



An
Bord
Pleanála

**Board Direction
ABP-303618-19**

The submissions on this file and the Inspector's report were considered at a Board meeting held on August 19th, 2019.

The Board decided, as set out in the following Order, that the change of use of a private residence to a residence for persons with intellectual or physical or mental illness, and the persons providing care for such persons is development and is exempted development and that the change of use and conversion of an ancillary garage to use as living accommodation associated with the use of the house at The Haven, Timahoe West, Donadea, Co Kildare is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the use of the existing dwelling and ancillary garage at The Haven, Timahoe West, Donadea, Co Kildare as a residence for persons with intellectual or physical or mental illness, and the persons providing care for such persons, with the number of occupants being six and the number of care staff being two, and the conversion of the permitted garage to use as living accommodation associated with the use of the house, is or is not development or is or is not exempted development.

AND WHEREAS Maple Healthcare of The Atrium, St. John's Lane, Naas, Co Kildare, requested a declaration on this question from Kildare County Council, and

the Council issued a declaration on the 9th day of January 2019 stating that the change of use of the existing dwelling as a residence for persons with intellectual or physical or mental illness, and the persons providing care for such persons, with the number of occupants being six and the number of care staff being two, was development and was exempted development, and that the change of use and conversion of the garage to use as living accommodation associated with the use of the house was development and was not exempted development.

AND WHEREAS Maple Healthcare referred this declaration for review to An Bord Pleanála, on the 1st day of February 2019.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended;
- (b) Articles 6 (1) and 9 (1) of the Planning and Development Regulations 2001, as amended,
- (c) Class 14 (f) of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended; and
- (d) The planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change of use of the existing dwelling from its former use as a private residence to use for the accommodation of persons with intellectual or physical or mental illness, and the persons providing care for such persons,

would represent a change of use, and such change of use would raise issues relevant to the proper planning and development of the area, and would, therefore, constitute a material change of use, and is therefore development;

- (b) The change of use of the garage to the rear of the site, to use as living accommodation associated with the use of the house, would involve a change of use, which change of use would raise issues relevant to the proper planning and development of the area, and would, therefore, constitute a material change of use, and is therefore development, and its conversion would involve the carrying out of works, and would, therefore, constitute development;
- (c) The change of use of the existing dwelling from its former use as a private residence to use for the accommodation of persons with intellectual or physical or mental illness, and the persons providing care for such persons, would come within the scope of Class 14 (f) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and would conform to the conditions and limitations to which this Class is subject, and would, therefore, be exempted development.
- (d) The change of use of the garage to the rear of the site, to use as living accommodation associated with the use of the house, would generally come within the scope of Class 14 (f) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but having regard to the restrictions on exemption set out in Article 9 (1)(a)(i) of these Regulations, as this change of use and this conversion would contravene conditions 2 and 3 of planning permission register reference number 16/1251, and would therefore not be exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby

decides that the change of use of a private residence to a residence for persons with intellectual or physical or mental illness, and the persons providing care for such persons is development and is exempted development and that the change of use and conversion of an ancillary garage to use as living accommodation associated with the use of the house at The Haven, Timahoe West, Donadea, Co Kildare is development and is not exempted development.

In not accepting the recommendation of the Inspector that the entire development should be determined not to be exempted development, the Board did not share the view of the Inspector that the restrictions on exemption relating to the garage structure, whose use as a dwelling was not authorised and was in breach of the conditions referred to, should apply to the change of use of the permitted house as well, and accordingly agreed with the planning authority.

Board Member

Date: 19th August 2019

Philip Jones