



An
Bord
Pleanála

Inspector's Report RL04.RL3492.

Details of Reference:

Whether the use of the former Ardscoil for educating / training accountants is or is not development or is or is not exempt development.

Location:

Former Ardscoil Phobail, Bheanntrai, Bantry, Co. Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D/13/16.

Referrer

Minehane Chartered Accountants

Owner/Occupier

Minehane Chartered Accountants

Planning Authority Decision

Is not exempted development

Date of Site Inspection

Inspector

A. Considine

1.0 **Site Location and Description**

- 1.1. This is a referral, by the referrer, of the Declaration made by Cork County Council on 25th May 2016, under Section 5(4) of the Planning & Development Act, of the question as to whether the use of the former Ardscoil for educating / training accountants is or is not development or is or is not exempt development at Ardscoil Phobail Bheantraí, Bantry, Co. Cork.
- 1.2. The site the subject of this referral comprises the building previously occupied by the secondary school in Bantry, Ardscoil Phobail Bheantraí. The site is located to the east of the town centre and occupies a large site elevated above the road level. The site is generally screened with mature planting and trees and still retains elements associated with the school use including basketball court and parking facilities.
- 1.3. Access to the school is via Chapel Street and the gate was closed on the date of my inspection. In order to gain access to the site, I had to call a number advertised at the entrance in order to have the gate opened remotely. There is a mix of uses in the wider area including educational, residential and commercial.

2.0 **Section 5 Declaration Request:**

The question arising in relation to this Section 5 Declaration request is presented as follows:

Whether the use of the former Ardscoil for educating / training accountants is or is not development or is or is not exempt development at Ardscoil Phobail Bheantraí, Bantry, Co. Cork.

Of note is the fact that the proposed use for educating / training accountants is not proposed across the full building, rather part of the ground floor of the existing building. In this regard, I refer the Board to the floor plans submitted by the owner / occupier to Cork County Council on the 21st of June, 2016.

3.0 Reports on Planning Authority File

- 3.1 There are no interdepartmental reports from Cork County Council with regard to the subject referral.
- 3.2 The Planning Report considered that 'the proposed development as described in the application form does not fall under any of the specific classes specified in the Second Schedule of the 2001 Planning & Development Regulations.' The report also notes the argument of the applicants agent that the training of accountants in the building ensures that the use is that of an educational nature and thus is not materially different from the previous use as that of a school.
- 3.3 The report concludes that the proposal is not considered to be exempt as the main and primary use of the building is as a professional and commercial accountants office. The report references a referral, RL3073, where the Board concluded that the change of use from a secondary school to a primary and secondary school was not development on the basis that the established use of the building was as a school, there were no traffic impacts and no material change of use from a school arose. It is submitted that the current proposal does not compare as the primary use of the building is commercial and not educational. The report concludes that the applicant does not provide educational opportunities solely in a structured environment within a pre-determined set of school hours. Rather, it provides for onsite training / mentoring as a means of gaining qualifications for employees who are being paid and who carry out financial services for paying customers.
- 3.4 The Planning Report concludes that the change of use is not considered exempt. The Board will note that the SEO co-signed the report in agreement with this conclusion.

4.0 **Decision of the Planning Authority**

Cork County Council determined that the use of the former Ardscoil Phobail Bheantraí, Bantry, Co. Cork as an accountants training office is not exempted development under the provisions of Section 4, subsection (1) – (3) of the Planning & Development Act, 2000 (as amended).

5.0 **Relevant History:**

The following referrals are considered relevant in this instance:

- 5.1. An Bord Pleanála Ref: RL3073: referral sought to determine whether the change of use from a secondary school to a primary and secondary school is or is not development, and is or is not exempted development. This referral was based in Dun Laoghaire – Rathdown County Council area, in 2013. The Board concluded that the change of use was not development.
- 5.2. An Bord Pleanála Ref: RL3446: referral sought to determine whether the use of a primary school for grind classes in the evenings, nights, weekends, and at holiday times is or is not development, and is or is not exempted development. This referral was based in Dun Laoghaire – Rathdown County Council area, in 2016. The Board concluded that the change of use was development and was not exempted development.
- 5.3. The Board will note that the referrer has referenced case law precedents notably in relation to intensification. It is noted that the courts have held that intensification of use might amount to a material change of use where the use may impose additional burdens on a local authority or infringe in a materially different manner on the proper planning of the area.

6.0 Policy Context

The subject site is located within the development boundaries of the town of Bantry in West Cork. The town is subject to the Bantry Electoral Area Local Area Plan, Second Edition, January 2015 and the LAP identifies that the site is zoned X-01. There are two areas within the town identified as Special Policy Areas, which have been determined as being suitable for development including a mix of uses or which may merit a masterplan approach.

7.0 Legislative Context

I consider the following to be the statutory provisions relevant to this referral case:

Planning & Development Act, 2000 – 2012

7.1 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 ...”

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”*.

7.2 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.”

7.3 Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act and S4(1)(h) states

‘development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

- 7.4 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.

Planning & Development Regulations, 2001-2013

- 7.5 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.”

- 7.6 Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby *development to which article 6 relates shall not be exempted development for the purposes of the Act.*

- 7.7 With respect to ‘interpretation’ under Article 5 of Part 2, ‘school’ has the meaning assigned to it by the Education Act 1998.

- 7.8 Class 20B of Part 1 (exempted development) of Schedule 2 refers to the following temporary structures and uses:

“The erection on land on which development consisting of the construction of a school is to be carried out pursuant to a permission or outline permission under the Act of temporary on-site school structures.”

Conditions/ limitations:

1. No such structure shall be erected for a period exceeding 5 years.
2. The gross floor area of such structure shall not exceed 50% of the gross floor area of the school to be constructed pursuant to the permission under the Act.
3. No such structure shall be above the ground floor.
4. Such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.

Class 20C includes the following:

“Temporary use as a school of any structure formerly used as a school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for religious instruction.”

Conditions and limitations:

1. The use shall be discontinued after a period not exceeding 2 years.
2. Such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.

Education Act, 1998

7.9 Under Section 2 of Part 1 in this Act, except where the context otherwise requires, “school” means an establishment which:

- a) *provides primary education to its students and which may also provide early childhood education, or*
- b) *provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training,*

but does not include a school or institution established in accordance with the Children Acts, 1908 to 1989, or a school or institution established or maintained by a health board in accordance with the Health Acts, 1947 to 1996, or the Child Care Act, 1991.

8.0 The Referral

- 8.1. This request has been sought by McCutcheon Halley Walsh on behalf of Minehane Chartered Accountants. The request at the outset, notes that Cork County Council issued a determination advising that the proposal for the use of the former Ardscoil Phobail Bheanntrai, Bantry, Co. Cork as an accountants training office is not exempted development. The submission also notes the subsequent letter from the Council dated 27th May, 2016 which stated that ‘the Council considered that as the use in question is not the primary and main use of the building – the primary and main use being as a professional accountants office – the use is considered development within the definition contained in Section 3 of the Planning & Development Act, 2000 (as amended) and is not exempted development under Section 4 of the Planning & Development Act, 2000 (as amended).’
- 8.2. The referrer believes that there are fundamental flaws in how the declaration was dealt with and submits that the first letter, dated 25th May, 2016, does not meet the statutory requirements for a Section 5 declaration in that it did not deal with the question that was presented and did not state the reasons and considerations in which the decision was based.

8.3. The grounds of reference are summarised as follows:

- The declaration is flawed
- The use of the former school for educating / training accountants falls within the definition of 'school' under Section 2 of the Education Act, 1998 and does not constitute development.
- The opinion of the Council that the primary and main use is a professional accountants office has no basis and does not stand up to objective scrutiny.
- Approximately 30% of the building is occupied for training of accountants, the remaining 70% is unoccupied.
- It is requested that the Board have regard to precedent case law and Section 5 Declarations / referrals.

Planning Authority Response

8.4. No response.

Other Party Responses

8.5. None

9.0 Assessment

- 9.1. The question has been posed as to whether the use of the former Ardscoil for educating / training accountants is or is not development or is or is not exempt development as defined under the Planning Acts and Regulations, at Ardscoil Phobail Bheanntai, Bantry, Co. Cork..
- 9.2. In terms of this assessment, I consider it reasonable to clarify at the outset that the submitted referral does not relate to the full school building, rather part of the ground floor which is advised to comprise 30% of the total floor area of the building. I acknowledge the report and determination of Cork County Council in relation to the question posed, and I also note that the referrers web site lists the subject site as the 'Bantry Office'. In this regard, I refer the Board to the maps and plans submitted to Cork County Council on the 21st June, 2016, which clearly identifies the extent of floor space used for training accountants, and the extent of floor space the subject of this referral. While Cork County Council have chosen to consider the use of the full building, and have based their determination on same, I would advise the Board that I undertook a site visit which included access to the interior of the building, and can confirm that the area delineated with a hatched yellow line appears to be the only area of the building that is in use by the owner / occupier.
- 9.3. Having regard to the question posed, I propose to focus my assessment below solely on this identified area. The use of the remainder of the building, advised as 70% of the total building, will not be considered, but certainly, if it is being used as an accountants office, this would require further assessment in terms of the requirements for appropriate planning consents. This would be a matter for Cork County Council.
- 9.4. The first question to be considered is whether or not a change of use has occurred and if any such change of use is *material* and therefore development. If any change of use is not material, no further question arises but if on the other hand there is a

material change of use, a second question arises as to whether or not the material change of use is exempted development by reference to the Act and Regulations.

- 9.5. Taking my comments in terms of the area of the subject building to be used as a training facility for accountants, I am of the opinion that a change of use might reasonably be considered as occurring where part of a secondary school is to be now used for adult education. However, in order to determine whether a *material* change of use has taken place, I am required to consider the character of the existing use and how the proposed use might affect or alter that character. In addition, the potential impacts of the change of use are required to be assessed.
- 9.6. Article 5 of Part 2 of the Planning and Development Regulations, 2001 (as amended) provides that the interpretation of 'school' has the meaning assigned to it by the Education Act 1998. Section 2 of Part 1 in the Act provides that "school" means an establishment which *'provides primary education to its students and which may also provide early childhood education, or provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training.'* In this regard, I am satisfied that the use of the building to provide courses in adult, continuing or vocational education, is clearly provided for within the definition. As such, I am satisfied that the use of 30% of the existing building on site for the training of accountants as advised, is acceptable, and that the character of the existing land use is not substantially altered.
- 9.7. Having regard to the above, I would be of the opinion that a change of use has taken place within part of the building on the subject site but the change of use is not material in that the use relates to education and training. Therefore, no development, as defined under Section 3 (1) of the Planning and Development Act, 2000 (as amended), has taken place within the defined area of the subject building on the site. The question as to whether a material change of use is exempted development does not therefore arise.

- 9.8. Should the Board be of a different opinion and consider that a material change of use has occurred, consideration as to whether the said material change of use constitutes exempted development.
- 9.9. In terms of the subject referral, Class 20C of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) is considered relevant. I consider that Class 20C provides for an exemption in that it states that the ‘temporary use as a school of any structure formerly used as a school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for religious instruction’ is exempted development ‘where the use shall be discontinued after a period not exceeding 2 years’ and ‘such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.’
- 9.10. Article 9 (1)(a) relating to restrictions on exemption states that ‘development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would (inter alia), (iii) endanger public safety by reason of traffic hazard or obstruction of road users, or (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.
- 9.11. As advised above, the subject site does not appear to have open access to all members of the public due to the presence of a gate. Access to the site is therefore, restricted to those who are required to be on the site. Given that when the building operated as a secondary school, there would have been significant traffic movements arising at various times of the day, the situation is not the same today. Indeed, there is no signage or advertising at the approach to the entrance to the school. In this regard, I do not consider that the use of part of the school building for adult educational purposes will generate significant additional traffic movement to/ from the site. Therefore, I am satisfied that there is no issue in terms of endangerment of public safety by reason of a traffic hazard or obstruction to road users.

10.0 Conclusion & Recommendation

Conclusion:

10.1. Having regard to the above, I am satisfied that the general question raised in this referral can be determined as follows:

- The referral relates to the use of the former Ardscoil Phobail Bheantraí, Bantry Co. Cork for educating / training accountants.
- The subject area is delineated on the maps and plans submitted to Cork County Council on the 21st day of June, 2016, amounting to approximately 30% of the overall building floor space.
- It is determined that the said use does not amount to a material change of use. Therefore, no development, as defined under Section 3 (1) of the Planning and Development Act, 2000 (as amended), has taken place within the defined area of the subject building on the site.
- The question as to whether a material change of use is exempted development does not therefore arise.

Recommendation:

10.2. I recommend therefore that the Board find as follows:

WHEREAS a question has arisen as to whether the use of the former Ardscoil for educating / training accountants is or is not development or is or is not exempt development at the former Ardscoil Phobail Bheantraí, Bantry, Co. Cork, is or is not development or is or is not exempted development;

AND WHEREAS McCutcheon Halley Walsh, on behalf of their client Minehane Chartered Accountants, requested a declaration on the said question from Cork County Council and the said Council issued a declaration on the 25th day of May, 2016 and further letter on the matter on the 27th May, 2016, stating that the said matter is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála for review by McCutcheon Halley Walsh, on behalf of their client Minehane Chartered Accountants, on the 21st day of June, 2016;

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

- (a) Section 3(1) of the Planning and Development Act, 2000, as amended;
- (b) Article 5(i) of the Planning and Development Regulations, 2001, as amended, in relation to the definition of a school;

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The established use of the structure on site is a school;
- (b) There are no adverse impacts in terms of traffic safety and no other material impacts arising from the proposed use of part of the former secondary school building for the purposes of educating / training accountants; and
- (c) There is no material change of use of the part of the former secondary school as delineated on the plans and maps submitted to Cork County Council on the 21st day of June, 2016.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, as amended, hereby decides that the change of use from a secondary school for educating / training accountants is not development at Ardscoil Phobail Bheanntai, Bantry, Co. Cork.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

A. Considine
Planning Inspector,
26th September, 2016