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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kildare County Council**

**Planning Register Reference Number: ED/00651**

**WHEREAS** a question has arisen as to whether the use of the existing dwelling and ancillary garage 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 at The Haven, Timahoe West, Donadea, County Kildare is or is not development or is or is not exempted development:

**AND WHEREAS** Maple Healthcare Limited of The Atrium, Saint John's Lane, Naas, County Kildare, requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 9<sup>th</sup> day of January 2019 stating that -

- (a) 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, is development and is exempted development, and

- (b) the change of use and conversion of the garage to use as living accommodation associated with the use of the house is development and is not exempted development:

**AND WHEREAS** Maple Healthcare Limited referred the declaration for review to An Bord Pleanála on the 1<sup>st</sup> 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 those Regulations, 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 sustainable 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 sustainable 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, this change of use and this conversion would contravene conditions numbers 2 and 3 of planning register reference number 16/1251, and therefore would not be exempted 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 at The Haven, Timahoe West, Donadea, County Kildare -

- (a) 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
- (b) the change of use and conversion of an ancillary garage to use as living accommodation associated with the use of the house is development and is not exempted development.

### **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.

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**Philip Jones**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

**Dated this            day of            2019.**