



An  
Bord  
Pleanála

## Inspector's Report ABP-322247-25

### Question

Whether the proposed use of the dwelling at Cornagill, Letterkenny, as a residential care facility for children under social care placements (as opposed to a residence for persons with an intellectual or physical disability or mental illness) is or is not development or is or is not exempt.

### Location

Cornagill, Letterkenny, Co. Donegal

### Declaration

Planning Authority

Donegal Co. Co.

Planning Authority Reg. Ref.

S525/04

Applicant for Declaration

Carl Rainey & Others

Planning Authority Decision

Is Development & is Not Exempted Development.

### Referral

Referred by

Carl Rainey & Others

Owner / Occupier

Patrick McQuade

**Observer(s)**

None

**Date of Site Inspection**

13<sup>th</sup> June 2025

**Inspector**

Karla McBride

## 1.0 Site Location and Description

- 1.1. The referral site is located in the townland of Cornagill to the NE of Letterkenny in Co. Donegal, and within a mainly rural area. The referral premises comprises a detached dwelling house with large front and rear gardens, located along a cul-de-sac of similar style houses. The site is bound to the rear (E) by a wooded area and agricultural fields with the River Swilly beyond. This river forms part of the Lough Swilly SAC, SPA and pNHA.
- 1.2. The attached photographs and maps describe the referral site in more detail.

## 2.0 The Question

- 2.1. Whether the proposed use of the dwelling at Cornagill, Letterkenny, as a residential care facility for children under social care placements (as opposed to a residence for persons with an intellectual or physical disability or mental illness) is or is not development or is or is not exempt.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS NOT EXEMPTED DEVELOPMENT** as the development does not fall within the scope of Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports (Digital)

- Note that several concerns raised by residents are not planning matters under Section 5 (incl. public notices & consultations).
- Had regard to sections 3(1), 2(1) & 4 of P&D Act and Class 14(f) of Schedule 2 Part 1 of P&D Regs.
- Constitutes a material change of use under S.3.1.

- Exemption under Class 14(f) applies to a residence for persons with an intellectual or physical disability or mental illness and their care providers.
- Facility is intended for social care placements for children who do not necessarily have an intellectual or physical disability or mental illness.
- Exceeds exemption limitations with more than 6 residents & 2 care providers.
- Not within scope of Class 14(f).
- Previous referral fell within scope of Class 14(f) as it related to persons with an intellectual or physical disability or mental illness & their care providers.

### 3.2.2. Other Technical Reports

No other relevant reports on the case file.

## 4.0 Planning History

### **Referral premises:**

**Reg. Ref. S524/93:** DCC determined that 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” is exempted development under Class 14(f) of Schedule 2 Part 1 of the P&D Regs.

### **Other referral cases**

**06D.RL2616:** the Board determined that the change of use from a dwelling unit to a residential care unit for persons with intellectual, physical disability or mental illnesses and persons providing care is development which is exempted development. In determining the referral, the Board had regard to Class 14 of Part 1 of Schedule 2 of the P&D Regulations.

**29S.RL2426:** the Board determined that the change of use from a parochial house to a care home for children is development which is exempted development, under Class 14, Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

## **5.0 Policy Context**

### **5.1. Development Plan**

The referral site is located within a mainly rural area to the NE of Letterkenny that is covered by the policies and objectives of the Donegal County Development Plan 2024-2030. The site is located within an:

- Area Under Strong Urban Influence
- Area of High Scenic Amenity

### **5.2. Natural Heritage Designations**

Lough Swilly SAC, SPA & pNHA located c.750m to the SE.

## **6.0 The Referral**

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

Mr Carl Rainey and Others raised the following concerns:

- Previous declaration related to the use of a house by persons with an intellectual or physical disability or mental illness & their care providers, which fell within the scope of Class 14(f) and was exempt.
- House is not being used for this purpose & instead it provides social care to children which does not fall within the scope of Class 14(f) and is not exempt.
- Provision of 7 x bedspaces for children & social care workers are employed.
- DCC's reference at the end of the S.5 Declaration to the previous referral still been valid implies an opportunity for ACP to consider and overturn it.
- Excess traffic & noise on quiet residential road generated by visitors (incl. family, medics & staff); overlooking & loss of privacy to adjoining neighbours.
- Noncompliance with rural housing policies as this is a commercial enterprise.

- No medical details of future occupants provided & advertising for Social Care professionals.
- Refers to previous similar cases.
- Noncompliance with Condition no. 1 of original planning permission for 9 houses in relation to site development standards (T.634/91).
- Possible breaches title deeds, covenants & conditions, and rights of way.
- Inadequate access for emergency services along narrow, steep local road; no public lighting provided as required under condition no. 8 of T.634/91; and footpaths & fire hydrants are in poor condition.

## **6.2. Planning Authority Response**

- No new issues.

## **6.3. Owner (Mr Patrick McQuade & Smyth & Son Solicitors)**

- Note the Referrer's concerns in relation to the previous declaration for the referral premises, which are not relevant to the current case.
- ACP has no role to play in reconsidering this previously determined declaration (S524/93) as the time period to do so has elapsed, and DCC's reference to it still being valid does not extend the timeframe.
- Request dismissal under S.138 (vexatious, frivolous & without substance).
- Medical records are confidential but can confirm that Tusla make referrals for young people with an intellectual and/or physical disability and/ or mental illness.
- Note that ABP previously referred to "...the conditions of the young adults in question as ranging from emotional disturbance to clinical systems such as DDHD, OCD & Depression." under ABP RL2426.
- No breach of title deeds, covenants & conditions, planning permission, or rights of way has or will occur.
- A Social Care qualification is required for most forms of care work.

- Residential care provides work within therapeutic models of care, utilizing clinical supports such as OTs & Physios to provide the best possible outcomes for young people who are in need of enhanced care and support.

#### 6.4. **Further Responses**

**DCC:** no further comments in relation to the Owners submission.

**Referrer:** no new issues raised, note the lack of an appeal process for referral decisions, and current referral is not vexatious.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

7.1.1. **Section 2(1)** of the Act states the following:

- 'development' has the meaning assigned to it by Section 3;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ....'

7.1.2. **Section 3(1)** states that:

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

7.1.3. **Section 4(1)** of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

### 7.2. Planning and Development Regulations, 2001

7.2.1. **Article 5(1)** states that "care" means personal care, including help with physical, intellectual, or social needs.

7.2.2. **Article 6(1)** provide that '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'.

7.2.3. **Article 9 (1)(a)** states that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would, inter alia:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

7.2.4. **Article 10 (1)** 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, 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 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.

7.2.5. **Part 1 of Schedule 2** of the Regulations set out the classes of exempted development, including '**Class 14**' allowing for 'development consisting of a change of use': -

- (f) from use of a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing for care for such persons.

Conditions of exemption include:

- The number of persons with an intellectual or physical disability or mental illness in any such residence shall not exceed six.
- The number of resident carers shall not exceed two.

### 7.3. **SI No. 397/1996 - Child Care (Standards in Children's Residential Centres) Regulations, 1996**

Part I (Preliminary Provisions) Section 3 (Definitions) states that in these Regulations: -

**"children's residential centre"** means any home or other institution for the residential care of children in the care of health boards or other children who are not receiving adequate care and protection excluding –

- (a) an institution managed by or on behalf of a Minister of the Government or a health board,
- (b) an institution in which a majority of the children being maintained are being treated for acute illnesses,
- (c) an institution for the care and maintenance of physically or mentally handicapped children,
- (d) a mental institution within the meaning of the Mental Treatment Acts, 1945 to 1966,
- (e) an institution which is a "certified school" within the meaning of Part IV of the Children Act, 1908, functions in relation to which stand vested in the Minister for Education;

## **8.0 Assessment**

### **8.1. The Question**

Carl Rainey and others asked the following Question:

Whether the proposed use of the dwelling at Cornagill, Letterkenny, as a residential care facility for children under social care placements (as opposed to a residence for persons with an intellectual or physical disability or mental illness) is or is not development or is or is not exempt.

Slight rewording recommended as follows:

Whether the proposed use of the dwelling at Cornagill, Letterkenny, as a residential care facility for children under social care placements (as opposed to a residence for persons with an intellectual or physical disability or mental illness) is or is not development or is or is not exempted development.

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

Section 3 of the Act defines development as ‘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’. As defined in section 2(1) of the Act, works include “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”. It is apparent from the information contained on file that no physical ‘works’ are to be undertaken as part of the proposed development. Whilst no works have been undertaken on the site, the change of use from use as a private dwelling house to use as a residential care home for children under social care placements represents a material change of use of the building, and as such, I am satisfied that the proposal constitutes development

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

- 8.3.1. If the Commission conclude that the proposed development constitutes development under the Act, the next question which arises is whether or not such development is development which is exempted development under the provisions of the 2001 Regulations. Part 1 of Schedule 2 of the Regulations set out the classes of exempted

development, including Class 14(f) which allows for “development consisting of a change of use from use of a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing for care for such persons.” Thus, the issue at this stage of the assessment relates to whether a residential care facility for children under social care placements is considered the same as a residence for persons with an intellectual or physical disability or mental illness as per Class 14(f).

- 8.3.2. Article 5(1) of the Planning and Development Regulations, 2001 (as amended) states that “care” means personal care, including help with physical, intellectual, or social needs, however there is no definition for “residential care”.
- 8.3.3. According to Tusla, residential care of children is for Children in the Care of the State who would otherwise be in Foster Care but possibly their needs mean a residential setting is more appropriate. Such a facility would normally be a Tusla owned facility, or a private facility commissioned by Tusla.
- 8.3.4. Section 3 of Part I of the Child Care (Standards in Children's Residential Centres) Regulations, 1996, defines a “children’s residential center” as any home or institution for the residential care of children in the care of health boards or other children who are not receiving adequate care and protection. However, the Regulations specifically exclude “an institution for the care and maintenance of physically or mentally handicapped children”. This definition of a residential care centre for children in the care of the state and its associated restrictions, indicates that a residential care facility for children under social care placements is not the same as a residence for persons with an intellectual or physical disability or mental illness which specifically lies within the exemption provided under per Class 14(f).
- 8.3.5. Smith & Son Solicitors who are acting on behalf of the owner of the referral premises, Patrick McQuade, has confirmed that the development will consist of a change of use of the property from use as a house, to use as a residence for persons with an intellectual disability or mental illness and their care providers. There are no specific details of the health status of the future residents, nor should there be, as this is strictly confidential information. However, Smith & Son Solicitors confirmed that there will be 5 x children ranging in age from 13 to 17 with varying degrees of intellectual or physical or mental illness who require full time care. Smith

& Son Solicitors also confirmed that the facility will receive referrals from Tusla for young people with an intellectual, physical disability or mental illness.

- 8.3.6. I note that Smith & Son Solicitors quoted a previous ABP Inspector's report in relation to a children's care facility which described "...the conditions of the young adults in question as ranging from emotional disturbance to clinical systems such as ADHD, OCD and Depression" which are conditions that are no doubt challenging. However, based on the information provided in relation to the role of Tusla I am satisfied that the facility will be used as a residence for children under social care placements, irrespective of their general or mental health status.
- 8.3.7. Having regard to the foregoing, and having regard to the definition of "care" under Article 5(1) of the Planning and Development Regulations, the exemption provided under Class 14(f) of Part 1 of Schedule 2 of the Regulations, and the definition of "children's residential center" and associated restrictions, and in particular item (c) under Section 3 of Part I of the Child Care (Standards in Children's Residential Centres) Regulations 1996, I am satisfied that the exemption provided for under Class 14(f) does not apply, and that the proposed development, which comprises a change of use, does not constitute exempted development.

#### **8.4. Restrictions on exempted development**

- 8.4.1. I am satisfied that in response to the Referrer's question, development has currently taken place on the referral site and that the change of use does not constitute exempted development. However, should the Board not concur, the provisions set out within Articles 5(1), 6(1), 9(1) and 10(1) of the Regulations and whether any exemptions would apply, are considered below.
- 8.4.2. Part 1 of Schedule 2 of the Regulations set out the classes of exempted development, including 'Class 14 (f)' which allows for "development consisting of a change of use from a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing for care for such persons". The Conditions of exemption include occupancy restrictions whereby the number of persons with an intellectual or physical disability or mental illness in any such residence shall not exceed six, and the number of resident care providers shall not exceed two. Smith & Son Solicitors have confirmed that 5 x children ranging in age

from 13 to 17 will occupy 5 of the 7 bedrooms, and 2 x resident care providers will occupy the two remaining bedrooms. I am therefore satisfied that the proposed change of use would comply with the Conditions of the Exemption under Class 14(f) in the event that the Commission concludes that an exemption applies.

- 8.4.3. The Referrers raised concerns in relation to the potential commercial use of the premises as a private residential facility within which children would be placed by Tusla. If the Commission concur with this submission, then it is possible that the carrying out of development (i.e. the change of use) might contravene a planning condition attached to the original planning permission for a dwellinghouse on the site, as per Article 9 (1)(a) and Articles 10(1)(b).

## **9.0 Other Matters**

- 9.1. EIA and AA Screening not required.

- 9.2. The Referrers (Carl Rainey & Others) raised concerns in relation to several other matters including public notices and consultations, which are not required for Section 5 referral applications.

- 9.3. The Referrers also raised concerns about the status and validity of a previous Section 5 Declaration by Donegal County Council (DCC) under S524/93, that determined that 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” is exempted development under Class 14(f) of Schedule 2 Part 1 of the Planning and Development Regulations. I note that any further consideration of this DCC Declaration by the Commission is outside its remit.

## 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 Cornagill, Letterkenny, as a residential care facility for children under social care placements (as opposed to a residence for persons with an intellectual or physical disability or mental illness) is or is not development or is or is not exempted development:

**AND WHEREAS** Carl Rainey and Others requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 14<sup>th</sup> day of March 2025 stating that the matter was development and was not exempted development:

**AND WHEREAS** Carl Rainey and Others referred this declaration for review to An Bord Pleanála on the 9<sup>th</sup> day of April 2025:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 5 (1), 6(1), 9(1) and article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 14(f) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

- (f) Section 3 of Part I of Child Care (Standards in Children's Residential Centres) Regulations, 1996 (SI No. 397/1996),
- (g) the planning history of the site,
- (h) the pattern of development in the area:

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

- (a) The proposal is development within the meaning of the Planning and Development Act 2000 (as amended),
- (b) The Exemption under Class 14(f) applies to a residence for persons with an intellectual or physical disability or mental illness and their care providers.
- (c) The facility is intended for social care placements for children who do not necessarily have an intellectual or physical disability or mental illness.
- (d) The use of a children's residential centre for the residential care of children who are physically or mentally handicapped is excluded under the Child Care (Standards in Children's Residential Centres) Regulations, 1996.

**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 proposed use of the dwelling at Cornagill, Letterkenny, as a residential care facility for children under social care placements (as opposed to a residence for persons with an intellectual or physical disability or mental illness) is development and is not exempted development.

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Karla McBride

17<sup>th</sup> July 2025

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	<b>ABP-322247-25</b>
<b>Proposed Development Summary</b>	Whether the proposed use of the dwelling at Cornagill, Letterkenny, as a residential care facility for children under social care placements (as opposed to a residence for persons with an intellectual or physical disability or mental illness) is or is not development or is or is not exempt.
<b>Development Address</b>	Cornagill, Letterkenny, Co. Donegal
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.  <div style="border: 1px solid black; height: 150px; width: 100%;"></div>
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input checked="" type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	State the Class here
<input type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	

<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.  <b>No Screening required.</b>	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.  <b>EIA is Mandatory. No Screening Required</b>	<b>State the Class and state the relevant threshold</b>
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b> <b>OR</b> <b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b>	<b>State the Class and state the relevant threshold</b>

<b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b>	
<b>Yes</b> <input type="checkbox"/>	<b>Screening Determination required (Complete Form 3)</b>
<b>No</b> <input type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

**Inspector:** Karla McBride

**Date:** 17<sup>th</sup> July 2025