not warranted, as there is evidence of year-round short-term lettings, i.e. the booking.com website, which opened in September 2018, states that it has been welcoming guests since 1st February 2019 and there is nothing to suggest that it is not available for bookings all year round. Furthermore, the trip advisor website has 2 guest reviews of Amnis House for April 2019, i.e. outside the summer vacation months.
- Under Article 9(1)(a)(i) of the Planning and Development Regulations, 2001 – 2019, the definition of student accommodation cited above cannot be construed as overruling not one, but two conditions attached to the permission in question.
- Even if the said definition were to be applied, then its qualification that short-term lettings occur only outside academic terms would, in the light of the above evidence, not be applicable.
- The owner's questioning of the validity of conditions nos. 2 and 13 is set aside on the basis that their accompanying reasons explain why they have been attached.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 – 2019

Section 2(1) states the following:

*In this Act, except where the context otherwise requires –
“planning authority” means a local authority,*

Section 5(1) states the following:

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Section 5(3)(b) states the following:

...in the event that no declaration is issued by the planning authority, any person made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued...

Section 127(1) states the following:

*An appeal or referral shall –
(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,*

Section 2(1) states the following:

“land” includes any structure and any land covered with water (whether inland or coastal);

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined, and –

(a) where the context so admits, includes the land on, in or under which the structure is situate...

“Student accommodation” –

(a) means a building or part thereof used or to be used to accommodate students whether or not provided by a relevant provider (within the meaning of Qualifications and Quality Assurance (Education and Training) Act 2012), and that is not for use –

(i) as permanent residential accommodation, or

(ii) subject to paragraph (b), as a hotel, hostel, apart-hotel or similar type accommodation, and

(b) includes residential accommodation that is used as tourist or visitor accommodation but only if it is so used outside academic term times;

“use”, in relation to land, does not include the use of land by the carrying out of any works thereon;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3(1) states the following:

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 138 states the following:

(1) The Board shall have an absolute discretion to dismiss an appeal or referral –

(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral –

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,

or

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to –

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

(2) A decision made under this section shall state the main reasons and considerations on which the decision is based.

7.2. Planning and Development Regulations, 2001 – 2019

Article 6(1) states the following:

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) states the following:

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would –

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

7.3. Other

Planning and Development (Housing) and Residential Tenancies Act, 2016, enacted on 23rd December 2016:

Section 13 states the following:

Section 2 of the Act of 2000 shall have effect in subsection (1) during the specified period –

(d) as if the following definition were inserted after the definition of “structure”:

“Student accommodation” –

(a) means a building or part thereof used or to be used to accommodate students whether or not provided by a relevant provider (within the meaning of Qualifications and Quality Assurance (Education and Training) Act 2012), and that is not for use –

(i) as permanent residential accommodation, or

(ii) subject to paragraph (b), as a hotel, hostel, apart-hotel or similar type accommodation, and

(b) includes residential accommodation that is used as tourist or visitor accommodation but only if it is so used outside academic term times;

DoHPCLG Circular Letter PL 12/2016 addresses “Recent An Bord Pleanála Decision on Short Term Lettings”: This Letter states the following, amongst other things:

...the continued operation of an apartment or residential unit without planning permission for such a material change of use should be considered unauthorised development and subject to enforcement proceedings by the relevant Planning Authority.

DoHPCLG Circular Letter PL 10/2017 addresses “Guidance on Planning Applications for Short Term Lettings”: This Letter states the following, amongst other things:

Under the planning code, all development, including a material change of use, requires planning permission unless exempted under the Act or the associated Regulations. However, there is a specific exemption in article 10(4) of the Planning and Development Regulations 2001 (the Regulations) for, within certain limitations or restrictions, development which consists of the use of a house for overnight guest accommodation, which, therefore, does not require planning permission. This exemption is typically or traditionally relied on in the context of the provision of B&B type accommodation. It is important to note that, for the purposes of article 10(4), “house” does not include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building. In other words, apartments do not benefit from this exemption.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The referrer asks the question as to whether the use of student accommodation at Amnis House, Western Road, Cork for year-round short-term letting constitutes a material change of use.
- 8.1.2. Under Section 3(1) of the Planning and Development Act, 2000 – 2019 (hereafter referred to as the Act), “development” means “the making of any material change in the use of any structures or other land.” Section 2(1) of the Act defines “structure” to mean, amongst other things, “any building”. Thus, under the referrer’s question, for development to have occurred at Amnis House, its use for year-round short-term letting must constitute a material change of use.

- 8.1.3. The owner of Amnis House has challenged the reference to year-round short term letting on the basis that short-term letting only occurs within the summer vacation and so it is not year-round. He, therefore, contends that the current referral should be dismissed by the Board, under Section 138(1)(a) of the Act, as being “without substance or foundation”. Alternatively, the question should be rephrased to represent the fact that year-round short-term letting is not occurring.
- 8.1.4. The referrer has responded by drawing attention to evidence gathered from the booking.com and trip advisor websites. The former website states that it has been welcoming guests since 1st February 2019 and the latter website includes reviews from visitors who stayed not only in June of this year, but also in April. It thus contends that short-term letting use is year-round in its extent.
- 8.1.5. The owner has commented on the phrase cited from the booking.com website to the effect that it refers to when bookings began to be taken for the summer vacation months rather than when visitors began to be accommodated in Amnis House. The reviews on the trip advisor website from June are consistent with this position. However, those from April are not, although they could refer to the Easter vacation, which fell within this month. Certainty in this respect is not available, as the website extract only states the month rather than the day.
- 8.1.6. I undertook a site visit on Wednesday 2nd October 2019 at around 12 noon. I observed young people entering and exiting from Amnis House and I noted that the signage on this House consistently stated “Univest Students Residences”. Thus, this House presented as one offering and providing student accommodation.
- 8.1.7. In the light of the exchanges between the parties and my site visit, I consider that the referrer has established that short-term letting is occurring, but not that it is definitely occurring year-round. I consider, too, that the owner’s contention that such lettings are confined to the summer vacation months of June, July, and August has been contradicted by the referrer’s evidence of lettings in April, albeit this could have been in the Easter vacation. In these circumstances, I take the view that the referral should not be dismissed under Section 138(1)(a)(i) of the Act, but that it should proceed to determination on the basis of the following revised question:

Whether the use of student accommodation at Amnis House, Western Road, Cork for short-term letting outside the academic term times of third level educational

institutions in Cork City constitutes a material change of use and so is development that is not exempted development.

8.1.8. The permission for Amnis House (16/36931) was granted at appeal (PL28.247182) on 11th January 2017, subject to 17 conditions, 2 of which relate to its subsequent usage, i.e. Nos. 2 and 13.

- The former condition makes clear that the use of this House is to be for student accommodation only and that any change of use, including to other types of residential accommodation, will require planning permission. The reason for the attachment of this condition is stated as being to define the scope of the permission and to comply with Objective 6.5 of the CDP, which in essence states what the condition says and adds that any change of use would be required to demonstrate the over provision of student accommodation in Cork City.
- The latter condition reiterates that only the use of Amnis House as student accommodation is authorised and that any change of use would require planning permission. It adds that an application, in this respect, “shall make provision for such additional car parking/communal open space as may be specified by the planning authority.” The reason for the attachment of this condition is stated as being “In the interest of residential amenity and to limit the scope of the proposed development to that for which the application was made.”

8.1.9. I note that the wording of both of the above conditions and their accompanying reasons indicates that the possibility of a change of use to some other type of residential accommodation was in view rather than that of visitor accommodation. These conditions thus give expression to the concern that student accommodation, which is designed to distinctive standards that would not be appropriate for other forms of residential accommodation, should be retained as such and that, alternatively, any change of use to another type of residential accommodation should be the subject of further planning permission.

8.1.10. Since the parent permission was granted, Objective 6.5 of the CDP has effectively been superseded by Variation No. 5 to the CDP, which is entitled “Student Accommodation”. Thus, the equivalent provision in the CDP now is Section 16.69,

which gives expression to the definition of student accommodation cited in Section 13 of the Planning and Development (Housing) and Residential Tenancies Act, 2016, which was enacted on 23rd December 2016. This definition states the following:

“Student accommodation” –

(a) means a building or part thereof used or to be used to accommodate students whether or not provided by a relevant provider (within the meaning of Qualifications and Quality Assurance (Education and Training) Act 2012), and that is not for use –

(i) as permanent residential accommodation, or

(ii) subject to paragraph (b), as a hotel, hostel, apart-hotel or similar type accommodation, and

(b) includes residential accommodation that is used as tourist or visitor accommodation but only if it is so used outside academic term times;

8.1.11. I note that the above cited definition of student accommodation includes within it the use of such accommodation by tourists or visitors outside academic term times, i.e. during vacations. I note, too, that, while this definition is set out in the Planning and Development (Housing) and Residential Tenancies Act, 2016, it is also an insert to the Planning and Development Act, 2000, as amended. This legislation was enacted before the Board granted permission for Amnis House and so the said definition is clearly relevant to the interpretation of the aforementioned conditions, i.e. they do allow for tourist or visitor accommodation outside academic term times.

8.1.12. In the light of the foregoing discussion I conclude that from the evidence before me, the short term letting use of Amnis House is either consistent with the definition of student accommodation in Section 2(1) of the Act or not demonstrably inconsistent with this definition. I, therefore, conclude that this use comes within the ambit of conditions nos. 2 and 13 of the relevant permission for this House and so no change of use has occurred. Accordingly, there can be no question that a material change of use has occurred and so development has not occurred.

8.2. Is or is not exempted development

- 8.2.1. Given my foregoing conclusion that development has not occurred the question of exempted development does not arise.

8.3. Restrictions on exempted development

- 8.3.1. Given my foregoing conclusion that development has not occurred the question of restrictions on exempted development does not arise.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the use of student accommodation at Amnis House, Western Road, Cork for short-term letting outside the academic term times of third level educational institutions in Cork City constitutes a material change of use and so is development that is not exempted development:

AND WHEREAS the Irish Hotel Federation requested a declaration on this question from Cork City Council and the Council failed to issue a declaration within the statutory time period:

AND WHEREAS the Irish Hotel Federation referred this declaration to An Bord Pleanála on the 14th day of June, 2019:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,

- (c) Section 138(1) and (2) of the Planning and Development Act, 2000, as amended,
- (d) Section 13 of the Planning and Development (Housing) and Residential Tenancies Act, 2016,
- (e) the planning history of the site,
- (f) the submissions of the parties, and
- (g) the inspector's site visit and report:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Short-term lettings are occurring in Amnis House to tourists or visitors,
- (b) No conclusive evidence has been submitted of either year-round short-term lettings or short-term lettings during the academic term times of third level educational institutions in Cork City,
- (c) The short-term lettings that are occurring are either outside academic term times or they have not been demonstrated to be during these academic term times,
- (d) The definition of student accommodation in Section 2(1) of the Planning and Development Act, 2000 – 2019, includes the use of student accommodation by tourists and visitors outside the academic term,
- (e) Conditions 2 and 13 attached to the permission authorising Amnis House restrict its use to student accommodation, as thus defined,
- (f) And so, the short-term letting use to tourists and visitors outside academic term times does not entail any change of use of Amnis House.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the use of

student accommodation at Amnis House, Western Road, Cork for short-term letting outside the academic term times of third level educational institutions in Cork City is not development.

Hugh D. Morrison
Planning Inspector

7th October 2019