

AN BORD PLEANÁLA
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ABP- _____
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Time: 12:30 By: hend

Cllr. Brian Lawlor
7 Beechdale Court
Ballycullen
Dublin 24

The Secretary
An Bord Pleanála
64 Marlborough St.
Dublin 1

04 June, 2019

REF: ED19/0009, South Dublin County Council

Dear Secretary,

I wish to appeal the decision on this referral, that the change of use of Glencarrig Nursing Home, Glencarrig Court, Firhouse Road, Road, Tallaght, Dublin 24, from a nursing home to a residential rehabilitation care centre. ~~religious~~, as decided by the council on 08 May, 2019. A fee of €220 is enclosed.

The Council issued a Section 5 declaration on Glencarrig Nursing Home, Glencarrig Court, Firhouse, Dublin 25 ED19/0003. The question was is the change of use from nursing home to a residential rehabilitation care centre exempted development or not. The council found that the development was exempted.

I do not agree with this finding, but I did not expect the planning authority to find otherwise. As there is no third party appeal on Section 5 referrals I had to ask the same question again, so requested the council to refer the question directly to An Bord Pleanála. The council declined and proceeded to make the same decision. No explanation was given as to why this reasonable request was denied.

It also ignored the fundamental point that I made - that services related to drug addiction and rehabilitation do not qualify for exemption for 'Change of Use' under Part 4 of the Planning and Development Regulations, due to the external impacts these services have on the surrounding communities. An Bord Pleanála has decided this matter both in relation to Class 9 and Class 8 exemptions.

Under Class 9, concerning a change of use of a nursing home to a residential drug rehabilitation centre for for Ballivor in Meath last year, ABP – 301064 -18, found that:

“the proposed use, as a residential drug rehabilitation facility, would be a factual change of use from use as a nursing home, and such change of use would raise material planning considerations, including different patterns of traffic and pedestrian activity/movements, a different service to a different user group, including a population with a broader age profile and who are drug dependent, and with limited interaction with the local community, and is, therefore, a material change of use, and is development”

Also:

“The residential drug rehabilitation use is inconsistent with the use included in the planning permission for the nursing home, by reason of the significant differences in the services provided, the age profile of the likely occupants, the greater geographical areas that would be served by the facility”.

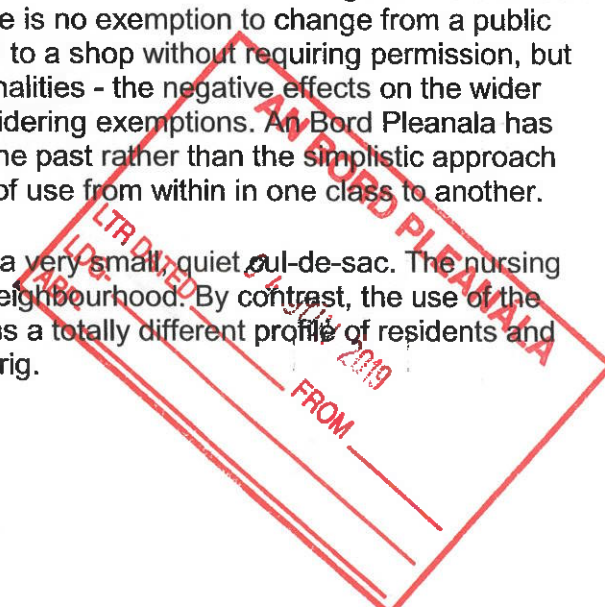
In that case, the change of use exemption attempted to be availed of was from Class 9 (b) nursing home to Class 9 (a), a residential home for persons in need of care. Therefore residential drug rehabilitation do not benefit from the exemptions of Class 9.

In 06F.RL2762, the HSE sought to avail of the exemption that a unit that had been permitted to be used as a community service, (Class 8 (d)) be used as a drug treatment clinic under Class 8 (a) health centre. In that case, An Bord Pleanála found that

“the proposed use, for dispensing of treatments for addictions, offices and consulting rooms, had particular material implications in terms of the proper planning and sustainable development of the area, including in respect of the potential **impact on the amenities of the area and of property in the vicinity and in respect of public health, security, noise and general disturbance, such that it is considered to be ‘sui generis’** and not to constitute a type of use coming within the scope of class 8 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001.”

Taking both cases, developments associated with drug treatment or rehabilitation, cannot come within the normal suite of exemptions provided for in the Regulations. This is because of concerns about disruption arising from the difficulties of dealing with drug addiction, including rehabilitation. Planning exemptions for changes of use within classes either are for equivalent types of uses or are uses that have less impact than a current use. So a change of use between a public hall to an exhibition hall is allowed, but there is no exemption to change from a public hall to a dance hall. A public house can be changed to a shop without requiring permission, but a shop cannot be changed to a public house. Externalities - the negative effects on the wider community has to be taken into account when considering exemptions. An Bord Pleanála has taken the negative impacts under consideration in the past rather than the simplistic approach adopted by the council that this is simply a change of use from within in one class to another.

While Ballivor is a small village, Glencarrig Court is a very small, quiet cul-de-sac. The nursing home use is limited in scale and works well in the neighbourhood. By contrast, the use of the nursing home for drug rehabilitation purposes means a totally different profile of residents and visitors, which will be far more disruptive to Glencarrig.



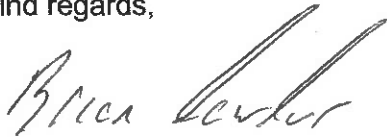
The planning authority does not dispute that the rehabilitation is drug rehabilitation. However it ignores this issue as being the primary cause of concern. Addiction is a chronic, relapsing condition and substance abuse; whether when that person is high or in need of funds to acquire that high, negatively impacts on addicts and those around them - their family and the community living in proximity. The chaotic, upsetting and tumultuous behaviour during relapse is very different and spills onto the street. This makes this type of facility very different from than from residential home provided for people with physical, intellectual or social needs (such as older persons). Even where people are doing their best to deal with addiction it will not prevent others who are in the grip of addiction visiting residents in Glencarrig - invited or not. While these visitors would not be admitted to the home, that could still result in public disorder on the street. So there are impacts on the community living close to the site and this is why the broad brush approach of anyone in 'need of care' can avail of the planning exemption taken by the planning authority is not the right approach.

I request An Bord Pleanála to overturn this decision by the planning authority. A benign nursing home cannot be changed to a residential drug rehabilitation home without first going through the planning process, given the impacts on the community living in the area.

As explained above, in the absence of an ability to appeal a Section 5 referral I paid my €80 to South Dublin County Council and asked them to refer this matter to An Bord Pleanála to make the decision, as they had already made their mind up in the case. This would have cost the council €110 - €30 more than I had paid. Given that they had determined the matter already, at a cost of €80, it meant that there would have been no net cost to the planning authority (€160 from the two referrals).

Instead the planning authority determined this again, forcing me to pay €220 . The planning authority has not acted fairly in regards to my request and so I am asking An Bord Pleanála to award me my costs of making the referral - €220.

Kind regards,



Cllr. Brian Lawlor





FINE GAEL 

AN BORD PLEANÁLA
LTR DATED 04 JUN 2019
LDG- _____ FROM _____
ABP- _____

Land Registry Compliant Map



National Mapping Agency

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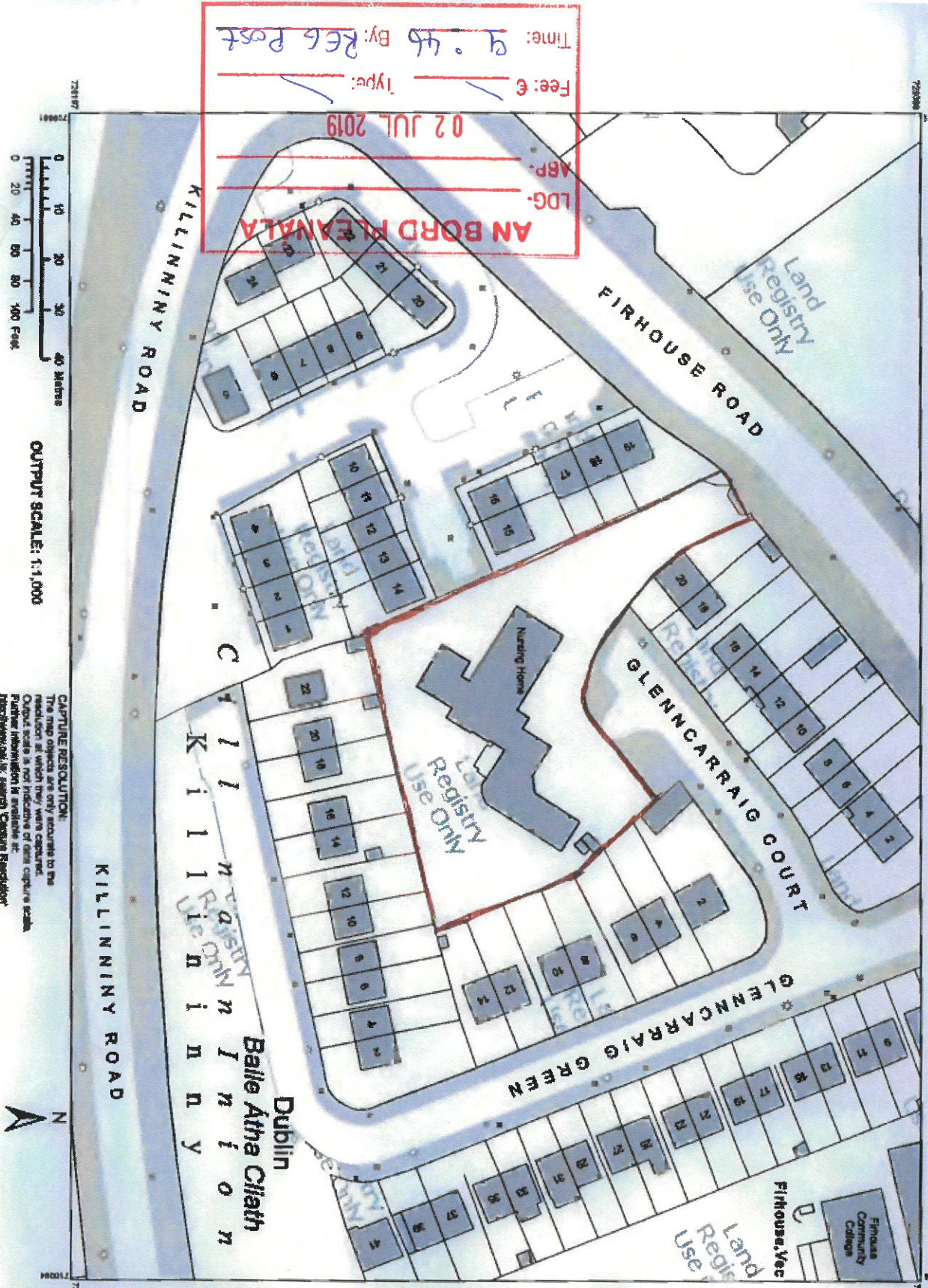
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