



An  
Bord  
Pleanála

## Inspector's Report ABP-300805-18

### Question

Whether the conversion of attic space to habitable bedroom and installation on 1 no. new window and 2 no. Velux windows to rear elevation and change of use from a house to use as a residence for persons with intellectual or physical disability or mental illness and persons providing for such persons is or is not development and is or is not exempted development.

### Location

Carrigaunroe, Shanballymore, Mallow, Co. Cork.

### Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D/278/17

Applicants for declaration

Tony Gallagher & Thomas O'Flynn

Planning Authority declaration

Development that is exempted development

**Referral**

Referred by Tony Gallagher & Thomas O'Flynn

Owner/occupier Charlie O'Driscoll/Daffodil Care Services Ltd

Observer(s) None

**Date of Site Inspection** 30<sup>th</sup> May 2018

**Inspector** Hugh D. Morrison

## Contents

1.0 Site Location and Description .....	4
2.0 The Question .....	4
3.0 Planning Authority Declaration.....	4
3.1. Declaration .....	4
3.2. Planning Authority Reports .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations .....	5
6.0 The Referral.....	5
6.1. Referrer's Case .....	5
6.2. Planning Authority Response .....	7
6.3. Owner/occupier's Response .....	7
6.4. Further Responses.....	7
7.0 Statutory Provisions.....	7
8.0 Assessment .....	11
9.0 Recommendation.....	15

## 1.0 Site Location and Description

- 1.1. The site is located on the western side of a local road (L-5240), which runs between the N73 and the village of Shanballymore through open countryside.
- 1.2. The site has been developed to provide a detached two-storey dwelling house with an accompanying freestanding garage to the north. These buildings are served by a driveway that is accessed off the local road. Accompanying gardens lie to the front, to the southern side, and to the rear of the dwelling house.

## 2.0 The Question

- 2.1. The question posed by the applicants is as follows:

*Whether the conversion of attic space to habitable bedroom and installation of 1 no. new window and 2 no. Velux windows to rear elevation and change of use from a house to use as a residence for persons with intellectual or physical disability or mental illness and persons providing for such persons at Carrigaunroe, Shanballymore, Mallow, Co. Cork is or is not development and is or is not exempted development.*

- 2.2. Subject to some tightening of phraseology and the introduction of the word “care” after the word “providing”, I consider that this question is satisfactory. Accordingly, as modified it would read as follows:

*Whether the conversion of attic space to a habitable bedroom and the installation of 1 no. new window and 2 no. Velux windows to the rear elevation and the change of use from a house to use as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Carrigaunroe, Shanballymore, Mallow, Co. Cork is or is not development and is or is not exempted development.*

## 3.0 Planning Authority Declaration

### 3.1. Declaration

Following receipt of further information, the Planning Authority declared that the said works and use is development, which is exempted development.

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

Further information was sought with respect to the maximum numbers of residents and carers, the gross floorspace of the converted attic, and the use of a utility room as a bedroom.

### **4.0 Planning History**

- 06/10547 and 07/8680: Outline and permission consequent applications for the dwelling house on the subject site were granted, subject to conditions.
- D234/17: Declaration requested by Daffodil Care on the same question, which is the subject of the current referral: The Planning Authority declared that the scenario set out in the question was development that was exempted development.

### **5.0 Policy Context**

#### **5.1. Development Plan**

Under the Cork County Development Plan 2014 – 2020 and the Fermoy Municipal District Local Area Plan 2017, the site is shown as lying within a rural area.

#### **5.2. Natural Heritage Designations**

Blackwater River (Cork/Waterford) SAC and (site code 002170)

Awbeg Valley (below Doneraile) pNHA (site code 000074)

### **6.0 The Referral**

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

- Is the subject property a residence or a place of business? In this respect, photographs of at least 10 cars in attendance at this property on 9<sup>th</sup> January 2018 have been submitted and attention is drawn to a Tusla Initial

Registration Report, which refers to 9 staff and the presence of an upstairs office and staff rooms.

- Attention is drawn to the following departures from the plans, which were the subject of D234/17:
  - The introduction of an upstairs office and staff rooms, and
  - A utility room has been converted to a bedroom.

The conversion of the attic would fail to comply with the Building Regulations and the house as a whole may be unsuitable from a mobility access perspective.

Attention is drawn to the website of Daffodil Care, which refers to “vulnerable youths”. D234/17 refers to children/young adults aged 12 to 17 with intellectual or physical disabilities or mental illnesses. Do residents come within this description?

- Attention is drawn to conditions 11 and 12 of the parent permission for the house.
  - The former condition relates to a waste water treatment system, which would serve a four-bedroom house. However, this house now has five-bedrooms and up to 9 staff in attendance, as well as visits from family members. The pressure on the said system is such that the risk of pollution to the bore water supply on the site has increased.
  - The latter condition relates to the annual maintenance of the WWTS. Is there evidence of such maintenance?

Daffodil Care stated to Tulsa that the house is served by the public water mains and sewerage system, information which is incorrect.

- Traffic generated by the use would place pressure on the narrow local road, which serves the site.
- The site lies on a rural road, which serves 14 dwelling houses occupied by elderly people and young families. The amenity value of this road for walkers and cyclists has been curtailed by the new use of the house on this site. Light

pollution and noise pollution from alarms is also affecting the amenity of the area.

The appropriateness of the location of the site for the residents concerned is questioned, in terms of its remoteness from shops and playing fields, and the adequacy of staffing levels is questioned, too.

## 6.2. **Planning Authority Response**

Response received out with the statutory period.

## 6.3. **Owner/occupier's Response**

Daffodil Care Services Ltd begins by questioning the validity of the referral, on the basis that neither of the referrers received a declaration under Section 5(3)(a) of the Planning and Development Act, 2000 – 2017. The following points are then made:

- Nine staff are employed in the residential care home and they work shifts with no more than two residing overnight. Regular staff meetings are held in this home and, at such times, additional vehicles would be in attendance.
- The conversion of the utility room to a bedroom was deemed to be exempted development under D/208/18.
- All works to the home would be carried out in accordance with the building regulations.

## 6.4. **Further Responses**

None

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000 – 2017**

Section 2(1) of the Planning and Development Act, 2000 – 2017, states the following:

*In this Act, except where the context otherwise requires –*

*“planning authority” means a local authority,*

Section 5(1) of the aforementioned Act 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)(a) of the aforementioned Act states the following:

*Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.*

Section 127(1) of the aforementioned Act 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) of the aforementioned Act states the following:

*“alteration” includes –*

*(a) Plastering or painting or the removal of plaster or stucco, or*

*(b) The replacement of a door, window or roof,*

*That materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;*



*“habitable house” means a house which –*

- (a) is used as a dwelling,*
- (b) is not in use but when last used was used, disregarded any unauthorised use, as a dwelling and is not derelict, or*
- (c) was provided for use as a dwelling but has not been occupied;*

*“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;*

*“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...*

*“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) of the aforementioned Act 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 4(1) of the aforementioned Act states the following:

*The following shall be exempted developments for the purposes of this Act*

–

*(h) 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 neighbouring structures;*

Section 4(2)(a) of the aforementioned Act states the following:

*The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –*

*(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against the principles of proper planning and sustainable development...*

## **7.2. Planning and Development Regulations, 2001 – 2018**

Article 3 of the Planning and Development Regulations, 2001 – 2018, states the following:

*(3) In these Regulations, except where the context otherwise requires –*

*“gross floor space” means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions)...*

Article 6(1) of the aforementioned Regulations 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.*

Column 1 of Class 14 of Part 1 of Schedule 2 to Article 6 of the aforementioned Regulations, states the following:

Development consisting of a change of use –

*(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.*

Column 2 to the aforementioned Class, states the following:

*The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.*

### 7.3. **Other**

None

## 8.0 **Assessment**

### **(i) Is or is not development?**

8.1. The question posed by the current referral relates to physical works and a change of use, i.e., in relation to the former, the conversion of attic space to a habitable

bedroom and the installation of 1 no. new window and 2 no. Velux windows to the rear elevation, and, in relation to the latter, change of use from a house to a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons. I will discuss these two elements, in turn, below.

- 8.2. Section 3(1) of the Planning and Development Act, 2000 – 2017, defines development as “the carrying out of any works on, in, over or under land or the making of any material change on the use of any structures or other land.” The two prongs of this definition relate to the two elements in the referral question.
- 8.3. The definition of works implies that “land” includes “structures”. Section 2(1) of the aforementioned Act makes this explicit in its definition of land as including any structure. The same Section defines “structure” to mean, amongst other things, any building. The subject dwelling house thus comes within the definition of land.
- 8.4. On the basis of the submitted plans of the subject dwelling house and from my observation during my site visit, the conversion of part of the attic to a habitable bedroom entailed the erection of an internal partition and the installation of both a window in the rear gable of the dwelling house and a rooflight on the RHS of the rear roof plane. (A further rooflight was installed on the LHS of the rear roof plane to serve the unconverted portion of the attic).
- 8.5. Section 2(1) of the aforementioned Act defines “works” as including any act or operation of construction or alteration. The conversion of the attic thus described would come within this definition. Thus, these works to the subject dwelling house would come within the definition of development.
- 8.6. Turning to the question of change of use, the planning history of the site indicates that planning permission was granted for the subject building, which was subsequently constructed. This building was permitted for use as a habitable house and it is now in use as a residence for persons with intellectual or physical or mental illness and persons caring for such persons. Under Section 2(1) of the aforementioned Act, “habitable house” is defined as meaning a house which is used as a dwelling or which was last used as a dwelling or which was provided for use as a dwelling but has not been occupied. While the Act does not define “dwelling”, it is commonly regarded as being a self-contained unit of accommodation occupied by a

household. Ordinarily, a residence for persons with intellectual or physical or mental illness and persons caring for such persons would not constitute a dwelling and so it would not be a habitable house. Thus, a change of use has occurred.

- 8.7. For a change of use to constitute development, it must be a material change of use. Under the Lackagh Rock case, a test for materiality was cited, i.e. if in assessing a new use the matters considered would be materially different from those that would have arisen in assessing the original use, then a material change of use has occurred.
- 8.8. The use of the subject building as a residence for persons with intellectual or physical or mental illness and persons caring for such persons, instead of as a dwelling house, would lead to materially different considerations, which would be prompted by the element of care, which is essential and inherent to the use, and the consequences of extending such care to residents. Thus, whereas a household residing together in a dwelling house may entail some members caring for one or more other members, the defining characteristic of the use in question is that care is extended at all times to each of the residents. Consequently, a staff of nine extends the required care with a maximum of two residing in the building overnight. As testified to by the referrers, this level of staffing generates a higher number of vehicle movements to and from the site than would be normal for a dwelling house.
- 8.9. In the light of the foregoing discussion of usage, I conclude that a change of use has occurred at the subject building and that this change of use is material and so it constitutes development.

**(ii) Is or is not exempted development?**

- 8.10. The conversion works described under the first heading of my assessment constitute development. Thus, the question arises as to whether or not they are exempted development.
- 8.11. Section 4(1)(h) of the Planning and Development Act, 2000 – 2017, cites development that is exempted development, which is relevant to the question under this heading. This Section states that works which affect only the interior of the structure are exempted development. Thus, the erection of an internal partition is exempted development. It also states that works 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 neighbouring structures is exempted development. I consider that the installation of the window in the rear gable and the rooflights in the rear roof plane do not cause the appearance of the dwelling house to become inconsistent with its character. As this dwelling house is detached and on a site that is away from any other structures, the question of neighbouring structures does not arise. Accordingly, these installations are exempted development, too.

- 8.12. Turning to the material change of use, which has occurred at the subject building, under Class 14 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2018, instances of change of use, which are deemed to be exempted development, are cited. One such instance is “from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons”, provided that “the number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.”
- 8.13. Daffodil Care Services Ltd has stated that their use of the subject building would come within the foregoing parameters of Class 14. The referrers have questioned whether each of the residents has an intellectual or physical disability or a mental illness. Daffodil Care Services Ltd has not responded to this question. I anticipate that issues of confidentiality may well impinge on providing such a response and so their *bona fides* in this matter needs to be relied upon.
- 8.14. I, therefore, conclude that the material change of use in question is exempted development.

### **(iii) Restrictions on exempted development**

- 8.15. Under Article 9(1)(a) of the Planning and Development Regulations, 2001 – 2018, instances of restrictions on exempted development are cited. I have reviewed each of the fifteen instances thus cited. In particular, I have reviewed item (iii), which in the light of my discussion under paragraph 8.8 could potentially be an issue. This item states that exempted development is de-exempted if it would “endanger public safety by reason of traffic hazard or obstruction of road users.”
- 8.16. During my site visit, I observed that the site is accessed off a straight portion of a local road and it is served by a splayed and gated entrance way, which provides a vehicle refuge and which is accompanied on either side by a grass verge.

Consequently, forward visibility available to approaching road users and the sightlines available to road users exiting the site are good. The local road is not heavily trafficked. Thus, notwithstanding the greater number of vehicular movements generated by the new use of the site, compared to its permitted use, I do not consider that the use of the site access/egress is resulting in any traffic hazard or obstruction that would endanger public safety.

- 8.17. I, therefore, conclude that the aforementioned item (iii) is not applicable. Equally, all the other items under Article 9(1)(a) are not applicable and so there is no basis for de-exemption.
- 8.18. The referrers have raised a considerable number of points that relate to the use of specific rooms within the subject building, compliance issues with respect to the Building Regulations, the adequacy and maintenance of the on-site WWTS, the impact of the new use upon amenity, and the appropriateness of the location for this use.
- 8.19. With respect to the first of these points, I observed during my site visit that a utility room is being used as a carer's bedroom and a bedroom is being used as an office and staff room. I consider that these uses are integral to the overall use of the subject building as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.
- 8.20. With respect to the remaining points, they are either subject to other legal codes or, insofar as they would be material planning considerations at all, could only be addressed if the need for express planning permission arose. As this is not the case, there is no opportunity to address them under the planning system.
- 8.21. None of the points cited by the referrers has a bearing on my conclusion with respect to the non-applicability of de-exemption.

## 9.0 Recommendation

That development has occurred and that this development is exempted development.

## Draft Order

**Whereas** a question has arisen as to whether the conversion of attic space to a habitable bedroom and the installation of 1 no. new window and 2 no. Velux windows to the rear elevation and the change of use from a house to use as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Carrigaunroe, Shanballymore, Mallow, Co. Cork is or is not development and is or is not exempted development.

**And whereas** this question was referred to An Bord Pleanala by Tony Gallagher and Thomas O'Flynn on 29<sup>th</sup> January 2018.

**And whereas** An Bord Pleanala, in considering this referral, had regard particularly to –

- (a) Sections 2, 3, and 4 of the Planning and Development Act, 2000 – 2017.
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001 – 2018.
- (c) Class 14(f) of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2018.
- (d) The submissions of the parties with respect to the nature and extent of the physical conversion works to the subject building and the nature and intensity of its new use

**And whereas** An Bord Pleanala has concluded that –

- (a) The conversion works constitute development that is exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 – 2017.
- (b) The change of use from a dwelling house to use as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is a material change of use and thus development, yet, as this development comes within the parameters of Class 14(f) of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2018, it constitutes exempted development.
- (c) Neither the said conversion works nor the material change of use are the subject of any of the restrictions cited under Article 9(1)(a) of the Planning and Development Regulations, 2001 – 2018.



**Now therefore** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(4) of the Planning and Development Act, 2000 – 2017, hereby decides that the conversion of attic space to a habitable bedroom and the installation of 1 no. new window and 2 no. Velux windows to the rear elevation and the change of use from a house to use as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Carrigaunroe, Shanballymore, Mallow, Co. Cork is development and is exempted development.

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Hugh D. Morrison  
Planning Inspector

5<sup>th</sup> July 2018