

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Date: Tuesday, 29th September 2020

Dear Sir/Madam

I wish to appeal the attached:

Declaration of Development & Exempted Development Under Section 5 of the Planning Development Act 2000 (as amended) as issued by Kildare County Council (Reference: ED00799)

I enclose a copy of Kildare County Council's decision dated 4th September 2020 and I also enclose the standard fee of €220.

Original Question put to Kildare County Council:

Whether a development comprising the change of use from a house to use as a residence by persons with an intellectual disability or mental illness at Mylerstown, Naas, Co. Kildare; approximately 1.5km east of the village of Two-Mile-House, is exempted development.

Kildare County Council, by letter dated 15th July 2020, requested further information as to whether the existing dwelling was in compliance with the original Planning Permission granted in November 1999. The intent of this letter was unclear, but we replied by submitting an up-to-date Report from a Wastewater Consultant, who confirmed that the Wastewater Treatment Plan installed at the house was in good working condition at the time of inspection. There were also remains of an old timber shed on the site and this was removed. We carried out a search against the property on the Planning Register, and there were no Planning Enforcement or other Orders registered against the site. We are satisfied that the property is in compliance with the original Planning Permission as granted by the Council.

Statutory Provisions

Planning and Development Act 2000

- s.3(1) states that in this Act, 'development' means, except 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.
- s.4(2)(a) states that The Minister may, by regulations, provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that:
- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carry out of such development would not offend against principles of proper planning and sustainable developments.
- Or
- (ii) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

AN BORD PLEANÁLA	
LDG- <u>031194-20</u>	
ABP- _____	
30 SEP 2020	
Fee: € <u>220</u>	Type: <u>cheque</u>
Time: _____	By: <u>post</u>

Planning and Development Regulations 2001

Article 6(1) states that: 'subject to Art.9, development of a class specified in Column 1 or 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 of the mention of that class in the said 'Column 1'

Class 14(f) of Part 1 of the Second Schedule states that the following will be exempted development: *'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. This exemption Class 14(f) is subject to the following condition or limitation: The number of persons with an 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.'*

Article 9(1) states that 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.
- (ii) Endanger public safety by reason of a traffic hazard or obstruction of road users.
- (iii) Consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure, the use of which is an unauthorised structure.

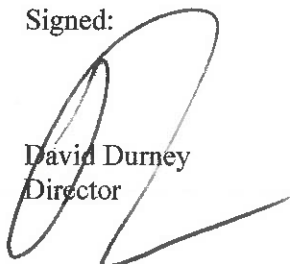
We are satisfied that none of these apply in this case.

It is our contention, therefore, that under the 2001 Planning and Development Regulations, the only relevant provision is Class 14(f) of Part 1 of the Second Schedule, which states that the following change of use shall be considered to be exempted development: (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. This exemption Class 14(f) is subject to the following condition or limitation: 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.

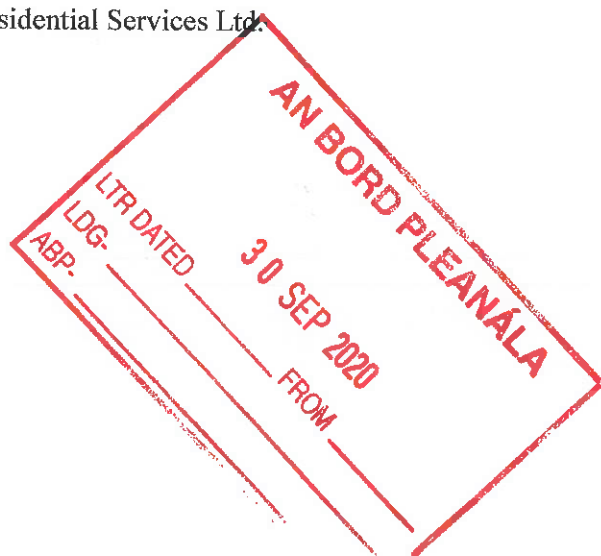
I attach herewith the following:

- Copy of Kildare County Council's decision dated 4th September 2020
- Standard Appeal Fee of €220.00
- Profile of New Beginnings Childcare & Residential Services Ltd.

Signed:



David Durney
Director



Profile of New Beginnings Childcare & Residential Services Ltd.

New Beginnings Childcare & Residential Services Ltd. was established in 2007 and provides residential childcare to vulnerable children and young people in the care of the State.

New Beginnings provides long-term care interventions for children and young people with intellectual and mental health difficulties. We currently have 1 residential unit in Newbridge and, due to demand, have decided to open another service in the Kildare area.

New Beginnings currently provides local employment for 13 individuals and, with the introduction of another service, will provide 15 more employment opportunities.

The focus of New Beginnings is to provide a 'home' for children and young people and assist them in attaining their developmental goals throughout their childhood/adolescence, in order to assist them in becoming independent adults after they turn 18 years of age.



Comhairle Contae Chill Dara
Kildare County Council



Date: 04/09/2020
Our Ref: ED/00799

REGISTERED POST

David Durney,
t/a New Beginnings Childcare & Residential Services,
32 The Grove,
Liffey Hall,
Newbridge,
Co. Kildare.

RE: Application for a Declaration of Exempted Development under Section 5 at Mylerstown, Naas, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received on the 15th June 2020 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 of Development & Exempted Development under
Section 5 of the
Planning and Development Act 2000 (as amended)

ED/00799

WHEREAS a question has arisen as to whether a development comprising the change of use from a house to use as residence by persons with an intellectual or physical disability or mental illness at Mylerstown, Naas, Co. Kildare is or is not development and is or is not exempted development

AS INDICATED on the plans and particulars received by the Planning Authority on 15th June 2020, and further information received 11th August 2020

AND WHEREAS David Durney has 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;

- Planning and Development Act 2000 (as amended);
- Planning and Development Regulations 2001 (as amended) and;
- Documentation received with the application;

AND WHEREAS Kildare County Council has concluded that the proposed works comprise development to which the provisions of the following applies:

- Sections 2, 3 and 5 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and;
- Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2001 (as amended);


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 works **is development** and **is not exempted development** because:

- Change of use from house to use as a residential centre for children, the residence will provide for 4 residents and 2 residential carers, constitutes development as defined by Section 3 (1) of the Planning and Development Act 2000 (as amended) Act.
- This development falls within the parameters of Class 14 (f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), but is not exempted development under restrictions on exemption imposed by Article 9 (1)(a)(viii) which states;
"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—
(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use

This development is therefore **not exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) as the Applicant has failed to adequately demonstrate that the existing dwelling is an authorised structure.

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

4th September 2020


Director of Services

