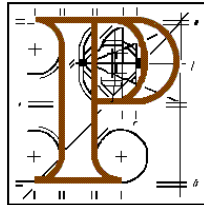


AN BORD PLEANÁLA



FILE REFERENCE: **RL15.RL3463**

QUESTION: Whether change of use as a house to use as residence for persons with intellectual/physical disability or mental illness is or is not development or is or is not exempted development.

LOCATION: Hampton Lodge, Tullydonnell, Dunleer, Co. Louth.

OWNER/OCCUPIER: Terra Glen Respite Services

REFERRER: Louth County Council

DATE LODGED: 29/02/16

INSPECTOR Fiona Fair

SITE INSPECTION 25th June 2016

1.0 INTRODUCTION

This is a referral by Louth County Council under Section 5(4) of the Planning and Development Act 2000. The referral relates to *'Whether change of use as a house to use as residence for persons with intellectual/physical disability or mental illness is or is not development or is or is not exempted development'* at Hampton Lodge, Tullydonnell, Dunleer, Co. Louth.

2.0 DESCRIPTION OF DEVELOPMENT AND LOCATIONAL CONTEXT

The site 'Hampton Lodge' is located at Tullydonnell, approx. 3 km north east of Dunleer, Co. Louth. The site is located in a quiet rural area which is scattered with sporadic one-off rural housing. The subject dwelling comprises a c. 250 sq. m detached red brick dormer dwelling on a c. 1 acre site. The dwelling is set back from the public road by approx. 40m with a long driveway and paved area to the front. The boundaries of the site comprise a block wall to the southern roadside boundary and to the east and western boundaries, the northern boundary comprises a timber post fence. The site is landscaped with mature trees and hedgerow. From my site visit it appeared that the dwelling is currently unoccupied.

3.0 BACKGROUND

The referrer is seeking a Section 5 Declaration in respect of *'Whether change of use as a house to use as residence for persons with intellectual/physical disability or mental illness is or is not development or is or is not exempted development'* at Hampton Lodge, Tullydonnell, Dunleer, Co. Louth. Louth County Council is not satisfied, that having regard to the application form submitted and to information contained on the TUSLA web site with respect to 'what are children's residential services?', that the proposed development is to be used as a residence for persons with an intellectual or physical disability or

mental illness. Thereby they have referred the matter to An Bord Pleanála for Determination.

The current Section 5 Declaration referred by the planning authority to An Bord Pleanála relates to Ref. S5/2016/01, which is the second application for a Declaration by the applicant TerraGlen Respite Services on the subject property.

The previous Section 5 Declaration Ref. S5/2015/43, where I note the question asked was stated as: *'Whether change of use from a house to use for children's residential services is or is not development or is or is not exempted development'* at Hampton Lodge, Tullydonnell, Dunleer, Co. Louth, It was decided by Louth County Council that *'The proposed change of use from a house to use for children's residential services is development and does not fall under the class 14(f) of exempted development which allows for a change of use of a dwelling to a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons...'*

On the 29th February 2016 the subject referral was received by An Bord Pleanála

4.0 PLANNING HISTORY

4.1 Reg. Ref.98/616 Planning Permission Granted (08/01/2000) to Dermot McConnoran for a dwelling house.

4.2 Ref. S5/2015/43 Section 5 Declaration, dated 14.01.2016 – Proposed use of Hampton Lodge Tullydonnell for *'Children's Residential Services'*.

In this case Louth County Council concluded *'that WHERAS the said question was referred to Louth County Council on the 10th December 2015.*

AND WHERAS Louth County Council in considering this reference, had regard particularly to

- (a) *Section 3 of the Planning and Development Acts, 2000 – 2011*
- (b) *Schedule 2, Part 1, Exempted Development, Change of Use Class 14 (f) of the Planning and Development Act 2001 – 2013*

AND WHEREAS Louth County Council concluded that:

The proposed from use as a house to use as children's residential services. The development does not fall under the Class 14 (f) of exempted development which allows for a change of use of a dwelling to a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons where 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

NOW THEREFORE Louth County Council in exercise of the powers conferred on it by Section 5 (2) (a) of the Planning and Development Acts 2000 – 2011, that the development is 'development' and is NOT 'exempted development'.

4.3 Enforcement:

None relevant indicated on the file.

5.0 SUBMISSION BY REFERRER

The referral by Louth County Council sets out the following:

- *Sets out the question as 'Whether change of use as a house to use as residence for persons with intellectual/physical disability or mental illness is or is not development or is or is not exempted development'*
- *Planning history, in particular the details of S52015/43*
- *'The applicant has submitted unsolicited information on the 4th January and 8th January. Details included that this application is made on behalf of TerraGlen Respite Services. It is also stated that the children in their care come within the category of persons with a mental illness as defined in Section 3 (2) of the Mental Act 2001'.*

- *‘The applicant however did not verify that this is the case. Details of who will be referring children to this service and confirmation from the referral body that all the children being referred to this Service have an intellectual or physical disability or mental illness was not provided in order that the planning authority may be satisfied that the proposed development meets with the requirements of Class 14 (f) above.’*
- Referral accompanied with:
 - Previous Section 5 Declaration S52015/43 issued by Louth County Council
 - Current Section 5 application S52016/01

6.0 SUBMISSION BY BARBARA MC KERNAN

A submission was received from Barbara Mc Kernan it is summarized as follows:

- Note that Louth County Council have determined that the development is ‘development’ and NOT ‘exempted development’
- The p.a. has stated that it is not satisfied that the proposed development is to be used as a residence for persons with an intellectual or physical disability or mental illness.
- Agree that the exemption afforded in respect of Class 14(f) relates to 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.
- The term ‘care’ is defined in the Planning and Development Regulations 2001 – 2015 as meaning ‘personal care, including help with physical, intellectual or social needs.’ However the term ‘mental illness’ is not defined within the Planning Regulations.
- ‘Mental Illness’ is defined in Section 3(2) of the Mental Health Act 2001 as meaning ‘a state of mind of a person which affects the person’s thinking, perceiving, emotion or judgment and which seriously impairs the mental functioning of the person to the extent that he or she requires care or

medical treatment in his or her own interest or in the interests of other persons.’

- Mental health issues have never been as pronounced as they are today.
- Often children do not received the care they require on a timely basis, which can lead to devastating consequences.
- The National Alliance on Mental Health (www.nami.org) defines ‘Mental illness’ as a condition that impacts on a person’s thinking, feeling or mood and may affect his or her ability to relate to others and function on a daily basis.
- The Medicinet.net website similarly defines mental illness as relating to a wide range of mental health conditions that affect your mood, thinking and behavior.
- The WHO define Mental Health as a state of wellbeing in which an individual realizes his or her own potential, can cope with the normal stresses of life and is able to make a contribution to his or her community
- The symptoms of mental illness can range from mild to severe depending on the particular type of mental illness.
- The exemption afforded in respect of Class 14(f) provided for under the Planning and Development Regulations 2001 – 2015 clearly provides for the use of a house as a residence for persons with a mental illness. The same regulations do not prescribe a particular type of mental illness for the exemption to apply.
- Given the lack of definition for Mental illness in the Planning and Development Regulations, believe it should be given its broadest meaning.
- Respectively contend that Louth County Council have taken a very restrictive view
- Terra Glen Respite Services looks after children and young persons under eighteen years of age who are emotionally unable to function on a daily basis without care.

- Children and young persons in the organisation's care include children who have suffered severe trauma, depression, anxiety, ADHD etc.
- It is incumbent on the State to provide appropriate and adequate mental health support and treatment services.
- Urgently trying to accommodate a number of children and young person's desperately in need of appropriate mental health supports.
- Would greatly appreciate if An Bord Pleanála would rule on this matter as a matter of urgency.

7.0 STATUTORY PROVISIONS

I consider the following to be the statutory provisions relevant to this reference case:

Planning and Development Act, 2000 (as amended)

Section 3(1):

"Development" in this Act means, save where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land.

Planning and Development Regulations, 2001 (as amended)

Under *Article 5:*

"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.

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 contravene a condition attached to a permission under the Acts or be inconsistent with any use specified or included in such a permission.

Second Schedule:

Part I - Exempted Development General:

Class 14 (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.

Condition and Limitations: The number of persons with an intellectual or physical disability living in any such residence shall not exceed 6 and the number of resident carers shall not exceed two.

8.0 PREVIOUS BOARD DECISIONS

29S.RL.2426: Whether proposed change of use from parochial house to care home for children is or is not development or is or is not exempted development at St Annes, 666 South Circular Road, Dublin 8.

Decision: Is development and is exempted development. (2008)

PL25M.RL2059 Whether the use of a dwelling house at Ories, Fardrum, Athlone, Co. Westmeath to provide residential care is or is not development or exempted development.

Decision: Is not development. (Date of decision 8th August 2003)

06D.RL2616: Whether the change of use from dwelling unit to residential care unit for persons with intellectual, physical disability or mental illness and persons providing of care is or is not development or is or is not exempt development at 59A Kerry Mount Rise, Foxrock, Dublin 18.

Decision: Is development and is exempted development. (2009)

PL29N.RF1066: Whether the use of a dwelling house for a women's resettlement project supported by the probation & welfare service at 59 Hollybank Road, Drumcondra, Dublin 9 is or is not exempted development.

Decision: Is development and is not exempted development.

9.0 ASSESSMENT

The question before the Board in this instance can be stated as follows:

'Whether change of use as a house to use as residence for persons with intellectual/physical disability or mental illness is or is not development or is or is not exempted development' at Hampton Lodge, Tullydonnell, Dunleer, Co. Louth.

I note this is the second application for a Section 5 Declaration in relation to the subject residence at Hampton Lodge, Tullydonnell, Dunleer, Co. Louth. Louth County Council made a Declaration Ref. S5/2015/13, on the 14th of January 2016, which considered that a 'change of use from a house to use for Children's residential services' is development and is not exempt development. I highlight that the question asked, in the case of S5/2015/43 differs in its wording from the above stated question which is pertinent to the subject referral S5/2016/01.

In the initial section 5 Declaration S5/2015/04 it was indicated that TerraGlen Respite Services (owner / occupier) is registered under the Childcare Act 1991 and currently runs two homes which provide care for children between the ages of 12 – 17 in Dublin and Dundalk. Hampton Lodge would also be registered under the Childcare Act 1991 regulations and would provide residential care as defined in the regulations for up to four children age 12 – 17 years. It is submitted that typically these children cannot live in their family home for various reasons including health / illness of parents / carers. The children of whom care is provided may also have a mild to moderate learning disability. The children may attend local school and take part in local sporting and community activities. At all-time there would be two full time social care workers and a manager (9.00am–5.00pm). By way of unsolicited information the applicant sought to confirm that the children using the TerraGlen care service would come within the category of persons with a mental illness as defined in section 3(2) of the Mental Health Act 2001. The planning authority was of the opinion that there is no specific provision

for the making of an unsolicited submission, under Section 5 (2) (c) of the Act and that the referrer in the case was being very general in their assumptions and using a very broad brush in classifying that all children using TerraGlen Services as having mental illness in order to avail of an exemption under Class 14(f), Schedule 2, Part 1 of the Planning and Development Regulations, 2001

The question of whether there is a change of use and whether that change is a material change and thereby ‘is development’, needs to be addressed.

From information submitted and attached to the file it is evident that care workers form a necessary part of the service. There is a clear need for continual support in order for children to reside at the dwelling and having regard to the definition of ‘care’ provided under Article 8(1) of the 1994 Regulations, as meaning, ‘personal care, including help with physical, intellectual or social needs.’ I am of the opinion that the nature of the use falls outside the range of users who might occupy a dwellinghouse and that, having regard to the need for and pattern of care being provided there is a change of use proposed at Hampton Lodge which is a material change of use that the use proposed thereby ‘is development’.

The question of whether this development is exempted development.

The issue as to whether the use ‘is development’ is not disputed by the respondent. In a letter dated 19th January 2016, which accompanied the application for Declaration S5/2016/01, it is stated that the TerraGlen Respite Services will operate within the meaning and intent of the exemption afforded under Class 14 (f) of the Planning and Development Regulations, and the limiting conditions provided thereunder. It is submitted that the children in their care come within the category of persons with a mental illness as defined in Section 3 (2) of the Mental Health Act 2001. The maximum number of children to be cared for at Hampton Lodge would not exceed 4 and they would be cared for by two resident carers.

A similar issue was considered in the case of PL25M.RL2059, whether a development comprising the use of a dwellinghouse to provide residential care at Ories, Fardrum, Athlone, County Westmeath was or was not exempted development and also in the case of PL29S.RL2426, whether the proposed change of use from a parochial house to a care home for children at St. Anne's, 666 South Circular Road, Dublin 8, is or is not development or is or is not exempted development.

In the first instance PL25M.RL2059, the proposer, the Midland Health Board, had described the project as four children living in the house, attending school and having social and recreational attachments to the area. The inspector noted that a domestic dwelling house might be used by a variety of groups. These would include families with children, families without children, groups of adults, whether mutually related or not, and families with foster children. Any change within the groups of users would not be a material change. It had been suggested that the proposed use was essentially use as a family house, with Health Board staff acting *in loco parentis*. The inspector held, however, that the children were not in a position where they could live independently, but were dependent on care staff, apparently a combination of staff residing in the house on a permanent basis and staff visiting during the day. Having regard to the need and pattern of care being provided, he concluded that this use was essentially of an institutional nature. A material change of use had occurred which was development. He went on to note that this development did not constitute exempted development and recommended that An Bord Pleanála find accordingly. However, the Board disagreed with the inspector's conclusion and considered that the change of use, by reason of its nature and scale, did not constitute a material change of use. Accordingly, this change of use was deemed not to be development.

Subsequently, however, In the case of PL29S.RL2426 while the inspector had regard to PL25M.RL2059 it was considered that the case was very different. In this case the children to be accommodated were older, they had no links with the

community and they would reside in the house on a temporary basis, generally three to six months only, but up to nine months. There would be a minimum of 14 staff required to look after the boys. It was the opinion of the Inspector that this would represent a fairly intensive institutional use of a former five bedroom parochial house and thus 'is development' which would not constitute exempted development under Class 14 (f). However, while the Board in this instance considered that the proposed change of use 'is development' it disagreed with the inspector's conclusion and considered that having regard to the Planning and Development Act and the Planning and Development Regulations, in particular, Class 14 of Part 1 of Schedule 2 of the Regulations and the nature and scale of the proposed use as a residence for children, with particular needs for comprehensive care, staffing, guidance and accommodation facilities the use would come within the scope of Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

I note that the exemption under Class 14 (f) is for persons with intellectual, physical disability or mental illness. The planning authority raise question marks as to whether the individuals referred to are such persons, however the wording of the question is clear. The owner occupier TerraGlen Respite Services submit that they will operate within the meaning and intent of the exemption afforded under Class 14 (f) of the Planning and Development Regulations, and the limiting conditions provided thereunder. The term 'mental illness' is not defined within the Planning Regulations and therefore is some ambiguity with regard to allowing for a change of use for a residence for persons with an intellectual or physical disability or mental illness. Regard is had to precedent cases and also to the four definitions of 'mental illness' as defined in Section 3(2) of the Mental Health Act 2001, The National Alliance on Mental Health, The Medicinet.net website and the World Health Organisation, as submitted by the respondent, see section 6.0 of this report above for full details of definitions.

Given An Bord Pleanála's ruling's in respect of 25RL.2059 (2003) and 29S.RL.2426 (2008) of which I consider, the nature and scale of the proposed use at Hampton Lodge, as a residence for up to four children, with particular needs for comprehensive care, staffing (two carers and a manager), guidance and accommodation facilities, similar, it is my opinion that the proposed use 'is development' and 'is exempted development'.

In view of the above and having read the contents of the submissions and inspected the subject area, it is my opinion that the change of use of a single dwelling to a residence for persons with intellectual / physical disability or mental illness and persons providing of care is development which is exempted development under the provision of Schedule 2, Part 1, Change of Use, Class 14 (f) of the Planning and Development Regulations, 2001

10.0 CONCLUSION

It is considered that the change of use is development and is exempted development. In considering this referral, I have had regard to the Planning and Development Act 2000 (as amended), the Planning and Development Regulations, 1994 and 2001, as amended, and precedent Board Declarations.

11.0 RECOMMENDATION

Having regard to the foregoing, I recommend that it be decided that the change of use constitute development which is exempt development.

A draft order is set out below.

WHEREAS a question has arisen as to *'Whether change of use as a house to use as residence for persons with intellectual/physical disability or mental illness is or is not development or is or is not exempted development'* at Hampton Lodge, Tullydonnell, Dunleer, Co. Louth.

AND WHEREAS TerraGlen Respite Services requested a declaration on the said question from Louth County Council and the said Council issued a referral to An Bord Pleanála, dated the 29.02.2016, under the provisions of Section 5(4) of the Planning and Development Act 2000, as amended.

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

- (a) Section 2 and 3 of the Planning and Development Act, 2000, as amended
- (b) Article 6 of the Planning and Development Regulations, 2001
- (c) Class 14, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- (d) The nature and scale of the proposed use as a residence for children, with particular needs for comprehensive care, staffing, guidance and accommodation facilities.

AND WHEREAS An Bord Pleanála has concluded that –

The change of use of 'Hampton Lodge', Tullydonnell, Dunleer, Co. Louth from single dwelling to a residence for persons with intellectual, physical disability or mental illness and persons providing care is exempted development under Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the change of use from use

as a house to use as residence for persons with intellectual/physical disability or mental illness is development which is exempted development.

Fiona Fair
Planning Inspector
29.06.2016