



An  
Bord  
Pleanála

## Inspector's Report ABP-305016-19

### Question

Whether the proposed use of a dwelling as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is development which is exempted development

### Location

Grove, Cloghan, County Offaly

### Declaration

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

DEC 19/10

Applicant for Declaration

Maple Healthcare Ltd

Planning Authority Decision

Is development and is not exempted development

### Referral

Referred by

Maple Healthcare Ltd

Owner/ Occupier

Maple Healthcare Ltd

Observer(s)

None

Date of Site Inspection

25 November 2020

Inspector

B. Wyse

## **1.0 Site Location and Description**

- 1.1. The site is located in a rural area approximately 3kms from the village of Cloghan, County Offaly. It has a stated area of 0.298has. It comprises; a bungalow (stated as 278sq.m floor area and including 3 bedrooms); a detached outbuilding (stated as c.25sq.m floor area and in use as a recreation room); and associated gardens.

## **2.0 The Question**

- 2.1. Whether the proposed use of the dwelling as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is development which is exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The proposed use of the dwelling as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons at Grove, Cloghan, County Offaly is development and is not exempted development.

In making this Declaration the planning authority had regard, particularly to:

- (a) Sections 2, 3 and 4 of the Act
- (b) Articles 6, 9 and 10 and Class 3, 14(f) and 50 of Part 1, Schedule 2 of the Regulations

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

#### **3.2.1. Planning Report**

Basis for planning authority Declaration. Includes:

- The change of use as a domestic dwelling to use as a residential care home represents a material change in use and as such the proposal constitutes development.

- Notes physical 'works' as defined in the Act being undertaken at time of inspection.
- The ground floor plan submitted with the Declaration request indicated the following proposed alterations:
  - (i) Window to east (side) elevation (previously serving an ensuite) changed to fire escape door.
  - (ii) Window to west (side) elevation (previously serving a family room) changed to a garden access door.
  - (iii) Window to south (rear) elevation (previously serving a bedroom) changed to a garden access door.
  - (iv) Internal layout changes to provide 3 bedrooms each with a private sittingroom along with an office and a communal kitchen/diningroom area with adjacent sunroom.
  - (v) Additional hard surface car parking area to front and sides of dwelling.
- Garage recently demolished (as advised during site inspection). Noted that the garage was located in the southeast corner of the site and not on the western boundary as originally approved (PA Ref. 02/809).
- The proposed detached recreation room, including a WC and utility room, stated in the application submission to be 25sqm floor area is calculated as 34sqm on the basis of the plans submitted.
- Acknowledgement that, under Class 14(f) of the Regulations, the change of use proposed is exempted development provided that the limitation on numbers specified in that class are met.
- The external alterations [Items (i)-(iii) and (v) above] were considered to materially alter the appearance of the dwelling resulting in the development contravening Condition No.1 of PA Ref. 02/809 (the original permission for the house). Therefore, in accordance with Article 9(i) of the Regulations the development was not considered to be exempted development.
- In relation to the demolition of the garage the original permission provided for a 48sq.m structure. On the basis of aerial photographs it is suggested that the

garage as constructed was larger than this. The demolition was not considered to be exempted development as it was larger than 40sqm (Ref. Class 50, Part 1, Schedule 2 of the Regulations).

- The proposed recreation room, floor area 34sqm and height to roof pitch of 5.6m, was considered not to qualify as exempted development under Class 3.
- Ambiguity remains re;  
Resident carers accommodation  
Number of care staff during daytime  
Office staff
- Concluded that the proposed use is not exempted development due to the cumulative effect of the material alterations to the dwelling; the proposed outbuilding; and the demolition of the garage.

## 4.0 Planning History

**PA Ref. 02/809** – This is the 2002 permission for the house. Copy decision on file.  
Conditions include:

No.1 – Requires the development to be carried out in accordance with the plans, particulars etc.

No. 2 – Use as a residence restricted to the applicants and/or family members for 3 years.

No. 15 – Proposed garage to be used solely for purposes incidental to the dwellinghouse and not for any trade or business.

## 5.0 Policy Context

### 5.1. Development Plan

Offaly County Development Plan 2014-2020

No provisions of relevance.

## 5.2. **Natural Heritage Designations**

None relevant.

## 6.0 **The Referral**

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

The submission includes a copy of the Referrers submission to the planning authority with the exception of the drawings which are on file with the planning authority documents. The submission includes:

#### **Material Change of Use**

- The Board is invited to concur with the planning authority that the material change of use, by reference to Class 14(f) of the Regulations, is exempted development.
- Precedent decisions [both planning authority and An Bord Pleanala] are cited in the submission to the planning authority. The ABP case cited are Refs RL2616 and RL3406.

#### **Material Alterations to the Appearance of the Dwelling**

- Amendments to the facades [comprising; conversion of 2no. window opes to doorways; reduction in size of 1no. doorway – double to single; and the addition of 1no. new doorway] are all to the sides/rear of the property and are not visible from the road or any other property. Photographs included.
- The additional area of hardscaping, consisting of two parking areas for safety and emergency access, comprise approximately 10sqm or less than 10% of an increase over the original (stated as approximately 160sqm).
- The above alterations are not material and fall within the scope of Section 4(1)(h) of the Act.

- Condition No.1 of the permission PA Ref. 02/809 was fully complied with in completing that development. It does not preclude further development as proposed in this case.

### **Demolition of Garage**

- The garage (floor area 48sqm) was demolished to bring the location of a new garage into compliance with permission PA Ref. 02/809.
- The demolished garage, whilst above the Class 50 threshold, is 'de minimis' in planning terms with no material planning consequences.

### **Erection of Outbuilding**

- The proposed recreation room is a pre-fabricated wooden structure placed on concrete footings. It will have a gross floor area of 24.49sqm and a peak roof height of 3m.
- While it is acknowledged that this exceeds the 25sqm required for exempted status under Class 3 of the Regulations it is considered marginal and not material.

### **Other Issues**

- There is to be no resident carers. Residents are to be facilitated by staff members not resident on site, including 2 staff on waking night shifts. This position was accepted by the Board under ABP Ref. RL3406.
- The average number of daytime staff will be 3 plus the team leader.
- The residence does not require an office.
- These issues do not affect the application under Section 5.

The submission to the planning authority also includes:

- The dwelling will accommodate a maximum of 3 residents in the 3 bedrooms.
- The care home is to be staffed by approximately 6-8 full time day care staff typically working 12-14 hour shifts in addition to a team leader who manages the house Monday-Friday 9am to 5pm.
- The maximum number of resident carers staying overnight will not exceed 2.

## 6.2. Planning Authority Response

No further comment.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 2(1) – Works** includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

**House** means a building or part of a building which is being or has been occupied as a dwelling...

**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.

#### **Section 4 – Exempted Development**

**Section 4(1)(h)** – development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

**Section 4(4)** – Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

### 7.2. Planning and Development Regulations, 2001 [as amended]

#### **Part 2 Exempted Development**

**Article 5(1)** – care means personal care, including help with physical, intellectual or social needs.

**Article 6(1)** – 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.

### **Schedule 2 Part 1**

**Class 3** – The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store or other similar structure. Conditions/limitations include; the total area of such structures shall not exceed 25sqm; the height of any such structure shall not exceed, in the case of a building with a tiled or slated roof, 4m or, in any other case, 3m; the structure shall not be used for human habitation or for any other purpose other than a purpose incidental to the enjoyment of the house.

**Class 6(b)** – Any works within the curtilage of a house for the provision of a hard surface to the rear, side or front of the house for purposes incidental to the enjoyment of the house. Conditions/limitations include; provided the area of the hard surface is less than 25sqm or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, whichever is the smaller, or if the area of hard surface is greater than this it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

**Class 14(f)** – Development consisting of a change of use 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. Conditions/limitations include; 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.

**Class 50(a)** – The demolition of a building, or buildings, within the curtilage of (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex. Conditions/limitations include; the cumulative floor area of any such building or



buildings shall not exceed 40sqm within the curtilage of a house or 100m in all other cases.

**Article 9(1)** Development to which Article 6 relates shall not be exempted development if the carrying out of such development would (a);

- (i) Contravene a condition attached to a permission or be inconsistent with any use specified in a permission,
- (viiB) require an Appropriate Assessment.
- (c) If it is development to which Part 10 applies (EIA)

## 8.0 Precedent Cases

8.1. As indicated the Referrer has cited a number of precedent cases in support of their position. By reference to the board's referrals database the following precedent cases are noted.

### 8.2. **ABP Ref. RL2616**

This is a 2009 decision that a change of use of a single dwelling unit [59A Kerrymount Rise, Foxrock, Dublin 18] to a residential care unit for persons with a physical or intellectual disability or mental illness and persons providing care was development and exempted development by reference, in particular, to Class 14, Part 1, Schedule 2 of the Regulations.

### 8.3. **ABP Ref. RL2851**

This is a 2011 decision relating to a change of use from a domestic dwelling to residential with support living and proposed modifications/alterations to a protected structure [The Millhouse, Whitechurch Road, Rathfarnham, Dublin]. The board decided that the change of use was development and exempted development by reference, in particular, to Class 14, Part 1, Schedule 2 of the Regulations, but that the proposed works were development and not exempted development by reference, in particular, to Section 57(1) of the Act.

#### 8.4. **ABP Ref. RL3060**

This is a 2013 decision that works to partially repair and reconstruct a defective section of a house and to change the use to a residence for 5 persons with intellectual disabilities [Coralstown, Killucan, County Westmeath] was development and exempted development. The works elements were considered to fall within the scope of Section 4(1)(h) of the Act and the change of use element was considered to fall within the scope of Class 14, Part 1, Schedule 2 of the Regulations.

#### 8.5. **ABP Ref. RL3406**

This is a 2016 decision that a change of use of a house [Gainvale House, Multyfarnham, County Westmeath] to a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons was development and exempted development by reference, in particular, to Class 14, Part 1, Schedule 2 of the Regulations.

#### 8.6. **ABP Ref. RL2503 (File attached)**

This is a 2008 decision that is also still of relevance.

### 9.0 **Assessment**

#### 9.1. **Is or is not development**

9.1.1. As indicated there are two elements to the proposal before the Board in this referral.

The first, and primary, element is the change of use of the dwelling to use as a residence for 3 persons with intellectual or physical disability or mental illness and persons providing care. The second element is the proposed modifications to the dwelling to adapt it for that purpose.

9.1.2. In relation to the proposed change of use it is not disputed by the Referrer or the planning authority that this would constitute a material change of use and this has also been confirmed in several precedent cases that have come before the Board (See section 8.0 above). The change of use, therefore, constitutes development.

9.1.3. In relation to the proposed works these, in summary, comprise:

- (i) Internal layout changes to provide 3no. ensuite bedrooms each with private sittingroom, an office and a communal kitchen/diningroom.

(ii) Modifications to window/door openings and insertion of one no. new doorway to provide door access to garden areas and fire escape. All of these modifications are to the side and rear of the house.

(iii) Additional hard surface parking/access areas.

(iv) Demolition of detached garage.

(v) Construction of a detached recreation room.

9.1.4. All of these modifications involve the carrying out of works as defined for the purposes of the Act and, therefore, constitute development.

9.1.5. It was noted at the time of inspection that a number of enclosed areas to the immediate rear and side (east) of the house had been created with timber panel fencing. These, however, are not included in the subject referral

## 9.2. **Is or is not exempted development**

9.2.1. In relation to the change of use there is again no dispute between the parties that this, in itself, falls within the scope of Class 14(f), Part 1, Schedule 2, of the Regulations and this is also confirmed in several precedent cases that have come before the Board (see section 8.0 above).

9.2.2. In so far as the planning authority appears to cast doubt on the proposed change of use in this instance satisfying the relevant conditions/limitations associated with this class, particularly in relation to the provision for care staff, the referrer has clarified the position. No resident carers are proposed with care being provided on a shift basis by non-resident carers. The proposal, therefore, does fully meet the relevant conditions/limitations [residents not exceeding 6 and resident carers not exceeding 2].

9.2.3. In the interests of completeness it should be noted that, by reference to Article 9(1) of the Regulations, the proposed change of use; would not contravene a condition or be inconsistent with any use specified in a permission [sub-article (a)(i)]; and would not give rise to any consideration for Appropriate Assessment [sub-article (a)(viiB)] or Environmental Impact Assessment [sub-article (c)].

9.2.4. The proposed change of use, therefore, constitutes exempted development.

9.2.5. In relation to the proposed works my assessment is as follows:

(i) Internal Layout Changes

These fall within the scope of Section 4(1)(h) of the Act being works affecting only the interior of the structure.

(ii) External Modifications to Windows/Doors

These fall within the scope of Section 4(1)(h) of the Act being works which are of a very minor nature that could not be considered to 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.

For completeness it should be noted that, by reference to Section 4(4) of the Act, given the very minor nature of all of the above works, no consideration of any requirement for Appropriate Assessment or Environmental Impact Assessment arises.

All of these works, therefore, constitute exempted development.

As the works are exempt under the Act, Article 9(1)(a)(i) of the Regulations is not engaged as is suggested by the planning authority.

(iii) Additional Hard Surfacing

The Referrer indicates that the additional hard surfacing consists of two parking areas for safety and emergency access. It is stated to comprise 10sqm or less than 10% of an increase over the original (stated as approximately 160sqm).

By reference to Class 6(b), Part 1, Schedule 2 of the Regulations the relevant condition/limitation here is 25sqm or, if the area is greater than this, it must be constructed using permeable materials or otherwise allow for rain water to soak into the ground.

Four areas of new/additional hard surfacing are clearly identifiable on site, one to each side of the house and two to the front. Altogether these cover an area of approximately 175sqm. Even excluding the area to the east

side of the house (which is slightly less clearly defined on the ground) the total area exceeds 150sqm.

This area of new hard surfacing is clearly in excess of the relevant threshold of 25sqm. The areas in question are made up of concrete so could not be considered to be permeable and there is no obvious provision for rainwater to soak to ground.

The new hard surfacing areas, therefore, do not constitute exempted development.

(iv) Demolition of Garage

It appears that the garage was originally constructed in the south east corner of the site rather than on the western boundary as provided for under PA Ref. 02/809. It also appears that it was at least 48sqm in floor area. The Referrer indicates that it was demolished to achieve compliance with that permission.

By reference to Class 50(a), Part 1, Schedule 2 of the Regulations the exemption limit for demolition of a building within the curtilage of a house is 40sqm. The Referrer concedes that this limit was exceeded in this case but that the exceedance is 'de minimus' in planning terms with no material consequences.

As the relevant limit was clearly exceeded I consider that the demolition of the garage did not constitute exempted development.

(v) Detached Recreation Room

The Referrer clarifies that the proposed recreation room is a pre-fabricated wooden structure, on concrete footings, with a floor area of 24.49sqm and a peak roof height of 3m.

This clearly differs from the proposal made to the planning authority and which informed it's assessment of the matter.

I can confirm that the recreation room as constructed on site is as described by the Referrer.

On the basis of the structure now insitu I am satisfied that it falls within the scope of Class 3, Part 1, Schedule 2 of the Regulations.

Given it's small scale and form of construction it does not give rise to any consideration for Appropriate Assessment or Environmental Impact Assessment [Article 9(1)(a)(viiB) or (c)].

The recreation room, therefore, constitutes exempted development.

## 10.0 Recommendation

10.1. 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 proposed use of the dwelling at Grove, Cloghan, County Offaly as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons is or is not development or is or is not exempted development;

**AND WHEREAS** Maple Healthcare Ltd, The Atrium, John's Lane, Naas, County Kildare requested a declaration on this question from Offaly County Council and the Council issued a declaration on the 3<sup>rd</sup> day of July, 2019 stating that the matter was development and was not exempted development;

**AND WHEREAS** Maple Healthcare Ltd referred this declaration for review to An Bord Pleanála on the 30th day of July, 2019;

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

- (a) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended,

- (b) article 6(1) and Classes 3, 6(b), 14(f) and 50(a) of Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site, and
- (d) the pattern of development in the area;

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

- (a) The change of use is development and is exempted development as it falls within the scope of Class 14(f) of the Regulations;
- (b) The associated internal layout changes are development and exempted development as they fall within the scope of Section 4(1)(h) of the Act being works affecting only the interior of the structure.
- (c) The associated external modifications to windows and doors are development and are exempted development as they fall within the scope of Section 4(1)(h) of the Act being works of a minor nature that 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.
- (d) The associated detached recreation room is development and is exempted development as it falls within the scope of Class 3, Part 1, Schedule 2 of the Regulations being less than 25sqm in floor area and not exceeding 3m in height.
- (e) The additional hard surfacing areas are development and are not exempted development as the cumulative area exceeds the relevant limit of 25sqm as provided for in Class 6(b), Part 1, Schedule 2 of the Regulations.
- (f) The demolition of the former garage is development and is not exempted development as the garage exceeded the relevant floor area limit of 40sqm as provided for in Class 50(a), Part 1, Schedule 2 of the Regulations.

**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 dwelling at Grove, Cloghan, County Offaly as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons and the associated works comprising; internal layout changes; external modifications to windows and doors; and the construction of a detached recreation room is development and is exempted development.

The additional hard surfacing areas and the demolition of the former garage is development and is not exempted development.

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Brendan Wyse  
Assistant Director of Planning

7<sup>th</sup> December 2020