



An  
Bord  
Pleanála

## Inspector's Report ABP-307667-20.

### Question

The application relates to the question as to whether various works that have been carried out at Trinity Hall, Dartry, Dublin 6, namely:- (a) An increase in the floor area of Building 2 of 1,029m<sup>2</sup> compared to what was approved; and (b) An increase in the floor area of Building 3 of 1,342m<sup>2</sup> compared to what was approved are or are not development and, if they are development, whether they are or are not exempted development for the purposes of the Planning and Development Acts.

### Location

Trinity Hally, Dartry, Dublin 6.

### Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0175/20.

Applicant for Declaration

James F. Kenny.

Planning Authority Decision

Is not development.

**Referral****Referred by**

James F. Kenny.

**Owner/ Occupier**

Trinity College Dublin.

**Observer(s)**

Patricia Kenny.

**Date of Site Inspection**

23/10/2020.

**Inspector**

A. Considine.

## 1.0 Site Location and Description

- 1.1. The subject site, which forms part of the Trinity Hall Student Residence complex in Dartry, Dublin 6, is located in a predominantly suburban residential area. Residential properties in the vicinity consist of detached and semi-detached houses and there are a number of period houses on the Palmerston Park and Dartry Road frontages, with apartment developments also constructed in the area. The site is accessed from Dartry Road on the western boundary with other access points, including pedestrian from Palmerston Park and Temple Road.
- 1.2. Trinity Hall is the main halls of residence for first year undergraduate students attending Trinity College and comprises, as constructed, three building blocks which provide 812 no. bedrooms, 937 bedspaces. Blocks 2 & 3 front onto Dartry Road, which is the subject of this referral, and Block 1 adjoins the original Trinity Hall and Purser House, Protected Structures, in the centre of the site.

## 2.0 The Question

- 2.1.1. The application relates to the question as to whether various works that have been carried out at Trinity Hall, Dartry, Dublin 6, namely:-
  - (a) An increase in the floor area of Building 2 of 1,029m<sup>2</sup> compared to what was approved; and
  - (b) An increase in the floor area of Building 3 of 1,342m<sup>2</sup> compared to what was approvedare or are not development and, if they are development, whether they are or are not exempted development for the purposes of the Planning and Development Acts.
- 2.1.2. The Board will note that this question arises due to a comparison of information presented during the application stage of the development, which include a schedule of areas and accommodation for the development within the April 1999 Architect's Report and the Compliance Plans and Compliance Architects Report, following the decision to grant planning permission for the development and subject to conditions. The Compliance Report provided information relating to the number of bedrooms and bedspaces in each building. The Referrer submits that no information was

provided in relation to floor areas. It is submitted by the referrer that the increase in the floor areas is a material deviation from the permission granted.

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

The Planning Authority issued a declaration with regard to the question posed and declared that:

‘the floor areas of Building 2 and Building 3 were deemed to be in compliance with the conditions imposed as part of the planning permission granted under Reg. Ref. 1101/99 (ABP ref. 29S.119164). The ‘increases in floor areas’ referred to were approved and constructed and therefore are not development.’

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Report**

The Planning Report, prepared to address the question posed, was submitted as part of the Referrers documents. The report sets out the planning history for the site and a background to the Section 5 request, summarised as follows:

- Permission was granted by the Board subject to a number of conditions.
- A compliance submission was submitted to the PA in November 2001 and a Compliance Order issued in January 2002 stating that the details submitted were satisfactory and that the conditions were complied with.
- The report notes the submission of a large suite of documents by the Referrer and notes the references to the Architects Report and the Compliance Architects Report.
- The referrer also notes the further planning applications in relation to Trinity Hall. The referrer argues that the floor areas outlined for buildings 2 and 3 in the later applications is a material deviation from the floor areas granted in the planning permission.

- It is also noted that the schedule of areas and accommodation, included in both the April 1999 and the October 1999 submissions, were not included in the Compliance Architects Reports of 2001.

In terms of the increase in floor area, the following is submitted:

- The floor area of Building 2 as permitted by ABP was 7,145m<sup>2</sup>, while in later applications is indicated at approximately 8,200m<sup>2</sup>, while Building 3 as permitted was 7,878m<sup>2</sup> and in later applications is approximately 9,250m<sup>2</sup>.
- The referrer suggests that no information was provided in the Compliance Submissions as to the floor area of the buildings, and therefore, there was no information available to the Council at the time of compliance as to what the floor area was.
- Having reviewed the submitted documents, the PA submits that it is clear that the total floor area of the buildings were indicated on the Compliance drawings submitted in November 2001. Therefore, it is not correct to say that information was not available to the Council.
- The planning officer was satisfied with the compliance submission as indicated in the Compliance Order and the floor areas indicated and approved on the compliance drawings, being 8,174.2m<sup>2</sup> and 9,217.4m<sup>2</sup> respectively.

The report concludes that while the floor areas approved in the compliance submission differ from the original proposals, they were considered as complying with the grant of permission and in accordance with conditions attached. The Council found that the increase in floor area of the buildings complied with conditions imposed as part of the planning permission granted under ABP ref 29S.117164 (PA Reg Ref 1101/99). As such, the increases were approved and constructed and therefore are not development.

#### 3.2.2. Other Technical Reports

None.

## 4.0 Planning History

- 4.1. There is a significant planning history relating to this site, including legal challenges.

**PL29S.117164 (PA Reg Ref 1101/99):** Permission granted for the construction of new student Halls of Residence at Trinity Hall for c. 25,000m<sup>2</sup> of development for three student residence blocks with 832 no. bedrooms (providing 946 bedspaces) new central support facilities and refurbishment of Trinity Hall and new sports facility and associated works. The Board upheld the decision to grant following an appeal and the application was accompanied by an Environmental Impact Statement.

While the Boards Inspector accepted the revised plans submitted to the PA on the 7<sup>th</sup> day of October 1999, the Board, in their decision, including the following conditions:

- 2: The western arm of Building Number 3, that is on the full Dartry Road elevation, shall be reduced in height by the omission of the first floor. Revised drawings incorporating this modification to Building Number 3 shall be submitted to the planning authority for agreement prior to the commencement of development.

**Reason:** In the interest of visual amenity.

8. Revised drawings of the proposed development, with floor plans and elevations corresponding in detail, shall be submitted to and agreed in writing by the planning authority prior to the commencement of development.

**Reason:** In the interest of orderly development.

The decision required that the applicant agree with the council a number of issues in terms of conditions 2, 6, 7, 8, 9 and 17.

Other decisions:

**PL29S.202698 (PA 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.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.300092 (PA Reg Ref 3645/17):** Permission granted on appeal for a change of use of part of the student accommodation in Block 1 to 30 temporary classrooms outside of academic term.

**PL29S.300133 (PA Reg Ref 3674/17):** Permission granted on appeal to amend Condition 3 (of the parent permission PL29S.117164 (PA Reg Ref 1101/99) refers) to facilitate the use of existing student accommodation as temporary tourist or visitor accommodation only outside of academic term times and to be used to accommodate any student registered in a Higher Education Institute during the academic term times at Blocks, 1, 2 and 3.

**ABP-306837-20:** SHD application to the Board for the demolition of existing structures within curtilage of Greenane House (a Protected Structure) and construction of 4 no. apartments, 358 no. student accommodation bedspaces and associated site works, all at Cunningham House, Trinity Hall, Dartry, Dublin 6. A decision to grant permission was signed on the 18<sup>th</sup> August 2020 and included 21 conditions.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2016-2022

- 5.1.1. 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.

- 5.1.2. 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.

## **5.2. Natural Heritage Designations**

The subject site is not located within any designated site. The closest site is the South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC which are located approximately 3.6km to the east of the site.

## **6.0 The Referral**

### **6.1. Referrer's Case**

- 6.1.1. Mr. Kenny applied to Dublin City Council for a Section 5 Declaration in respect of increases that have been made to the floor area of Building 2 and Building 3 at Trinity Hall, Dublin 6 beyond what was permitted. The notification from Dublin City Council states that the floor areas of Building 2 and Building 3 were deemed to be in compliance with the conditions imposed as part of the planning permission granted under Reg. Ref. 1101/99 (ABP ref. 29S.119164) and that the increases in floor areas referred to were approved and constructed and therefore are not development.
- 6.1.2. This declaration is challenged on the grounds that the declaration is:
- contradictory
  - illogical and irrational



- contrary to Irish Law on the basis that the express agreement of the Council was not sought for the changes and were therefore not agreed by the Council
- contrary to Irish Law on the basis that there is no provision in planning law or regulations under which the changes could be exempted development
- contrary to Irish Law on the basis that any purported approval and / or agreement of the Council in respect of the changes would have been *ultra vires*
- contrary to Irish Law on the basis that revised environmental impact assessment is required in respect of the visual impact of the changes and as this has not been done, they could not be exempted development; and
- contrary to EU Law on the basis that by making the declaration the Council failed to comply with its obligations to give effect to Council Directive 85/337/EEC, as amended, and deprived the referrer and the public of his rights under that Directive.

The Board will note that an Oral Hearing was requested and refused.

6.1.3. The submission to the Board is extensive and includes a suite of information in relation to the planning history of the site and the relevant litigation which has occurred in relation to the site and the development. I refer the Board to my summary of same above in section 4 of this report.

6.1.4. It is the referrers case that all of the mentioned works are material deviations from the permission that was granted for Trinity Hall and are therefore development and that the mentioned works are not exempted development.

## 6.2. Planning Authority Response

None

## 6.3. Owner/ occupier's response

None

## 6.4. Observers

6.4.1. Mr. Philip Kenny submitted an observation on behalf of Mrs. Patricia Kenny, wife of the referrer. The observation is summarised as follows

- The declaration made by Dublin City Council under Decision Order P3332 is fundamentally flawed on a number of grounds (8 in total).
- Request that the Board should, in the interests of justice, consider using powers under Section 131 of the P&D Act to serve notice on Trinity College requesting that they make a submission to the Board outlining when, how and why the changes to the floor areas of Buildings 2 and 3 at Trinity Hall were made.
- The submission includes a legal and factual analysis of documents submitted by Mr. Kenny to the Council in the Section 5 application and to the Board in the Section 5 referral. Duplicate copies have not been included in the observation to the Board which is an addendum to the submission.
- It is submitted that the Boards Condition 1 required the development to be carried out in accordance with the October 1999 plans except as was otherwise required in order to comply with the other Board Conditions. The referrer submits 'as none of the other Board Conditions required changes that would or could have resulted in an increase in the floor area of Building 2 and Building 3, these changes represent material differences between the permitted development and the as constructed development.'
- When the changes to the building were made is also raised as an issue and the observation includes an alternative scenario, being that the changes were made after the Compliance Plans were submitted and agreed by the Council.
- The declaration is contrary to Irish and EU law.
- Building 2 and Building 3 should have been subjected to an updated visual impact assessment.
- It is requested that the Board use its powers available under S131 of the Planning and Development Act and request a suite of information from Trinity College.

- It is submitted that the referral is not an attempt to challenge the Compliance Order or the October 1999 EIS.

## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000**

#### **7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:-**

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

#### **7.1.2. In Section 2 (1) of the Act “works” are interpreted as including**

“any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.

#### **7.1.3. Section 3 (1) of the 2000 Planning and Development Act states as follows:-**

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

#### **7.1.4. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.**

### **7.2. Planning and Development Regulations, 2001**

#### **7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-**

“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.”

- 7.2.2. Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General.
- 7.2.3. Article 9 of the Planning & Development Regulations deal with restrictions on exemption for developments to which article 6 relates and sets out a number of restrictions which would render development not exempt for the purposes of the Act.

### 7.3. Legal Challenges:

- 7.3.1. The current referrer sought leave to apply for judicial review of the Board’s decision to grant permission. Leave was refused, after a full *inter partes* hearing, in a judgment delivered on the 15th December 2000 by McKechnie J. (see *Kenny v. An Bord Pleanála (No. 1)* [2001] 1 I.R. 565) on the basis that the arguments raised did not meet the necessary threshold of “substantial grounds” under s.82(3)(a) of the Local Government (Planning and Development) Act 1963. McKechnie J. later refused leave to appeal against his decision. It is noted that the Judge held that condition 8 was intended to deal with discrepancies and ambiguities in the plans that had been noted by the inspector in the oral hearing and did not in any significant way modify Condition 1. Other issues raised in relation to boilers were considered by the trial judge as being suitable to be dealt with by way of agreement with the local authority. It was considered inappropriate for the court to become involved in such microscopic examination of matters of detail.
- 7.3.2. The referrer made many attempts to have the judgement of McKechnie J. set aside on a range of grounds which led, in 2006 to the making (by Clarke J.) of a an Isaac Wunder order against the appellant, precluding him from bringing any further proceedings against Trinity or the Board without the leave of the court.
- 7.3.3. Further to the above, the current referrer sought leave to apply for judicial review, in July 2002, of the Councils Order in relation to the Compliance Plans associated with the Boards decision under PL29S.117164 (PA Reg Ref 1101/99), on the basis that they did not comply with the permission and Board conditions. It was submitted that the Council Order was therefore ultra vires of grounds that the Council had acted in excess of jurisdiction in finding that Conditions 2,6,7,8,9 and 17 of the Board’s

permission had been complied with. This application was refused in the High Court by Murphy J., and the appeal to the Supreme Court was also refused on the 5th March 2009, with judgment being delivered by Fennelly J. ([2009] IESC 19). It is noted that the matters that were the subject of the JR proceedings are accordingly *res judicata* and cannot be raised again in court or Section 5 proceedings.

- 7.3.4. In the same month as the JR proceedings, the current referrer commenced proceedings under Section 160 of the Planning and Development Act, 2000, contending that Trinity had breached and intended to breach the provisions of the permission as cited above. Trinity, as respondents, sought an order from the High Court dismissing and / or striking out the S160 proceedings on the grounds that all of the matters before the Court in the S160 proceedings had already been decided in the JR proceedings. This order was granted and the S160 proceedings were struck out of the High Court in April 2011.
- 7.3.5. It is of note that Fennelly J. found that matters relating to increase bedspace numbers and changes to roof pitch were considered minor adjustments and expressly stated that matters such as a minor change in roof pitch were not appropriate subjects for scrutiny in the judicial review process.
- 7.3.6. The appeal to the Supreme Court was heard on the 17<sup>th</sup> February 2020 and judgement issued on the 14<sup>th</sup> August 2020. I have included a copy of the judgement on the file.
- 7.3.7. O'Malley J. noted that the '*issue at the heart of this appeal, therefore, is whether this appellant has any entitlement to raise issues that turn on the validity of the compliance decision.*' In reference to *Krikke v. Barranafaddock Sustainability Electricity Ltd. [2019] IEHC 825*, Simons J. considered that, on the facts of the case, the developer's compliance submission had been insufficiently clear in relation to the particular alteration in question and that the decision should not be seen as intentionally approving it. He also expressed the view that the planning authority would have acted ultra vires if it had intended to give approval without giving reasons.
- 7.3.8. In the current case, the validity of the compliance was challenged, by the current referrer and on particular grounds. The validity of the decision in this instance was determined against the appellant and O'Malley J. stated that '*he cannot now seek to*

*achieve the same outcome by arguing in separate proceedings, where the Council is not a party, that, notwithstanding the decision of this Court, the compliance decision was ultra vires on grounds other than those previously raised by him.'*

7.3.9. The decision found that while the 'case does not come within the strict confines of the principles of res judicata or issue estoppel, given that the parties are not identical..... it is ..... a clear example of abuse of process.' 'In concrete terms, if the compliance decision was lawful, then it was lawful for Trinity to construct the buildings in accordance with that decision. To argue that the construction is unlawful, where that argument is based entirely on the plans approved by the compliance decision, is in reality an attack on that decision.'

7.3.10. In discussion of collateral attack, the Judge references *Sweetman v. An Bord Pleanála* [2018] IESC 1, where Clarke C.J. said:

*"[38] The rationale behind the collateral attack jurisprudence is clear. A party who has the benefit of an administrative decision which is not challenged within any legally-mandated timeframe should not be exposed to the risk of having the validity of that decision subsequently challenged in later proceedings which seek to quash the validity of a subsequent decision on the basis that the earlier decision was invalid. Like consideration would apply to a State decision maker who has rejected an application or other similar decisions.*

*[39] The requirements of legal certainty make clear that a person who has the benefit of a decision which is not challenged within whatever time limit may be appropriate is entitled to act on the assurance that the decision concerned is now immune from challenge subject to very limited exceptions such as fraud and the like."*

7.3.11. The primary view taken by the Supreme Court in the compliance judicial review was that (apart from the issues in respect of the trees, now abandoned) the appellant had 'failed to show any respect in which the Council's decision was not within the scope of the authority given to it by the Board. The case now made by the appellant cannot be seen as anything other than an attempt to re-open the issue as to whether the compliance decision came within the scope of that authority, based on new arguments that were available to him from the start but not previously pursued.'

7.3.12. O'Malley J. concludes that in '*the circumstances it would be entirely contrary to the principle of finality of litigation, and to what was described in McCauley v. McDermott [1997] I.L.R.M. 486 as the general interest of the community in the termination of disputes and the finality and conclusiveness of judicial decisions, to permit this litigation to proceed further. I consider that Feeney J. was correct in finding that to do so would be to permit an abuse of process, and I would therefore dismiss the appeal.*'

## 8.0 Assessment

8.1.1. The application relates to the question as to whether various works that have been carried out at Trinity Hall, Dartry, Dublin 6, namely:-

- (a) An increase in the floor area of Building 2 of 1,029m<sup>2</sup> compared to what was approved; and
- (b) An increase in the floor area of Building 3 of 1,342m<sup>2</sup> compared to what was approved

are or are not development and, if they are development, whether they are or are not exempted development for the purposes of the Planning and Development Acts.

8.1.2. It is submitted by the referrer that the increase in the floor areas is a material deviation from the permission granted. However, it would appear to me that the referrer is seeking that the Board decide that the development is unauthorised as a result of the increased floor area, which the referrer considers is outside the permission as granted by An Bord Pleanála under PL29S.117164 (PA Reg Ref 1101/99).

8.1.3. In the context of the P&D Act 2000, as amended, an "unauthorised structure" means a structure other than—

- (a) a structure which was in existence on 1 October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act F21 [or under section 34, 37G or 37N of this Act], being a permission which has not been revoked, or which exists as a result of the carrying out of

exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“Unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 F21 [or under section 34, 37G or 37N of this Act], being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

8.1.4. The referrer suggests that no information was provided in the Compliance Submissions as to the floor area of the buildings, and therefore, there was no information available to the Council at the time of compliance as to what the floor area was. This is not the case. The plans and particulars submitted to Dublin City Council as part of the Compliance documents on the 30<sup>th</sup> August 2001 clearly indicate the floor areas of the buildings. I refer the Board to the following drawings in this regard:

- Building 2 – Floor Plans, Drg No. 214 Rev PPP which indicates a cumulative floor area of 8,174.2m<sup>2</sup>
- Building 3 - Floor Plans, Drg No. 215 Rev PPP1 which indicates a cumulative floor area of 9,217.4m<sup>2</sup>.

8.1.5. Therefore, the Council found that the increase in floor area of the buildings complied with conditions imposed as part of the planning permission granted under ABP ref 29S.117164 (PA Reg Ref 1101/99). As such, the increases were approved. The PA considered that as the increases were approved and constructed, the ‘works’, therefore are not development.

8.1.6. The question posed, therefore is potentially leading, and not appropriate for determination under the Section 5 process as it states, ‘compared to what was approved’. In the context of the planning history associated with the subject site, I would note that the Planning Authority, who is the appropriate authority to agree



compliance with conditions, clearly 'approved' the plans for the development which is now long established. It is therefore inaccurate to suggest that the plans were not approved. The Board will also note that the Compliance Reports were also subject to judicial review.

8.1.7. In terms of the S5 declaration before the Board, I would note that such a declaration can only say:

- a) whether something is development or not, and if it is
- b) whether it is exempted development or not.

It is not appropriate, therefore, to determine if something is permitted development or whether it is unauthorised development, which appears to be at the root of the question posed in this case. Neither is it appropriate for the Board to deal with a compliance issues, if relevant.

## **8.2. Is or is not development**

8.2.1. Section 2(1) of the Act defines 'works' as including "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure". In this regard, I am satisfied that the subject referral relates to 'works'.

8.2.2. In terms of Section 3(1) of the 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". I am satisfied that the said 'works', including the construction of the buildings comprise 'development'. This determined, consideration is required as to whether the 'works' would constitute 'exempted development'.

## **8.3. Is or is not exempted development**

8.3.1. Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not. The construction of the increased floor area of Buildings 2 and 3 of the student accommodation scheme at Trinity Hall as detailed in this referral comprises

development and is not a class of development which would fall under the exempted development limits.

#### **8.4. Restrictions on exempted development**

- 8.4.1. There is no category of exemption within the Planning and Development Regulations which would appear to apply in this case. Therefore, the works referred to is not exempted development.

### **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 various works that have been carried out at Trinity Hall, Dartry, Dublin 6, namely:-

- (a) An increase in the floor area of Building 2 of 1,029m<sup>2</sup> compared to what was approved; and
- (b) An increase in the floor area of Building 3 of 1,342m<sup>2</sup> compared to what was approved

are or are not development and, if they are development, whether they are or are not exempted development for the purposes of the Planning and Development Acts:

**AND WHEREAS** Mr. James F. Kenny requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 23<sup>rd</sup> day of June 2020 stating that the matter was not development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of July 2020:

**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 4(1) of the Planning and Development Act, 2000, as amended,
- (d) article 6 and article 9 of the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) the legal history of the site,
- (g) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) An increase in the floor area of Building 2 of 1,029m<sup>2</sup> compared to what was approved; and
- (b) An increase in the floor area of Building 3 of 1,342m<sup>2</sup> compared to what was approved

at Trinity Hall, Dartry, Dublin 6, constitutes development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that various works that have been carried out at Trinity Hall, Dartry, Dublin 6, is development and is not exempted development.

**NOTE:**

As indicated above in my report, I consider that the question raised in this referral relates to compliance with a previous grant of planning permission. I am satisfied that such matters are not for the Board to determine.

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A. Considine

Planning Inspector

4<sup>th</sup> November 2021