

An Bord Pleanála



Inspector's Report

RL25.RL3406

Referral Ref. No:

RL25.3406

Question Referred:

Whether the use of a house 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 exempted development.

Local Authority:

Westmeath County Council

Address:

Gaineville House, Multifarnham,
County Westmeath.

Owner/Occupier:

Nua Healthcare

Referrer:

Nua Healthcare

Date of Site Inspection:

26th November, 2015.

INSPECTOR:

Paul Caprani

1.0 INTRODUCTION

A question has arisen pursuant to the provisions of Section 5 of the Planning and Development Act 2000, as amended, as to whether or not the use of a house at a residence for persons with intellectual or physical disability or mental illness and persons providing care for such people is or is not development and if it is development whether or not it constitutes exempted development. The Referral is directed to the Board by the owner/occupiers of the site after Westmeath County Council determined that, because of the number of occupants accommodated within the house and in particular the number of care staff, the residence does not come within the scope of Schedule 2, Part 1, Class 14 of the Planning and Development Regulations, 2001 as amended and therefore it was deemed that the use of the house for such purposes was development which is not exempted development.

2.0 SITE LOCATION AND DESCRIPTION.

The subject referral site is located on the outskirts of the village of Multifarnham approximately 8 miles north-west of Mullingar. The residential home is located on the southern outskirts of the village and faces onto one of the main approach roads leading to the village from the N4 to the south. The residence is located on the eastern side of the road and comprises of a two-storey 19th century stone dwelling with a pitched roof. The building is listed on the record of protected structures in the development plan. The building is set back approximately 45 metres from the roadway and incorporate mature landscaped gardens. A number of outbuildings are located in a courtyard area to the rear of the dwelling. Entrances to the main dwellinghouse are provided along the front (western elevation) and the side (southern elevation) of the dwelling. The latter entrance is the main entrance to the facility. At ground floor level the facility accommodates a number of communal rooms including the dining, sitting, kitchen, communal bathroom and office area. Two bedrooms together with en-suite bathrooms are also located at ground floor level. Four additional bedrooms are located at first floor level together with a relaxation/sleepover room. The outbuildings to the rear incorporate ancillary uses while a laundry area is located at basement level. A newly constructed residential estate comprising of 15 dwellings centred on a cul-de-sac are located to the immediate south of the site. Lands to the rear and the immediate north of the site are undeveloped.

3.0 PLANNING AUTHORITY DETERMINATION

On the 17th June, 2015 the current referrers sought a Section 5 Declaration and Exempted Development under the Planning and Development Acts 2000 to 2010. The referrers, Nua Healthcare Services, provide a range of residential services and supports for children and adults with intellectual disabilities. The services cater for low to high levels of disabilities. It is stated that the number of people with intellectual disability that reside within the house is six together with two care staff. The conservation report submitted with the application notes that the house in question is a protected structure and is of regional importance in accordance to the National Inventory of Architectural Heritage (Ref. 15304003).

The conservation report also makes reference to Class 14 which is listed in Column 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 which provides the following shall be exempted development.

From use as a house to use as a residence for persons for intellectual or physical disability or mental illness or persons providing care for such persons.

Details of the planning history associated with the site and the surrounding area are also set out. It is stated that although the property is a protected structure, the change of use will not materially affect the character of either the structure or any element within the structure which contributes to the special architectural, historical or other interest associated with the site and therefore it is contended that the change of use is exempted under the provisions of Section 57(1) of the Planning and Development Act 2000. The report goes on to set out the main architectural historical features associated with the house and it is stated that no changes to the fabric of the building is proposed. The change of use will ensure that the building and the features as they exist will currently be retained and maintained. The proposal would be fully in accordance with general conservation objectives which seeks to ensure that such buildings are kept in active use.

3.1 Planning Report

The planning report describes the proposed development and sets out the legislative context in respect of the exempted development

provisions relating to the referral case. It concludes that the change of use, notwithstanding the fact it relates to a protected structure will not materially affect the character of the protected structure to which Section 57 of the Planning and Development Act refers. However further information is required in relation to the nature of the use and how it would be run and how many persons would be residing at the premises at any one time. Additional information was therefore requested. Westmeath County Council requested the following additional information.

- Details as to when the current occupants moved into the premises.
- Details of the nature and role of Nua Healthcare in the running of the premises.
- Details as to how the residents will function in terms of permanent staff and the independent living of residents.
- How many residents will live at the property at any one time?
- Details of where the carers live and sleep on the premises.
- At the time of site inspection it was noted that 8 cars were located on the premises. The occupants are requested to explain the level of car parking at the premises.
- Details as to whether or not there will be office staff on the premises at all times in addition to the carers. If so will the office staff be used in connection with this property or others associated with the facility.
- Details of the intended use of the outbuildings.

Further information was submitted on 13th August, 2013. The applicants submitted the following response.

- Nua Healthcare occupied the house on the 25th June, 2015.
- Details of the work carried out by Nua Healthcare is set out. It specialises in providing residential care, community outreach and day to day services for both adults and children with intellectual disability, brain acquired injuries and mental health difficulties. Full details are provided on the website.
- The function of the house is to provide residential care services to adults for both male and female with intellectual and other disabilities. The home will function as close as possible to a traditional family home where it is deemed appropriate and after initial assessments residents may stay at the home on a more permanent basis.

- The house currently accommodated five resident service users however it is proposed to accommodate a maximum of six individuals. Revised plans are submitted indicating the location of each of the bedrooms. During night shifts one staff member usually sleeps in a bed in the “sleepover/relaxation room on the first floor while the second staff member works a waking night shift and is typically accommodated in the office/waking night room on the ground floor level”. The maximum number of resident carers staying overnight will not exceed 2. The house is staffed by approximately six full-time day-care staff who typically work 12 – 14 hour shifts in addition to a team leader who manages the house Monday to Friday 9-5.
- In relation to car parking, it is stated that Nua Healthcare provides three company cars and these cars remain on the grounds of the house at night-time. Other cars are owned by the care staff on shift. The house does not require office staff in addition to carers. The outbuilding will be used for storage and laundry services only.

A separate letter was submitted by the referrers on the same date seeking clarity with regard to the Council’s interpretation of “resident carers”. It confirms that the number of resident carers at the house does not exceed 2.

A further planning report concludes that the provision of six full-time day-care staff in addition to a team leader and two night-time staff would result in 8 resident carers and 1 team leader being present on site which does not accord with the limitations and criteria for exempted development as set out under Schedule 2, Part 1, Class 14 of the Planning and Development Regulations as amended and therefore the change of use would require planning permission.

This conclusion was confirmed in the decision issued by Westmeath County Council on 26th August, 2015.

3.0 PLANNING HISTORY

Two history files are attached. Under Reg. Ref. 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 particular regard to Class 14 of Part 1 of Schedule 2 of the said Regulations.

Under Reg. Ref. 29S.RL2426 the Board likewise determined that the change of use from a parochial house to a care home for children is development which is exempted development. Again reference was made Class 14, Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

4.0 GROUNDS OF REFERRAL

A referral was submitted on behalf of Nua Healthcare by Cunnane, Stratton Reynolds Consultants. It sets out the background to the current referral. It further states that the care facility will accommodate five residents with intellectual disabilities. During the day there will be a minimum of two staff present and at night there will be no more than two staff present. As such the proposal accords full with Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2001 as amended.

There is only a maximum of 7 rooms within the house. 5 to 6 rooms will be used for residents of the facility which leaves a maximum of 1 to 2 bedrooms for use by any of the carers. On any one night one of the staff will sleep in one of the bedrooms while the other staff works the night shift. It is simply not possible for there to be more than two resident carers on the property at any one time.

Westmeath County Council in its assessment referred to the provision of six full-time day-care staff in addition to one team leader and two night staff which would represent eight resident carers and a team leader. On foot of this the Planning Authority concluded that the proposal would not accord with the limitations set out in the Exempted Development Regulations.

The refusal of the County Council rests solely on the definition of the term "resident carer". While planning legislation is silent on the definition of "resident carer", such carers are generally taken to mean somebody who lives in or at a particular place permanently or on a long-term basis. It does not encompass staff working as carers on a shift basis who reside elsewhere. While staff will be on site they are not necessarily 'resident carers'. The additional staff or specialists should not be considered 'resident carers'. On this basis it is contended that the proposal meets the requirements of Schedule 2, Part 1, Class 14.

Nua Healthcare currently operate a number of facilities throughout the country on exactly the same basis, all of which have been granted Section 5 Declarations of exemption. Details of these are contained in Appendix 4 of the submission.

4.1 Response by the Planning Authority

No response was received from Westmeath County Council in respect of the referral.

5.0 LEGISLATIVE PROVISIONS

Planning and Development Act 2000

Section 2 – Definitions

“*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

(b) in relation to a protected structure or proposed protected structure includes

- (i) the interior of the structure,
- (ii) the land lying within the curtilage of the structure,
- (iii) any other structures lying within the curtilage and their interiors, and
- (iv) all fixtures and features which would form part of the interior or exterior of any structure or structures referred to in subparagraphs (i) to (iii).

“*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 – Development

In this Act “development” means except where the context otherwise requires the carrying out of any works, on, in, over or under land or making any material change in the use of any structures or other land.

Section 4(1)

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

(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 and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of other structures or neighbouring structures.

Section 57(1)

Notwithstanding Section 4(1)(h) the carrying out of works to a protected structure, or proposed protected structure, shall be exempted development only if those works would not materially affect the character of

- (a) the structure, or
- (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Planning and Development Regulations 2001, as amended.

Article 6 Exempted Development. Subject to Article 9, development of a class specified in Column 1, 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 sets out restrictions on exemptions and states the following:

Development to which Article 6 relates shall not be exempted development for the purposes of the Act. None of the specific exemptions set out relate to the subject matter currently before the Board.

Article 10 relates to changes of use. Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 shall be exempted development for the purposes of the Act, providing that the development if carried out would not

- (a) involve the carrying out of any works other than the 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 permission,
- (d) be a development where the existing use is an unauthorised use save where such a change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Schedule 2, Part 1 of Article 6 contains the following specific class of development under Class 14(f). *Development consisting of changes of use from 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.*

The conditions and limitations in respect of this exemption includes the following:

The number of persons with intellectual or physical disability or mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.

6.0 ASSESSMENT

Section 3 of the Planning and Development Act 2000

It is apparent from the information contained on file that no physical 'works' as defined in the Act are to be undertaken as part of the proposed development. No operation of construction, excavation, demolition, extension repair or renewable is to take place within the structure as part of the referral before the Board. What is sought in this instance is a change of use of the structure from a domestic dwelling to use as a care home for persons of intellectual disabilities. So while no works are to be undertaken on site, it is clear that the change from a use as a domestic dwelling to use as a residential care home represents a material change in the use of the structure and as such I can only conclude that the proposal constitutes development in the first instance.

Furthermore as the development in this instance relates to a material change of use only, and does not involve the carrying out of works I consider that the provisions of Section 57(1) of the Act is not of relevance to the referral before the Board.

Class 14

If the Board 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. In this regard the only relevant provisions relates to Class 14(f) of Schedule 2, Part 1 of the Regulations. The site layout plan submitted indicates that there are a total of two bedrooms at ground floor level and an additional four bedrooms at first floor level with a relaxation/sleepover room located to the rear of the building at first floor level. The information contained in the referral indicates that presently five residents with intellectual/physical or mental disabilities reside at the premises. There is scope to increase the number to six. But the referrer states that the maximum number of residents to be cared for at any one time will not exceed six persons. This aspect of the proposed development appears to comply with the limitations set out in Class 14(f).

The more contentious issue in respect of the above referral relates to the number of residential carers to be accommodated at the facility. Westmeath County Council in its assessment of the application concluded that the provision of six full-time day-care staff in addition to a

team leader and two night-time staff would result in eight resident carers together with a team leader which exceeds the limitations and criteria for exempted development as set out in Class 14(f) of the Exempted Development Regulations.

It is not appropriate in my view to equate the number of staff working at the facility as being the same as the number of 'resident carers' to be accommodated at the facility. The Planning and Development Regulations quite clearly stipulate that the number of 'residential carers' are to be limited to two at the facility. I consider that the referrer in this instance has offered a reasonable interpretation as to what constitutes a residential carer that is a carer who is in residence at the facility at any one time as opposed to a staff member who works at the facility. It is clear from the internal layout of the facility that only one, or a maximum of two rooms, would be available to facilitate carers in residence at the facility. As such the facility could only accommodate two resident carers at any one time. It would seem reasonable to conclude therefore that the facility can only accommodate a maximum of six residents and two residential carers at any one time. The proposal therefore complies with the conditions and limitations as set out under Class 14(f) and I would conclude therefore that the use of the facility as a residence for persons with an intellectual or physical disability or mental illness and persons providing care at the facility constitutes development which is exempted development under the provisions of the legislation.

Accordingly I would recommend that the Board issue an order in respect of the question as follows:

WHEREAS a question has arisen as to whether or not the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and, where it is development whether or not it is or is not exempted development at Gaineville House, Multyfarnham, County Westmeath.

AND WHEREAS Cunnane Stratton Reynolds on behalf of the referrers Nua Healthcare requested a Declaration on the said question from Westmeath County Council and the said Council issued a Declaration on the 26th day of August, 2015 stating that the change of use was development which was not exempted development,

AND WHEREAS Cunnane Stratton Reynolds on behalf of Nua Healthcare referred the Declaration for review to An Bord Pleanála on 22nd September 2015,

AND WHEREAS An Bord Pleanála in considering this referral had particular regard to –

(a) Sections 3, 4 and 57 of the Planning and Development Act, 2000

(b) Articles 6 and 9 of the Planning and Development Regulations, 2001

(c) Class 14(f) of Part 1 of Schedule 2 of the said Regulations,

AND WHEREAS An Bord Pleanála concluded that the change of use from use of as a house to a residential care unit for persons with intellectual physical disability or mental illness and the residential carers providing care falls within the conditions and limitations set out in Column 2 of Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

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 said change of use at Gaineville House, Multyfarnham, County Westmeath constitutes development which is exempted development.

**Paul Caprani,
Senior Planning Inspector.**

21st December, 2015.

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