



An  
Bord  
Pleanála

## Inspector's Report ABP-319021-24

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### Question

Whether the use of a garden room / pod on an appointment basis for therapeutic counselling is or is not development and is or is not exempted development

### Location

20 Lansdowne Park, Ennis Road,  
Limerick

### Declaration

Planning Authority

Limerick City & County Council

Planning Authority Reg. Ref.

EC004/24

Applicant for Declaration

Laura & Cian Murphy

Planning Authority Decision

Not Exempted Development

### Referral

Referred by

Laura & Cian Murphy

Date of Inspection

8<sup>th</sup> May, 2024

Inspector

Kevin Moore

## **1.1. Site Location / Description**

- 1.1. No. 20 Lansdowne Park, Ennis Road, Limerick is a semi-detached house at a cul-de-sac end of a residential estate located north-west of Limerick City Centre. The property has a driveway and garden area to the front and a back garden in which there is a structure located at the garden's south-westernmost end. The structure is subdivided into a home office and a garden shed. There is a side access to the back garden from the front of the house.

## **2.0 The Question**

- 2.1 The question before the Board is:

Whether the use of a garden room/pod by the homeowners to the rear of their dwelling on an appointment only basis (not exceeding 5 hours per week) for Therapeutic Counselling at 20 Lansdowne Park, Ennis Road, Limerick V94 XK4D is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

- 3.1 On 2<sup>nd</sup> February, 2024, Limerick City & County Council issued a declaration stating that the use does not come within the scope of exempted development as defined by Class 3 of Part 1 of Schedule 2 and Section 2 Part 1: 4(1)(j) of the Planning and Development Regulations 2001 (as amended) and decided that the development is development and is not exempted development.

## **4.0 Planning Authority's Reports**

### **4.1 Planning Report**

The Development Inspector noted the site's planning history and enforcement history. It was considered that the proposed development comprises construction

of a garden room / pod, constituting 'works' and 'development'. The applicant's submission that the development is exempted development is noted.

Acknowledging the provisions of Class 3 of Schedule 2 of the Planning and Development Regulations, with regard to Condition/Limitation 6, it was submitted that the use of the structure for therapeutic counselling sessions is not considered incidental to the enjoyment of the house. Reference was made to "Section 2, Part 1: 4(1)(j) (Planning and Development Regulations 2001 as amended)" (sic). It was considered that the proposal is contrary to the permitted purpose of the development as prescribed in 4(1)(j). Reference was made to the Board's decision relating to Ref. ABP-311946-21. It was submitted that additional planning considerations arise in the current referral, namely car parking, no waiting area, access to the side of the dwelling and disturbance to residential amenity, and alleged use of the structure up to 10pm, resulting in the operation being outside normal work/office hours, nuisance, and disturbance to residential amenity. It was considered that this indicates a change of use other than a use incidental to the enjoyment of the house. It was further considered that the proposed development is not restricted by the provisions of Article 9 of the Planning and Development Regulations. It was concluded that the works are development and are not exempted development, with regard being had to Section, 2, 3 and 4 of the Planning and Development Act, Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, and the plans and particulars submitted.

## **5.0 The Referrers' Submission**

### **5.1 The following is submitted:**

- The limited counselling service is not at a scale that constitutes a business. She works full time with the HSE at their offices.
- The pod is ancillary to the main dwelling and is an outdoor room primarily used as a 'work from home' office and as a garden shed. The referrers

also use the pod for home study as they are both studying part time for add-on qualifications.

- The referrers have three children and there is no scope to use the house for counselling sessions due to family life.
- The use of the pod for a 'one-on-one' counselling basis for a few hours each week involves a private and quiet interaction with no impact on third party homeowners.
- The part time use of the pod for counselling is not development that requires permission having regard to:
  - Sections 2(1), 3(1) and 4(1)(j) of the Planning and Development Act 2000, as amended,
  - Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
  - The pattern of development in the area,
  - The scale, nature and layout of an external room used for the intermittent and limited provision of therapeutic counselling,
  - The nature of the use carried on therein, including the sole activity by a homeowner, the absence of any employees, absence of machinery/equipment or nuisance, and the restricted and controlled access to the premises by visiting clients, and
  - The absence of any signage at the property or any other external manifestation of a business.
- It is concluded that the part time use of part of the house does not constitute a material change of use, the change of use does not raise issues which are material in relation to proper planning and sustainable development of the area, and the development does not come within the scope of section 4(1)(j) of the Planning and Development Act 2000, as amended as the use is incidental to the enjoyment of the house.

## 6.0 **Statutory Provisions**

### 6.1 **Planning and Development Act 2000, as amended**

#### Section 2(1)

In this Act, except where the context otherwise requires—

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any 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, and ...

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

#### Section 3(1)

In this Act, except where the context otherwise requires, "development" means—

- (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, ...

#### Section 4(1)

The following shall be exempted development for the purposes of this Act - ...

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such; ...

## **6.2. Planning and Development Regulations 2001, as amended**

### 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.

### Article 9(1)

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 ...

### Article 10(1)

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, if 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 unauthorised 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 1 Exempted Development – General*

Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Development within the curtilage of a house</i>  CLASS 3  The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.	<ol style="list-style-type: none"><li>1. No such structure shall be constructed, erected or placed forward of the front wall of a house.</li><li>2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</li><li>3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.</li><li>4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.</li><li>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</li><li>6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</li></ol>

## *PART 4 Exempted Development – Classes of Use*

### CLASS 2

Use for the provision of—

- (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

Use—

- (a) as a health centre or clinic or 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 crèche,
- (c) as a day nursery,
- (d) as a day centre.

## **7.0 Assessment**

### **7.1 The Question of ‘Development’**

- 7.1.1 In accordance with section 3(1) of the Planning and Development Act, 2000 (as amended), "development" means the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land. It is noted that the placing of the structure forming the garden room / pod for use as a home office and garden shed was subject to the carrying out of works in, on, over and under land. Further to this, the use of this structure for therapeutic counselling sessions requires a determination that such



use is or is not a change of use and, if so, if any such change of use is or is not a material change of use. If it is so determined to be a material change of use, then it constitutes “development” for the purposes of the Planning and Development Act, 2000 (as amended). This will be discussed below.

## 7.2 The Question of Exempted Development

### 7.2.1. The Structure

#### **Planning and Development Act 2000, as amended**

Section 4 of the Planning and Development Act 2000, as amended, refers to exempted development and includes the following:

*The following shall be exempted development for the purposes of this Act - ...*

*(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;*

The issue at hand relates to whether the use of the garden room / pod for therapeutic counselling constitutes a use of this structure for a purpose which is incidental to the enjoyment of the house. The Planning and Development Act does not define the term ‘incidental’. I note an Oxford Dictionary definition of the term is “*occurring in connection with*”.

It is apparent from the referrers’ submission that the garden room is being used as a service separate from the residential use of this property, providing therapeutic counselling to visitors and forming a use which is separate and unrelated to the enjoyment of the house.

## **Planning and Development Regulations 2001, as amended**

Article 6(1) of the Planning and Development Regulations states:

*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.*

Article 9(1) sets out the restrictions on exemptions.

The provisions of Part 1 of Schedule 2 include ‘*Development within the curtilage of a house*’, which includes the following:

### **CLASS 3**

*The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.*

This is subject to the following conditions / limitations:

- 1. No such structure shall be constructed, erected or placed forward of the front wall of a house.*
- 2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.*
- 3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved*

*exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.*

*4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.*

*5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.*

*6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

I observe that the garden room / pod:

- is not forward of the front wall of the house,
- is the sole independent structure to the rear of the house and its total area does not exceed 25 square metres,
- does not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres,
- has external finishes which are not discordant with those of the house, and
- is of a height that does not exceed 3 metres.

Regarding the final condition / limitation relating to Class 3, it is understood that the structure is primarily used as a home office and garden shed. It is also used on an appointment basis (not exceeding 5 hours per week) for therapeutic counselling. Therefore, it is used on the occasions of the latter for the provision of a service which is not incidental to the enjoyment of the house, a service which is separate to the residential use of the property. This use is directly in conflict with the final condition / limitation as it is used for a purpose other than a purpose incidental to the enjoyment of the house.

From this, it may be determined that the use of the garden room structure for therapeutic counselling is not exempted development in accordance with the provisions of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations.

#### 7.2.2. Change of Use

Article 10 of the Planning and Development Regulations 2001, as amended, refers to changes of use within classes of use which are exempted development. Part 4 of Schedule 2 identifies the classes of use within which a change of use may be determined to be exempted development. I acknowledge that Class 2 of Part 4 refers to professional services but does not relate to health or medical services and does not relate to a change of use from residential to professional services. I also note Class 8 refers to use as a clinic for the provision of medical or health services and expressly excludes the use of a house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose. This class does not relate to a change of use from residential to medical / health services. It is apparent that the change of use of the garden room / pod as a home office to its use for medical / health services cannot avail of the exempted development provisions of the Planning and Development Regulations as they relate to change of use.

The referrers submit that the limited counselling service is not at a scale that constitutes a business. From the details on file, it is seen that the garden room is being used as a room in which a therapeutic counselling service is being provided. Thus, its use is as a private medical / health service, albeit part-time. I note that there are no details provided on the service as to whether or not it is a commercial operation and, thus, whether the use of the garden room functions as a business. Notwithstanding this, it remains that the structure is being used to

provide a medical / health service to visitors which is a use that is separate and unrelated to the enjoyment of the house.

The use of the structure for the provision of a therapeutic counselling service for visiting members of the public would bring with it material planning considerations. For example, the referrers' property has a confined front curtilage with restricted parking available. The property fronts onto a turning circle at the end of the cul-de-sac with no opportunity for on-street parking in the immediate vicinity. The necessity to adequately accommodate parking for visitors using the service requires consideration. Further to this, the delivery of such a service may bring with it an increased demand for increased services over time at this residential property. This would require consideration of how to control such development in terms of scale and intensification of use, as well as consideration of hours of operation, the provision of a waiting area, suitable access, the potential effects on residential amenity by way of parking, access, hours of operation, siting of the service in a structure in the back garden, etc. The ramifications of services of this nature using a garden room in a residential estate have material planning considerations. The change of use of the garden room to use for therapeutic counselling would constitute a material change of use as a result.

Finally, I submit to the Board that the exempted development provisions of the Planning and Development Act and Regulations purposefully separate uses and purposefully set out limitations and conditions for different classes of exempted development. The ramifications of de-exempting a service such as that proposed in residential property potentially establishes a precedent for uses of structures elsewhere within the curtilage of residential properties for other types of services, for example psychology, psychotherapy, physiotherapy, and other such services. The change of use of the garden room in this instance within the curtilage of the house is for a purpose which is not incidental to the enjoyment of the house.

## 8.0 CONCLUSION AND RECOMMENDATION

**WHEREAS** a question has arisen as to whether the use of a garden room/pod by the homeowners to the rear of their dwelling on an appointment only basis (not exceeding 5 hours per week) for therapeutic counselling at 20 Lansdowne Park, Ennis Road, Limerick V94 XK4D is or is not development or is or is not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Laura and Cian Murphy on the 12<sup>th</sup> day of February, 2024:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended) and articles 6, 9, and 10 and Parts 1 and 4 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended):

**AND WHEREAS** An Bord Pleanála has concluded that the use of the garden room / pod for therapeutic counselling does not come within the scope of section 4(1)(j) of the Planning and Development Act, 2000 (as amended) or Class 3 of Part 1 of Schedule 2 or the Classes of Use in Part 4 of Schedule of the Planning and Development Regulations 2001 (as amended), and constitutes a material change in the use of the structure:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that the use of the garden room / pod for therapeutic counselling is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Kevin Moore  
Senior Planning Inspector  
15<sup>th</sup> May, 2024.