



An
Bord
Pleanála

Inspector's Report ABP-305008-19

Question

Whether the use of a building formerly operating as a General Practice surgery for use as a Methadone Clinic at Kildare Health Centre, Kildare Town County Kildare is or is not development and is or is not exempted development

Location

Kildare Health Centre, Tully Road,
Kildare Town County Kildare

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED00723

Applicant for Declaration

Tameric Investments.

Planning Authority Decision

Is not development

Referral

Referred by

Tameric Investments.

Owner/ Occupier

Watermills Family Practice.

Observer(s)

None.

Date of Site Inspection

4th December 2019.

Inspector

Susan McHugh

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1.0 Site Location and Description

- 1.1. The referral site is located on the southern side of Kildare Town, County Kildare. It lies on the west side of Tully Road and comprises a single storey, detached building with on-site surface parking for staff to the front.
- 1.2. The area is characterised by residential development and a number of community uses, including St Brigid's Parish Church to the north, St. Brigid's Primary school to the west, and Kildare Local Services adjoining to the south. At the time of site inspection, the subject site was in use as a General Practice – Watermills Family Practice.

2.0 The Question

- 2.1. Under section 5 of the Planning and Development Act 2000 David Mulcahy Planning Consultants Ltd, (Agent on behalf of Tameric Investments), has sought a decision from the Board as to whether the use of a building formerly operating as a General Practice surgery for use as a methadone clinic at Kildare Heath Centre, Tully Road, Kildare Town, Co. Kildare is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

ED/00723: The Planning Authority issued a Section 5 Declaration on the 1st July 2019, which had regard to the details submitted and the relevant sections of the Planning and Development Act, Roads Act, and Planning and Development Regulations. The Declaration states that 'the proposed change of use is not development and therefore the question of exempted development does not arise'.

3.2. Planning Authority Reports

3.2.1. Planning Reports (dated 16/04/2019 and 25/06/2019)

The 1st **Planners Report** notes the following;

- Notes Section 3 and 4 of the Planning and Development Act, 2000 (as amended). Also notes Articles 6, 9, 10, and 11, and Schedule 2, Part 4 Class 8 of the Planning and Development Regulations 2001, as amended.
- As the Referral has been made by a Third Party, there are no specific substantiated details as to the history of the premises and its use as a health centre, GP surgery, clinic, dispensary etc. In the context of Section 5(2)(c) of the Planning and Development Act 2000 (as amended) further information regarding the use of the property was recommended.
- Notes planning precedent (RL2762) cited by the Referrer de-exempting the use of a day centre for the dispensing of treatments for addictions, offices and consulting rooms and subsequent material change of use. However, there is insufficient information on file to reach a similar conclusion.
- Recommends further information.

The **2nd Planners Report** notes the following;

- Notes response from the Health Service Executive (HSE), and whilst not all of the questions have been answered in detail it is still in use by the HSE as a Health Centre and clinic, for medical/health related services to and attendance by, members of the public.
- Health centre has been in operation on the site for over 30 years.
- Notes planning history for extension in 1986 at which time it included services such as dental, doctor (GP), Public Health Nurses, Welfare Officers and Social Worker. Hours of operation varied from mornings, afternoons and late evenings. Historic mapping shows the structure in use as a Dispensary.
- Considers that the use of the building or part thereof as a clinic for the dispensing of methadone would be in accordance with the use of the building as a health centre/clinic and would also accord with the use of the for provision of any medical or health services.
- Structure is a standalone unit and not a dwelling, nor is it within the curtilage of a dwelling.

- It would not appear that there are any ‘works’ proposed either internally or externally.
- Concludes that the use for the dispensing of methadone does not constitute a material change of use of the lands and is therefore not development and therefore the question of Exempted Development does not arise.

3.2.2. Other Technical Reports

Not applicable.

4.0 Planning History

P.A.Reg.Ref.86/1198 : Permission **granted** 31/03/1986 for a single storey extension to Health Centre and a new boundary wall to the rear to the Eastern Health Board.

5.0 Policy Context

5.1. Development Plan

The operative plan for the area is the Kildare County Development Plan 2017-2023.

5.2. Local Area Plan

The site is identified in the Kildare Town Local Area Plan 2012-2018 as being in an area zoned ‘**Town Centre**’. (see attached). The zoning objective is ‘*to provide for the development and improvement of appropriate town centre uses including retail, commercial, office, residential, amenity and civic use.*’

5.3. Natural Heritage Designations

None of relevance.

5.4. Environmental Impact Assessment – Screening

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.

6.0 The Referral

6.1. Referrer's Case

6.1.1. This can be summarised as follows:

- The referral includes a copy of the declaration and photographs of the site.
- It is understood that the subject building on Tully Road is intended to be used by the HSE for the purposes of a methadone clinic and will involve a change of use from the previous use as a GP surgery.
- It is understood that this GP use has ceased, and this would appear to be supported by the KCC inspection which found the building to be unoccupied. Either way there is no dispute that the current or former use of the building is/was a GP surgery forming part of a larger health centre.
- Methadone is a prescription opioid used in the treatment of opiate addiction, which helps to stabilise individuals in recovery by reducing their cravings and withdrawal symptoms so they can fully engage in addiction treatment and therapy. A methadone clinic is a place where the dispensing of methadone occurs under a controlled medical environment.
- Notes Referral 06F.RL.2762 (referral relating to change of use from community centre to use for dispensing of treatments for addictions) and determination of the Board, which noted the '*particular material implications in terms of the proper planning and sustainable development of the area*', including in respect of the potential impact on the amenities of the area and of property in the vicinity and in respect of public health, security noise and general disturbance.

- Notes under ABP-301055-18 (referral relating to change of use from nursing home to drug rehabilitation facility) the Boards Order noted that *'The proposed use, as a residential drug rehabilitation facility, would be a factual change of use from use as a nursing home, and such change of use would raise material planning considerations, including different patterns of traffic and pedestrian activity/movements, a different service to a different user group, including a population with a broader age profile and who are drug dependent, and with limited interaction with the local community, and is, therefore, a material change of use, and is development'*. Content that these material planning considerations would also apply in this instance.
- Submits that a change of use from GP surgery (or health centre) to a methadone clinic is material in planning terms and constitutes development.
- In relation to the KCC view that no development is involved this appears to be based on a decision by Wicklow County Council (provided by the HSE) that a similar situation in Bray involving a change of use was deemed not to be development.
- Contend that the decision under 06F.RL.2762 is more relevant in this instance.
- The fact that the HSE state that there are no current plans to change the building to a methadone clinic is irrelevant to the current referral.
- Note that the HSE have acknowledged that the building is under consideration for change of use to an addiction treatment centre as part of a review for treatment centres in Co. Kildare.
- Note the Boards' conclusion under 06F.RL.2762 that drug dispensation for addiction is considered to be a **'sui generis' use**.
- On this basis a change of use from GP surgery (Class 8, Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended) to a Methadone Clinic (sui generis use) cannot avail of any exemption under Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended. This also applies if the building is considered under the wider health centre description. It is therefore not exempted development.

- Note: The Board may want to consider a broader query whereby the use of Kildare Health Centre, as a drug dispensation facility is or is not development and is or is not exempted development.

6.2. Planning Authority Response

The planning authority make no comments on the referral.

6.3. Owner/ occupier's response

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

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

Section 2

“structure’ means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined, and –

(a) Where the context so admits, includes the land on, in or under which the structure is situate,”

Section 3(1)

“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”.

7.2. Planning and Development Regulations, 2001, as amended.

7.2.1. Relevant sections of the Regulations are:

Part 2, Article 5(1) Exempted Development

“care” means personal care, including help with physical, intellectual or social needs;

“day centre” means non-residential premises used for social or creational purposes or for the provision of care (including occupational training);

Part 2, Article 6(1) Exempted Development

“Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”

Part 2, Article 10(1) Changes of Use.

‘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 that the development, carried out 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 use specified or included in such a permission, or*
- (d) be a development where the existing use is an authorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.’*

Schedule 2, Part 4, Exempted Development Classes of Use.

Class 2 of this Schedule sets out the following uses.

‘Use-

- (a) financial services,*
- (b) professional services (other than health or medical services),*
- (c) any other services (including use as a betting office).*

Where the services are provided principally to visiting members of the public.’

Class 8 of Part 4 of Schedule 2 states-

‘Use-

- (a) as a health centre or clinic for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose).*

- (b) as a creche,
- (c) as a day nursery,
- (d) as a day centre.'

Class 10 of Part 4 of Schedule states-

'Use as-

(f) a social centre, community centre or non-residential club.'

8.0 Assessment

It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.1. Is or is not development

- 8.1.1. 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'*.
- 8.1.2. Under P.A.Reg.Ref.86/1198 planning permission was granted for a single storey extension to a Health Centre and a new boundary wall to the rear of the Eastern Health Board. The P.A. also note that the building was historically identified as 'Dispy' on Ordnance Survey Maps (see attached). This however is not relevant to the current assessment of the subject referral.
- 8.1.3. The application referred to the Board is the change of use of a former General Practice surgery to a methadone clinic. The question before the Board relates to whether or not this change of use is material.
- 8.1.4. I note that the referral was made by a third party and that the P.A. in their assessment of the referral sought further information in relation to the history of and nature of the use of the property as a health centre, and subsequent use as a GP surgery with details of the operators.

- 8.1.5. I note the referrer's submission that the P.A. had regard to another declaration by Wicklow Co. Council for a similar change of use in Bray, exemption Ref. No. 62A/17 cited by the HSE in their response to the request for further information. I note the determination which concluded that the change of use did not constitute a material change of use and was not development.
- 8.1.6. The P.A. concluded that the change of use from a building formerly operating as a General Practice surgery for use as a methadone clinic does not constitute a material change of use of the lands, and is therefore, not development and therefore, the question of Exempted Development does not arise.
- 8.1.7. I also note the referrer's contention that the proposed use is a 'sui generis' use and references the conclusion reached by the Board on referral (06F.RL.2762) where drug dispensation for addiction was also considered to be a 'sui generis' use. It is submitted by the referrer that the change of use cannot avail of any exemption under Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- 8.1.8. Having regard to the above, I am of the view that the change of use of the building formerly operating as a General Practice surgery for use as a methadone clinic would be materially different from a GP surgery. It would provide a different service to a different user group, i.e. a population who are drug dependent, and would be subject to oversight by the HSE (although this is not strictly a planning consideration). It also has material implications in terms of the proper planning and sustainable development of the area, in respect of the potential impact on the amenities of the area and of property in the vicinity. There would also be implications in terms of public health, security, noise and general disturbance. The change of use would, therefore, comprise development.

8.2. **Is or is not exempted development**

- 8.2.1. Article 5(1) of the 2001 Regulations defines 'care' and 'day centre'. These definitions are of importance in the absence of any definition of 'general practice surgery' within the Act or the Regulations made thereunder.
- 8.2.2. A 'day centre' is a non-residential premises used for social or recreational purposes or for the provision of care (including occupational training).

- 8.2.3. 'Care' is defined to mean personal care, including help with physical, intellectual or social needs. I would contend that the permission granted under P.A.Reg.Ref.86/1198 which was for an extension to a health centre was for a 'day centre', providing care for those with social needs and including occupational training.
- 8.2.4. The nature of the use proposed as referenced by the referrer as a methadone clinic by the HSE falls under Class 8 (d). The use permitted would appear to fall within Class 8 (a), while the change of use within a class – from 8(a) to 8 (d) would appear to constitute exempted development.

8.3. Restrictions on exempted development

- 8.3.1. Article 10 (1) of the 2001 Regulations provides that development which consists of a change of use within any of the 11 classes within Part 4 of Schedule 2 constitutes exempted development. The proposed use would not appear to conflict with any of the four qualifying sub-clauses of this sub-article. The proposal does not involve the carrying of any works; does not contravene a condition attached to permission P.A.Reg.Ref.86/1198; and does not relate to an unauthorised use.
- 8.3.2. It is the contention of the planning authority that the use permitted under P.A.Reg.Ref.86/1198 falls within Class 8 (a) – use as a health centre or clinic for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose). I would agree with the contention that Class 8 approximates to the nature of what was permitted to the HSE – under subsection (a) as a 'health centre'.
- 8.3.3. The final category to be examined is that the development should not '*be inconsistent with any use specified or included such a permission*'.
- 8.3.4. As already stated, the nature of the service provided, is likely to be different for a methadone clinic, compared to a GP.
- 8.3.5. 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'*.

- 8.3.6. In this instance, the nature of the development substantially differs from the permitted health centre use, and potentially has consequences for the proper planning and sustainable development of the area.
- 8.3.7. Having regard to the foregoing, I would consider that the proposed development, which provides specific care to a defined group, would be inconsistent with the use specified in the permission granted for the health centre on site, and, therefore, would not constitute exempted development.

8.4. **Precedent Cases**

8.4.1. **ABP-301055-18 (November 2018)**

The question here referred to whether a change of use of a permitted Nursing Home (permitted under TA/140621) to a residential drug rehabilitation facility, at the Old National School, Ballivor Village, Co. Meath is or is not development. The Board decided that it is development and is not exempted development.

8.4.2. **PL.17.RL.2762 (December 2010)**

The question here referred to whether a change of use from community services to use for dispensing treatments for addictions, offices and consulting rooms, at Unit 37A, Coolmine Industrial Estate, Porters Avenue, Blanchardstown, Dublin 15 is or is not development. The Board decided that it is development and is not exempted development.

9.0 **Recommendation**

- 9.1. Arising from my assessment above I consider that the use of a building formerly operating as a General Practice surgery for use as a methadone clinic at Kildare Heath Centre, Tully Road, Kildare Town, Co. Kildare does constitute a material change of use and is development and is not exempted development.

9.2. 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 use of a building formerly operating as a General Practice surgery for use as a methadone clinic at Kildare Heath Centre, Tully Road, Kildare Town, Co. Kildare is or is not development or is or is not exempted development:

AND WHEREAS Tameric Investments requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 1st day of July 2019 stating that the matter was not development and therefore the question of exempted development does not arise:

AND WHEREAS Tameric Investments referred this declaration for review to An Bord Pleanála on the 26th day of July, 2019:

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 of the Planning and Development Act, 2000 as amended;
- (c) article 5(1) of the Planning and Development Regulations, 2001, as amended,
- (d) articles 6(1) and 10(1) of the Planning and Development Regulations, 2001
- (e) Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and in particular, Class 8 thereof,
- (f) the planning history of the site,
- (g) the nature of the proposed use, which includes dispensing of treatment for addictions, and

(h) the submissions made in connection with the referral.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The permitted use on this site can be considered to be a 'day centre' – as defined by Article 5(1) of the Planning and Development Regulations 2001, and therefore a class of use coming within the scope of class 8 (d) of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001;
- (b) The proposed use, as a methadone clinic, has particular material implications in terms of proper planning and sustainable development of the area, including in respect of the potential impact on the amenities of the area and of property in the vicinity and in respect of public health, security, noise and general disturbance, such that it is considered to be 'sui generis' and not to constitute a type of use coming within the scope of class 8 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001;
- (c) The proposed change of use from General Practice surgery for use as a methadone clinic, constitutes a material change of use and therefore, is development and
- (d) The said change of use does not come within the exempted development provisions of section 4(1) of the Planning and Development Act's 2000-2010 or of article 6 or 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 (3) (a) of the Planning and Development Act, 2000, hereby decides that the change of use from a General Practice surgery to use as a methadone clinic at Kildare Heath Centre, Tully Road, Kildare Town, Co. Kildare is development and is not exempted development.

Susan McHugh

Senior Planning Inspector

6th February 2020