



Question

Whether the use of Buildings A, B, C and D is in accordance with the uses specified under Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, is not development or is or is not exempted development.

Location

Mill House, Killeenmore, Tullamore, Co. Offlay.

Declaration

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

Dec 17/5

Applicant for Declaration

Niall Stack

Planning Authority Decision

Is Development and is not Exempted Development

Referral

Referred by

Niall Stack.

Owner/ Occupier

Bradbury Housse Ireland Ltd

Date of Site Inspection

25th of July 2023

Inspector

Caryn Coogan

1.0 Site Location and Description

- 1.1. The is located in a rural area 6.5 km south east of Tullamore town in Co. Offlay. It is in the townland of Killeenmore. The general land use in the area is agriculture. There is a certain amount of linear developments in the area, however the general area is sparsely populated. There is a large worked raised bog to the west of the general vicinity which is not visible form the site.
- 1.2. The site includes a cottage and old stone buildings, that formerly operated as a corn mill, with a mill stream running north-easterly from the raised bog, and a mill pond to the south of the site. The buildings range from single to two storey units and are located close to the local road. It includes a surface carpark area and vehicular access to the south. The site is very well maintained with tasteful hard and soft landscaping.
- 1.3. The cottage and outbuildings have been converted into residential units.
- 1.4. There is a communal garden area and pockets of green space throughout the site.

2.0 The Question

- 2.1 Whether the use of the buildings to a use for persons with an intellectual or physical disability or mental illness and persons providing care for such persons in Buildings A, B, C and D is or is not development, is or is not exempted development under the provisions of Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

3.0 Planning Authority Declaration

3.1. Declaration

On the 5th of April 2017 Offlay Co. Co. concluded

- (i) that the proposal consisting of the use of buildings denoted as A, B, C and D in accordance with the uses specified under Class 14(f) of Part 1 of

Schedule 2 of the Planning and Development Regulations is development, and is not exempted development.

- (ii) The proposal (consisting of the use of a building denoted as B in accordance with the uses specified under Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, is development and is exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Declaration relates to four buildings, three of which have planning permissions as follows:

Reference PL2 94/77 Beni Gerber granted planning permission for a private office, boiler house and oil storage tank (Building A)

Reference PL2 95/7 Beni Gerber granted planning permission for conversion of existing block into 3No. holiday flats (Building B)

Reference PL2 95/140 Beni Gerber granted planning permission for a garage and carpark (Building C)

- The works of the declaration come within the definition of development.
- The Exemption associated with Class 14 (f) of Schedule 2 cannot apply to Buildings A, D and C because there is no exception for a change of use to social use for such buildings.
- Unit B consist of holiday flats. No planning condition restricts the occupancy and it is considered to be used as normal housing units.
- Given the definition of a house in the Planning Act to includes apartments, it is considered that the housing units could be used for the purposes detailed in Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended.
- Appropriate Assessment Screening Report concluded there will be no likely signifigant impact on European sites from the proposed development.

3.2.2. Other Technical Reports

None

4.0 Planning History

Planning Reference

Planning Reference 16/297 ABP PL19.248715

Planning permission granted for first floor extension to rear of existing dwelling, alterations to existing holiday apartment and single storey extension to existing garage and all associated site development works.

The development includes change of use of buildings (existing dwelling house, apartment building, office and garage as indicated Buildings 01 to 04 on the site layout plan, to a residential care complex for people with disabilities and comprises of 9No. 1 bedroom units, communal living rooms, education/ training areas and offices.

The inspectors report on PL19.248715 Referenced the current Referral case.

'I note that there is a reference case for this site – RL19.RL3577. The question in that reference is whether the use of the buildings as accommodation for people with specified needs is or is not development. While I would recommend that these two files are addressed concurrently, I do not consider that the decision in the reference file would alter my recommendations in this appeal.'

Planning Reference PL2 94/77

Beni Gerber granted planning permission for a private office, boiler house and oil storage tank (Building A)

Planning Reference PL2 95/7

Beni Gerber granted planning permission for conversion of existing block into 3No. holiday flats (Building B)

Planning Reference PL2 95/140

Beni Gerber granted planning permission for a garage and carpark (Building C)

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Offaly County Development Plan 2021-2027.

9.13 People with Disabilities

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. 2 For persons with mental, intellectual or sensory impairments, it is important to ensure facilities such as quiet rooms and sensory gardens are incorporated into development proposals where appropriate and that the needs of this group are taken into consideration in the selection of building materials. For people with mobility impairments, ensuring level/ramped access to buildings, dished kerbs and the provision of appropriate parking and toilet facilities are important. For people with visual impairments, tactile paving that can be felt underfoot and audible signals at pedestrian crossings are necessary.

5.2 Natural Heritage Designations

The closest SAC is Charleville Wood SAC which is just south of Tullamore, just under 6km west of the subject site.

The Barrow and Nore River SAC is just over 10km to the south of the site.

6.0 The Referral

6.1. Referrer's Case

Niall Stack Killeenmore, Tullamore submitted the Section 5 Declaration to Laois Co. Co. The following is a summary of his submission:

- **Introduction** : The exemption under Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 cannot be applied to the development because :

- (i) Article 9 (1)(a)(i) of the Planning and Development Regulations 2001 as amended, as the carrying out of such development would 'contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, and
- (ii) As such a change of use is not covered by the exemption in Part 2 'Exempted Development' or relevant provisions contained in Schedule 2, Part 1 'Exempted Development – Classes of Use' of the Planning and Development Regulations 2001.

- **Statutory Provisions :-**

Planning and Development Act, 2000 as amended

Section 3(1)

Planning and Development Regulations – Exempted Development

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. 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.

- **Planning History/ Status of Buildings**

Building A

Building A was granted planning permission for an office under reference 94/77 for the provision of an office, boiler house and oil storage tank in the existing buildings.

Building B received planning permission under reference 95/7 for conversion of existing block into 3 No. holiday flats.

Building C received planning permission for a garage and carpark under planning reference 95/140

Building D is a large agricultural building, constructed without the benefit of planning permission for housing livestock, machinery and straw.

- **Reasons Why the Exemption Does Not Apply**

Building A:

'Development' in the 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

Under Article 5

'care' means personal care including help with physical, intellectual or social needs.

Article 6(1)

6.(1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1)

Development to which article 6 shall not be exempt development for the purposes of the Act –

(a) If carrying out of such development would –

(a) If the carrying out of such development would –

Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

Changes of Use

Article 10 (1) Development which consist of a change of use within any one of the classes of use specified in Part 4 Schedule 2 shall be exempted

development for the purposes of the Act, provided that the development, if the development if carried would not

- (i) Involve the carrying out of any works other than the works which are exempted development;
- (ii) Contravene a condition attached to a permission
- (iii) Be inconsistent with any use specified or included in such a permission.

Second Schedule

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. 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.

6.2. **Building A:**

The exemption class contained under Class 14(f) of Schedule 2 does not apply having regard to the limitations contained in Article 9(1)(a)(i), as condition No. 5 of planning reference 94/77 states the 'proposed office shall not be used for commercial purposes or for human habitation or for any other purpose other than a purpose incidental to the enjoyment of the dwelling house as such. Therefore the change of use to a use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons would not be exempted development and would require planning permission.

Building B:

The permitted and most recent use of the building is as holiday flats and not a house, it is considered Class 17(f) does not apply, and the former/ permitted use was not a dwelling. The use of the building would materially intensify too due to permanent occupation, there it constitutes a material change of use.

Building C

The exemption class contained under Class 14(f) of Schedule 2 does not apply having regard to the limitations contained in Article 9(1)(a)(i), as condition No. 3 of planning reference 95/140 states the 'proposed garage shall not be used for commercial purposes or for human habitation or for any other purpose other than a purpose incidental to the enjoyment of the dwelling house as such. Therefore, the change of use to a use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons would not be exempted development and would require planning permission.

Building D

The conversion of an agricultural building to a 'use as a residence for persons with an intellectual or physical disability or mental illness and persons involving such care for persons or a use ancillary to the use of the buildings elsewhere on the landholding would require planning permission.

6.3. Planning Authority Response

The planning authority responded by stating there is a current planning application PL2/16/297 received on the 14/09/2016 relating to the site.

It had no further comments to make.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

2 (1) In this Act, except where the context requires –

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

3. (1) In this Act, “development” means, except where the context otherwise requires, 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.

7.2. Planning and Development Regulations, 2001

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.

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. | 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. |
|---|---|

Article 9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

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

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. I would concur with the Referrer Nial Stack, that the change of use of the buildings in question from the permitted office/ garage/ and holiday home use (granted under planning reference, (4/77, 95/7 and 95/140), to use as a residence for persons with an intellectual or physical disability or mental illness and person providing care for such persons, is a material change of use, and therefore is considered to be 'development'.

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

By reference to the relevant statutory provisions (Section 7.0 above) the only avenue by which the subject development could be considered to constitute exempted development is under 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.

- 8.2.1. As the Referral referenced each building separately:

- (i) **Building A**

- Building A is located beside the carpark in the middle of the site, backing onto the adjoining road. It is a single storey unit. Under planning reference PL2 94/77, this building was granted planning permission as a private office, boiler house and oil storage tank. Condition No. 5 of the grant of permission stated the *'proposed office shall not be used for commercial purposes or for human habitation or for any*

other purpose other than a purpose incidental to the enjoyment of the dwelling house as such.'

The change of use of the building as part of a residential care complex for people with disabilities including educational/ training areas and office, is a material change of use from the permitted office use of the building. There is no provision under the Exemption Development section of the Planning and Development Regulations 2001 for the subject change of use. Part 1 of Schedule 2 in particular Class 14 relates to a change of use from a **house** to a use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons. The change of use is development, and is not exempted development.

(i) Building B

Building B is a two-storey stone building located in the centre of the site. It is configured perpendicular to the public road. Under planning reference PL2 95/7 Beni Gerber was granted planning permission to convert the subject building into 3No. holiday flats. The planning authority concluded in its assessment of the Section 5 Declaration, that the units would be considered normal housing units. Therefore, the planning authority stated in the Declaration Order the use of Building B was considered to be development, and is exempted development, because it complied with Class 14(f) of Part 1 Schedule 2 of the Planning and Development Regulations 2001.

The Referrer, Mr. Nash, rightly stipulates the permitted and operational use of Building B was holiday units and not a house. The permitted use of the building was for holiday accommodation. This is a commercial use and not a domestic dwelling land use. Therefore, Class 14(f) of Part 1 Schedule 2 of the Planning and Development Regulations 2001 is not applicable to Building B. The change of use from holiday accommodation to a facility accommodating persons with intellectual or physically disabilities, and providing care for the persons, would be considered material. Therefore, the material change of use is considered to be development, and is not exempted development.

(ii) Building C

Under planning reference PL 95/140 Beni Gerber was granted planning permission for a garage and carpark. The building is a detached stone building with a slated roof. From my observations it would appear to be use as a laundry room associated with the care facility on site. Under planning permission PL 95/140 condition No. 3 stated 'the proposed garage shall not be used for commercial purposes or for human habitation or for any other purposes other than a purpose incidental to the enjoyment of the dwelling house as such'.

Therefore in terms of Article 9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(b) if the carrying out of such development would—

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

The use of Building C as an auxiliary building to the overall care facilities on the site is a change of use from the original permitted use granted under PL95/140. The existing use contravenes a condition of the original permission. The change of use from a domestic garage to the use associated with a care facility for disabled persons is material, and therefore is considered to be development. Having regard to Article 9 (1) (a), the development contravenes a condition relating to the planning permission for Building C, and is therefore not exempted development.

(iv) Building D

Building D is a former agricultural outhouse located to the north of the cottage. The change of use of the building as part of a residential care complex for people with disabilities including educational/ training areas and office, is a material change of use from the agricultural use of the building. There is no provision under the Exemption Development section of the Planning and Development Regulations 2001 for the subject change of use. Part 1 of Schedule 2 in particular Class 14 relates to a change of use from a **house** to a use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons. The change of use is development, and is not exempted development.

9.0 Recommendation

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

REAS a question has arisen as to whether the use of the building A, B, C and D to a use for persons with an intellectual or physical disability or mental illness and persons providing care for such persons at Millhouse, Killeenmore, Tullamore, Co. Offlay, under the provisions of Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 is or is not development or is or is not exempted development:

AND WHEREAS Niall Stack requested a declaration on this question from Offlay County Council and the Council issued a declaration on the 5th day of April, 2017 stating (i) that the use of Buildings A, C and D is development and is not exempted development and (ii) the use of Building B is development, and is exempted development:

AND WHEREAS Niall Stack referred this declaration for review to An Bord Pleanála on the 27th day of April 2017:

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 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change of use of Buildings A, B, C, and D from former uses and permitted uses to a use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons, involves a material change of use within the meaning of Sections 2 & 3 of the Act, therefore constitutes development under Section 3 of the Act;
- (b) The development relating to Buildings A, B and D do not fall within the scope of Article 6 (1) of the Planning and Development Regulations 2001, as amended, in that the development is not of a class specified in column 1 of Part 1 of Schedule 2, Class 14(f),
- (c) Having regard to Condition No. 3 of planning reference PI 95/140 the development relating to Building C does not fall within the scope of Article 9(1)(a)(i) of the Planning and Development Regulations as amended, and
- (d) No requirement for environmental impact assessment or appropriate assessment arises.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development 2000 Act, hereby decides that the use of the buildings A, B, C and D to a use for persons with an intellectual or physical disability or mental illness and persons providing care for such persons at Millhouse, Killeenmore, Tullamore, Co. Offlay is development and is not exempted development.

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

Caryn Coogan
Planning Inspector

01/12/2023