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REFERRAL

AN BORD PLEANÁLA	
LDG-	<u>017841-19</u>
ABP-	_____
26 JUL 2019	
Fee: € <u>220</u>	Type: <u>Curd</u>
Time: <u>12:58</u>	By: <u>Hand</u>

CONCERNING

METHADONE CLINIC

AT

**KILDARE HEALTH CENTRE, TULLY ROAD,
KILDARE TOWN, CO. KILDARE**

Client: Tameric Investments

24th July 2019

Member of the Irish Planning Institute
Chartered Planning Consultant

1.0 INTRODUCTION

David Mulcahy Planning Consultants Ltd have been instructed by **Tameric Investments** of Tully Road, Kildare Town, Co. Kildare to refer a declaration by Kildare County Council to An Bord Pleanála concerning the use of a building as a methadone clinic at Kildare Health Centre, Tully Road, Kildare Town, Co. Kildare.

A declaration was sought under Section 5 of the Planning and Development Act 2000 (as amended) from Kildare County Council to establish:

"Whether the use of a building formerly operating as a General Practice surgery for use as a methadone clinic at Kildare Health Centre, Tully Road, Kildare Town, Co. Kildare is or is not development and is or is not exempted development".

Kildare County Council have declared that the use of the building for dispensing of methadone and other medical services does not constitute a material change of use of the lands and is therefore not development (Ref. ED/00723) see copy of declaration in **Appendix A**.

This referral will demonstrate that Council's declaration is wrong and that the change of use is development and is not exempted development.

The Council's decision was made on 1st July 2019. The four week deadline for referring the matter to An Bord Pleanála is 29th July 2019. This referral meets that deadline.

The fee of **€220** is enclosed.

Please send all future correspondence on this matter to this address.

AN BORD PLEANÁLA	
26 JUL 2019	
LTR DATED _____	FROM _____
LDG- _____	
A.D.P.	

2.0 SITE LOCATION & DESCRIPTION

2.1 Site Location

The subject site is located on the west side of Tully Road, Kildare Town, Co. Kildare (Eircode Ref: R51 W209) adjacent to KARE (on the south side).



Fig No.1 Site Location (source: Myplan.ie - OSI Licence No.EN 0080915)

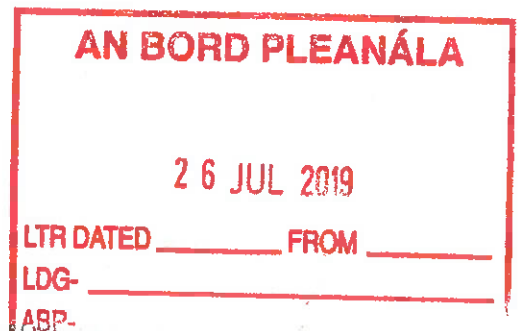




Fig No.2 Site Location (source: Myplan.ie - OSI Licence No.EN 0080915)

2.2 Site Context and Description

At present the site contains a single storey, detached building which operated up until recently¹ as a General Practitioner (GP) surgery.



Fig No.3 Google Street View Image taken from the public road to the front of the site.

¹ Approximately one year ago according to our client.



The general area is characterized by residential development and community uses for the young, disabled and elderly.

- The crèche under development directly across the road.
- The KARE centre, on the property's southern boundary, which provides services to people with intellectual disabilities.
- Kildare parish church, which attracts a mostly elderly group of parishioners.
- A primary school with c.900 pupils.
- A senior citizens day care centre.

3.0 PLANNING HISTORY

3.1 Subject Site

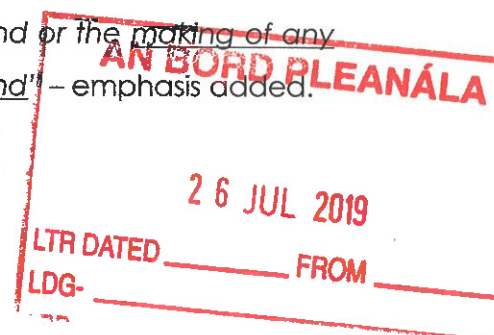
A review of the Kildare County Council on-line planning system did not reveal any planning history associated with the subject site or any other Section 5 planning applications.

4.0 RELEVANT LEGISLATION

4.1 Development

Section 3(1) of the Planning and Development Act, 2000 defines 'development' as

"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" – emphasis added.



4.2 Change of Use

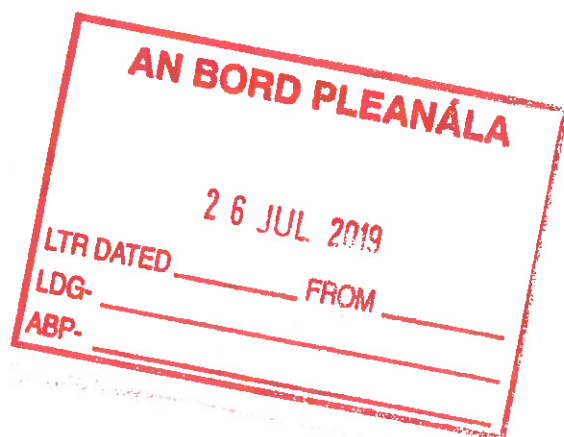
A.10 (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 shall be exempted development for the purposes of the Act, provided that the development, if carried out would not-

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

Class 8 of Part 4 of Schedule 2 states-

Use-

- (a) as a health centre or clinic for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),
- (b) as a crèche,
- (c) as a day nursery,
- (d) as a day centre.



5.0 PLANNING CONTEXT

5.1 Kildare Town LAP 2012-18

The site is zoned Town Centre under the Kildare Town LAP 2012-18

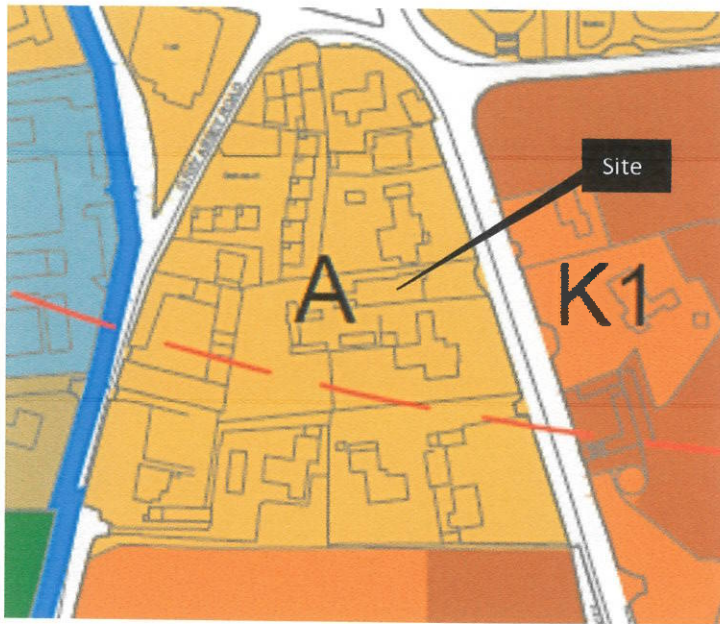


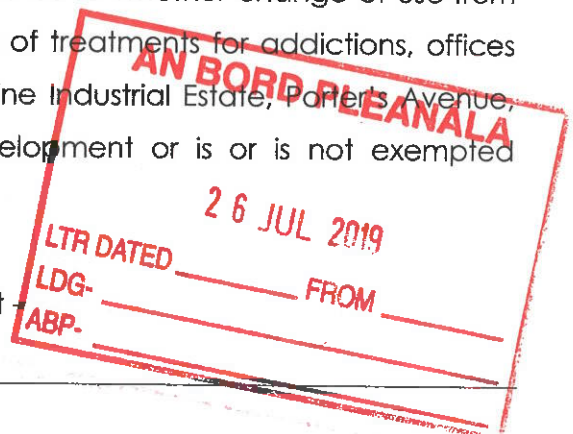
Fig No.4 Extract from Kildare Town LAP 2012-18

6.0 RELEVANT PRECEDENT

6.1 Referral 06F.RL.2762

A question came before An Bord Pleanála as to whether change of use from community services to use for dispensing of treatments for addictions, offices and consulting rooms at Unit 37A Coolmine Industrial Estate, Porter's Avenue, Blanchardstown, Dublin is or is not development or is or is not exempted development:

An Bord Pleanála concluded (in 2010) that



(a) the permitted use on this site is considered to be a "day centre" as defined by article 5 (1) of the Planning and Development Regulations, 2001 and therefore a class of use coming within the scope of class 8(d) of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001;

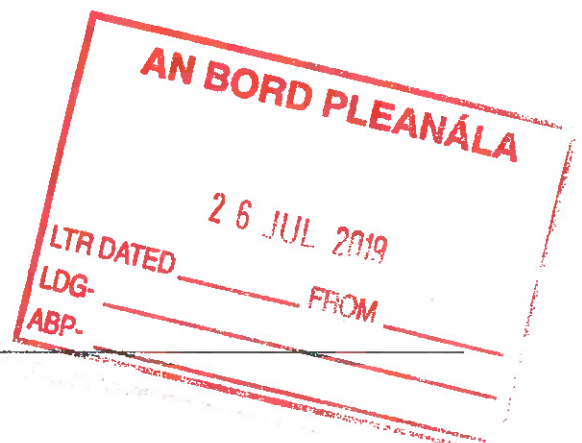
(b) the proposed use, for dispensing of treatments for addictions, offices and consulting rooms, **has particular material implications in terms of the proper planning and sustainable development of the area, including in respect of the potential impact on the amenities of the area and of property in the vicinity and in respect of public health, security, noise and general disturbance**, such that it is considered to be '**sui generis**'² 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;

(c) the proposed change of use from community services to use **for dispensing of treatments for addictions**, office and consulting rooms, constitutes a **material change of use** and, therefore, is development and

(d) the said change of use does not come within the exempted development provisions of section 4(1) of the Planning and Development Acts, 2000-2010 or of article 6 or article 10 of the Planning and Development Regulations, 2001, as amended.

Therefore, An Bord Pleanála decided that the change of use from community services to use for dispensing of treatments for addictions, offices and consulting rooms at Unit 37A Coolmine Industrial Estate, Porter's Avenue, Blanchardstown, Dublin **is development and is not exempted development.**

² In a class of its own.



7.0 COUNCIL DECISION

7.1 Ref. ED/00723

A declaration was sought under Section 5 of the Planning and Development Act 2000 (as amended) from Kildare County Council ('KCC') to establish:

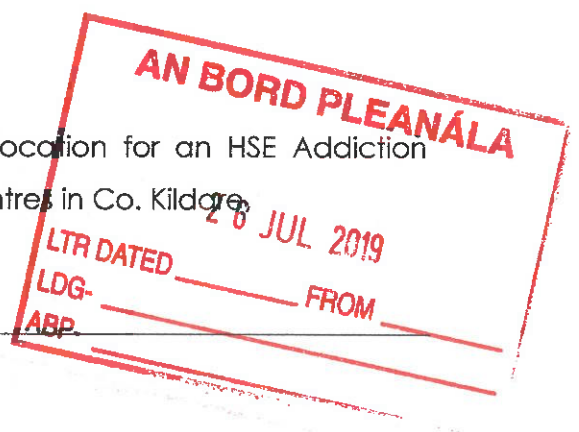
"Whether the use of a building formerly operating as a General Practice surgery for use as a methadone clinic at Kildare Health Centre, Tully Road, Kildare Town, Co. Kildare is or is not development and is or is not exempted development".

The KCC Planner's Report notes that there is a planning history relating to the site whereby permission was granted under Reg. Ref. 1198/86 for a single storey extension to a health centre. The report questions whether there is a GP services operating from the building. The Planner's Report notes the precedent highlighted by this office where An Bord Pleanála determined that a change of use from day centre to use for dispensing of treatments for addictions was development and was not exempted development on account of dispensing of treatment for addictions being a 'sui generis' use. The Planner states however that there is insufficient information to arrive at a similar conclusion.

Kildare County Council issued a request for further information from the Health Service Executive ('HSE') on 18th April 2019. The request contained a number of queries designed to find out more about the use of the building, noting that it was closed at the time of inspection.

The HSE responded to confirm that:

- they own the property for over 30 years;
- it presently accommodates a GP,
- the premises was identified as a possible location for an HSE Addiction Services as part of a review for treatment centres in Co. Kildare,
- a new review is ongoing,



-
- there is no proposed change of use to methadone dispensing
 - finally, the response refers to a declaration of exemption issued by Wicklow County Council (Ref. 62a/17) in 2018 that a change of use from health centre to methadone clinic does not constitute a material change and is not therefore development.

Kildare County Council declared on 1st July 2019 that the use of the building for dispensing of methadone and other medical services does not constitute a material change of use of the lands and is therefore not development (Ref. ED/00723).

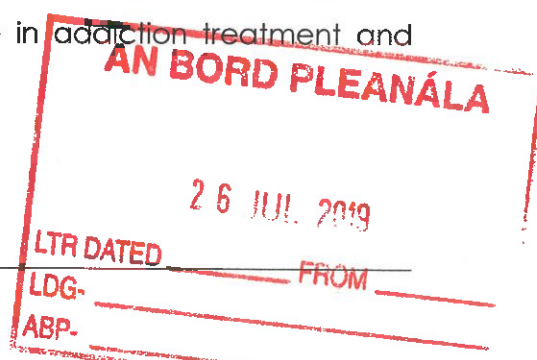
8.0 ANALYSIS

8.1 Background

It is understood from our client that the subject building on Tully Road is intended to be used by the HSE for the purposes of a methadone clinic. This will involve a change of use from the previous use as a GP surgery.

The HSE have stated that the building is still in use as a GP surgery, and forms part of a health centre. It is our clients understanding that this GP use has ceased, and this would appear to be supported by the KCC inspection which found the building to be unoccupied. Either way there is no dispute that the current or former use of the building is/was a GP surgery forming part of a larger health centre.

Methadone is a prescription opioid used in the treatment of opiate addiction, which helps to stabilise individuals in recovery by reducing their cravings and withdrawal symptoms so they can fully engage in addiction treatment and therapy.



A methadone clinic is a place where the dispensing of methadone occurs under a controlled medical environment.

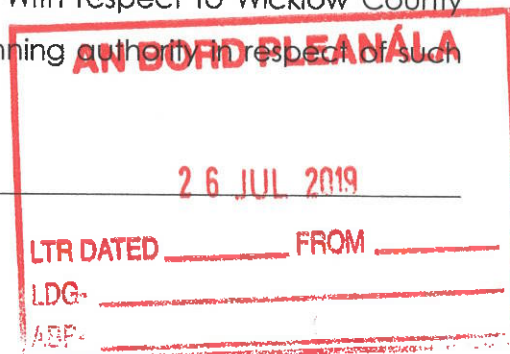
7.2 Has Development Occurred?

As noted in the An Bord Pleanála referral above (**06F.RL.2762**) use for dispensing of treatments for addictions has "*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.

It is further noted that under ABP-301055-18 (referral relating to change of use from nursing home to drug rehabilitation facility the Boards Order noted 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*". We consider that these material planning considerations would also apply in this instance.

It is submitted therefore that the change of use involved from a GP surgery (or health centre) to a methadone clinic is material in planning terms and constitutes development.

In relation to the Kildare County Council view that that no development is involved this appears to be based on a decision by Wicklow County Council (provided by the HSE) that a similar situation in Bray involving a change of use from was deemed to be not development. With respect to Wicklow County Council An Bord Pleanála is the eminent planning authority in respect of such

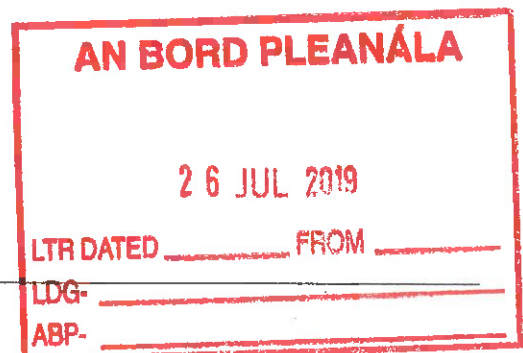


matters and therefore the decision under 06F.RL.2762 is more relevant in this instance.

We note that initially Kildare County Council considered that there was sufficient information available to make a decision but considered sufficient information to be available following the HSE reply. We therefore consider that An Bord Pleanála have sufficient information to make a decision on this matter. Furthermore, the fact that the HSE state that there are no current plans to change the building to a methadone clinic is irrelevant to the query at hand under this referral. Section 5 (1) of the Planning and Development Act 2000 (as amended) is clear that *"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question"*. We also note that the HSE have acknowledged that the building is under consideration for change of use to an addiction treatment centre as part of a review for treatment centres in Co. Kildare.

7.3 Is the development exempt?

We refer again to the same referral (**06F.RL.2762**) where the Board concluded that drug dispensation for addiction is considered to be a **'sui generis' use**. On this basis a change of use from GP surgery (Class 8, Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended) to a Methadone Clinic (sui generis use) cannot avail of any exemption under Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended. This also applies if the building is to be considered under the wider health centre description. It is therefore not exempted development.



9.0 CONCLUSION

The question before the Board is:-

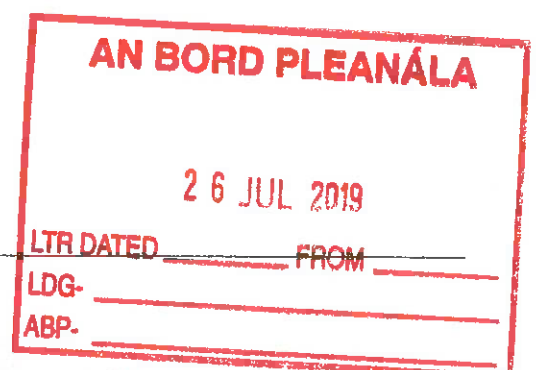
“Whether the use of a building formerly operating as a General Practice surgery for use as a methadone clinic at Kildare Health Centre, Tully Road, Kildare Town, Co. Kildare is or is not development and is or is not exempted development”.

It is submitted to the Board that the change of use is material as previously accepted by An Bord Pleanála in a referral relating to a drug dispensing clinic in Blanchardstown. Furthermore, that same referral also noted that a drug dispensing clinic is a sui generis use and therefore no exemption can be obtained under Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended and this applied to GP or health centre use.

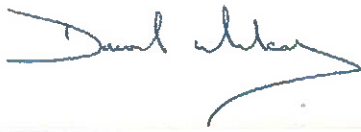
The Kildare County Council view that the change of use is not development is based on a decision provided by the building's owner and does not take into account the Blanchardstown referral decision which we consider to be more relevant in this instance given it was made by An Bord Pleanála.

The Board are therefore requested to issue a declaration that the change of use from general practice to methadone clinic is **development and is not exempted development**.

Note: The Board may want to consider a broader query whereby the use of Kildare Health Centre, Tully Road, Kildare Town, Co. Kildare as a drug dispensation facility is or is not development and is or is not exempted development.



Signed:



David Mulcahy

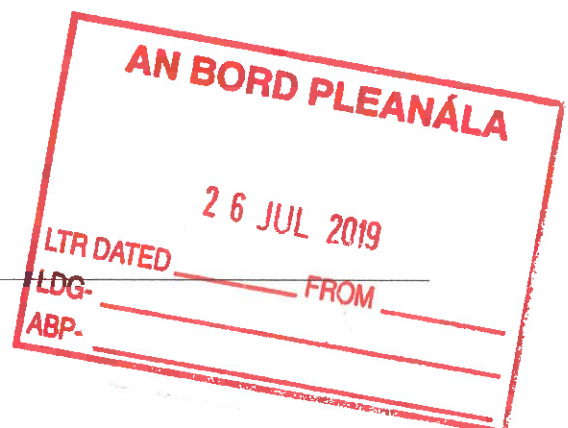
BA (Mod. Natural Sciences), MRUP, MSc. Urban Design, MIPI, MRTPI

David Mulcahy Planning Consultants Ltd

CHARTERED PLANNING CONSULTANTS

Appendix

A Copy of Kildare County Council declaration.



Comhairle Contae Chill Dara
Kildare County Council



Date: 01/07/2019
Our Ref: ED/00723

REGISTERED POST

Tameric Investments
c/o David Mulcahy,
67 The Old Mill Race,
Athgarvan,
Newbridge,
Co.Kildare

E:Application for a Declaration of Exempted Development under Section 5 at Kildare Health Centre, Tully Road, Kildare Town, Co Kildare

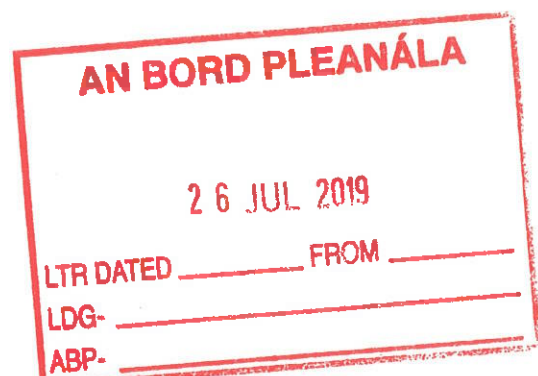
Dear Sir/Madam,

I refer to your correspondence received 15 March 2019 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 as amended in this regard.

Yours sincerely,


Senior Executive Officer
Planning Department





Declaration on Development and Exempted Development Section 5 of the Planning and Development Act 2000 (as amended)

ED/00723

WHEREAS a question has arisen as to whether the change of use of GP surgery to methadone clinic at Kildare Health Centre, Tully Road, Kildare Town is or is not development and is or is not exempted development.

AS INDICATED on the particulars received by the Planning Authority on 15/03/2019 and 05/06/2019

AND WHEREAS Tameric Investments c/o David Mulcahy, 67 The Old Mill Race, Athgarvan, Co. Kildare requested a declaration on the said question from Kildare County Council;

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended);
- (c) Class 8, Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

AND WHEREAS Kildare County Council has concluded that the permitted use on this site is considered to be a Health Centre and therefore a class of use coming within the scope of Class 8(a) of Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Its use for the dispensing of methadone and other medical services does not constitute a material change of use of the lands and is therefore NOT DEVELOPMENT and therefore the question of Exempted Development does not arise.

NOW THEREFORE Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed change of use is not development and therefore the question of exempted development does not arise.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

01st July 2019

