

<b>Question</b>	Whether the change of use of a permitted Nursing Home (permitted under TA/140621) to a residential drug rehabilitation facility is or is not development or is or is not exempted development.
<b>Location</b>	Ballivor, Co. Meath.
<b>Declaration</b>	
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	TA/S51806
Applicant for Declaration	Trim Municipal District Council Ballivor Community Group
Planning Authority Decision	N/A
<b>Referral</b>	
Referred by	Meath County Council.
Owner/ Occupier	Narconon Trust
Observer(s)	None
Date of Site Inspection	28 <sup>th</sup> August 2018.
Inspector	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The referral site lies in the village of Ballivor, County Meath. It lies on the western side of the village, to the south of the R156, and comprises the site of the Ballivor National School. At the time of site inspection, the redevelopment and extension of the buildings was underway.
- 1.2. To the north of the subject site is a National School, residential estate and play area (under construction). To the east is a disused two storey property and a Health Centre/Community Centre. Beyond this are large industrial premises which are unoccupied. To the west of the site is a residential property and beyond this a pre-school facility.

## 2.0 The Question

- 2.1. In 2014, under PA ref. TA/140621, Meath County Council granted permission for the change of use, and extension, of the old national school in Ballivor, Co. Meath, to a nursing home.
- 2.2. On the 29<sup>th</sup> June 2016, under PA ref. TA/S51639, Meath County Council issued a declaration stating that the change of use of the permitted nursing home to a drug rehabilitation facility was exempted development.
- 2.3. On the 19<sup>th</sup> February 2018, they received a Section 5 application from Trim Municipal District Council, asking the authority to determine whether the change of use of the permitted nursing home under TA/140621 to a residential drug rehabilitation facility is exempted development.
- 2.4. On the 19<sup>th</sup> February 2018, the planning authority also received a Section 5 application from Ballivor Community Group, also asking the authority the same question. This application was also referred to the Board, under ABP-301064-18. Both references cases are dealt with in this report and a copy of this report has been placed on each case file (under each individual case reference number). Arguments made by each referrer are set out separately bellow (under Referrer's Case).

- 2.5. The referral is therefore made by Meath County Council and the question before the Board, in both cases, is whether the change of use of the permitted nursing home under PA ref. TA/140621 to a residential drug rehabilitation facility constitutes exempted development.

### 3.0 Planning Authority Declaration

#### 3.1. Declaration

- 3.1.1. None made. Application referred to the Board under Section 5(4) of the Act.

#### 3.2. Planning Authority Reports

- 3.2.1. N/A.

##### Other Technical Reports

- 3.2.2. N/A.

### 4.0 Planning History

- 4.1. Under PA ref. TA/140621, permission granted for the change of use and refurbishment of the existing national school building (545sqm) to a nursing home and provision of additional extensions, over two phases (1,512sqm and 1,795sqm).
- 4.1.1. Under TA/S51639 (29<sup>th</sup> September 2016), Narconon Trust applied for a declaration on whether or not the change to use of the permitted nursing home (TA/140621) at Ballivor, Co. Meath to a drug rehabilitation facility was exempted development. The planning authority subsequently declared that the change of use was exempted development.
- 4.1.2. The planning authority report, dealing with the above reference case (TA/S51639) refers to relevant sections of the Planning and Development Act (sections 3(1) and 4(1)(h)) and the Planning and Development Regulations (Articles 6(1) and 9(1) and Schedule 2, Part 4, Exempted Development, Classes of Use, Class 6), and states that a nursing home is within the same class as a use for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose). It is therefore to be a use which is consistent with the provision of



residential accommodation and are to people in need of care. It concludes, therefore, that the proposed development is exempted development and recommends that an exemption certificate be granted.

## 5.0 Reference Cases

5.1. The following reference cases have been determined by the Board. None are directly relevant to the subject referral but they provide a broader context for this assessment:

- 17.RL2762 – Whether the change of use from community services to use for dispensing treatments for additions, offices and consulting rooms is or is not development and is or is not exempted development. The Board decided that the change of use was development and was not exempted development.
- 29N.RL2359 – Whether the change of use of a former bed and breakfast to provide residential care is or is not development or is or is not exempted development. The Board decided that the change of use was development and was not exempted development.
- 06D.RL2616 - Whether change of use from dwelling unit to residential care unit for persons with intellectual, physical disability or mental illness and persons providing care is or is not development or is or is not exempted development.

## 6.0 Policy Context

### 6.1. Meath County Development Plan 2013 to 2019

6.2. The western part of the subject site is zoned B1 and the eastern part G1 in the current Meath County Development Plan. The objective of, and the uses permitted within, these zonings is as follows:

- B1 – To protect, provide for and/or improve town and village facilities and uses. Uses which are open for consideration include residential institution.

- G1 – To provide for necessary community, educational and social facilities. Permitted uses include residential institution.

6.3. Ballivor is identified in the Development Plan's core strategy as a 'village'. Objectives of the Plan seek to ensure that the village caters for a local catchment in service provision.

## 7.0 The Referral

### 7.1. Referrer's Case

#### Trim Municipal District Council

7.1.1. In their section 5 application form for a declaration on the change of use of the permitted nursing home to a drug rehabilitation facility, Trim Municipal District Council set out the following arguments:

- Under PA ref. TA/140621, permission was granted for the conversion and extension of the old national school building in Ballivor to a residential care facility for the elderly. The development was welcomed by the community as it would create local employment.
- The use of the property by its new owner as a drug rehabilitation facility comprises a material change to the use the use of the development. Care of the elderly involves clear care giving but when medical interventions are required the residents fall under the care of the HSE e.g. with transfer to hospital if required. The standards in this type of facility would be set by the HSE and a number of support services would be in place. A drug rehabilitation facility does not have any regulatory controls imposed on it. The proposed facility is not operated by the HSE.
- Section 9, Part 4, Schedule 2 of the Planning Development Regulations exempts changes of use of a nursing home to '*use for the provision of residential accommodation and care to people in need of care*'. The care of 56 elderly people in a nursing home is materially different from the care of 56 drug addicts in a rehabilitation facility. The development will have a huge impact on neighbours and the community.

- The use is inconsistent with the zoning objectives for the site (town/village facilities, local community services).
- Development is inconsistent with SOC POL 26 – Narconon does not provide appropriate health care facilities (see attached news reports in submission).
- Narconon is not a sustainable development. The introduction of a large number of people from outside the area, from the rest of Ireland and most likely from abroad, is not a sustainable development.
- There is no definition of care in the Planning and Development Regulations, so can a planning authority make its own definition? Narconon programme has no basis in science and there is no evidence that it would meet HSE criteria for addition services. There will be no doctor available at the facility and this will pose a risk to patients as a doctor is only available in the village for 2 hours a week. The Department of Health has no jurisdiction over agencies that provide private addition services.
- Safety/security – Given the nature of patient's additions and a higher propensity to commit crime then a security presence should be a requirement. There is no full time Garda presence in Ballivor.
- The development will affect children as it is in close proximity to a national school, a childcare facility, a Montessori school and the proposed site of a new playground.
- Size – A 56 bed drug rehabilitation facility is not compatible with the size of the population of Ballivor (1800).
- There is a lack of infrastructure to support a drug rehabilitation facility of this size. Ballivor is a vulnerable community with limited community facilities. There are limited transport options, with one bus to Dublin in the morning and one back in the evening.

#### Ballivor Community Group

7.1.2. The following arguments are set out by Ballivor Community Group. Their submission includes a petition signed by over 600 residents.

#### Context



- The proposed development, which is intended as a regional/national facility, is contrary to the planning strategy, set out in the CDP, for Ballivor village and its role and function as set out in the settlement hierarchy and core strategy of the Meath County Development Plan.
- The premises have never been occupied or used as a nursing home.

#### Whether Development would or would not Occur

- A change of use does occur from that of a nursing home to a drugs rehabilitation facility. Case law has determined that a change of use is material if the character of the first use is substantially different, in planning terms, from the second use and if the change of use impacts on the proper planning and sustainable development of the area.
- In this instance, the change of use is material, having regard to the established nature and operation of both activities.
- Generally, a nursing home is considered to be part of community infrastructure within a settlement, generally open to visitors and residents interact with the community. A drug rehabilitation centre is intended to accommodate all ages and the needs of a restricted section of society (those with a drug addiction). In the proposed development, residents will not be allowed to interact with the community, the property is secured and isolated from its surroundings. The facility is not considered to be part of the community infrastructure within the settlement. It is not a local service and therefore the suitability of its location in a small rural village must be questioned.
- The Care and Welfare of Residents in Designated Centres for Older People Regulations govern the maintenance, care and wellbeing of persons in nursing homes. There is currently no provision in legislation for the regulation or inspection of residential treatment or rehabilitation centres specialising in addiction. Narconon Trust is not funded by the HSE and therefore there is no oversight body to ensure the safety, quality and standards of safety in the rehabilitation facility.



- When permission was granted for the nursing home there was an expectation that the development would contribute to the local community and social facilities in the area e.g. local employment, alternative accommodation for the care of the elderly. The proposed building as a drug rehabilitation facility does not meet or satisfy these expectations.

#### Whether Development is Exempted Development

- The use of the subject site and building by Narconon Trust as a drugs rehabilitation facility does not fall within any of the uses detailed under Class 9 of the Planning and Development Regulations 2001 (as amended) and therefore the change of use cannot be deemed to be exempted development.
- The use of the site and building as a drugs rehabilitation facility cannot be described as a hospital or a nursing home or as a residential school or residential training centre. It is also submitted that the use does not fall within the scope of section 4 of the Planning and Development Act, 2000 (as amended) or articles 6 and 10 and Schedule 2 to the Regulations, 2001 (as amended).
- The use of the Old School as a drug rehabilitation facility has material consequences in terms of the proper planning and sustainable development of the area.

#### **7.2. Planning Authority Response**

7.2.1. The planning authority make no comments on the referrals.

#### **7.3. Owner/ occupier's response**

7.3.1. There is one response to both referrals. It is made by Noel Smyth and Partners on behalf of Narconon Trust and Ryan Alabaster.

- Ryan Alabaster is the registered owner of lands at Ballivor, Co. Meath, the subject matter of the two referrals, with the lands held on trust for Narconon Trust, a registered charity in the UK.
- The 2016 declaration was subject neither to review by An Bord Pleanála under section 5(3) of the Act or to judicial review by the High Court. The

relevant statutory time limits have expired. Accordingly, the 2016 Declaration is now conclusive and binding on the Board. The Board does not have the jurisdiction to question the validity of the Declaration and must dismiss the referrals made as invalid.

- The legal status of a section 5 declaration has been ruled upon by the Court of Appeal in *Killross Properties Ltd. V Electricity Supply Board* [2016] IECA 207; [2016] 1 I.R. 541 (*'Killross Properties'*). In this case the Court of Appeal held that enforcement proceedings had no jurisdiction to go behind the section 5 declaration. The same rationale applies to the Board in this case.
- Following on from the judgement of the Court of Appeal in *Killross Properties* the High Court has confirmed that a section 5 declaration is binding on the Board in a subsequent planning application or appeal (*Sweetman v An Bord Pleanála* [2017] IEHC 46 9 (*'Grousemount'*). The High Court, in this case, held that the Board, in determining an application for permission for a wind farm, would be bound by an earlier section 5 declaration to the effect that associated grid connection works constituted *'exempted development'*. The Court described the section 5 determinations as formal decisions having irreversible legal effects. The applicant quotes from the judgement including the following extract *'The section 5 declaration is a matter that can only be reviewed by appeal to the Board, or by judicial review brought in time in the High Court, and after that it is beyond attack. They were 'formal decision(s) having irreversible effects'. Thus they could not be substantively reviewed by the Board. When not appealed within 4 weeks or subjected to judicial review within 8 weeks they became final and binding in their own right, and their correctness could not be revisited by the Board'*.
- The applicant has sought to comply with planning legislation and have ensured a section 5 declaration in advance of the purchase of the premises and have now invested substantially in designs and architectural plans. It would undermine their legitimate expectations were the Board to revisit this section 5 declaration.
- Class 9 of the Use Classes – Meath County Council's planners report concluded that the development, which was considered to be a use consistent

with a use for the provision of residential accommodation and care to people in need of care, and therefore exempted development, as it fell within the same use class as a nursing home.

- The same issues are raised by the referrers (Class 9 is expressly cited in the submissions). The Board is being asked to overrule the 2016 Declaration. An Bord Pleanála does not have jurisdiction to do so for the reasons set out above.

#### 7.4. Further Responses

- No response from Trim Municipal Council on applicant's response to the referrals.
- Ballivor Community Group: -
  - There is no basis for the request that the appeal be dismissed as invalid.
  - Meath County Council does not share this view, otherwise it would not have referred the matter on to the Board.
  - The cases cited by the applicant have no application to the jurisdiction of the Board but to the jurisdiction of the Courts.
  - The jurisdiction of the Board to determine section 5 requests is provided in section 5(3) and 5(4) of the Act. The *Killross* and *Sweetman (Grousemount)* proceedings referred to concern the limit of the Court's jurisdiction, and not the Board's.
  - There is a fundamental flaw to the reasoning that the section 5 declaration means that no further section 5 applications relating to the same matter may be raised or reviewed by the Board. The section 5 application for declaration was made by Narconon Trust. No public notice is required for such an application or opportunity for public participation. Any application for review of the planning authority's declaration can only be made by the person issued with the declaration. There is no merit, therefore, to the suggestion that the Board should be bound by any such prior declaration in such circumstances. There is no authority cited to support the proposition



that the Board is bound by the planning authority's declarations, even though the matter was not referred to review by the Board and no opportunity for interested parties to refer such a declaration to the Board for review.

- The decision by Narconon Trust to spend money of foot of a section 5 declaration is a matter for itself.
- Class 9 – The drug rehabilitation facility is not the provision of residential accommodation and care to people in need of care. The primary purpose of the facility is drug rehabilitation, not to provide accommodation, whilst also giving them social support services. In order to fall within Class 9(a), the use is an accommodation use for persons who have certain care needs. The use would more clearly fall within Class 8(a) (health centre or clinic for the provision of any medical or health services). The Planning Report wrongly refers to the using being 'consistent with' the provision of residential accommodation and care to people in need of care, whereas the test for exempted development is whether the use is actually that particular use.
- A drug rehabilitation is materially different in planning terms to either residential accommodation with care needs or a nursing home. A person with care needs does not mean a person with drug issues. There is no mention of drug rehabilitation in the article 5(1)(c) definition of the term 'care'. The development differs materially from a nursing home in the temporary nature of the residential accommodation provided and the profile of persons attending the facility.
- The Board is not being asked to overrule the 2016 declaration by Meath County Council. A separate section 5 application is being referred to the Board for determination. If the Board's decision differs from that of the planning authority, there is nothing anomalous with such a consequence.
- Planning permission not implemented – Only construction works for Phase 1 have been completed for the nursing home. The permission for the nursing home has not, therefore, been fully implemented.



Narconon cannot therefore rely upon the existing use of the nursing home for the purposes of claiming an exempted change of use within Class 9.

## 8.0 Statutory Provisions

### 8.1. Planning and Development Act, 2000

8.1.1. Relevant sections of the Planning and Development Act 2000 (as amended) are:

- Section 3(1) '*development..the carrying out of any works on, in over or under land or the making of a material change of use of any structures or other land*'.
- Section 4(1)(h) – States that regulations may be provided for any class of development which may be considered exempted development.

### 8.2. Planning and Development Regulations, 2001

8.2.1. Relevant sections of the Regulations are:

- Part 1, Article 10(1), Changes of Use. This article provides that development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 shall be exempted development for the purposes of the Act, provided the development would not
  - a. Involve the carrying out of any works other than works which are exempted development,
  - b. Contravene a condition attached to a permission under the Act,
  - c. Be inconsistent with any uses specified or included in such a permission,
  - d. Be a development where the exiting change of use is an unauthorised use.
- Schedule 2, Part 4, Exempted Development Classes of Use. Class 9 of this Schedule sets out the following uses.
  - 'Use –
    - (a) *For the residential accommodation and care to people in need of care (but not the use of a house for that purpose),*

(b) As a hospital or nursing home,

(c) As a residential school, residential college or residential training centre'.

## 9.0 Assessment

9.1. This assessment concerns three matters, (i) Does the Board have jurisdiction to determine the referrals made? (ii) Is the proposed change of use development, and (iii) If it is development, is the proposed change of use exempted development. I examine these matters in turn.

### 9.2. Jurisdiction to Determine the Referrals Made

- 9.2.1. Section 5(1) of the Planning and Development Act 2000 (as amended) provides the legislative basis for any person to request a declaration from the relevant planning authority on whether a development is or is not development or is or is not exempted development. Section 5(3)(a) provides the basis for referral of the planning authority's Declaration to the Board for review and section 5(4) enables the planning authority, on payment of a fee, to refer any question to the Board as to what, in any particular case, is or is not development or is or is not exempted development.
- 9.2.2. Under section 50 of the Act, provides that a person shall not question the validity of any decision made by a planning authority or the Board in the performance of a function under the Act except by Judicial Review. In such circumstances, a Judicial Review must be brought within 8 weeks of the date of decision of the planning authority or the Board.
- 9.2.3. The original Declaration by the planning authority in respect of the proposed change of use (TA/651639, made on the 29<sup>th</sup> September 2016) was not referred to the Board, and it would be *ultra vires* for any such referral at this stage. In this regard, I would accept Narconon's submission that a Section 5 declaration, after the expiry of statutory time limits, cannot be challenged.
- 9.2.4. In the two legal cases referred to by the parties (available on line), the status of a Section 5 declaration is examined by the Courts, principally in respect of its interface with section 160 of the Act (enforcement). In summary, the case referred to by

Narconon, *Killross Properties v Electricity Supply Board* [2016] IECA 201; [2016] 1 LR. 541 *Killross Properties*) effectively examined whether section 160 proceedings (enforcement) could be brought against a development which had been declared exempted development under section 5 of the Planning and Development. Judge Hogan concluded that *'the High Court cannot go behind an otherwise valid s.5 determination'*.

- 9.2.5. In the case *Sweetman v An Bord Pleanála*, [2017] IEHC 46, reference is made to the above case, and Judge Haughton states that *'While it might have been thought, before Killross, that a s.5 declaration was no more than a declaration that a particular development was exempt from the requirement of planning permission or approval, it clearly does have a status in itself. It establishes that a particular development is not 'unauthorised', and the High Court cannot go behind that, and cannot permit a collateral attack. As the Court of Appeal found, a s.160 application in respect of an 'exempted' development is bound to fail...The s.5 declaration is a matter that can only be reviewed by appeal to the Board, or by judicial review brought in time in the High Court, and after that it is beyond attack...When not appealed within 4 weeks or subjected to judicial review within 8 weeks they became final and binding in their own right, and their correctness could not be revisited by the Board'*.
- 9.2.6. Both cases highlight the status of a section 5 declaration, in its own right, the inability of any party to challenge this after the expiry of statutory time limits and its status in the context of enforcement action for the same development.
- 9.2.7. However, in this instance, the planning authority has referred the section 5 applications by Ballivor Community Group and Trim Municipal District Council to the Board under section 5(4) of the Act, i.e. there is no review sought of the planning authority's previous declaration. Further, and importantly, there are no provisions in the Act (or case law) which specifically cater for the circumstances before the Board or legal constructs which prevent it from adjudicating on the referral cases before it, despite the previous earlier determination by the planning authority in respect of the same development. I am of the opinion therefore that it is incumbent on the Board to determine the section 5(4) referrals before it.



### 9.3. Is or is not development

- 9.3.1. Section 3(1) of the Planning and Development Act, 2000 (as amended), is defined as *'the carrying out of any works on, in, over or under land or the making of any material change of use of any structures or other land'*.
- 9.3.2. Under PA ref. TA/140621, planning permission granted for change of use and refurbishment of existing national school building (545sqm) to nursing home and provision of additional extensions over two phases (1,512sqm and 1,795sqm).
- 9.3.3. The application referred to the Board is the change of use of this nursing home to a residential drug rehabilitation facility. The question for the Board is therefore whether or not this change of use is material.
- 9.3.4. I would accept the referrer's argument that a nursing home would typically refer to the care of the elderly and would have links to the local community and oversight by the HSE.
- 9.3.5. The drug rehabilitation facility is described in Narconon Trust's letter to the planning authority, accompanying their application for a declaration under section 5 (TA/S51639). It states that the facility will provide a drug-free residential drug-rehabilitation programme, which typically lasts 3 months per client, operating only by prior appointment. Whilst participating in the programme, it is stated that clients are not permitted to leave the facility except towards the end of the programme, where they may walk accompanied by a member of staff. The programme consists of three phases, withdrawal (supervised by a qualified doctor), detox/sauna and study.
- 9.3.6. Having regard to this information, I would consider that the development would be materially different from a nursing home, notably it would provide a different service to a different user group, i.e. a population with a broader age profile and who are drug dependent. It is very likely that it would provide a service to a wider geographical area and have fewer links to the local community. In addition, from the information on file it would appear that the development would not be subject to oversight by the HSE (although this is not strictly a planning matter). The change of use would, therefore, comprise development.



#### 9.4. Is or is not exempted development

9.4.1. Section 4(2) of the Planning and Development Act, 2000 (as amended), enables the Minister to make regulations for any class of development to be exempted development for the purposes of the Act, where he or she is of the opinion that, by reason of its size, nature or limited effect on its surroundings, the development belonging to that class would not offend against the principles of proper planning and sustainable development.

9.4.2. Article 10(1) of the Planning and Development Regulations, 2001 (as amended) refers to changes of uses and states that development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development, subject to certain provisos.

9.4.3. Part 4 of the Act sets out Classes of Use for the purpose of Article 10. Class 9 refers to the following:

*'Use-*

*(a) For the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),*

*(b) As a hospital or nursing home,*

*(c) As a residential school, residential college or residential training centre'.*

9.4.4. The term 'care' is defined in article 5(1), Part 2, of the Planning and Development Regulations, 2001 (as amended), as *'means personal care, including help with physical, intellectual or social needs'.*

9.4.5. I would consider that rehabilitation from drug dependency is a form of 'personal care' which includes help with social needs, for example, drug addiction can prevent a person from participating fully in society. Further, treatment for drug dependency, at the proposed facility, is provided on a residential basis (for c. three months). Having regard to these two factors, I would consider, therefore, that a drug rehabilitation facility would fall within Class 9(a) above.

#### 9.5. Restrictions on exempted development

9.5.1. Article 10 of the Regulations provides that any development which consists of a change of use within any one of the classes of uses specified in Class 9 (Part 4,

Schedule 2) is exempted development if the four restrictions set out in Article 10 do not apply to the development.

- 9.5.2. In this instance, (i) the applicant has not indicated that any other works are proposed, other than those set out in the original permission for the nursing home, (ii) the development does not contravene a condition attached to the permission granted for the nursing home, and (iii) the existing use is not unauthorised.
- 9.5.3. The final category to be examined is that the development should not *'be inconsistent with any use specified or included in such a permission'*.
- 9.5.4. As I stated previously, the inherent service provided, the age profile of occupants, geographical area served by the facility, links to the local community and oversight by the HSE (although this matter is not a planning one) are likely to be different for a drug rehabilitation facility, compared to a nursing home.
- 9.5.5. In considering whether or not these differences are significant, I am mindful of the wider context for the exempted development regulations. Specifically, section 4(2)(a) of the Planning and Development Act, 2000 (as amended), provides that the Minister can make regulations for any class of development provided he or she is of the opinion that *'by reason of its 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'*.
- 9.5.6. In this instance, the nature of the development substantially differs from the permitted nursing home. This potentially has consequences for the proper planning and sustainable development of the area, in particular, consistency with its development plan context (role of settlement) and zoning objectives for the site, which seek to protect, provide for and/or improve town and village facilities and to provide for necessary community, educational and social facilities.
- 9.5.7. Having regard to this wider, overarching context, I would consider that the proposed development, which provides a specific programme to a defined group, with limited interaction with the local community, would be inconsistent with the use specified in the permission granted for the nursing home on site, and, therefore, would not constitute exempted development.

## 10.0 Environmental Impact Assessment – Screening

10.1. The proposed development is of a type that does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). The need for screening for environmental impact assessment is therefore not required.

## 11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the change of use of the permitted nursing home under register reference TA/140621 to a residential drug rehabilitation facility is or is not development or is or is not exempted development:

**AND WHEREAS** Trim Municipal District Council requested a declaration on this question on the 19<sup>th</sup> Day of February, 2018, from Meath County Council

**AND WHEREAS** this question was referred to An Bord Pleanála on the 27<sup>th</sup> day of February, 2018:

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

- (a) Section 3(1) of the Planning and Development Act, 2000,
- (b) Section 4(2)(a) of the Planning and Development Act, 2000, as amended,
- (c) article 10(1) of the Planning and Development Regulations, 2001, as amended,

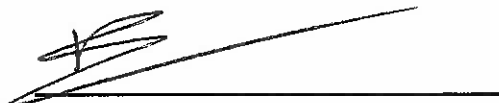


- (d) Class 9 of Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) the nature of the subject development, which includes the provision of drug rehabilitation therapy.

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

- (a) The permitted use on site is a nursing home and therefore a class of use coming within the scope of Class 9 (b) of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended);
- (b) The proposed use, a residential drug rehabilitation facility, providing a specific programme to a defined client group, serving a wide geographical area and with limited links to the local community, differs materially in its nature from the permitted use, and has particular implications in terms of the proper planning and sustainable development of the area, including consistency with the overall zoning objectives for the site;
- (c) The proposed change of use from nursing home to drug rehabilitation facility, would therefore be inconsistent with the use specified in the permission, and would not therefore come within the exempted development provisions of article 10 of the Planning and Development Regulations, 2001 (as amended).

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the change of use from nursing home to drug rehabilitation facility is development and is not exempted development.





Deirdre MacGabhann  
Senior Planning Inspector

12<sup>th</sup> September 2018

**DECISION QUASHED**

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