



An
Bord
Pleanála

Inspector's Report ABP-304612-19

Question

Whether the change of use of a nursing home to a residential rehabilitation care centre is or is not development or is or is not exempted development.

Location

Glencarrig Nursing Home, Glencarrig Court, Firhouse Road, Tallaght, Dublin 24

Declaration

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

ED 19/0009

Applicant for Declaration

Cllr. Brian Lawlor

Planning Authority Decision

Is exempted development

Referral

Referred by

Cllr. Brian Lawlor

Owner/ Occupier

De Paul

Date of Site Inspection

28th, January 2020.

Inspector

Paddy Keogh

1.0 Location and Description

1.1. The subject site is located at the south western end of Firhouse Road, Tallaght, Dublin 24. The site is enclosed on all sides by the Glencarrig Court housing estate. The site is accessed from the southern side of the carriageway at Firhouse Road and from a gate located at the bottom of a residential cul-de-sac within Clencarrig Court. The site contains a vacant single storey nursing home (Glencarrig Nursing Home). There is a surface car parking area to the front of the nursing home and a significant garden area (currently overgrown) to the rear.

2.0 The Question

2.1. The question referred by the referrer to the planning authority pursuant to Section 5(1) of the *Planning and Development Act, 2000*, as amended (“the Act”) and subsequently referred by the referrer to the Board, for review, pursuant to Section 5(3)(a) of the Act is, as follows:

Whether the change of use from a nursing home to a residential rehabilitation care centre at Glencarrig Nursing Home, Glencarrig Court, Firhouse Road, Tallaght, Dublin 24 is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. By Order dated 9th, May 2019, the change of use of a nursing home to a residential rehabilitation care centre at Glencarrig Nursing Home, Glencarrig Court, Firhouse Road, Tallaght, Dublin 24 was declared to be exempted development.

3.2. Planning Authority Reports

Planning Reports

3.2.1. A report from the planning authority Senior Planner dated 8th, May 2019 includes:

- The referrer has requested that the planning authority answer the same questions has already been answered by the planning authority in the case of

Referral ED19/0003 which was a question referred to the planning authority by the same referrer *[but not subsequently referred to the Board]*.

- The question asked by the referrer is *'is the change of use from a nursing home to a residential rehabilitation care centre development or not?*
- The planning authority declared under ED 19/0003 that the change of use of a nursing home to a residential rehabilitation care centre is exempted development.
- The referrer has referenced a decision of the Board (Appeal No. 301064-18) where the Board concluded that the change of a use of a permitted nursing home in Ballivor, Co. Meath to a residential drug rehabilitation facility was development and not exempted development. The planning authority considers that this decision by the Board (which asked a question in relation to a change of use to a **residential drug rehabilitation facility**) is clearly distinguishable from the question being asked in the current referral (which asks a question in relation to a **residential rehabilitation care centre**).
- Supporting documentation accompanying the previous Section 5 Referral that asked the same question (ED 19/0003) indicated that (i) No additional works are proposed to the nursing home building other than those set out in the previous planning permission obtained for the nursing home, (ii) the development does not contravene any condition attached to the planning permission granted for the nursing home, (iii) the existing use is not unauthorised, (iv) the development is not inconsistent with any use specified or included in such a permission. [The referrer has not stated anything to contradict these statements]
- Supporting documentation accompanying ED 19/0003 also states that (i) The existing nursing home building comprises 14 bedrooms and previously accommodated up to 25 people in shared bedroom facilities, (ii) De Paul intend to use the facility to deliver an accommodation based care centre 'Recovery Hub' to accommodate women and children, (iii) Women residents of the hub will have completed a treatment programme for up to one year with a view to rehabilitating them back into the community and will required to be completely alcohol and drug free when residents of the facility, (iv) Between

10 and 13 women together with their young children will be accommodated in 13 family rooms. The maximum number of residents will be 13 adults and 13 children, (v) the care centre will have 24 hour supervision.

- Various sections of the Act and the *Planning and Development Regulations, 2001*, as amended, ('the Regulations') quoted including Article 10 and Class 9(a) and 9(b), Part 4, Schedule 2. Class 9(a) refers to *use as a hospital or nursing home*. Class 9(b) refers to *the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)*.
- The referrers question refers to a change of use within a class of use (i.e. Class 9) set out in Part 4, Schedule 2 of the Regulations. Therefore, pursuant to Art. 10 of the Regulations to the change of use constitutes exempted development.

4.0 Planning History

Reg. Ref. ED 19/0003 – Declaration, pursuant to Section 5 of the Act, by the planning authority that a change of use from nursing home to a residential rehabilitation care centre is exempted development at Glencarrig Nursing Home, Glencarrig Court, Firhouse Road, Tallaght, Dublin 24.

Reg. Ref. 13A/0269 – Planning permission granted by the planning authority for the reconfiguration of and for 4 no. single storey extensions at Glencarrig Nursing Home.

Reg. Ref. SD07A/0732 – Planning permission granted by the planning authority for new 12-bedroom extension and reconfiguration works to Glencarrig Nursing Home. [Extension of duration of this planning permission subsequently granted per Reg. Ref. SD07A/0732/EP].

Reg. Ref. SD07A/0342 – Planning permission granted by the planning authority for the removal of an existing low-level wall and gate and replacement with a high-level stone wall etc. at Glencarrig Nursing Home.

Appeal No. 06S.219062 – Planning permission refused by the Board for a 15 bedroom extension to the Glencarrig Nursing Home.

Reg. Ref. SDA/0174 - Planning permission granted by the planning authority for a single storey conservatory extension to the side and rear of Glencarrig Nursing Home.

5.0 Policy Context

5.1. South County Dublin Development Plan 2016-2022

- 5.1.1. The subject site is located within an area zoned 'RES' in the Development Plan. The stated objective of this zoning is '*To protect and/or improve residential amenity*'.

5.2. Natural Heritage Designations

- 5.2.1. Glenasmole Valley SAC (Site Code 001209) is c. 5km south-west of the site. Wicklow Mountain SAC (Site Code 002122) is c.5km south of the site. Wicklow Mountain SPA (Site Code 004040) is c. 5.4km south of the site.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. The referrers case includes:
- Services related to drug addiction and rehabilitation do not qualify for exemption under the change of use provisions set out in Part 4 of the Regulations due to the external impacts that these services have on surrounding communities. The Board have previously determined this to be the case.
 - The Board has previously determined that a change of use from a nursing home to a residential drug rehabilitation centre at Ballivor, Co. Meath (Appeal No. 301064-18) is a material change of use and, therefore, is development and that the exemption provided for under Class 9, Part 4, Schedule 2 of the Regulations from Class 9(b) (a nursing home) to Class 9(a) (a residential home for persons in need of care) did not apply.

- The Board has previously determined that a use for the dispensing of treatments for addictions, offices and consulting rooms constituted a sui generis use and did not come within the scope of Class 8, Part 4, Schedule 2 of the Regulations (and did not constitute a change of use from a community service (Class 8(d) to a health centre (Class 8(a)).
- Planning provisions in respect of changes of use within a given use class relate to changes to an equivalent type of use or to uses that have less impact than an established use. Changes to use associated with drug treatment or rehabilitation cannot come within the normal suite of exemptions provided for under the Regulations.
- The planning authority does not dispute that the centre is proposed for drug rehabilitation. Addiction is a chronic relapsing condition which negatively impacts upon addicts and those around them. The chaotic behaviour during relapse often spills out onto the street. This makes a rehabilitation facility very different to that of a home catering for the needs of persons with physical, intellectual or social needs.
- A benign nursing home cannot be changed into a residential drug rehabilitation home without first going through the planning process. The Board is requested to overturn the decision of the planning authority.
- The referrer has made an application for costs (in the sum of €220.00 – the cost of making a referral to the Board) on the grounds that the planning authority declined (without reason) the referrers request that the planning authority refer his question to the Board.

6.2. Owner/occupier's response

6.2.1. A submission from Doyle Kent Planning Partnership, agents for De Paul who will operate the proposed residential rehabilitation care centre (owner/occupiers) includes:

- The care centre will accommodate women and support them in their pathway to consolidate their progress within a drug and alcohol-free environment.

- The service is not a drug or alcohol treatment clinic for people wishing stop using drugs and alcohol but rather a residential care centre for women and their children. These women will have already completed a recognised recovery programme (typically at Coolmine, Ashleigh House Centre) but are in need of care to rehabilitate them back into their communities.
- Ashleigh House is the only mother and child (children under the age of 5) residential rehabilitation centre in Ireland. Women leaving Ashleigh House having successfully completed a rehabilitation programme are in need of residential care in order to assist them to gain independence in living skills. The proposed Gelncarrig residential centre will offer this next step in the rehabilitation of women and children back into the community.
- The ultimate aim of the residential care centre is to assist the women in being re-integrated into the community by obtaining long term residential tenancies in suitable independent living accommodation.
- The centre will accommodate up to 13 women (together with their children) in rooms shared by mothers and their child/children.
- There will be no tolerance of drug or alcohol use on site or by residents of the centre.
- De Paul have a robust 'good neighbour' protocol at the heart of its management system.
- The care centre will be supervised by staff on a 24/7 basis.
- There are two separate entrances to the site. Staff will arrive and leave via the entrance to Firhouse Road (not via the entrance through Glencarrig Court housing estate) in order to minimise traffic disruption and impact to local residents.
- The proposed residential rehabilitation care centre can be distinguished from the changes of use proposed in both the Ballivor, Co. Meath (Appeal No. 301064) and the Coolmine, Fingal case (Appeal No.RL 2762) highlighted in the referrer's submission. Both these cases related to a change of use to treatment centres for people needing help in relation to ongoing substance abuse (drug and alcohol). The women that will be living with their children in

the proposed Glencarrig centre will not be substance dependent. All of the women will have completed a recognised treatment programme and will not be permitted into the centre unless they are no longer engaged in substance abuse.

- 'care' is defined in Art. 5(1), Part 2 of the Regulations as meaning '*personal care, including help physical, intellectual or social needs*'. The care that will be offered to residents of the Glencarrig facility comes within this definition.
- The proposed change of use constitutes exempted development pursuant to the provisions of Art. 10, Part 4, Schedule 2, Class 9 of the Regulations.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended ('the Act')

7.1.1. Section 2(1) (Interpretation) states:

'In this Act, except where the context otherwise requires- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....'

7.1.2. Section 3 (1) states:

'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.'

7.1.3. Section 4 (1) (h) states:

'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 of neighbouring structures.'

7.1.4. Section 4(4) states:

'Notwithstanding.....any regulations, development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required'

7.2. Section 145(1)(a) gives the Board a discretion for the making of an award of costs against a planning authority in favour of a person making a referral.

7.3. **Planning and Development Regulations, 2001, as amended ('the Regulations')**

7.3.1. Art. 5(1), Part 2 defines 'care' as

'personal care, including help physical, intellectual or social needs'.

7.3.2. Article 10 of the Regulations 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 for the purposes of the Act.....

[subject to specified limitations]

7.3.3. CLASS 9 refers to 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.

8.0 **Assessment**

8.1. **Is or is not development**

8.1.1. The definition of development provided for in Section 2(1) of the Act involves 'works' and/or a 'material change of use'. For development to take place 'works' and/or a 'material change of use' must occur.

8.1.2. 'Works' as defined for the purposes of the Act includes any act of 'construction, excavation, demolition, extension, alteration, repair or renewal'.

8.1.3. The documentation on file does not include any specifications in relation to any proposed works. However, it is clear from the content of submissions from the planning authority and the agent for De Paul and from my inspection of the site that

the existing nursing home will be refurbished in order to provide for the proposed care centre accommodation (demolition of an internal wall, refurbishment of a communal kitchen, repainting etc.). These modifications will be confined to the interior of the nursing home only. While minor in nature, insofar as they involve acts of alteration, demolition, renewal and repair, they probably (barely) fall within the definition of 'works' for the purposes of the Act.

8.1.4. The planning authority and the referrer are in agreement that a change of use has occurred. Insofar as a premises previously used as a nursing home will be used as a care centre for mothers and their children (supervised by care staff on a 24/7 basis) I concur that a change of use has occurred. However, in order for a change of use to fall within the definition of 'development' for the purposes of the Act. The change of use must be a 'material' change of use.

8.1.5. At first glance, I consider that arguably no 'material change of use' is proposed - a premises previously used as a residential nursing home for the care of the elderly will now be used as a residential care centre providing care support to mothers and children.

8.1.6. However, I note the test proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd [1984 21 MCA]* for the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that '*in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different then the present use must be equally materially different.*'

8.1.7. In short, if the matters considered in assessing a planning application for a nursing home are materially different to the matters considered in assessing a planning application for a rehabilitation care centre then the uses must be materially different and a change of use from one use to the other must be a material change of use.

8.1.8. On balance, I consider that the matters that would be taken into consideration in the assessment of a nursing home are materially different to the matters that would be taken into consideration in the assessment of a rehabilitation care centre (e.g. intensity and timing of traffic movements into and out of the premises, car parking requirements, quality and quantum and qualities of open space provision (given

different age profile of residents) etc.). In these circumstances, I consider that the proposed change of use constitutes a material change of use.

- 8.1.9. In my opinion, the conclusion that the proposed change of use constitutes a material change of use is bolstered by reference to the fact that use as a nursing home falls within a different sub-class of use (Class 9(b)) to use for the provision of residential accommodation and care to people in need of care (Class 9(a)) PART 4 , SCHEDULE 2 of the Regulations. I base this on the belief that the requirement to provide for a statutory exemption between these classes implies that they must have been regarded as materially different uses when the statutory provision was being framed (otherwise this exemption would be superfluous).

On the basis of the above analysis, I consider that the change of use on Glencarrig Nursing Home to a rehabilitation care centre involves both 'works' as defined for the purposes of the Act and a 'material change of use' and, thus, constitutes 'development' as defined for the purposes of the Act.

8.2. Is or is not exempted development

- 8.2.1. Planning permission is required for any development other than exempted development. Exemptions are provided for under both the Act and the Regulations.
- 8.2.2. I have already concluded at paragraph 8.1.3 above that the proposed modifications to the nursing home fall within the definition of 'works' provided in the Act and, therefore, constitute development. However, given the limited nature of the proposed works which will be confined to the interior of the property only, I consider that the proposed works come within the scope of the exemption provided for pursuant to Section 4(1)(h) of the Act (i.e. *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...etc.*).
- 8.2.3. The planning authority have concluded that the proposed development constitutes exempted development pursuant to Art. 10 of the Regulations which provided for exemptions relating to changes of use within classes of use set out in PART 4, SCHEDULE 2 of the Regulations. The planning authority is satisfied that the proposed change of use is exempted under Class 9 (i.e. a change of use from Class

9(b) – use as a nursing home to Class 9(a) – use for the provision of residential accommodation and care to people in need of care.

- 8.2.4. The referrer argues that the proposed change of use cannot avail of the exemption provided for in Class 9 in circumstances where the use of the proposed care centre will not be confined to the residential accommodation needs of users of the centre but will also function as a drugs rehabilitation centre. The referrer also expresses concerns in relation to the fact that a care centre of the nature being proposed, (independent of the status of the residents of the care centre) would tend to attract drug users into the area (visiting residents of the care centre).
- 8.2.5. The submission from the agent for the owner/occupier of the proposed residential rehabilitation care centre (De Paul) describes in some detail the nature of the proposed care centre and the profile of residents. This submission specifically highlights that drug and alcohol use and abuse will not be tolerated within the care centre. Women residents will have completed a detox programme before being admitted to the residential rehabilitation care centre. In the event that any resident is found to be engaged in substance abuse they will be moved out of the centre. The (fully supervised) care centre is intended as a ‘step-up’ facility to provide accommodation and care for women who were previously engaged in substance abuse (together with their children) and to assist them in their efforts to return to fully independent living.
- 8.2.6. For the purposes of answering the question poses in this referral I consider that the Board are confined to interpreting the statutory provisions of the Act and Regulation based on a strict reading of the words as set out in the Act and Regulations. Whether one adopts a literal or purposive approach to the interpretation of the provisions of the legislation I consider that on a strict reading of the wording of Art. 10 and Class 9, PART 4, SCHEDULE 2 of the Regulations the proposed change of use (being a change of use from a nursing home (Class 9(b)) to use for the provision of residential accommodation and care to people in need of care (Class 9(a)) constitutes exempted development. I consider that it is not appropriate for the Board to infer into the question matters relating to the provision of drug rehabilitation facilities on site where the owner/occupier (De Paul) has specifically highlighted that the care centre is not intended for such use and where the referrer has not asked this question.

- 8.2.7. I note the concerns highlighted by the referrer in relation to the potential for a centre of this nature to attract persons still actively engaged in substance abuse to the area when visiting residents of the care centre. Irrespective of the merit or otherwise of the concerns expressed in this regard by the referrer, I consider that these concerns are matters that do not strictly fall within the scope of statutory interpretation for the purposes of Section 5 of the Act.
- 8.2.8. The referrer has sought to rely on previous decisions of the Board in respect of Section 5 referrals as precedents for the current case. These include Appeal No. 301064-18 and RL2762.
- 8.2.9. In Appeal No. 301064-18 the Board determined that the change of use of a permitted nursing home to a residential drug rehabilitation facility at the Old National School Ballivor Village, Co. Meath constituted development which was not exempted development. In coming to this conclusion, the Board considered that the proposed change of use was a material change of use generally coming within the scope of Art. 10(1) of the Regulations (and being a change of use from Class (9b) to Class 9(a)) but was nonetheless inconsistent with the use included in the planning permission for the nursing home by reason of significant differences in the services provided, the age profile of the likely occupants etc.
- 8.2.10. In my opinion, the current referral can be distinguished from the Board decision in Appeal No. 301064-18 by reason of the fact that the facility proposed for Ballivor was a drug rehabilitation facility catering for persons engaged in substance abuse undergoing drug treatment and rehabilitation (and not, as in the case of current referral, confined to the provision on residential care only). Furthermore, the Ballivor centre did cater for mothers accompanied by young children.
- 8.2.11. Notwithstanding the above comments, I note that the Board decision in Appeal No. 301064-18 has recently been quashed by the High Court following an appeal by way of Judicial Review.
- 8.2.12. RL2762 refers to a decision by the Board that change of use to a drug rehabilitation centre at Coolmine, Co. Dublin constituted development which was not exempted development. I consider that this case can again be distinguished from the current referral in that the proposed use was to provide residential drug rehabilitation and to

persons still engaged in on-going substance abuse. Again, the proposed facility did not cater for mothers accompanied by young children.

8.2.13. The recent decision delivered by the High Court on 24th, January 2020 in Narconon Trust v An Bord Pleanála quashed the Board's decision made in respect of Appeal No. 301064-18 (the Ballivor case). In quashing the Board's decision Hewlin, J held that the Board had failed to exercise its powers pursuant to S. 138 of the Act to dismiss the referral. This decision centred on the fact that the same question had been referred to and determined by the planning authority (but not subsequently referred to the Board) c. 2 years previously. It was determined that (in the absence of the original referral being passed on to the Board) it was open to any other party to apply for judicial review of the planning authority determination, but not the other party to subsequently ask the same question pursuant to Section 5 of the Act after the statutory time period for the lodgement of an application for judicial review had passed.

8.2.14. Having regard to the decision of the High Court in this case, the Board may consider that it is bound to dismiss the current referral pursuant to S. 138 of the Act in circumstances where the same question relating to the same development has already been answered by the planning authority in a recent Section 5 Referral. However, I consider that the current referral can be distinguished from the Ballivor (Narconon) case in that in the current instance the same question has been asked of the same planning authority by the same person shortly after the planning authority made its original determination in the matter. It seems that the question was asked a second time in circumstances where the referrer wished to avail of the opportunity of referring the planning authority decision to the Board for review but had failed to do so within the statutory time frame. In this light, it would seem reasonable to conclude that the second (repeat) referral facilitated the referrer in overcoming a technical breach relating to his failure to exercise his right to refer the planning authority decision in the original referral to the Board for review rather than any abuse of process. These circumstances would appear to be significantly different to the circumstances of the Narconon case. In the latter case the same question was asked of the planning authority in relation to the same development on the same site in a fresh referral made by different parties to the original referral and after the passage of a significant time period (c. 2 years). The High Court decision in the Narconon

case appears to suggest that parties to a Section 5 referral are entitled to legal certainty in relation to the answer given to a question posed (following the passing of the statutory judicial review period) and that the making of a fresh referral (by third parties) asking the same question (and seeking a different answer) outside these statutory time frames constitutes an abuse of process and should therefore be dismissed.

8.3. Restrictions on exempted development

- 8.3.1. The only restriction on the exemption provided under Art.10 of the Regulations are those set out in Art. 10 itself (Art. 10(1)(a),(b),(c), and/or (d) and those referred to in Section 4(4) of the Act.
- 8.3.2. Pursuant to Art. 10 development comprising a change of use between classes that is otherwise exempted within a class specified in PART 4, SCHEDULE 2, shall not be exempted if it would (a) involve the carrying out of any works other than works which are exempted development. (b) contravene a condition attached to a permission under that Act, (c) be inconsistent with any use specified or included in such a permission, or (d) be a development where the existing use is an unauthorised use....etc. Based on the documentation on file (including the report from the planning authority Senior Planner dated 8th, May 2019), I consider that none of these restrictions apply.
- 8.3.3. Section 4(4) of the Act provides that certain developments requiring Environmental Impact Assessment and Appropriate Assessment cannot avail of certain exemptions otherwise provided for under the Act (and Regulations). The nature of the development in this instance would not require Environmental Impact Assessment or Appropriate Assessment. (see Sections 8.5 and 8.6 below).

8.4. Costs

- 8.4.1. The referrer has applied for costs in the sum of €220.00 (the cost of making the referral to the Board). The referrers claim is grounded on the fact that the planning authority (without giving reasons) failed to refer the question that is the subject matter of this referral on to the Board for determination following a request to do so by the referrer. Thus, the referrer incurred the cost of making this referral to the Board.

8.4.2. I note that Section 5(4) of the Act provides that a planning authority may refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board. The wording of this section makes it clear that a planning authority has a discretion in this matter. There is no provision in the legislation that a planning authority is obliged or compelled to refer a question to the Board for determination when requested to do so by a referrer or any other party. Accordingly, I consider that the Board invoking its powers pursuant to Section 145 of the Act making an award of costs against the planning authority in favour of the referrer would be unwarranted in this instance.

8.5. **Appropriate Assessment**

8.5.1. Having regard to the nature and scale of the development which does not involve the carrying out of any significant works and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.6. **Environmental Impact Assessment**

8.6.1. Having regard to the nature and scale of the development which does not involve the carrying out of any significant works and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

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 nursing home to a residential rehabilitation care centre at Glencarrig Nursing Home, Glencarrig Court, Firhouse Road, Tallaght, Dublin 24 is or is not exempted development:

AND WHEREAS Councillor Brian Lawlor requested a declaration on this question from South Dublin Co. Council and the Council issued a declaration on the 9th day of May, 2019 stating that the matter was exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 4th, day of June 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, as amended,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (e) Article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Part 4 of Schedule 2 (Class 9) to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site and the nature of the subject use:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Modification of the nursing home for use as a residential rehabilitation care centre would involve the carrying out of works (of

a minor nature) to the interior of the property.

- (b) The change of use of the existing premises from use as a nursing home to a residential rehabilitation care centre for women and children would represent a change of use, and such change of use would raise issues relevant to the proper planning and development of the area, and would, therefore, constitute a material change of use.
- (c) The proposed works and material change of use constitute development,
- (d) The proposed works being minor in nature and 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 of neighbouring structures come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended, and are therefore exempted development.
- (e) The proposed material change of use comprises a change of use that falls within the scope of class 9, PART 4, SCHEDULE 2 of the Planning and Development Regulations, 2001, as amended being a change of use from a nursing home (Class 9(b)) to the provision of residential accommodation and care to people in need of care (Class 9(a)) and is therefore exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the change of use from a nursing home to a residential rehabilitation care centre at Glencarrig Nursing Home, Glencarrig Court, Firhouse Road, Dublin 24 is development and is exempted development.

Paddy Keogh

Planning Inspector

16th, February 2020