



An
Coimisiún
Pleanála

Inspector's Report ACP-323880-25

Question

Whether the change of use from a residential dwelling house to a care in the community dwelling house is or is not development and is or is not exempted development.

Location

Gurtussa, Dundrum, Co. Tipperary
E34 YF65.

Declaration

Planning Authority

Tipperary County Council.

Planning Authority Reg. Ref.

S5/25/129.

Applicant for Declaration

Compass Child and Family Services
CLG.

Planning Authority Decision

Is not exempted development.

Referral

Referred by

Compass Child and Family Services
CLG.

Owner/ Occupier

KJSH – Stiftung fur Kinder.

Observer(s)

None.

Date of Site Inspection

8th December 2025.

Inspector

C. Daly.

1.0 Site Location and Description

- 1.1. The subject site, of area 1.813ha, consists of an existing detached pitched roof dormer dwelling towards the north-west end of the site with side gable end facing the road. It is within landscaped grounds with mature trees towards the southern boundary. There are two driveway access points and two gravel driveways from the adjacent local road, the L-1291-0. The site is at the south-east end of a line of three detached dwellings and is directly opposite a detached dwelling. It is c.720m north of the edge of Dundrum village.

2.0 The Question

- 2.1. Whether a change of use from a residential dwelling to a care in the community dwelling house is or is not development and is or is not exempted development.
- 2.2. Per Section 8.1.3 below, I recommend this wording be changed to the following,
- 2.3. *“Whether a change of use from a residential dwelling to a care in the community dwelling house for children is or is not development and is or is not exempted development”.*

3.0 Planning Authority Declaration

3.1. Declaration

Tipperary County Council decided that the change of use from an existing dwelling to use as a care in the community dwelling house constitutes a material change of use and “development” within the meaning of the Planning and Development Act 2000, as amended and is not “exempted development” as it does not avail of an exemption under 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

The Planner's Report assessment considered that the change of use from a private dwelling house to use as a residential care home for children in social care represents a material change of use of the structure and constitutes development.

In relation to exempted development it noted the exemption under Class 14(f) of the Regulations. It noted the proposal is intended to cater for a maximum of four children in care with rotating staff present in loco parentis. It considered the proposal to be for a change of use to a social care unit. It noted the exemption relates to residences for people with an intellectual or physical disability or mental illness.

It noted that the definition of a "children's residential centre" under Section 3, Part I of the Child Care (Standards in Children's Residential Centres) Regulations 1996 relates to other children who are not receiving adequate care and protection and excludes "*an institution for the care and maintenance of physically or mentally handicapped children*". It therefore considered that the Class 14(f) exemption does not extend to children under social care placements. It noted Commission referral case RL05E.322247 in this regard. It concluded that the exemption is not met and that it is not exempted development. It considered that the Article 9 restrictions on exemptions did not apply.

3.2.2. Other Technical Reports

- None.

4.0 Planning History

Subject Site

2560622: Permission refused by the P.A. and granted on appeal (ACP-323684-25) for a) a change of use from a residential dwelling house use to a care in the community dwelling house and b) an extension to the front of the dwelling house and c) changes to the front elevation of the existing dormer dwelling house.

2460389: Permission granted by the P.A. for the construction of a) a single storey extension to side of existing dwelling; b) a domestic garage and carport to rear of existing dwelling; c) the refurbishment and alterations.

Not implemented on date of site visit.

20243: Permission granted by the P.A. for roadside stone boundary wall with entrances as constructed.

P315392: Permission granted by the P.A. for the erection of a dwelling.

Precedents

RL05E.322247: The Commission in 2025 concluded that the proposed use of a dwelling in County Donegal 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.

06D.RL2616: The Board determined in 2009 that the change of use from a dwelling unit in Dun Laoghaire Rathdown 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.

18.RL.2552: The Board decided in 2009 that the change of use of a dwelling house in County Monaghan to a childcare facility did not constitute a material change of use which would come within the scope of Section 3(1) of the 2000 Act.

29S.RL2426: The Board determined in 2008 that the change of use from a parochial house in Dublin City 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.

19.RL.2430: The Board decided in 2007 that the use of an existing house in County Offaly for the care of children did not constitute a material change of use which would come within the scope of Section 3(1) of the 2000 Act.

25M.RL.2059: The Board decided in 2003 that the use of a dwelling house in County Westmeath to provide residential care did not constitute a material change of use.

5.0 Policy Context

5.1. Tipperary County Development Plan 2022 – 2028 (the CDP)

Volume 1

Policy 5-7 *Ensure that new residential development accommodates housing for a range of specialised needs, including those of the elderly, and contain appropriate mix of housing types and sizes. New housing shall incorporate the principles of Lifetime Adaptable Homes and Universal Design to cater for groups with specific needs in the county, as informed by a ‘Statement of Housing Mix’ as part of a ‘Sustainability Statement’ where applicable.*

5.2. Natural Heritage Designations

5.2.1. In relation to designated sites, the subject site is located:

- c.1.05km north-west of the Dundrum Sanctuary Proposed Natural Heritage Area (PNHA) (site code 000950).
- c.1.3km north-west of the Lower River Suir Special Area of Conservation (SAC) (site code 002137).
- c.1.95km north-east of the Annacarty Wetlands PNHA (site code 000639).
- c.3.3km south of the Aughnaglanny Valley PNHA (site code 000948).
- c.5.6km south-west of the Inchinsquillib and Dowlings Woods PNHA (site code 000956).

6.0 The Referral

6.1. Referrer's Case

The case on behalf of the referrer can be summarised as follows:

- The facility is for a maximum of four children in care with social worker staff present on a 24-hour basis acting in loco parentis, three carers during the day and two overnight.

- The care model is non-institutional and is designed to replicate the routines and relationships of an ordinary household and placements are made under the Child Care Act 1991.
- The role of staff is to provide day to day care, guidance and emotional support within a domestic family structure and they are not healthcare workers.
- The home does not operate as a medical or institutional facility.
- The planning assessment did not substantively assess the nature of the change of use with no analysis of scale, intensity, traffic, amenity or physical works.
- At no time will the number of people living in the house exceed six and it will continue to function as a single household with shared kitchen, dining, living and recreation areas.
- A domestic dwelling can accommodate a wide variety of household forms including that proposed and these remain within the definition of a dwelling house.
- Vehicle movements for school and daily staff changeovers will remain comparable to a working family and the existing entrance and road network are adequate.
- Day to day activities involve meals, homework, recreation and community participation.
- The relationship between residents and carers mirrors that of a normal household.
- The use remains domestic in scale and activity and cannot be regarded as a material change of use.
- The P.A. refers to “care in the community” as if it is a separate use class is not based on the functional reality of how the property operates.
- The absence of a specific exemption under the regulations reflects the position that the care of children within a dwelling is residential in nature and does not constitute development.

- Class 14(f) exists to address situations where the support required could be interpreted as approaching the institutional model and the proposed use is less intensive than this exemption.
- Precedents confirm that the proposed use does not constitute a material change of use or development, see in particular 18.RL.2552 and the Inspector's reasoning.
- Institutional character arises from factors such as scale, staffing intensity or physical form and not in relation to the presence of carers.
- The P.A. did not identify any planning consequences from the proposed use and there is no factual basis for its conclusion.
- The legislative context of the Class 9 exemption for hospitals and nursing homes excluding residential use and the Child Care Regulations define such care as residential reinforce that small-scale domestic children's homes operate as homes in the ordinary residential sense.
- The reference by the P.A. to the 1996 Child Care Regulations which serve a child welfare licensing function are not relevant to planning uses.
- The reliance of the P.A. on RL05E.322247 reflects the conclusions of one inspector which were not consistent with three other previously cited cases and each case must be determined on its own merits.
- The conclusion that a material change of use has occurred is not supported and does not follow the statutory methodology under Section 5.
- The use, if considered development, qualifies as exempt under Class 14(f), Part 1, Schedule 2 of the regulations.
- The young people cared for in the home present with trauma, anxiety, depression and stress which are mental health difficulties and the dwelling therefore accommodates the type of people who fall within Class 14(f).
- This classification in relation to mental illness was accepted by the inspector in referral case 18.RL.2552.

- The 1996 regulations exclusion of specialist hospitals or institutions does not mean that domestic children's homes are outside the scope of residences for persons with a mental illness.
- By importing welfare definitions, the P.A. applied the wrong legal test and reached an unsound conclusion.
- The Class 14(f) exemption makes no distinction between children and adults, nor between different forms of mental health difficulty.
- There is no restriction under Article 9 that would disqualify the exemption.
- Enclosures include the Council decision, site location map and copies of previous An Bord Pleanála referral decisions.

6.2. Planning Authority Response

- None.

6.3. Owner/ occupier's response

- None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) states that

“structure” means inter alia “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....

““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) states that “*“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, or

(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021)”.

Section 4 (2) (a) states that “*The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act...*

(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act”.

Section 4 (3) states that “*A reference in this Act to exempted development shall be construed as a reference to development which is— (a) any of the developments specified in subsection (1) or (1A), or (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act”.*

Section 4(4) states that “*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, 2001-2026, as amended

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.*

Part 1 Exempted Development – General

Class 14 Development consisting of a change of use – ...

(f) 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.

This is subject to the following restriction:

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.

Other Restrictions

Article 9(1) states that “*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—

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

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site...

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000”.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The first matter to be determined is whether the proposal, or part thereof, constitutes development or not. I note that per Section 3(1) of the 2000 Act that “*the making of any material change in the use of any land or structures situated on land*” is development. Whether the change of use from a residential dwelling to a care in the

community dwelling house for children is a material change of use is at issue per the referrer's submission.

8.1.2. I note the referrer refers to the assessment of the Inspector per case ref. 18.RL.2552 where she states the factual use of the dwelling was examined in detail. I agree that there are similarities with this case in that the subject dwelling would be used as permanent home of children, social workers providing care in lieu of parents do not change the residential nature of the use, the domestic routines associated with such a dwelling would be similar to the upbringing of children in a family home, occupancy numbers (four children and two to three staff) are reasonably consistent with what would be expected in a domestic family home, additional staff visits would not materially alter the land use effects of the dwelling, the house layout is similar to that of a standard family dwelling and that the residential care proposed is not institutional care.

8.1.3. I note however that the change of use, as stated, is for care in the community. This wording would not be limited to children only. Therefore, given the details submitted in the referral in relation to the nature of the care being for children in care, I propose that the referral wording be altered to the following,

"Whether a change of use from a residential dwelling to a care in the community dwelling house for children is or is not development and is or is not exempted development".

8.1.4. In my opinion the proposed use is significantly similar to the normal use of a dwelling as accommodation and a residential setting for a family with children. I consider that the substantive difference in this regard is the need for support staff. I consider this akin to parental or foster care support that would be provided in a standard family dwelling. In order for the scale of this change to be considered material, it would have to result in noticeable planning impacts in my opinion.

8.1.5. I consider that this is supported by the Child Care (Standards in Children's Residential Centres) Regulations 1996 which define a children's residential centre as *"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"*, as noted by the referrer. The referrer also notes a deliberate legislative distinction

between domestic dwellings providing care as compared with institutional facilities (see Part 4, Class 9 and Article 10 of the 2001 regulations).

- 8.1.6. In relation to the scale of the change of use, I have noted above that it would be little different in occupancy terms to that of an ordinary dwelling including in terms of the number of trips to and from the site and in relation to impacts on wastewater disposal. Therefore, I consider that there would be no significant external impacts from the change of use including in relation to amenity impacts..
- 8.1.7. On this basis, I do not consider that the change of use would constitute a material change of use that would meet the definition of “development”. I note that the 2003, 2007, 2008 and one of the 2009 referrals noted in Section 4.0 above are consistent with this approach. I note that this opinion is not consistent with the more recent case under ref. no. RL05E.322247 also mentioned above. The Commission may wish to consider the Inspector’s Report in this regard and the rationale for its finding in Section 8.2 of that report. However, similar to that report I am satisfied that the change of use referred relates to use as a residence for children under social care, irrespective of their abilities or mental health status.
- 8.1.8. I note that the P.A. cited this more recent case. However, I note the particular circumstances of the subject case. I note the reasons for the case outlined by the referrer including in relation to the similarity of scale and nature of the occupancy, the absence of any traffic and access impacts, the day to day activity being consistent with any house and the staffing pattern being similar to that of adults living at the property in terms of external planning impacts. I am satisfied that no material change of use would arise in this instance. I also note this having regard to floor plans before and after the most recently permitted development for the site which in my opinion would not result in significant planning impacts by reference to the change of use referred in this case.
- 8.1.9. I therefore consider that the proposed change of use does not constitute a material change in the use of the dwelling and is not development.

8.2. Is or is not exempted development

- 8.2.1. I have assessed above that the change of use would not constitute development. However, if the Commission disagree it may wish to consider if the change of use

satisfies the relevant criteria to be exempted development. I note that the referrer relies on Class 14(f) of the Planning and Development Regulations 2001 to suggest that it would nevertheless be exempted development.

- 8.2.2. I note that the use under this class relates to “*persons with an intellectual or physical disability or mental illness and persons providing care for such persons*”. In my opinion this implies a need for care over and above that normally expected in a general residential care home for children. It also implies care for adults as well as children and the referral submission makes clear the house is for children in care and associated staff only.
- 8.2.3. I note the referrer’s case that the referral is applicable to Class 14(f) particularly where it notes that young people placed in care present with trauma, anxiety, depression and stress from previous experiences. However, I have noted in Section 8.1 above that I consider the change of use referred would be used as a residence regardless of the general or mental health status of the occupants. This is because I do not consider it reasonable to assume that all children would present with mental illness or an intellectual or physical disability, particularly noting the referral wording, as stated by the referrer, relates to “*a care in the community dwelling house*” for children.
- 8.2.4. In my opinion the change of use referred is for a general residential care use rather than the type of use noted in Class 14(f) which I consider to be a specific and separate use type which may result in intensification impacts if significant on-site medical care and/or increased staffing is required for example and noting that adult care fits under this class also. I therefore consider there is a distinction between children’s homes and institutions and/or homes for persons with disabilities or mental illness which I note is reasonably similar to the distinction noted in the Child Care (Standards in Children’s Residential Centres) Regulations 1996. I therefore do not consider that the Class 14(f) exemption applies in this case.

8.3. Restrictions on exempted development

- 8.3.1. In relation to the restrictions on the Class 14 (f) exemption, I note that these include that the number or relevant persons shall not exceed 6 and the number of resident

care providers shall not exceed two. Per the documentation submitted, I note that these numbers would not be exceeded in this case.

- 8.3.2. I have reviewed the Article 9 restrictions on the classes of exempted development above. I do not consider that the change of use in the referral would endanger public safety by reason of a traffic hazard or obstruction of road users. I do not consider the other restrictions applicable including in relation to contravening a condition of an applicable permission.
- 8.3.3. I note no protected sites on the site or in reasonable proximity to same and that the change of use could have no significant impact in this regard. I note no Natura 2000 sites in proximity to the subject site. I note that the Lower River Suir Special Area of Conservation (SAC) (site code 002137) is c.1.3km to the south-east and which could not reasonably be considered to be affected by the proposed change of use. I therefore consider that no appropriate assessment is required.
- 8.3.4. I note the nearest Natural Heritage Area, Dundrum Sanctuary PNHA (site code 000950) is c.1.05km away and would not be affected by the proposed change of use. Noting the above and the other exemption restrictions, I consider that no Article 9 restrictions apply to the above exemptions.

8.4. **Other Matters**

- 8.4.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

9.0 **Recommendation**

- 9.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether a change of use from a residential dwelling to a care in the community dwelling house for children is or is not development and is or is not exempted development.

AND WHEREAS Compass Child and Family Services CLG requested a declaration on this question from Tipperary County Council and the Council issued a declaration on the 22nd day of October, 2025 stating that the matter constitutes a material change of use, was development and was not exempted development:

AND WHEREAS Compass Child and Family Services CLG referred this declaration for review to An Coimisiún Pleanála on the 17th day of November, 2025:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended
- (c) the planning history of the site,
- (d) the pattern of development in the area
- (e) the nature of the proposed change of use:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) the change of use from a residential dwelling to a care in the community dwelling house for children at Gurtussa, Dundrum, Co. Tipperary E34 YF65 does not constitute a material change in the use of the said dwelling, which would come within the scope of Section 3(1) of the Planning and Development Act, 2000.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the change of use from a residential dwelling to a care in the community dwelling house for children at Gurtussa, Dundrum, Co. Tipperary E34 YF65, is not 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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Ciarán Daly
Planning Inspector

29th July 2026

Appendix 1
Form 1 - EIA Pre-Screening

Case Reference	ACP-323880-25
Proposed Development Summary	Change of use from a residential dwelling to a care in the community dwelling house for children.
Development Address	Gortussa , Dundrum , Co. Tipperary.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (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)	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ No, No further action required. <i>Project above refers to the minor works and not the change of use.</i>
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
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?	
☒ 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. No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	

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)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____