



An
Bord
Pleanála

Inspector's Report ABP-303618-19

Question

Whether the change of use of a private residence and ancillary garage to a residential care facility is or is not development and is or is not exempted development.

Location

Timahoe, Donadea, County Kildare.

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED00651

Applicant for Declaration

Maple Healthcare

Planning Authority Decision

House conversion is development and is exempted development

Garage conversion is development and is not exempted development.

Referral

Referred by

Maple Healthcare

Owner/ Occupier

Maple Healthcare

Observer(s)

None

Date of Site Inspection

26th June, 2019

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The site of the subject referral is a rural location to the south west of the village of Timahoe, 6km to the west of Derrinturn and approximately 7km north west of Prosperous. The site is accessed via a laneway that runs south from Derrinturn village.
- 1.2. The site is occupied by a large dormer house that has a total of five bedrooms, two living rooms and two offices. To the rear of the main dwelling is located what is described on the submitted drawings as an ancillary building. This building comprises a single storey building with a floor area of 69 sq. metres. This building was originally permitted as a garage located to the rear of the main dwelling and has been reconfigured internally to provide habitable accommodation.
- 1.3. Both the main house and the ancillary building at the rear of the site are currently in use as facility for the housing of persons with autism and other intellectual and behavioural issues. Information submitted with the referral request indicates that the facility operates with a maximum of 6 no. residents who are supported by approximately 5 no. full time staff members who operate shifts with the result that the normal staff complement at night time would be two staff.
- 1.4. The building at the rear can be accessed via the courtyard area at the rear of the main house with a fence separating the two areas or alternatively an independent vehicular access to the ancillary building at the rear is available from an entrance and driveway located at the south western end of the road frontage.
- 1.5. The development on the site was originally known as Longfield House but since the use of the site by Maple Healthcare it is now known as 'The Haven'.
- 1.6. The stated floor area of the house is 451 sq. metres and that of the ancillary building located to the rear of the site 69 sq. metres.

2.0 The Question

2.1. The question as submitted to the Planning Authority for a declaration is as follows:

Whether the use of a house and ancillary garage as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and is or is not exempted development.

I note the fact that the decision of the Planning Authority on the above question was to issue a split decision, deeming that the change of use of the main house is development that is exempted development and that the change of use and conversion of the garage structure is development and is not exempted development. I also note the fact that the subject of the referral to the Board relates only to the element deemed by the Planning Authority not to comprise exempted development, namely the change of use and conversion of the garage structure. Given the interrelationships between the two elements (main house and garage) it is proposed to proceed with assessment of the question as submitted to the Planning Authority.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority issued a direction which stated that the use of the existing dwelling as a residence for persons with intellectual or physical illness and persons providing care for such persons (the number of occupants is six and number of care staff is two) is exempted development, and

The proposed change of use and conversion of the garage to use as a living accommodation associated with the use of the house is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer sets out the planning history of the site and the relevant legislative provisions, including Class 14(f) of Part 2 of the Second Schedule of the Regulations. The assessment concludes that the conditions attaching to the permissions granted on the site (Refs. 02/2470, 06/637 and 16/1251) are such that the proposed use would contravene condition 2 attaching to Ref. 16/1251 which prohibits the use of the garage for human habitation and that internal partition walls have not been removed from the ancillary structure as required under Condition 3(b) of Ref. 16/1251. Concluded that the use of the dwelling as proposed is considered to be exempted development and that the proposed use of the garage does not constitute exempted development.

4.0 Planning History

4.1. The following planning history relates to the site which is the subject of the current referral:

Kildare County Council Ref. 02/2470 – Permission granted to Alan Byrne for the construction of a dormer bungalow, garage and waste water treatment system on the site. Condition No.9 attached to that permission specified that the proposed garage shall not be used for human habitation or other purpose other than one incidental to the use of the site as a dwelling. This garage is indicated on the Site Layout Plan as being located to the north of the dwelling and adjacent to the north east boundary of the site.

Kildare County Council Ref. 08/637 – Permission granted to Alan Byrne to retain alterations and attic conversion to permitted bungalow. Condition No.2 requires that the existing dwelling and attic conversion shall be occupied as a single dwelling unit. Condition No.3 states that the permission authorises the proposed development and does not relate to any other development not the subject of this application whether or not such development would otherwise constitute exempted development. It is noted that the Site Layout Plan submitted with this application indicates the 'existing

garage' in a position adjoining the north west (rear) site boundary and in a position that appears to be approximately that in which the garage / ancillary building which is part of the current referral is located.

Kildare County Council Ref. 16/501 – Permission refused by the Planning Authority for the retention and completion of detached garage to the rear of the dwelling to accommodate a person with intellectual disabilities. Permission refused for a reason relating to the proposal being contrary to policies relating to backland development, negative impact on the amenities of properties in the vicinity and the undesirable precedent that would be set.

Kildare County Council Ref. 16/1251 – Permission granted to Nua Healthcare for two garages and two shed (total floor area of 170 sq. metres) to be used for storage ancillary to the main house and for a new septic tank, percolation area and associated works. One of the shed structures which was included in this application comprises the garage / ancillary building that is located at the rear of the site and which is currently in use as residential accommodation. Condition No.2 attached to this permission specifies that the structures shall be used for purposes ancillary to the residential use of the site and shall not be for human habitation. Condition No.3 requires that within 6 weeks of the date of this permission a revised floor plan for the garage shall be submitted. This plan shall indicate the garage being open plan, shall indicate the internal partition walls removed and notate the space as being for storage.

Kildare County Council Ref. ED/588 – Application for declaration from the Planning Authority as to whether the change of use of the main house on the site from use as a dwelling to use for the housing of persons with an intellectual disability and support staff was or was not development and was or was not exempted development. The exact details of this referral are not available on file or on the Council website, however it would appear from the information presented by the referrer that it was determined by the Planning Authority that the change of use was development which was not exempted development by virtue of the fact that there were unauthorised structures on the site in the form of shed, double garage and the garage to the rear.

4.2. The following referral cases are relevant to the case and / or are cited by the referrer in their submissions to the Board:

Cork County Council Ref. D/202/17 – Determined that the conversion of a house and ancillary garage to a residence for persons with an intellectual or physical disability is development and is exempted development. It is not clear from the information available if the ancillary garage referred to in this case was part of the main house or an a stand alone structure.

An Bord Pleanala Ref. 06D.RL.2616 – Determined by the Board that the change of use of an existing dwelling at 59A Kerry Mount Avenue, Dublin 18 to use as a residential care unit for persons with an intellectual or physical disability or mental illness and persons providing care was development and was exempted development. Noted that this case related to a single dwelling albeit one where a condition of the original grant was that its use was restricted to that of a single dwelling unit.

An Bord Pleanala Ref. 25.RL3406 – Determined by the Board that the use of a house by Nua Healthcare as a residence for persons with an intellectual or physical disability at Multyfarnham, Co. Westmeath is development and is exempted development. Noted that this case related only to the use of a house for such a use and not other ancillary structures on the site.

Kildare County Council Refs. ED/00531; ED/00553; ED/00521; ED/00562 and ED/00541 are cited by the first party as examples where the change of use of houses to use as a residence for persons with a intellectual or physical disability or mental illness is development and is exempted development.

5.0 Policy Context

5.1. Development Plan

The site is located in a rural area outside of any identified settlement.

5.2. Natural Heritage Designations

The site is not located within or close to any European site. The closest such sites to the subject site is Ballynafagh Bog SAC (site code 000391) which is located c.5km to the south east of the site at the closest point.

There are no other European sites within 10km of the subject site.

6.0 The Referral

6.1. Referrer's Case

As noted at section 2.0 of this report above, the referrer's case relates to the decision of the Planning Authority in relation to the proposed change of use and works undertaken to the garage structure.

The following is a summary of the main issues of relevance to the assessment raised in the submission received from the referrer (Maple Healthcare):

- That regard should be had to the length of time that it took the Planning Authority to make a decision on the referral.
- That Condition No.3 of Ref. 16/1251 does not prohibit use of the garage for habitable use. It is Condition No.2 prohibits habitable use.
- That the principle behind such a condition is to prevent the sub division of the site. This is not the intention of the referrer and would not be possible as the facility is registered with HIQUA as a single facility.
- Contended that the garage is ancillary to the primary use of the site as a dwelling. The garage would not exist were it not for the dwelling.
- That the cessation of the ancillary use does not give rise to a material change of use.
- That there is no specific condition or limitation specified in Class 14(f) regarding the change of use of a garage (or other structure) that is ancillary to a house.
- There is no intention that the garage would be separated in sale or lease from the main dwelling.

- That the permission granted and the attached conditions apply to the use of the site as a dwelling. The change of the primary use of the property / site to the provision of care as allowed under the s.5 declaration alters the effect of the condition in the previous permission and cannot prevent the change of use of the garage to match that of the new primary use.
- That the refusal of the retention application (Ref. 16/501) is not relevant as it was made under a different development plan. The s.5 declaration Ref. ED00651 does not refer to this permission.
- That there is precedent in a number of counties for the conversion of a garage for the provision of care ancillary to the change of use of the main house. The cases cited include Cork County Council Ref. D/202/17, An Bord Pleanála Ref. 06D.RL.2616 at 59A Kerry Mount Avenue, Dublin 18 and An Bord Pleanála Ref. PL25.RL3406 at Multyfarnham County Westmeath.
- That the subject site meets the requirements of Nua Healthcare in terms of its size and location in a rural environment where there is a minimum of arousal for residents.
- That the change of use undertaken by Nua Healthcare would normally be considered to come within the scope of Class 14(f) of the *Planning and Development Regulations, 2001*.
- Regarding the restrictions on exemptions set out at Article 9 of the Regulations, the proposed development does not contravene a condition attached to any previous permission pertaining to the property. The change of use resulting in a maximum of 6 no. vehicles will not endanger public safety by reason of a traffic hazard or obstruction of road users. None of the other criteria set out at Article 9 would be impacted.

6.2. Planning Authority Response

There is no record of a response being received from the Planning Authority.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

s.3(1) states that

in this Act 'development' means, except where the context otherwise requires, the carrying out of any works on in or under land or the making of any material change in the use of any structures or other land.

s.4(2)(a) states that

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 principles of proper planning and sustainable development, or

(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

7.2. Planning and Development Regulations, 2001

Article 6(1) states that:

'subject to Art.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 of the mention of that class in the said column 1'.

Class 14(f) of Part 1 of the Second Schedule states that the following will be exempted development:

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.

This exemption (Class 14(f)) is subject to the following condition or limitation:

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.

Article 9(1) states that development to which article 6 relates shall not be exempted development for the purposes of the Act-

- (a) If the carrying out of such development would –
- (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
 - (iii) endanger public safety by reason of a traffic hazard or obstruction of road users.
 - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
 - (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 structure.

8.0 Assessment

8.1. Appropriate Assessment

- 8.1.1. The site is not located within or close to any European site. The closest such sites to the subject site is Ballynafagh Bog SAC (site code 000391) and Ballynafagh Lake SAC (site code 001387) which are located c.5km to the south east of the site at the closest point. There are no other European sites within 10km of the subject site. The site is served by an on site effluent treatment system and a new system was granted permission under Kildare County Council Ref. 16/1251.
- 8.1.2. There is no direct surface water pathway between the referral site and the above referenced SAC sites. No clear groundwater connection between the referral site and the SAC sites is evident and the separation distance involved is approximately 5km. The nature of the change of use which is the subject of this referral is a change from residential to residential use for the accommodation of persons with an intellectual disability. The proposed number of persons on the site would be 6 no. residents with the number of support staff varying between two and five. Only the 6 no. residents would live on site with the support staff operating in shifts and resident off site. The level of intensity of use of the site under the proposed use the subject of this referral is not in my opinion such that the level or nature of waste water discharges from the site could be anticipated to materially change or to be such that there would be a significant impact on the capacity of the installed on site waste water treatment system.
- 8.1.3. In view of the above, having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site. No appropriate assessment is therefore considered to be required and the provisions of Article 9(1)(viiB) of the Planning and Development Regulations 2001 (as amended) are not applicable.

8.2. Is or is not development

- 8.2.1. The question relates to the use of a permitted house and a stand alone building at the rear of the house for the purposes of the provision of supervised residential accommodation for persons who have an intellectual disability. .
- 8.2.2. From the details including drawings submitted with the referral and from an inspection of the site, no physical works have been undertaken to the main residential house. The use of the main residential house has, however changed from use as a house to use as a residential home for persons with intellectual disabilities. The nature of this change involving the presence on site of care personnel and implications for the site in terms of traffic generation and residential disturbance are in my opinion such that a material change of use has occurred.
- 8.2.3. With regard to the separate structure located to the rear of the site, this building was originally permitted as a garage ancillary to the main use of the site as a house. The submitted plans and an inspection of the interior of this structure indicates that it has been the subject of a number of internal and external alterations including the installation of internal partitions, toilet, bathroom and the addition of an extra window and door. These nature of these works are such that development has occurred. In addition, development has occurred on foot of the change of use of this structure from a permitted garage that is ancillary to the main use of the site as a house to a unit for the supervised accommodation of a person with intellectual disability.
- 8.2.4. For the above reasons, it is considered that the subject of this referral question comprises physical works and a material change in the use of both of the main and ancillary structures on the site such that development has occurred.

8.3. Is or is not exempted development

- 8.3.1. In considering the question as to whether the development which has occurred on the site is or is not exempted development, I propose to separately assess the exempted status of the change of use of the main building on the site and the detached ancillary / garage structure to the rear.

- 8.3.2. Before the assessment of the individual elements of the proposed changes of use, the following general facts relating to the activity on site which are of relevance to the question are noted.

General Issues

- 8.3.3. None of the exempted development provisions under section 4 of the Planning and Development Act, 2000 (as amended) are applicable in this case. Under the 2001 Planning and Development Regulations, the only relevant provision is Class 14(f) of Part 1 of the Second Schedule which states that the following change of use shall be considered to be exempted development:

(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.

This exemption (Class 14(f)) is subject to the following condition or limitation:

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.

- 8.3.4. In the case of the subject site, the main building has a total of 5 no. bedrooms and is stated in the submitted documentation to accommodate a maximum of 5 no. residents and therefore within the maximum of 6 residents specified under Class 14(f). An additional one resident is stated to occupy the ancillary or garage building at the rear of the site meaning that the total number of residents on site would not exceed six.
- 8.3.5. The submitted information with the referral also contains significant information regarding the nature of the service provided and details how the facility is for persons with an intellectual disability, including those with autism, and how placement is generally for a twelve week period. From the information presented, I am satisfied that the nature of the service provided on the site is compatible with the use as provided for in Class 14(f).

8.3.6. With regard to the number of support staff, the details submitted with the referral indicate that the facility comprising both the main building and the ancillary / garage structure is staffed by approximately 5 no. full time day care staff who work 12-14 hour shifts and that the maximum number of resident carers staying overnight would not exceed two. The conditions and limitations relating to Class 14(f) of Part 1 of the Second Schedule of the Regulations make reference to a requirement that '*the number of resident carers shall not exceed 2*'. No definition of what constitutes a '*resident carer*' is given in the Regulations, however I consider it reasonable that this would be taken to comprise the number of carers who would be living on site and not the total number of staff that work at the facility. This interpretation is consistent with that accepted by the Board in the case of 25.RL3406. In the case of the subject facility, the submitted information indicates that no carers would permanently reside on site with all staff living off site and working shifts. The submitted information also indicates that the maximum number of staff on site during night time hours would be two. On the basis of the information presented I consider that the facility meets the requirement of having a maximum of two resident carers.

8.3.7. On the basis of the information presented, therefore I consider that the nature of the change of use sought is consistent with a use for persons with an intellectual or physical disability or mental illness as specified in Class 14(f) of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended) and that the relevant Conditions and limitations applying to this exempted change of use regarding numbers of residents and resident carers are met.

8.3.8. The following sections address the issue of the compliance of the change of use sought with other elements of the Planning and Development Act and Regulations.

Ancillary / Garage Structure

8.3.9. While the nature of the new use of the ancillary / garage structure is consistent with that provided for in Class 14(f) of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended), I note the fact that the wording of Class 14(f) provides for a change of use '*from use as a house*'. The question therefore arises as to whether the existing ancillary / garage structure at the rear of the site is a house. '*House*' is defined in section 2 of the Planning and Development Act, 2000 (as amended) as follows:

'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 two or more dwellings or a flat, an apartment or other dwelling within such a building'.

8.3.10. In the case of the subject referral, the garage / ancillary structure is currently being used as residential accommodation, however no permission exists for this use. The structure was built as a garage to serve the main residential use on the site and its retention as a stand alone residential unit was refused permission by the Planning Authority (Kildare County Council Ref. 16/501). The subsequent granting of permission for the retention of the structure, under Kildare County Council Ref. 16/1251, was permitted on the basis that it shall be used for purposes ancillary to the residential use of the site and shall not be for human habitation. Having regard to these factors, I do not consider that the garage / shed structure comprises a house within the meaning of the Planning and Development Acts and do not therefore consider that it can avail of the exempted change of use provisions at Class 14(f) of Part 1 of the Second Schedule of the Regulations which provides for a change of use 'from use as a house'.

8.3.11. The basis for the determination by the Planning Authority in their determination that the use of garage / ancillary structure as a residence for the accommodation of persons with an intellectual or physical disability or mental illness related to the contravention of conditions Nos. 2 and 3 attaching to Kildare County Council Ref. 16/1251 which is the permission authorising the garage / ancillary building as constructed. It should be noted that while the original permission for a house on the site (Kildare Co. Co. Ref. 02/2470) included for a detached garage, this was in a different location to the garage as constructed on the site. Subsequent permission for alterations to the permitted dwelling (Kildare Co. Co. Ref. 08/637) did not include for changes to the location of the garage even though the Site Layout Plan submitted with this application indicates the shed in approximately the current position. In my opinion, **Kildare Co. Co. Ref. 16/1251** and associated conditions is therefore the relevant permission relating to the garage / ancillary building which is the subject of this referral. **Condition No.2** attached to this permission specifies that the structures shall be used for purposes ancillary to the residential use of the site and shall not be

for human habitation. The current use of the garage / ancillary building as stand alone living accommodation for a person with intellectual or physical disability is in my opinion clearly in contravention of this condition with the result that the proposed change of use would not be exempted having regard to Article 9(1)(a)(i) which states that *'development to which Article 6 relates (exemptions set out in Schedule 2) shall not be exempted development for the purposes of the Act if the carrying out of such development would contravene a condition attached to a permission.'*

8.3.12. The referrer makes a number of assertions regarding the garage / ancillary structure and how it is not appropriate that the exemption would be lost by virtue of non compliance with a condition. These include that the garage is ancillary to the primary use of the site as a dwelling and would not exist were it not for the dwelling and that the cessation of the ancillary use does not give rise to a material change of use. I do not follow or agree with the arguments made by the referrer on these issues. The use of the garage was indeed ancillary to the original use of the site as a house and permitted as such in the original permission (Ref. 02/2470). It does not however in my opinion follow that the cessation of this ancillary use and its replacement with an alternative use is not a material change of use. The wording of Article 9(1)(a)(i) is clear that an exemption is lost in the event that the carrying out of development would contravene a condition attaching to a permission.

8.3.13. The referrer also makes the case that the permission granted and the attached conditions apply to the use of the site as a dwelling, and that the change of the primary use of the property / site to the provision of care as allowed under the s.5 declaration alters the effect of the condition in the previous permission and cannot prevent the change of use of the garage to match that of the new primary use. I do not follow the logic of this argument as what is sought is an exempted change of the use of the structures on the site and any conditions attaching to previous permissions remain applicable.

8.3.14. I also note the case made by the referrer that the principle behind a condition restricting habitable use of the garage is to prevent the sub division of the site and that this is not the intention of the referrer. This may well be the case, however it is not in my opinion relevant to the interpretation of the relevant legislation and the determination of the referral request.

8.3.15. Condition No.3 attached to Ref. 16/1251 required the submission of a revised floorplan of the garage indicating an open plan layout and the removal of all internal partition walls and condition 3(b) required that these works shall be carried out within 2 months of receipt of the decision of the Planning Authority. From the online documents relating to Ref. 16/1251 available on the council website it would appear that compliance correspondence regarding the revised floorplan was submitted, albeit that it was not within the required two month period from the date of permission. As evidenced by the drawings submitted with the referral request and the site inspection, it is apparent that the garage is still in use as habitable accommodation with internal partition walls remaining in place. The requirements of Condition No.3 attached to Ref. 16/1251 have not therefore been met, and as per Article 9(1)(a)(i) the exemption available under Class 14(f) of Part 1 of Schedule 2 of the Regulations is not applicable.

8.3.16. In conclusion, by virtue of the fact that it would contravene a condition (Conditions Nos. 2 and 3 attached to Ref. 16/1251) of the permission under which retention permission for the garage / ancillary building is granted, I consider that the exempted change of use under Class 14(f) is not exempted development having regard to Article 9(1)(a)(i) of the Planning and Development Regulations, 2001 (as amended).

Main House

8.3.17. As set out above under the heading of 'General Issues', on the basis of the information presented, I consider that the nature of the change of use sought is consistent with a use for persons with an intellectual or physical disability or mental illness as specified in Class 14(f) of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended) and that the relevant Conditions and limitations applying to this exempted change of use regarding numbers of residents and resident carers are met.

8.3.18. In my opinion however the fact that the garage structure is currently in use as habitable accommodation which is not exempted development and for which no planning permission has been obtained has implications for the planning status of the change of use sought for the main house. The house and garage form part of the same site or planning unit which has a permitted residential use. The fact that the garage is currently being used for habitable accommodation means that part of

the house site is unauthorised and, under Article 9(1)(a)(viii) no exemptions under Article 6 can apply in such circumstances. In my opinion therefore, the exempted change of use under Class 14(f) of Part 1 of Schedule 2 (from use as a house to use as a residence for persons with an intellectual or physical disability) is not applicable in the circumstances of this case.

- 8.3.19. On the basis of the above, I consider that the change of use of the main building on the site from use as a house to use as a residence for persons with an intellectual or physical disability is not exempted development.

9.0 Recommendation

- 9.1. 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 a private residence and ancillary garage to a residential care facility is or is not development or is or is not exempted development:

AND WHEREAS Maple Healthcare 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 house to a residential care facility was development and was exempted development and that the change of use of the ancillary structure / garage to a residential care facility 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) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, in particular Class 14(f)
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The nature of the proposed use of the site comprising use for the accommodation of persons with an intellectual or physical disability, including the number of persons to be accommodated and the number of resident carers is such that, in principle, it is consistent with the provisions of Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended.
- (b) The ancillary building / shed structure at the rear of the site does not come within the definition of a 'house' as set out at section 2 of the Planning and Development Act, 2000 (as amended) and such that the provisions of Class 14(f) of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended) comprising a change of use 'from use as a house' is not therefore applicable to this structure.
- (c) That the use of the ancillary building / shed structure for habitable accommodation and the internal works undertaken to this structure to facilitate its use as habitable accommodation are unauthorised and this unauthorised use and development continues on site as observed at the time of the site inspection.

- (d) That the proposed change of use of the garage structure would contravene a condition (Conditions No. 2 and 3 attached to Ref. 16/1251) and would therefore be contrary to Article 9(1)(a)(i) of the Planning and Development Regulations, 2001 (as amended).
- (e) That the unauthorised use of the garage structure means that part of the overall residential use of the site which is the subject of the referral is unauthorised and, as per Article 9(1)(a)(viii) of the Planning and Development Regulations, 2001 as amended, no exemptions under Article 6, including Class 14(f) of Part 1 of Schedule 2, are applicable.

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 the change of use of the main building on the site from use as a house to use as a residential care facility and the change of use of an ancillary garage to use as a residential care facility is development and is not exempted development.

Stephen Kay
Planning Inspector

13th August, 2019