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The Secretary,
An Bord Pleanala
64 Marlborough Street,
Dublin 1

28th February, 2021.

JN 6662.

Re: Knockadreet, Roundwood, Co Wicklow, A67 T282
(The subject property).
Land Registry Folio WW3812. (Copy attached Appendix I)
Planning Authority: Wicklow County Council
Section 5 Referral.
Wicklow County Council Exemption Ref No 03/2021
Change of use of house to registered children's residential home.

Dear Sir,

I am instructed by Elaine Currie Director of Attuned Programmes Ireland Ltd. t/a FutureScape, 94 Saunders Lane Rathnew, Merrymeeting Co Wicklow and 4 Rogan's Court, Patrick Street, Dun Laoghaire Co. Dublin under the Planning and Development Act 2000, Section 5 (3) (a) to refer a declaration by Wicklow County Council for review.

The Wicklow County Council decision is dated 5th February, 2021.

I attach a copy of the submission to the Planning Authority and the Planning Authority declaration and the appropriate payment fee of €220 is attached. **(Appendix II)**

QUESTION REFERRED:

Whether the development comprising the use of a dwelling house to provide residential care at Knockadreet, Roundwood, Co Wicklow, A67 T282 causes a traffic hazard as defined by the Planning and Development Act 2000-2020, with particular reference to the Planning and Development Regulations Article 9 (1) (a) (iii) or, does not cause a traffic hazard and is or is not development and is exempted development.

DESCRIPTION OF PROPOSAL:

The following is the description of the proposal submitted to the Planning Authority;

Section 5 exemption on the current planning permission to change the use of the house to a registered children's residential home. I am looking to register this house with Tusla Child and Family Agency as a home wherein one or more young people will reside with the support of professionally qualified social care workers on duty 24 hours a day 7 days a week. The rotating team of professionals will be supported by a Deputy House Manager and a House Manager all of which positions will, be advertised and where possible recruited locally. Under Tusla registration the house would be maintained to a high domestic standard, where possible by local trades persons, while adhering to the Fire and Safety Regulations set out in the code of practice for community dwelling 2016. This would involve the installation of an A1 integrated fire alarm and fire certification to ensure the house including internal doors have the appropriate fire retardation. This will be certified by a Chartered Engineer. The house and the provision of service within the house would be subject to regular inspection by Tusla to ensure it complies with HIQA National Standards for Children's Residential Care Centres in Ireland 2018 a pre-requisite of which is that the house is not identifiable as anything other than a domestic home providing homely care to a young person in the statutory care of the state.

REASON FOR REFUSAL:

The Planning Authority give the ***"Main Reasons with respect to Section 5 Declaration"*** as *"Given the location of the dwelling on Knockadreet Lane, which is seriously substandard in width, alignment and junctions, it is considered that the proposed change of use would represent a serious traffic hazard. Therefore, the provisions of Article 9 (i) (a) (iii) applies and therefore the proposed development would not be exempted development".*

No other reason is given by the Planning Authority and it is therefore reasonably assumed the Planning Authority accepts that the proposed development otherwise constitutes exempted development.

PLANNING PERMISSION EXISTING DWELLING AT THE SUBJECT PROPERTY:

Planning Permission was sought on the 11th November, 2004 and obtained on the 6th July, 2005 for the existing subject dwelling, under planning permissions, Register Reference No **041800**, which related to "bungalow and effluent treatment system in accordance with EPA standards 2000" at Knockadreet, Roundwood.

The applicant was Michael Gaffney.

During the planning application process further information was sought on the 11th January 2005.

Four items of further information were sought relating to;

1 Local Needs.

2 Water Supply.
3 Height and scale of the proposed dwelling.
4 Archaeological monuments.

Traffic hazard was not an issue.

A further information clarification was issued by the Planning Authority on the 26th April, 2006 relating to items 3 and 4.

The Wicklow Area Engineer submitted a report on the 23rd December 2004, noting "*the entrance is existing so if no significant increase in traffic I have no objection*" **(Copy attached Appendix III).**

Ultimately a planning permission was granted on the 6th July, 2005. **(Copy attached Appendix III).**

Potentially four to six adults could occupy the dwelling, with four to six cars. Potentially twenty-four or thirty-six vehicle movements or more per day could result from the permission.

COMMENCEMENT NOTICE:

A valid Commencement Notice was served the 31st January, 2006 and was given the Development Commencement No BCR57/6.

RELEVANT CONDITIONS:

The development was subject to nineteen conditions.

Planning Conditions 6 and 7 are relevant to the current Section 5 application.

Condition 6 required entrance gates to be recessed 5m from the public road carriageway, and the wing walls not to exceed 0.8m high.

Condition 6 was substantially complied with.

Condition 7 required sightlines of 40m in each direction set back 3m from the edge of the public road carriageway with the revised boundary finished between 200-300mm above the carriageway.

Condition 7 was substantially complied with. I attach a drawing and photographs showing the sightlines achieved and entrance completion works. **(Drawing 6662-01).**

Condition 2 required a burden to be registered against the title in relation to the type of person qualified to occupy the dwelling. It is plain from the Land Registry Folio (WW3812) no burden registration took place and the Planning Authority is now estopped under Section 157 (4) (a) (ii) of the Planning and Development Act 2000 (as amended) from seeking to enforce compliance. In addition, the property is no longer in the ownership of the original applicant. **(Appendix I).**

PLANNING PERMISSION TO EXTEND THE EXISTING DWELLING:

The house was sold to the present owners.

Planning permission was sought and obtained for to extend the existing dwelling, under planning Register Reference No **17857** for a single-storey extension to the sides, rear and front of existing dwelling and all associated site works and services.

The applicants were Antoinette and David Rooney.

Further information was sought, and related to;

1 Waste water treatment.
2 Landscaping.

No issue was raised in relation to entrance onto the public road or intensification of vehicle movements from the subject property.

Planning permission was granted on the 16th January, 2018. **(Copy attached Appendix IV)**

No planning condition attached to the permission in relation to the entrance and access onto the public road, and it is reasonably assumed that the Executive Area Engineer and the Planning Authority were satisfied that the entrance complied with parent permission conditions, and no new or greater traffic hazard resulted.

No planning condition linked this permission to the previous permission, reg ref no 041800.

The 2017 planning permission creates a large house with four double bedrooms and a capacity of eight adults, with the likelihood that they will all have cars.

No comment was made by the Planning Authority in the Planner's report in relation to the enlarged dwelling causing a traffic hazard.

No report was received from the Executive area Engineer.

PLANNING PERMISSION 17857, LIKELY TRAFFIC MOVEMENTS:

On this basis the Planning Authority in granting planning permission under Register Reference No 17857, were aware that the volume of traffic entering and exiting the site on a daily basis would be increased over the previous permitted dwelling, and would be likely to be in the order of sixteen to forty-eight plus, vehicle movement per day, it is plain the Planning Authority were satisfied the entrance and exit off the public road was safe and suitable for the increased vehicular movements. The vehicle movements associated with a dwelling is random and could be dramatically increased when parties or funerals take place at the subject property.

SECTION 5 REFERRAL, LIKELY TRAFFIC MOVEMENTS:

The proposed facility would accommodate one child, two staff / house or deputy-house manager. Vehicle arrivals and departures, would be controlled and at regular specific times of the day.

Staff would change over on an eight-hour shift, consequently you would have one to three vehicles movements per shift, totalling six to eighteen movements per day.

The vehicle movements associated with the proposed childcare facility would be strictly controlled and would plainly represent a significant reduction on the random vehicle movements associated with the eight-person planning permitted subject dwelling, by both occupants and visitors.

It is plain from the foregoing that the proposed change of use will not cause any new or greater traffic hazard.

CURRENT ENTRANCE:

The current entrance is illustrated on the attached drawing 6662-01.

It is plain from this drawing that the gates are recessed a considerable distance off the road allowing several vehicles to queue within the curtilage of the site, while waiting for access through the gates and causing no obstruction of the public road or inconvenience to other road users. Similarly, four or five vehicles can queue between the gate and public road while waiting to leave, causing no traffic hazard or obstruction.

The width of the public road to the subject property at the entrance to the site is 2.75m.

From the documents submitted with both planning applications (041800 & 17857) the entrance layout onto the public road is not plainly shown and there is no evidence that the current entrance was materially altered.

Notwithstanding the foregoing, The Planning and Development Regulations 2001, as amended, Article 9 (1) plainly 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—*

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width"

The width of the current public road carriageway is as stated above 2.75m.

The width of the current entrance and the depth to the gate off the public road was not commented on by the planner in dealing with the subject Section 5 application, and it is reasonably assumed therefore they were satisfied it was compliant with the previous permissions.

Further, Article 9 (1) (a) (ii) permits the widening of the entrance to the subject property, because the public road is less than 4m wide.

This exemption is not subject to any other criteria, and is plainly not considered to be a traffic hazard, as there is no such limitation associated with Article 9 (1) (a) (ii).

LOCATION OF THE DWELLING:

The dwelling is not visible from the public road and is set back over 250m off the road. This is in line with the HIQA National Standards for Children's Residential Care Centres in Ireland 2018 pre-requisite.

It is in excess of 250m from other dwellings in the area and provides an ideal setting for care of a vulnerable child.

CARE IN THE COMMUNITY AND THE PLANNING AND DEVELOPMENT REGULATIONS 2001:

The Planning and Development Regulations 2001 as amended recognises the need for care in the community and this would in my opinion justify the inclusion under exempted change of use of Class 14 (f) in Schedule 2, Part 1, which, states *"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."* Subject to *"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."*.

Intellectual and physical disability are identifiable conditions, mental illness is much more intangible.

Mental illness, also called mental health disorders, refers to a wide range of mental health conditions — disorders that affect mood, thinking and behaviour. A few examples of mental illness include depression, anxiety disorders, schizophrenia, eating disorders and addictive behaviours.

Many people have mental health concerns from time to time. But a mental health concern becomes a mental illness when ongoing signs and symptoms cause frequent stress and affect ability to function.

A mental illness can make a person miserable and can cause problems in their daily life, such as at school or work or in relationships.

The stress caused to a child in an abusive or threatening relationship, being removed from that environment, or simply being separated from parents who are unable to care for them, will cause mental stress, which may be described as mental illness at certain times.

REGISTERED PROVIDER:

This proposed centre will be operated by a registered provider who is charged with delivering child-centred, safe and effective care and support, including the mental health of the child.in care.

PROTECTION OF A VULNERABLE CHILD:

For to protect a vulnerable child in a community setting it is important that the dwelling used remains discrete and anonymous, and cannot be readily identified, particularly by those who may pose a threat to the child.

The avoidance of a planning application that requires public notices is essential and I am of the opinion that such was one of the intentions when establishing Class 14 (f) described above.

As the planning application system is public and is readily searchable it is impossible to disguise the use of a particular dwelling. It is therefore inappropriate that such a proposal be placed in the planning system, as it causes a real danger to the vulnerable child.

PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED):

Section 4 (1) (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

The proposed child care facility requires no alterations other than fire compliant internal alterations.

Section 4 (3) (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

I am of the opinion the proposed child care facility falls under Class 14 (f0 of the Planning and Development Regulations 2001 (as amended).

Section 4 (4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

I am of the opinion the proposed child care facility does not require environmental impact assessment or an appropriate assessment.

Section 4(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—
(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and
(b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

Section 177U (9) In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

As the dwelling and associated site works is already in place no environmental impact assessment or appropriate assessment is required.

PLANNING AND DEVELOPMENT REGULATIONS 2001 (AS AMENDED):

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

Article 9 (1) (a) (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

Article 9 (1) (a) (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

SCHEDULE 2, PART 1, Change of use, Class 14 (f);

Column 1 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.

Column 2 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.

Condition 2 of planning permission reg ref no 041800 was not complied with and is now beyond enforcement, under Section 157 (4) 9a) (ii) of the Planning and Development Act 2000 (as amended).

PLANNING AUTHORITY SECTION 5 DECLARATION (03/2021):

The Planning Authority in making the Section 5 decision in relation to the subject property placed no reliance on Article 9 (1) (a) (i) of the Planning and Development Regulations 2001(as amended) and did not rely on Condition 2 of planning permission 041800, as no burden was ever registered on the against the title of the subject property or land, and the Planning Authority is now estopped from seeking compliance with Condition 2, under Section 157 (4) (a) (ii) of the Planning and Development Act 2000 (as amended).

PREVIOUS PLANNING AUTHORITY AND AN BORD PLEANALA DECISIONS:

A number of previous Local Authority and An Bord Pleanala decisions are appended in support of this referral.

RL2059 – 2003: (Appendix V)

A rural dwelling was used to house four children and their carer's.

The Bord Inspector in this case took the view that the applicant Health Board did not identify the particular children as suffering from mental illness and did not therefore meet the criteria

set out in Class 14 (f). The inspector concluded the change of use was material, was development and was not exempted development.

An Bord Pleanala Board disagreed with the Inspectors conclusion and considered that the change of use, by reason of its nature and scale, did not constitute a material change of use. The Board therefore concluded the change of use of the house , to provide residential care does not comprise development.

RL2430 – 2007: (Appendix VI)

It was proposed to house two children with disabilities, with carers in twenty-four attendance.

The Board Inspector concluded the change of use did not constitute a material change of use , which would come within the scope of Section 3 (1) of the Planning and Development Act 2000, and is not development.

The Board upheld the Inspector's conclusion.

RL2426 – 2008: (Appendix VII)

This proposal was to provide a care home for six children and two carers, 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 case was more complex than the current case, as it related to extension of the existing building.

The Board Inspector concluded that the works were development and was not exempted development.

The Board disagreed with the Inspector's report and concluded the change of use from parochial house to a care home for six children is development and is exempted development.

RL2552 – 2009: (Appendix VIII)

This proposal was for the change of use from a dwelling to a childcare facility for 11- to 17-year-old children with a range of social, psychological and emotional difficulties, in a rural area.

The Board's Inspector concluded the change of use was not a material change of use and is not development.

The Board concurred with the Inspector's report

Cork County Council R563/20: (Appendix IX)

The proposal was for the change of use from a dwelling house to a registered children's residential home.

The Planning Authority having regard to:

Section 4 (4), 4 (4A) and 177U(9) of the Planning and Development Act 2000 (as amended) declared the change of use is not development.

CONCLUSION:

Having regard particularly to –

(a) Section 2, 3 and 4 of the Planning and Development Act 2000 as amended.
(b) Article 6 and 9 of the planning and Development Regulations 2001 as amended
(c) Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001
(d) The nature and scale of the use of the subject property.
(e) The evidence submitted above showing the proposed change of use does not endanger public safety by reason of a traffic hazard or obstruction of road users.

I ask An Bord Pleanala to conclude the change of use does not cause a traffic hazard or obstruction of road users is or is not development and is exempted development.

Yours Faithfully

William Doran

APPENDIX I

LAND REGISTRY FOLIO WW3812 & MAP

Land Registry

County Wicklow Folio 3812

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) **Description**	**Official Notes**
1	The property shown coloured Red as plan(s) 5 on the Registry Map, situate in the Townland of KNOCKADREET, in the Barony of NEWCASTLE, in the Electoral Division of NEWCASTLE UPPER. The Registration does not extend to the mines and minerals Description revised 07-APR-2014 D2014LR034566E. Plan C35B4 removed as D2011LR013943K abandoned - See Q2013LR012656J Plan C35B4 added. D2011LR013943K	Instrument L.R. 17/19780

Land Cert Issued: Yes

Collection No.:

Land Registry

County Wicklow Folio 3812

Part 1(B) - Property

Parts Transferred

No.	Prop No:	Instrument:	Date:	Area(Hectares):	Plan:	Folio No:

Land Registry

County Wicklow Folio 3812

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
~~1~~	~~14-SEP-1977~~ ~~A.P.237/75~~ ~~Margaret Kennedy of Knockadreet, Roundwood, Wicklow is full owner.~~ Cancelled D2004KW006313U 05-MAY-2004
~~2~~	~~31-AUG-2004~~ ~~D2004KW006313U~~ ~~D2004KW012179V~~ ~~MICHAEL GAFFNEY of Knockadreet, Roundwood, County Wicklow and SANDRA GAFFNEY of Knockadreet, Roundwood, County Wicklow are full owners.~~ Cancelled D2014LR034566E 07-APR-2014 Land Cert Application No.: D2004KW012179V Date: 08-SEP-2005 Issued To: MURPHY & CO SOLICITORS Address: THE OLD COURT HOUSE ABBEYLEIX LAOIS
~~3~~	~~07-APR-2014~~ ~~D2014LR034566E~~ ~~DAVID ROONEY of Knockadreet, Roundwood, County Wicklow and ANTOINETTE ROONEY of Knockadreet, Roundwood, County Wicklow are full owners.~~ Cancelled D2018LR071046M 17-MAY-2018
4	17-MAY-2018 D2014LR034566E D2018LR071046M ANTOINETTE ROONEY of Knockadreet, Roundwood, County Wicklow is full owner. Note: The previous joint ownership entry has been altered, D2018LR071046M, 17th May 2018.

Land Registry

County Wicklow Folio 3812

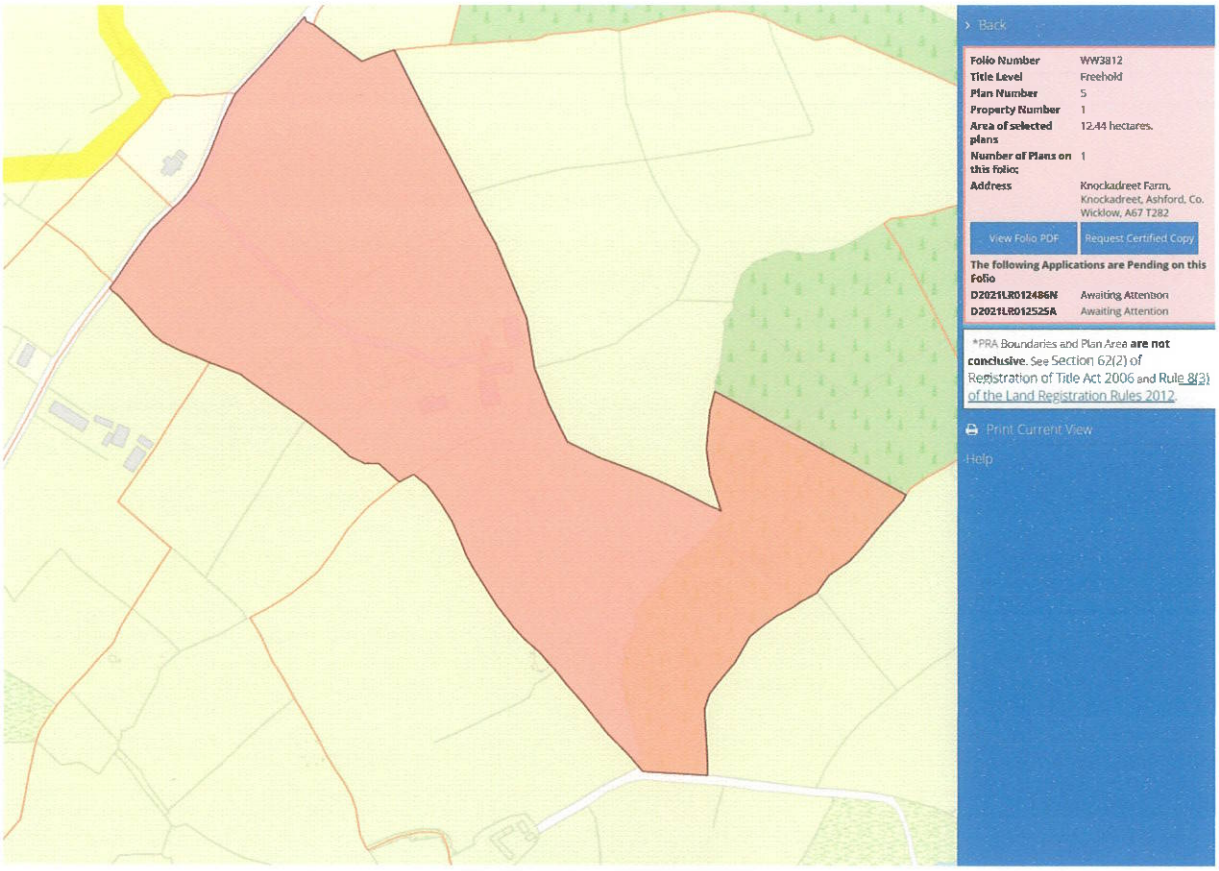
~~1~~	~~12 SEP 2019~~ ~~D2019LR135851B~~	~~The property is subject to the priority to be conferred by Section 108 of the Registration of Title Act 1964 as substituted by Section 66 of the Registration of Deeds and Title Act 2006.~~ Cancelled D2019LR144730T 15-OCT-2019

Land Registry

County Wicklow Folio 3812

Part 3 - Burdens and Notices of Burdens

No.		Particulars
~~1~~		~~The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.~~ Cancelled D2014LR034566E 07-APR-2014
2	15-OCT-2019 D2019LR144730T	Charge for present and future advances repayable with interest. BELVEDERE SECURITY LIMITED is owner of this charge. Note: This charge is also registered on folio WW26124F.



Folio Map WW3812

APPENDIX II

SECTION 5 SUBMISSION

&

WICKLOW COUNTY COUNCIL DECLARATION

Wicklow County Council
County Buildings
Wicklow
Co Wicklow
Telephone 0404 20148
Fax 0404 69462

Office Use Only

Date Received _____

Fee Received _____

APPLICATION FORM FOR A DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING & DEVELOPMENT ACTS 2000(AS AMENDED) AS TO WHAT IS OR IS NOT DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT

1. Applicant Details

(a) Name of applicant: Elaine Currie Director of Attuned Programmes Ireland Ltd. t/a FutureScape

Address of applicant: 94 Saunders Lane Rathnew Merrymeeting Co Wicklow

Note Phone number and email to be filled in on separate page.

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) _____

Address of Agent : _____

_____

Note Phone number and email to be filled in on separate page.

3. Declaration Details

i. Location of Development subject of Declaration:

Knockadreet
Roundwood
Co Wicklow
A67T282

ii. Are you the owner and/or occupier of these lands at the location under i. above ?
No.

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier:

Thomas Cahill
Nakilly House
Ashford
Co Wicklow

i.v. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, an payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration

I am requesting a section 5 exemption on the current planning permission to change the use of the house to a registered children's residential home. I am looking to register this house with Tusla Child and Family Agency as a home wherein one or more young people will reside with the support of professionally qualified social care workers on duty 24 hours a day 7 days a week. The rotating team of professionals will be supported by a Deputy House Manager and a House Manager all of which positions will, be advertised and where possible recruited locally. Under Tusla registration the house would be maintained to a high domestic standard, where possible by local trades persons, while adhering to the Fire and Safety Regulations set out in the code of practice for community dwelling 2016. This would involve the installation of a A1 integrated fire alarm and fire certification to ensure the house including internal doors have the appropriate fire retardation. This will be certified by a Chartered Engineer. The house and the provision of service within the house would be subject to regular inspection by Tusla to ensure it complies with HIQA National Standards for Children's Residential Care Centres in Ireland 2018 a pre-requisite of which is that the house is not identifiable as anything other than a domestic home providing homely care to a young person in the statutory care of the state.

Additional details may be submitted by way of separate submission.

v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration
Section 5 of the Planning and Development Act – Declaration of Exemption.

Additional details may be submitted by way of separate submission.

vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ? No

vii. List of Plans, Drawings submitted with this Declaration Application
Ordnance Maps have be attached to indicate exact location of the house / property.
There is no request to make any alteration to either the inside or the outside of this building other than the installation of an A1 integrated fire alarm system. There is ample parking on-site on the grounds of the house which is situation well off the road with a private gated avenue providing access. There will not be any commercial deliveries to the house. The house will continue to all intents and purposes to function as a domestic residence with the staff and young people engaging in day to day domestic living activities e.g. shopping and participating in activities in the local community.

viii. Fee of € 80 Attached ? Yes

Signed : Elaine Curris Dated : 05th January 2020

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.

- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.
- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.

ADDITIONAL CONTACT INFORMATION
NOT TO BE MADE AVAILABLE WITH APPLICATION

Please note:

- **This page will not be published as part of the planning file.**

Applicant:

Telephone No	0858626000
Email Address	*elaine.currie@futurescape.ie*
Fax No.	

Person/Agent acting on behalf of the Applicant (if any):

Telephone No.	
Email Address (if any)	
Fax No. (if any)	

Comhairle Contae Chill Mhantáin
Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

5 February 2021

Elaine Currie,
Director,
Futurescape,
4 Rogans Court
Patrick Street,
Dun Laoghaire
Co Dublin

RE: Declaration in accordance with Section 5
of the Planning & Development Acts 2000 – 2011

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000 in respect of the following:

Exemption Ref. No:	03/2021
Applicant:	Elaine Currie
Nature of Application:	change of use of house to registered children's residential home
Location:	Knockadreet Roundwood

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanala of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

pp

ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Comhairle Contae Chill Mhantáin
Wicklow County Council
Forbairt Pleanála agus Comhshaol
Planning Development and Environment

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000.

Applicant: Elaine Currie
Location: Knockadreet, Roundwood

DIRECTOR OF SERVICES ORDER NO. 198/2021

A question has arisen as to whether or not change of use of house to registered children's residential home is or is not exempted development.

Having regard to:

- The details submitted under Section 5 Declaration on 12/01/2021
- Sections 2 (1), 3 (1), 4 (1) (h) of the Planning & Development Act 2000 (as amended)
- Articles 6, 9 & 10 of the Planning & Development Regulations 2001 (as amended)
- Schedule 2, Pt.1 Class 14 (f) of the Planning & Development Regulations 2001 (as amended)
- WCC PRR 17/857 and PRR 04/1800
- An Bord Pleanala referral case 18.RL.2552
- Site Inspection carried out on 29/1/2021

Main Reasons with respect to Section 5 Declaration:
Given the location of the dwelling on Knockadreet Lane, which is seriously substandard in width, alignment and junctions, it is considered that the proposed change of use would represent a serious traffic hazard. Therefore, the provisions of Article 9 (i) (a) (iii) applies and therefore the proposed development would not be exempted development.

The Planning Authority considers that change of use of house to registered children's residential home is development but is NOT exempted development.

Signed: _____
ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 5 February 2021

APPENDIX III

FINAL GRANT PLANNING PERMISSION 041800

116

Comhairle Chontae Chill Mhantáin

WICKLOW COUNTY COUNCIL

Aras An Chontae
Cill Mhantáin
Telefón : (0404) 20148
Fax No : (0404) 69462
Intl VPN : 181 2100
E-Mail: plandev@wicklowcoco.ie
Web: www.wicklow.ie

Your Ref:

Our Ref:

PLANNING & DEVELOPMENT ACTS 2000 - 2002

NOTIFICATION OF FINAL GRANT

Michael Gaffney
John Murphy
Ballyteige,
Rathdrum,
Co. Wicklow.

Planning Register Number: 04/1800

Valid Application Receipt Date: 11/11/2004

In pursuance of the powers conferred upon them by the above-mentioned Acts, Wicklow County Council have by Order dated 06/07/2005 GRANTED PERMISSION to the above named, for the development of land, namely:-

Proposed bungalow and effluent treatment system in accordance with EPA standards 2000 at Knockadreet Roundwood

Subject to the 19 conditions set out in the Schedule attached.

Signed on behalf of WICKLOW COUNTY COUNCIL.

SENIOR EXECUTIVE OFFICER
PLANNING & ECONOMIC DEVELOPMENT

Date: 23/09/05

(It should be noted that where OUTLINE permission only is granted same is subject to the subsequent approval of the Planning Authority and until such approval has been obtained to detailed plans of the development proposed, the development is **NOT AUTHORISED**.)

PLANNING AND DEVELOPMENT ACTS 2000 - 2002

Reference Number in Register: 04/1800

S C H E D U L E

Pursuant to the Planning & Development Acts 2000 - 2002, permission is hereby granted, having regard to the objective of the Planning Authority in the current Development Plan to allow for essential rural housing need in the area, it is considered that the applicant comes within the scope of the housing need criteria. Subject to compliance with the conditions outlined in the schedule below the proposed development could be assimilated into the landscape and would be in accordance with the proper planning and development of the area.

1. This permission refers to the development as described in the documents lodged, as revised by the plans and particulars submitted on 10th June 2005, 18th April 2005 and 14th April 2005, save as the conditions hereunder require.

REASON: For clarification.

2. (a) The use of the proposed dwelling shall be restricted to the applicant or to other persons primarily employed or engaged in agriculture in the vicinity or to other such class of persons as the Planning Authority may agree to in writing. This requirement shall be embodied by a legal undertaking that shall be registered as a burden against the title of the land in the Land Registry or Registry of Deeds and shall be of ten years duration from the date of this registration. Evidence of this registration shall be submitted to the Planning Authority within twelve months of the commencement of development on the site.

   (b) The Planning Authority will consent to any sale of the completed dwelling by a lending institution in exercise of its powers as Mortgager in possession of this property and likewise consent to any sale by any person deriving title from the lending institution.

REASON: To ensure that development in this area of high amenity is appropriately restricted, in the

interests of proper planning and development and visual amenity.

3. **Before development commences**, the developer shall pay the sum of €2,000 (updated at the time of payment in accordance with changes in the Consumer Price Index as published by the Central Statistics Office) to the Planning Authority as a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

   The contribution sought is in accordance with Wicklow County Council's Development Contribution Scheme and Section 48(1) of the Planning and Development Acts 2000 to 2002.

REASON: The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof.

4. All surface water run-off from roofs, entrances, driveways, parking areas etc. shall be collected and disposed of within the site to soakpits, drains or adjacent watercourses. In particular, no such surface water run-off shall be allowed to flow onto the public roadway or adjoining properties, nor to discharge to the effluent disposal system.

REASON: In the interests of traffic safety and residential amenity.

5. Mains powered self-contained domestic smoke alarms, to BS 5839:Part 6:1995 grade D system, to give type LD3 cover, should be fitted on the ceiling of each landing or hallway.

REASON: In the interests of fire safety.

6. The entrance gates shall be recessed 5m from the public road carriageway. The recessed space shall be splayed with wing walls, timber fences or stone banks not exceeding 0.8m in height (including any pillars), splayed to provide an overall width of 6 - 8m along the roadside boundary.

REASON: In the interests of traffic safety.

7. (a) **Before any other development commences**, the roadside boundary shall be set back along a line formed by joining a point measured 3 metres back from the public road carriageway at the centre of the access driveway to a point 40 metres to the southwest and 40m northeast on the existing road boundary.

(b) The area between the public road carriageway and the revised boundary shall be finished 200 - 300mm above carriageway level and finished in grass.

(c) The revised boundary shall match the existing roadside boundary.

REASON: (a), (b) In the interests of traffic safety.
(c) In the interests of visual amenity.

8. The gradient of the access driveway shall not exceed 1 in 40 for a minimum distance of 6 metres from its junction with the public road.

REASON: In the interests of traffic safety.

9. The effluent dispcsal system shall be laid out as proposed and constructed to the specification of Waste Water Treatment Manuals-Treatment Systems for Single Houses (published by E.P.A. 2000). Photographic evidence of the installation of the septic tank/secondary treatment unit, distribution chamber, and percolation trenches and pipes shall be submitted on completion of the system. Before the development is occupied, a certificate from a Chartered Engineer, Environmental Health Officer, Hydrogeologist or other experienced qualified professional who has been deemed acceptable to the Planning Authority (with professional indemnity insurance) stating that the effluent disposal system has been installed in accordance with this condition, shall be submitted to the Planning Authority.

REASON: To ensure the provision of an adequate sewage disposal system, in the interests of public health and residential amenity.

10. The developer shall enter into an annual maintenance and servicing contract with regard to the sewage treatment system. This contract shall also include

for a guarantee of continual effective treatment of the effluent and for periodic de-sludging. Any malfunction of the system shall be immediately rectified.

Reason: In the interest of public health and of the amenities of property in the vicinity.

11. The external walls shall have a cement rendered finish. They shall be dashed or painted in the off-white colour range, unless the Planning Authority agrees another paint colour in writing.

REASON: In the interests of visual amenity.

12. The roof finish shall be blue/black slate, unless another roof finish is agreed in writing by the Planning Authority.

REASON: In the interests of visual amenity.

13. (a) The house shall be built into the hillside in such a manner that the finished floor level shall be not more than 0.15m above existing ground level at the lowest point along the downhill side of the house.

(b) When the floor slab has been laid and before any further development takes place on the dwelling a certificate from a Chartered Engineer, Architect or other suitably qualified professional (with professional indemnity insurance) stating that the floor level is in accordance with (a) above shall be submitted to the Planning Authority.

REASON: In the interests of visual amenity and integrating the development into the landscape.

14. **No development shall commence** until proposals for landscaping and tree planting on the site have been submitted to and agreed acceptable by the Planning Authority in writing.

REASON: In order to assimilate development on this site into the surrounding area, in the interests of visual amenity and proper planning and development.

15. Tree planting shall be carried out along the entire site boundary of the site comprising deciduous trees planted not less than <4-5 years old/ 2m high> and

evergreen species planted when not more than 900mm high. The species planted shall include mountain ash, silver birch, cedar, willow, sycamore, larch, spruce, pine and Lawson's cypress.

REASON: In order to assimilate development on this site into the surrounding area, in the interests of visual amenity and proper planning and development.

16. The landscaping and tree planting shall be carried out before or during the first planting season or part thereof occuring after the commencement of development. Any plants, which become seriously damaged, shall be replaced by others of similar size and species.

REASON: In order to assimilate development on this site into the surrounding area, in the interests of visual amenity and proper planning and development.

17. **NO DEVELOPMENT SHALL BE COMMENCED UNTIL SECURITY,** for the satisfactory completion and establishment of tree planting required by this permission has been given. This security is required by the Council for application at its absolute discretion if such planting is not duly provided and established to its satisfaction. In order to secure the return of this security, the applicant shall, on the completion of the tree planting, submit full details of all tree planting carried out, including details of the number, species and location of trees planted and photographs of same to the Planning Authority for approval. The security shall be given by a lodgement with the Council of the sum of €1,000.

REASON: To ensure satisfactory completion of tree planting.

18. Effective composting facilities, capable of dealing with all organic and garden waste that will be generated by this development, shall be provided before the house is occupied.

REASON: To reduce waste in the interests of proper planning and development.

19. The mobile home currently on site shall be removed with 3 months of the Grant of Permission.

REASON: In the interest of proper planning and development.

APPENDIX IV

FINAL GRANT PLANNING PERMISSION 17857

Comhairle Contae Chill Mhantáin
WICKLOW COUNTY COUNCIL
Forbartha agus Pleanála - Planning and Development

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404)69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

196
+284 extn.
480 sqm.

PLANNING & DEVELOPMENT ACT 2000 to 2015

NOTIFICATION OF FINAL GRANT

Aman Antoinette Rooney & David Rooney
Deane Turner Associates
Block 6, Suite A
Broomhall Business Park
Rathnew
Co. Wicklow

Planning Register Number: 17/857

Valid Application Receipt Date: 17/07/2017

In pursuance of the powers conferred upon them by the above-mentioned Acts, Wicklow County Council have by Order dated 16/01/2018 GRANTED PERMISSION to the above named, for the development of land, namely:-

Single storey extensions to sides, rear and front of existing dwelling, provision of new 60m2 soil polishing filter and all associated site works and services at Knockadreet Farm, Knockadreet, Ashford, Co. Wicklow.

Subject to the 10 conditions set out in the Schedule attached.

Signed on behalf of WICKLOW COUNTY COUNCIL.

C Canterbury

pp **ADMINISTRATIVE OFFICER**
PLANNING & DEVELOPMENT

Date: 23rd February, 2018

(It should be noted that where OUTLINE permission only is granted same is subject to the subsequent approval of the Planning Authority and until such approval has been obtained to detailed plans of the development proposed, the development is **NOT AUTHORISED**.)

Tá an doiciméid ar fáil ar iarratas i bhformáid eile/malartach.
This document is available in alternative formats on request.

Seoltar gach comhfreagras chuig Stiúrthóir Seirbhísí, Forbartha agus Pleanála.
All correspondence should be addressed to the Director of Services, Planning and Development.

PLANNING & DEVELOPMENT ACT 2000 - 2015

Reference Number in Register: 17/857

SCHEDULE

Pursuant to the Planning & Development Acts 2000-2006, permission is hereby granted, having regard to the existing dwelling on site the proposed extension would be compatible with this structure and would not impinge on the amenities of the area. Subject to the compliance with the attached conditions the proposed development would be in accordance with the proper planning and sustainable development.

1 This permission refers only to the development as described in the documents lodged, as revised by the plans and particulars submitted on the 14/12/2017, save as the conditions hereunder require.

REASON: For clarification.

2 Before development commences, the developer shall pay the sum of €12,200 (twelve thousand and two hundred euro) to the Planning Authority as a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority.

The contribution sought is in accordance with Wicklow County Council's Development Contribution Scheme and Section 48(1) of the Planning and Development Act 2000.

Where the contribution remains unpaid the monies payable shall be increased in accordance with increases in the Consumer Price Index as published by the Central Statistics Office on the 1st January of each year following the date of the Final Grant.

REASON: The public infrastructure and facilities included in the Development Contribution Scheme will facilitate the development and it is considered reasonable that the developer should contribute towards the cost thereof

3 The roof and external wall finishes shall match that of the existing dwelling in all respects.

REASON: In the interests of architectural harmony and visual amenity.

4 The existing dwelling and proposed extension shall be jointly occupied as a single housing unit and shall not be sold, let or otherwise transferred or conveyed save as part of the dwelling.

REASON: To restrict the use of this extension in the interests of residential amenity.

5 All surface water run-off from roofs shall be collected and disposed of within the site to soakpits, drains or adjacent watercourses. In particular, no such surface water run-off shall be allowed to flow onto the public roadway or adjoining properties, nor to discharge to the effluent treatment system.

REASON: In the interests of traffic safety and residential amenity.

6. NO DEVELOPMENT SHALL BE COMMENCED UNTIL SECURITY, for the satisfactory completion and establishment of the landscape planting as described in the landscape report and associated Dwg. " Landscape Plan" submitted with this application has been given. This security is required by the Council for application at its absolute discretion if such planting is not duly provided and established to its satisfaction. In order to secure the return of this security, the applicant shall, on the completion of the planting, submit full details of all landscaping and planting carried out, including details of the number, species and location of trees planted and photographs of same to the Planning Authority for approval. The security shall be given by a lodgement with the Council of the sum of € 1,000.

REASON: To ensure satisfactory completion of landscaping and planting.

7. The landscaping and tree planting shall be carried out before or during the first planting season or part thereof occurring after the commencement of development. Any plants, which become seriously damaged, shall be replaced by others of similar size and species.

REASON: In order to assimilate development on this site into the surrounding area, in the interests of visual amenity and proper planning and development.

8. Before development commences a revised section drawing shall be submitted for agreement in writing with the planning authority, showing the polishing filter being raised to take account of a possible high water table level of 0.5m below ground level.

REASON: To ensure the provision of an adequate sewage disposal system, in the interests of public health and residential amenity.

9. The effluent disposal system shall be laid out as proposed subject to the written agreement under condition No. 8 and constructed to the specification of Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10), Code of Practice, published by E.P.A 2009

Photographic evidence of the installation of the percolation trenches/ polishing filter and pipes shall be submitted on completion of the system. Before the extension is occupied, a certificate from a Chartered Engineer, Environmental

Health Officer, or Hydrogeologist, (with professional indemnity insurance)stating that the effluent disposal system has been installed in accordance with this condition, shall be submitted to the Planning Authority.

REASON: To ensure the provision of an adequate sewage disposal system, in the interests of public health and residential amenity.

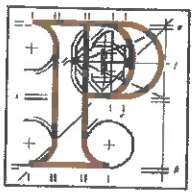
10. **Within 6 months of the final grant**, the developer shall arrange to have the water supply source tested for compliance with the Drinking Water Regulations 2014 (SI 122 of 2014). The results of testing shall be submitted to and agreed with the Planning Authority. Where such results require any remedial measures these shall be carried out at the expense of the developer.

REASON: In the interests of public health.

APPENDIX V

REFERRAL TO AN BORD PLEANALA RL2059

An Bord Pleanála



Referral under Section 5 of the Planning and Development Act, 2000

Inspector's Report

Question Referred

Whether the development comprising the use of a dwellinghouse to provide residential care at Ories, Fardrum, Athlone is exempted development

Type of Referral

By planning authority under Section 5(4) of the above Act

Referrer:	Westmeath County Council
Other Party:	Midland Health Board
Observers:	None
Others with whom Question raised:	Residents of Ories
Planning Authority Ref. No.:	EA013
Inspector:	Michael Walsh
Inspection Date:	23rd June, 2003.

SITE LOCATION

The site is located approximately 4 kilometres south-east of Athlone. It adjoins a cul-de-sac which runs southward for some distance from the Dublin Road (N6). It is about 600 metres from the N6 junction.

PLANNING HISTORY

I would refer briefly to three previous decisions relating to this property.

Reg. Ref. No. 547/86 Permission granted on 16.01.1987 for erection of house.

Reg. Ref. No. 91/297 Permission granted on 24.07.1991 for retention of Puraflo effluent treatment system.

Reg. Ref. No: 01/1174 Permission granted on 08.01.2002 for retention of garage.

DETAILS OF THE QUESTION REFERRED

This is essentially as set out on the title page. The referral has been made under Section 5(4) of the 2000 Act and in these circumstances it has not arisen from a declaration by the planning authority. The question relates to the alleged change of use from a dwellinghouse to residential accommodation and care to people in need of care, not necessarily being people having intellectual physical disability or mental illness.

POSITIONS OF THE PARTIES AND OTHERS

Westmeath County Council

The change of use from the previous use of this dwellinghouse to its current use is an unauthorised use. Referring to Part 4 of the Second Schedule of the Planning and Development Regulations 2001, it is the considered opinion of the Council that the current use is excluded in Class 9 of this Schedule.

This class is expressed as follows:

Use–

(a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),
(b) as a hospital or nursing home,
(c) as a residential school, residential college or residential training centre.

It is also the opinion of the Council that the exempted change of use set out in Class 14(f) of this Schedule is not applicable in this case as the persons to whom care is

being provided do not necessarily have intellectual, physical disability or mental illness. The children are from home environments whose parents were unable to care for them and the persons providing care reside in the house while on duty.

This class is expressed as follows:

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 use 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.

Midland Health Board

This house has always been in residential use and its continued use for ordinary residential purposes does not comprise a material change of use. The use of existing houses for residential care has never been considered a change of use by any other planning authority. To draw a distinction between the use of this house and any other family home or fostering arrangement is unfair, discriminatory and likely to compound the disadvantages already being visited on children placed into the care of the Health Board. The Board in this case is effectively discharging its responsibility as the legal parent of those children.

There is a misunderstanding in relation to Class 9 of Part 4 of Schedule 2 of the Regulations insofar as that class excludes the use of a house for the purposes of residential care and is therefore irrelevant. Referring to Class 14(f) of Part 1 of the Schedule, it would be completely contrary to the intention of the legislation if the provision of residential care to persons free of all disability and illness should be considered a change of use when this class was clearly drafted to avoid this situation.

The basic circumstances are that there are four children living in the house in question, who attend school and have social and recreational attachments in the area. They would have previously resided on the main street in Moate in a house deemed unsuitable in terms of space and layout and without the option of refurbishment and extension. This move has enhanced the quality of life for these children.

Residents of Ories

The initial complaint of these residents to the planning authority gave rise to this referral. These residents are concerned that intense use of the septic tank on the property will pollute a nearby stream, which is part of a watercourse from which wells serving their homes draw water, that the community including elderly residents living alone feel that they are vulnerable and that the Midland Health Board, who did not consult them, is acting in contravention of planning legislation in effecting a change and intensification of use of a private dwelling to an institutional type situation.

SITE DETAILS

The site is located in a relatively flat area of countryside to the east of Athlone. This area has a rural character and a dispersed settlement pattern with a mix of old and new houses.

The road leading to the site is a cul-de-sac which runs in a generally southerly direction from the N6 road for a distance of approximately 2 kilometres. Its standard is typical of a road of this type. It serves a total of some nine houses, five of them in a group near the main road junction.

The site is quite large with a lengthy road frontage. It has a lay-by suitable for parking along this frontage. The house is a reasonably conventional bungalow with semi-separate living and bedroom sections, the latter comprising four bedrooms and a bathroom. It also has an office.

The curtilage is large and well screened with dense boundary planting and substantial lawns. There is a driveway and parking area near the house. There is a free-standing double garage and a deck to the rear of the living section of the house. The treatment plant is located as shown. There is no other house in its immediate vicinity.

ASSESSMENT

Criteria for Consideration

The assessment relates to the question raised in the referral to the Board by Westmeath County Council under Section 5(4) of the 2000 Act. The basis of the question is that a change of use of this house at Ories has occurred through its acquisition by the Midland Health Board and its use for the care of four young persons. There are two parts to this question, which I propose to examine. The first is whether this change of use is a *material change of use* thereby comprising *development.* If the answer is that any change is not a material change, no further question arises. If on the other hand the answer is that the change is a material change, then the second part of the question is whether the development comprised in the material change of use is exempted development by reference to the provisions of the Planning and Development Act, 2000 and the Planning and Development Regulations, 2001.

It is important to note that this report does not include my consideration of whether the change of use is in accordance with the proper planning and sustainable development of the area nor whether this is a suitable location for this use. Referring to one particular concern of the residents, the report similarly does not include any consideration of the efficacy of the sewage treatment plant serving this house. Referring to a point made on behalf of the Health Board, the claim that such use has never been considered a change of use by any other planning authority has not been substantiated and is not being further considered in this report.

The Question of whether the Change of Use is Development

It can be accepted that some change of use has occurred and the nature and purpose of the current use has been clearly explained. The question to be answered is whether this change has been a material change.

It is clear that a domestic dwellinghouse can be used by a variety of groups. These include families with children, families without children, groups of adults whether mutually related or not and families with foster children. Any change within these groups of users would not be a material change. It has been suggested that the current use is essentially use as a family house with health board staff acting *in loco parentis*. The children however are not in a position where they could live independently but are dependent on care staff, who appear to combine staff residing in the house on a permanent basis and staff visiting the house during the day.

This use might give rise to distinctive patterns of activities or traffic movements but these would not necessarily be greatly different to those associated with normal domestic use. I consider in any case 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, this use is essentially of an institutional nature. I conclude therefore that a material change of use has occurred and that this comprises *development*.

The Question of whether this Development is Exempted Development

The 2000 Act makes explicit provision for certain types of development to be exempted from planning permission. The essential position is that these types are listed in Section 4(1) of the Act or are set out in regulations made under Section 4(2).

It can be inferred rapidly that this development does not fall within any of the types listed in Section 4(1). Two classes of development specified in the Regulations have been referred to as being of possible relevance, Class 9 of Part 4 of Schedule 2 of the Regulations and Class 14 of Part 1. I propose to examine the development which has taken place by reference to these and also to review any other relevant classes.

Class 9 of Part 4 refers to changes of use within a number of specified categories which are essentially of an institutional nature, effectively changes from one type of institution to another. These categories do not include use as a dwellinghouse. The Health Board's consultant has argued that the use of a house for purposes of residential care to people in need of care does not come into this class and I concur with this.

Class 14 of Part 1 specifies six exempted changes of use of which Class 14)f), quoted above, is that of possible relevance to this case. This allows for a change to use as a residence for persons with specified disabilities together with persons providing care for such persons. It might be inferred that a change of use of the type which has occurred was intended to be provided for as exempted development but the occupants needing care are specifically described as "persons with an intellectual or physical disability or mental illness". It is clear that the persons in this case do not have any of the above disabilities or illnesses; their circumstances have been clearly explained.

I infer therefore from the facts of this case that the change of use which has occurred does not come within Class 14(f) of Part 1 of the Second Schedule. Arguments have been put about the intent of legislation and about the discriminatory effects of the above interpretation but the nature of a referral is that reliance must be placed on the actual wordings in the legislation; the Board have no power to reinterpret these wordings nor to take account of the possible intent of legislators.

It can be inferred readily that no other provision of the exempted development regulations are applicable. The other five parts of Class 14 are clearly irrelevant. None of the other classes specified in Part 4 include the residential use of a house. Article 10(5) provides for the use of a house for child minding but I infer that that applies to crèches and similar facilities.

RECOMMENDATION

I have no further comments to make on the submissions and reports. I have concluded that the change of use which has occurred of this house is a material change of use, and thereby development, and that it is not exempted development. I recommend therefore that the Board find as follows:

Having regard particularly to:

(a) Sections 2, 3 and 4 of the Planning and Development Act, 2000,
(b) Article 6 of the Planning and Development Regulations 2001 with particular reference to Class 14 of Part 1 of Schedule 2 to these Regulations and
(c) Article 10 of the said regulations with particular reference to Class 9 of Part 4 of the said Schedule 2.

It is concluded that:

(a) The change of use which has occurred of the house in question was a material change of use,
(b) That change of use thereby comprised development and
(c) That change of use did not comprise exempted development by reference to the provisions of Section 4(1) and (2) of the Planning and Development Act, 2000 and to those of the regulations made under the said Section 4(2).

It is therefore decided that the change of use in question is development and is not exempted development.

Michael Walsh
Deputy Planning Officer

5th August, 2003.

An Bord Pleanála

Board Direction

Ref: 25.RL.2059

The submissions on this file and the Inspector's report were considered at a Board meeting held on 07 August 2003.

The Board considered the referral made under Section 5(4) of the 2000 Act. The Board first examined whether the change of use of the house at Ories, Fardrum, Athlone, to provide residential care, constitute a material change of use.

In arriving at its decision the Board disagreed with the conclusion of the Inspector and considered that the change of use, by reason of its nature and scale, did not constitute a material change of use. The Board, therefore, concluded that the change of use of the house at Ories, Fardrum, Athlone, to provide residential care, does not comprise development.

Please prepare draft order.

Board Member _____ Date 08 August 2003
Michael P.G. Wall

An Bord Pleanála

PLANNING AND DEVELOPMENT ACTS, 2000 TO 2002

Westmeath County

An Bord Pleanála Reference Number: 25M.RL.2059

WHEREAS a question has arisen as to whether the use of a dwellinghouse at Ories, Fardrum, Athlone, County Westmeath to provide residential care is or is not development or exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Westmeath County Council on the 9th day of April, 2003:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to sections 2 and 3 of the Planning and Development Act, 2000:

AND WHEREAS An Bord Pleanála has concluded that the change of use of the said dwellinghouse does not constitute a material change in the use of the said dwellinghouse, which would come within the scope of section 3(1) of the Planning and Development Act, 2000:

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 use of the said dwellinghouse at Ories, Fardrum, Athlone, County Westmeath to provide residential care is not development.

In arriving at its decision the Board disagreed with the conclusion of the Inspector and considered that the change of use, by reason of its nature and scale, did not constitute a material change of use.

Member of An Bord Pleanála duly authorised to authenticate the seal of the Board.

Dated this day of 2003.

APPENDIX VI

REFERRAL TO AN BORD PLEANALA RL2043

An Bord Pleanála

Inspector's Report

Question:	Whether the use of an existing house for the care of children at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly is or is not development or is or is not exempted development.
Referrer:	Fresh Start.
Planning Authority:	Offaly County Council.
Declaration Reference:	07/3
Planning Authority Decision:	Is development and is not exempted development.
Date of Site Inspection:	24th July 2007
Inspector:	**Andrew Boyle.**

INTRODUCTION

This is a referral under section 5(3)(a) of the Planning and Development Act, 2000, for a review by the Board of the planning authority's declaration that the proposed development is development which is not exempted development.

THE SITE

The site is that of a 4-bedroomed semi-detached house in a newly constructed housing estate, approximately 2 kilometres to the north of the centre of Tullamore in County Offaly.

THE PROJECT

The proposers explain the project in a letter to the planning authority as consisting of the caring of a maximum of two children living together. The children, *"for one reason or another"* cannot live at home. Fully qualified staff would care them for, 24 hours a day, 7 days a week and 365 days a year. No physical changes would be made to the house, except to ensure that it complies with the statutory fire safety standards. They ask that the planning authority confirm that the proposal would be an exempted development.

THE REFERRAL

The referrer has written to the Board stating that it disagrees with the planner's decision. In support of the referrer's opinion, it submits a decision made by the Board in relation to a similar service in Westmeath and a copy of a declaration from Kildare County Council that a similar service, provided by the referrer in County Kildare, is exempted development.

RESPONSE FROM THE PLANNING AUTHORITY

The planning authority has responded to this referral by stating that it is satisfied in relation to its decision and has no further comment.

ASSESSMENT

In evaluating the request for a declaration, the planning authority had regard, in particular, to Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001. The planner's report notes that the exemption, in this instance, consists of development consisting of the change of use 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 planner lays particular emphasis on disability or illness. She considered that the regulations provide for specific

groupings of persons who would require specialist care. She noted that the children concerned in this proposal are not stated to have specific care requirements and therefore cannot be considered to comply with this exemption.

When this referral was received by the Board it sought clarification under section 132 of the Planning and Development Act, 2000 on the full range of circumstances which might require that the children under the referrer's care would live at 11 Eiscir Circle Road, be they intellectual or physical disability, mental illness, family or other specified circumstances. The referrer has responded by quoting from the conditions and limitations which govern Class 14(f) of Part 1 of the second schedule of the Planning and Development Regulations, 2001 which restricts the number of persons with an intellectual or physical disability or mental illness living in the residence to a maximum of six and the number of resident carers to a maximum of two. It is stated that the young people who would be residing at 11 Eiscir Circle Road are categorised as falling under the intellectual disability spectrum and/or mental illness spectrum.

Despite this clarification and the implication, from the precedent cases quoted, that the number of resident carers would not exceed two, I concur with the view of the referrer that the proposal, in this instance, is very similar to that considered by the Board under 25M.RL2059. 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 structure or other land". Under section 2(1) of the Act "house" is defined as *"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..."*. It appears, from an external inspection, that the building in question may never have been occupied. Nevertheless, it constitutes a house within the meaning of the Act.

The case considered under 25M.RL2059 comprised the use of a dwellinghouse to provide residential care at Ories, Fardrum, Athlone, County Westmeath. In that instance, 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 dwellinghouse 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 Pleanala 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.

In the present instance, a maximum of two children would be cared for in this four-bedroomed house. The referrer makes reference to the Child Care Legislation (1991). This appears to be reference to the Child Care Act, 1991, in which, at section 2, a child is defined as a person under the age of 18 years, other than a person who is or has been married. I consider that the proposed use is similar, though less intensive, than that proposed under 25M.RL2059. In my view, it does not represent a material change of use.

RECOMMENDATIONS

Having regard to the foregoing, I recommend that it be found that the change of the existing house at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly, is not development.

The order should be worded as follows: -

WHEREAS a question has arisen as to whether the use of an existing house at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly for the care of children is or is not development or is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by David Durney of Fresh Start on the 18th day of April 2007:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard, particularly, to sections 2 and 3 of the Planning and Development Act, 2000:

AND WHEREAS An Bord Pleanála has concluded that the change of use of the said house does not constitute a material change in the use of the said house, which would come within the scope of section 3(1) of the Planning and Development Act, 2000:

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 use of the said house at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly, is not development.

Andrew C. Boyle
Senior Planning Inspector.

14th August 2007.

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An Bord Pleanála

Board Direction

Ref: 19RL2430

The submissions on this file and the Inspector's report were considered at a Board meeting held on 29th August 2007.

The Board accepted the recommendation of the Inspector and decided that the change of use of the house at 11 Eiscir Circle Road is not a material change of use and is therefore not development, as set out in the Inspector's report. In addition, the Board had particular regard to the nature and scale of the use of the house.

Board Member _____ Date 29th August 2007

Karl Kent

An Bord Pleanála

PLANNING AND DEVELOPMENT ACTS 2000 TO 2006

Offaly County

Register Reference Number: 07/3

An Bord Pleanála Reference Number: 19.RL.2430

WHEREAS a question has arisen as to whether the use of an existing house for the care of children at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly is or is not development or is or is not exempted development:

AND WHEREAS Fresh Start care of David Durney of Raffeen House, Monkstown, Cork requested a declaration on the said question from Offaly County Council and the said Council issued a declaration on the 27th day of March, 2007 stating that the said development was development and was not exempted development:

AND WHEREAS the said Fresh Start care of David Durney of Raffeen House, Monkstown, Cork referred the declaration for review to An Bord Pleanála on the 18th day of April, 2007:

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

(a) sections 2 and 3 of the Planning and Development Act, 2000,

(b) class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and

(c) the nature and scale of the use of the house,

AND WHEREAS An Bord Pleanála has concluded that the change of use of the said house does not constitute a material change in the use of the said house which would come within the scope of section 3 (1) of the Planning and Development Act, 2000:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said use of the existing house for the care of children at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly is not development.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Member of An Bord Pleanála duly authorised to authenticate the seal of the Board.

Dated this day of 2007.

APPENDIX VII

REFERRAL TO AN BORD PLEANALA RL2426

An Bord Pleanála

Inspector's Report

Question:	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.
Referrer:	Jill Kerby
Planning Authority:	Dublin City Council
Declaration Reference:	0086/07
Planning Authority Decision:	Is development which is exempted development.
Date of Site Inspection:	27th July 2007
Inspector:	**Andrew Boyle.**

INTRODUCTION

This is a referral under Section 5 (3)(a) of the Planning and Development Act, 2000 for a review by the Board of the planning authority's declaration that the proposed development would be development which would be exempted development.

THE SITE

The site is that of the parochial house at 666 South Circular Road in Kilmainham, Dublin 8. No. 666 is located on the north side of South Circular Road. It consists of a substantial detached two-storey triple-bayed "double-fronted" Victorian House. It has a garden area to the front, sides and rear. On its south side, the site has a frontage of 24 metres onto South Circular Road. On its west side, it is separated by an access laneway from an end of terrace two-storey Victorian House, No. 670 South Circular Road. On its north side, the site adjoins a continuation of the access lane to its side, which separates it from a recently constructed apartment complex. On its east side the site adjoins an end of terrace two-storey Victorian House, No. 664 South Circular Road.

The parochial house was shown, on documentation submitted in connection with a previous invalidated referral on the site, under 29S.RL2390, to consist of a hallway, living room, television room, dining room and bedroom at ground floor level, together with a kitchen and bathroom extension. At first floor level, it was shown to consist of four bedrooms, an oratory and a bathroom.

THE PROJECT

The project, as described by the referrer, consists of the change of use of the parochial house to a care home for six children. The referrer, in making her request for a declaration from the planning authority, requested that it take into consideration the details, which had already been furnished to it under the earlier request for a declaration from the undertakers of the project, Crosscare, under declaration reference 0630/06 (29S.RL2390 – invalid referral). This documentation showed the ground floor being modified to contain a hall and lobby, a staff room, living room, dining room and staff bedroom with a kitchen now being located in the single-storey extension to the rear. At first floor level, one of the bedrooms was shown to be sub-divided diagonally and the oratory was shown to be converted to a bedroom, giving a total of six bedrooms at first floor level. A Section 5 application form submitted with the declaration request to the planning authority stated that the six children proposed to be cared for in the house would have been assessed, or would be pending assessment, and would generally suffer from a variety of problems, which might include such disability headings as learning disorders, oppositional defiant disorders and attention deficit hyper-activity disorders, among other disabilities.

THE REFERRAL

The referrer has an address at 664 South Circular Road, the house on the adjoining site to the east.

The referral notes the previous declaration of the planning authority on this site on its reference 0630/06, wherein it was held that the change of use of No. 666 South Circular Road to a care home for six children in care and no more than two residential staff was development which was exempted development. The referrer attempted to appeal this declaration to the Board, but her referral was deemed invalid, as she had no standing in the case. The referrer then sought a declaration from the planning authority, on the same issue in her own right and, following the issuing of the same declaration from the planning authority, has now referred the matter to the Board.

The referral notes a response from Crosscare to questions raised by the South Circular Road Residents' Association. A copy of this response is attached with the referral. The normal length of stay would be 3-6 months, although this might be extended to 9 months. The boys availing of the facility would arrive for a broad range of reasons including child protection issues, breakdown in family relationships and the individuals' own behaviour, e.g. non-attendance at school and staying out late. Some would have been involved in criminal activity. There would be approximately 14 staff employed with a minimum of two staff on the premises at all times, not including support staff.

The referral notes the provisions of Class 14 (f) of the Second Schedule, Part I, of the Planning and Development Regulations, 2001, whereunder *"development consisting of a change of use 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"* is exempted development, subject to the number of persons with such disability or illness not exceeding six and the number of resident carers not exceeding two. The referral draws the Board's attention to Class 9 of Part 4 of the Second Schedule of the Regulations, which includes the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose). It is submitted that the use of the house for such accommodation and care thus requires planning permission.

The referral goes on to note the zoning objective for the area under the Dublin City Development Plan, 2005, namely, Z2 *"to protect and/or improve the amenities of residential conservation areas"*.

The referral notes the previous declaration from the planning authority on this site, under its reference 0630/06, in which it held that the change of use from a parochial house to residence for people with physical disability of *(sic)* mental illness was exempted development when assessed in accordance with the Planning and Development Regulations, 2001, Schedule 2, Article 6, (Part I), Class 1. The referral notes that Class 1 refers to an extension of a house and makes no reference whatsoever to change of use from a dwelling to residential accommodation and care. The referral infers that the reference to Class 1 suggest that the planning authority considered the change of use from a dwelling to a care home not to be a change of use, as both are essentially dwellings. It is submitted that this is unreasonable and that

there is a clear material change of use from a dwelling to an institutional type use. Class 9, Part 4 of Schedule 2 of the Regulations is claimed to clearly state that the use of a house for the provision of residential accommodation and care to people in need of care is not exempted development and therefore requires planning permission.

The planning authority's current declaration makes reference to Class 14 (f), Part 1, Schedule 2 of the Regulations. This is in clear contradiction of its previous declaration. The referral, again notes the letter from Crosscare, in response to questions from the South Circular Road Residents Association. It shows there is a myriad of reasons as to why the boys may end up in residential care and not exclusively mental illness. On this basis, the proposed change of use does not comply with Class 14 (f) of Part 1, Schedule 2 of the Regulations.

The referral notes also that Class 14 (f) refers only to a "residence" and does not expressly refer to or include a temporary residence. It is submitted that the difference between fulltime residence and temporary residence is material. Fulltime residents could, over time, be expected to integrate into the community and contribute to the social fabric of the area. This is unlikely to be the case with residents of six months, or in some cases up to nine months. This would be likely to heighten tension between the established community and the new arrivals.

The referral notes another decided referral under 25M.RL2059. This related to the change of use of a dwelling to provide residential care at Ories in Fardrum, Athlone. This change of use was for the care of four young persons, effectively in a permanent fostering capacity and, it is submitted, that this situation is very different from the current situation. In Athlone, the children were notably younger, they came from the locality, they were going to live in the dwelling on a permanent basis, they were going to be in school fulltime and they already had established social connections with the area. In the present instance, the residents would be young adults requiring care for a range of reasons, including, inter alia, criminal backgrounds. The Crosscare Annual Report, 2004 refers to assault, self-harm, serious criminal behaviour and psychiatric problems. Those in the care of Crosscare are clearly unstable individuals who have serious problems, some derived from social and economic deprivation and some of a medical nature. They are not simply young adults needing a roof over their head.

RESPONSE FROM THE PROPOSER

A response has been received from the project undertaker in relation to this referral. The response is under two headings, namely

1. Extant declaration.

2. Issues raised.

Under the heading "extant declaration," the response notes the declaration already issued by the planning authority, under its reference 0630/06. The Board's rejection of the referrer's appeal in this case on the basis of lack of standing is included with the response. On this basis, it is submitted that the Board can have no jurisdiction in the matter because of the established extant declaration. This fully authorises the

proposer to undertake the proposed change of use. It is submitted that if this referral is considered, a precedent would be established which would be in conflict with the spirit of the legislation and, in effect, would mean that every resident on South Circular Road could apply for a Section 5 declaration to the planning authority and then refer it the Board, making a mockery of the system, and resulting in never-ending time delays. It is submitted that once the matter of the reference was decided, this decision was final and could not be subject to challenge. It could not be reopened by the taking of a second reference on the matter by a third party.

The development, which comprises a change of use of a house to use as a residence for persons with an intellectual or physical disability or mental illness, is exempt. The Board is invited to dismiss the subject referral as without substance or foundation, having regard to the fact that this matter has already been decided.

In relation to the issues raised, it is stated that the proposer is a religious charity set up in 1941 to address and redress poverty, marginalisation and social exclusion in Dublin. Part of its work includes the "Crosscare Residential Project", which provides a home environment for teenage boys with intellectual disability and/or mental illness. In this regard, a letter from the principal psychologist of a teen counselling organisation which describes the conditions of the young adults in question as ranging from emotional disturbance to clinical systems such as Attention Deficit Hyper-Activity Disorder (ADHD), Obsessive-compulsive Disorder (OCD) and Depression. Two documents are attached with the response giving background on ADHD. The planning authority has accepted that the nature of the use comes within the scope of residence for persons with intellectual and mental disability and illness. There would be no more than six persons in residence at any one time and the number of resident carers would not exceed two. The carers would provide support and care for the boys' intellectual and mental disabilities, in addition to acting *in locus parentis.* The response notes the referrers claim that it is *"quite conceivable that a boy who is not being diagnosed with mental illness and is not physically or intellectually disabled could end up residing in the care home".* It is stated that the reason the boys are referred to Crosscare is because they are unstable and have emotional and mental disabilities, such as ADHD. The goal of Crosscare is to provide a home environment with professional carers for those who have an intellectual disability and/or mental illness.

The proposed change of use would allow for the accommodation of boys with intellectual disabilities and/or mental illness. The Board is again referred to the letter from the principal psychologist. It is claimed that it is clear from this letter that the boys who would be living at the house are, according to professional medical opinion, suffering from conditions that come under the term of intellectual and/or mental disability. The proposed development would comply fully with Class 14 (f).

In relation to the difference in declaration schedules issued by the planning authority on the previous case, it is stated that the declaration under reference 0630/06 referring to Schedule 2, Article 6, Part 1, Class 1 is clearly a typing error and that Class 14 is the respective Class permitting the exemption. This is clear from the Planning Report.

On the temporary duration of the residents' stay at the referral site, it is claimed that this is irrelevant as it is not specified in Class 14 (f), Part 2, Section 2 of the Planning

and Development Regulations, 2001. The only criterion attached to the exemption is that the number of residents should not exceed six and the number of resident carers should not exceed two.

FURTHER COMMENTS FROM THE REFFERER

Further comments have been received from the referrer in relation to the response of the proposer.

It is noted that Section 5 of the Planning and Development Act, 2000 provides that any person may seek a declaration and that furthermore, any person issued with a declaration may refer the declaration for review by the Board. It is only through applying, herself, for a declaration that the referrer could have such declaration reviewed by the Board. It is firmly established in Irish planning law that third parties should have a right to engage in the planning process and express their views.

The comments note a precedent whereby the Board issued a decision on a referral, where an extant Section 5 declaration had already been issued on the same matter, under 06D.RL2319.

On the issues raised, it is noted that the psychologist's letter is very limited in terms of its content and contribution to the issue at hand. It is noted from this letter that the young persons attending the proposer's existing residential unit on Eccles Street "*generally experience*" emotional disturbance and clinical symptoms. Nowhere does the psychologist's letter confirm that the specific purpose of the residential unit at No. 666 is to house and care for young people with intellectual or physical disability or mental illness. Instead, the letter infers that like any particular section of society, there is a possibility (perhaps more than most) that the prospective residents could be affected by intellectual/physical disability or mental illness. It is submitted that this is very different from a dedicated care home to specifically treat/care for people suffering from these particular disabilities or illnesses, which is the intention of the exemption. It is submitted that the proposers have "changed the goalposts" in terms of what they themselves have previously stated to explain their operations. They are attempting to describe themselves solely under the banner of intellectual/physical disability and mental illness, to comply with the planning exemption, and conveniently ignore the totality of the range of reasons given previously.

The comments again refer to the temporary nature of the period of residence in the house.

Concluding her comments, the referrer submits that the response of the proposer does not contain any categorical evidence that the use of No. 666 South Circular Road is specifically for the purpose of housing persons with mental/physical disability or mental illness. The fact that some of the occupants might suffer from such disabilities is not sufficient justification to allow an exemption.

The comments include a letter from the South Circular Road Kilmainham Residents' Association. In addition to the response to their questionnaire, this in turn refers to two letters from the proposers, dated May and September 2006, which are copied to the Board and the minutes of a meeting in May, 2006, none of which described the

purposes of their services as a home or residence for children with intellectual disability or mental illness.

RESPONSE OF THE PLANNING AUTHORITY

The planning authority has no further comment, other than to request the Board uphold its decision.

ASSESSMENT

A number of issues arise in considering this referral. These issues are discussed under the sub-headings which follow.

The Admissibility of the Referral

Under its reference 0630/06, Dublin City Council has already issued a declaration on this issue at 666 South Circular Road. The proposer submits that the referral should thus be dismissed as vexatious or without substance. However, there is no provision under Section 5 of the Planning and Development Act, 2000, for a third party to refer a declaration for review by the Board. In order to make such a referral, the referrer was thus forced to seek the same declaration, separately, from the planning authority.

The same sequence of events took place in the case of a referral as to whether a single-storey extension and new entrance door to the side was or was not exempted development at 19 Coppinger Wood, Blackrock, County Dublin under 06D.RL2319. I concur with the view, expressed by the inspector in that case, that the necessity to adopt this circuitous procedure represents a shortcoming in the Act. While there are certain miscellaneous amendments to the principal act, contained in the Planning and Development (Strategic Infrastructure) Act, 2006, the situation in this regard has not changed. As in the case of 06D.RL2319, I do not consider that this referral is either vexatious or without substance.

While there is a possibility that further declarations and referrals could be sought by other third parties on the same issue at the same address, in the event that the Board finds in favour of the proposer, once the Board has decided on this referral, then it might reasonably be held such further declarations and referrals were, indeed, vexatious and made with the intention of delaying the project. The remedy, in that instance, would appear to be to impose compensation, as envisaged under Section 145(1) (b) of the Planning and Development Act, 2000.

The Nature and Extent of the Project

The Manager's Order endorses the recommendation of the Deputy City Planning Officer to declare that the proposed change of use from parochial house to care home for six children at 666 South Circular Road is exempt from the requirement to obtain planning permission. Under the heading "Reasons and Considerations", it is stated that *"accordingly, it is considered that the works proposed are considered exempted development when assessed in accordance with the Planning and Development Regulations, 2001, Schedule 2, Article 6, (Part 1), Class 14 – Change of Use and it is*

recommended that a certificate for exempted development be granted." The planner's report throws no further light on the matter. It appears to be confused, with the address 7-8 Sandfort Avenue, being deleted in favour of 666 South Circular Road, the file reference being altered from 0065/06 to 0086/***06*** (my emphasis), the project being described as "extend on their first floor returns" and the recommendation making reference to Class 1 of Schedule 2, Article 6 (Part 1) of the Regulations, before recommending that the proposed "works" be considered exempted development.

Class 14 (f) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 classifies, as exempted development, change of use 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 is subject to the condition and limitation that the number of persons with such a disability or illness living in any such residence should not exceed six and that the number of resident carers should not exceed two. The response from the proposer would suggest that the project would comply with the description and its conditions and limitations.

In making her request for a declaration to the planning authority, the referrer asked that a reasonable approach in relation to the provision of drawings etc., be taken, as the referrer is not the owner of the property in question and could not supply these documents. It was stated that all the relevant documents were available on the planning authority's file reference 0630/06. It appears that amongst these documents was the submission from the South Circular Road Residents' Association, which included a response to a questionnaire from the Association to the proposers.

Although the planner's report on 0630/06 effectively notes the submission from the referrer in this earlier case, it is unclear as to what weight was or could have been given to the submission, as there is no specific provision for the making of an unsolicited third party submission in relation to a declaration under Section 5 of the Planning and Development Act, 2000. The only specific provision is for a third party submission in response to a request from the planning authority under Section 5 (2) (c) of the Act. The planner accepted that the proposed use came within Class 14 (f) of Part 1, Schedule 2 of the Planning and Development Regulations, 2001. The planning authority's order, under its reference 0630/06, specifically refers to change of use from parochial house to residence for people with physical disability of *(sic)* mental illness.

I consider that in the present case, notwithstanding the request from the referrer for an expedient response from the planning authority, in view of the fact that a decision had already been made on the issue, much greater weight should have been given to the referrer's earlier submission on the planning authority's reference 0630/06. The proposer's response to the residents' association's questionnaire noted that there is a huge range of reasons for proposed occupants of the parochial house being out of home. This included child protection issues, breakdown in family relationships, non-attendance at school, staying out late, parent not knowing where a child is, etc. I consider that this response, given freely at the outset of the entire proceedings, is likely to be a much more accurate reflection of the full range of circumstance of those who would be residing at the parochial house. It is difficult to avoid the conclusion that the more limited range of circumstances, specified in the response to the referral, has been tailored, retrospectively, to suit the specifications of Class 14. I thus do not

consider that the proposed development constitutes exempted development under Class 14.

Material Change of Use

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". Under section 2 (1) of the Act, "house" is defined as *"a building or part of a building which is being or has been occupied as a dwelling...."* If it is accepted that the proposed development fails to constitute exempted development under Class 14, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, it is reasonable to ask whether the use of a house to accommodate up to six children, for whatever reason, and two carers, constitutes a material change of use.

A similar issue was considered in the case of 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 (25M.RL2059). In that instance, 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 dwellinghouse 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 Pleanala 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 be development.

I concur with the view of the referrer that the case considered under 25M.RL2059 was very different from the present case. In that case, the change of use was for the care of four children, effectively in a permanent fostering capacity. They would attend school fulltime. They already had established social connections to the area. In the present instance, the children would be older, they would have 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. In my view, this represents a fairly intensive institutional use of a former five-bedroomed parochial house.

RECOMMENDATION

Having regard to the foregoing, I recommend that it be found that the change of use from parochial house to care home for children at St. Anne's, 666 South Circular Road, Dublin 8, is development which is not exempted development. The order should be worded as follows: -

WHEREAS a question has arisen as to whether the 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.

AND WHEREAS a declaration on that question was sought from Dublin City Council on the 7th day of February 2007, and

AND WHEREAS, Dublin City Council, by Manager's Order dated the 5th day of March 2007, declared the matters raised in the question constituted exempted development;

AND WHEREAS the said declaration was referred for review by the Board on the 12th day of March 2007;

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

(a) Sections 2, 3 and 4 of the Planning and Development Act, 2000

(b) Article 6 of the Planning and Development Regulations, 2001;

AND WHEREAS An Bord Pleanála has concluded that the house at No. 666 South Circular Road would not be used, exclusively, as a residence for persons with an intellectual or physical disability or mental illness and that the proposed use would constitute a material change of use from that of a parochial house;

NOW THEREFORE, An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the 2000 Act, hereby decides that the proposed change of use from a parochial house to a care home for six children is development which is not exempted development.

Andrew C. Boyle

2nd August 2007.

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An Bord Pleanála

Board Direction

Ref: 29s.RL.2426

The submissions on this file and the Inspector's report were considered at a Board meeting held on 25th January 2008.

The Board concurred with the Inspector that the proposed use constitutes a material change of use, but it did not agree with the Inspector in respect of the exempted development status of the premises, having regard to the provisions of the planning and development regulations. In this regard, the Board noted the comments of the "Teen Counselling" psychologist, Ms. Forrest, in the letter dated 28th November 2006 and which was received by An Bord Pleanála on the 24th April 2007, which indicated that occupants of the house would come within the term of mental illness and intellectual disability. Accordingly, these would fall within the scope of the exemption provided under class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001.

In making its decision, the Board had regard particularly to:

(a) sections 2, 3 and 4 of the Planning and Development Act, 2000,

(b) article 6 of the Planning and Development Regulations, 2001,

(c) class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and

(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.

The Board concluded that the house at number 666 South Circular Road would be used as a residence for persons who come within the scope of class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001:

Therefore, in accordance with Section 5 (3)(a) of the 2000 Act, the Board decided that the said proposed change of use from a parochial house to a care home for six children at Saint Anne's, 666 South Circular Road, Dublin is development and is exempted development.

Board Member _____ Date 1st February 2008

Karl Kent

An Bord Pleanála

PLANNING AND DEVELOPMENT ACTS 2000 TO 2006

Dublin City

Planning Register Reference Number: 0086/07

An Bord Pleanála Reference Number: 29S.RL.2426

WHEREAS a question has arisen as to whether the proposed change of use from a parochial house to a care home for children at Saint Anne's, 666 South Circular Road, Dublin is or is not development or is or is not exempted development:

AND WHEREAS Jill Kirby care of David Mulcahy of 67 The Old Mill Race, Athgarvan, County Kildare requested a declaration on the said question from Dublin City Council and the said Council issued a declaration on the 5th day of March, 2007 stating that the said development is exempted development:

AND WHEREAS Jill Kirby care of David Mulcahy of 67 The Old Mill Race, Athgarvan, County Kildare referred the declaration for review to An Bord Pleanála on the 12th day of March, 2007:

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

(a) sections 2, 3 and 4 of the Planning and Development Act, 2000,

(b) article 6 of the Planning and Development Regulations, 2001,

(c) class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and

(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 house at number 666 South Circular Road would be used as a residence for persons who come within the scope of 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 (3)(a) of the 2000 Act, hereby decides that the said proposed change of use from a parochial house to a care home for six children at Saint Anne's, 666 South Circular Road, Dublin is development and is exempted development.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2008.

APPENDIX VIII

REFERRAL TO AN BORD PLEANALA RL2552

An Bord Pleanála

Inspector's Report

Referral No:	18.RL.2552
Details of Reference:	Whether the change of use from a dwelling to a childcare facility is or is not development or is or is not exempted development.
Location:	Drumbenagh, Co. Monaghan
Referred By:	Monaghan County Council
Owner/ occupier:	Ashdale Care Limited
Planning Authority:	Monaghan County Council
Inspector:	Donal Donnelly
Date of Site Inspection:	27/10/08
Appendices:	Appendix 1 – Photographs Appendix 2 – Maps

1. INTRODUCTION

1.1 This referral is a referral by the Planning Authority, under Section 5(4) of the 2000 Act, for a determination by the Board on whether or not the subject development is development and whether or not it is exempted development.

2. BACKGROUND

2.1 Following from the change of use planning application (Reg Ref: 08/265), which was refused permission, an application for a Declaration of Exempted Development was made on behalf of Ashdale Care (Ireland) Ltd. on 16th June 2008 under Sections 5 & 4(1) of the Planning and Development Act, 2000 and Class 14 (f) of Part 1 of Schedule 2 and Class 9 (a) of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended. This application included letters of support from the General Manager of the facility and from the Health Services Executive, together with a fire certificate, a draft Statement of Purpose and Function and various maps and plans.

2.2 The letter from the General Manager outlines that the use of the property will change from a dwelling house to a residence for persons aged 11 to 17 years with a range of social, psychological and emotional difficulties and possibly an intellectual or physical disability or mental illness, and for the carers of such persons. Care for one specific young person is to be provided on the medium to long term (12 months to 6 years), with accommodation being provided for up to three young persons and two resident carers. It is noted that CARE (Northern Ireland) Ltd. incorporating Ashdale Care (Ireland) Ltd. care for young persons from Counties Monaghan, Meath and Louth who have been placed into the long term care of the HSE by their parents or the Courts. The facility essentially becomes a permanent home for the young people where they receive intensive support, a range of therapeutic services and assistance in integrating with local community services.

2.3 A letter from the Child Care Manager of the HSE appended to the application confirms a number of children with challenging presentations have received an excellent private residential care service from Care Northern Ireland over the past five years. This includes children with intellectual difficulties and diagnosed mental health conditions. It is submitted that the Care Northern Ireland's services will continue to be used by the HSE.

Monaghan County Council Reg. Ref: 08/265

2.4 Paula Kane was refused planning permission on the subject site on 6th May 2008 for the change use from an existing dwelling house to a residential care facility for children with all ancillary site works and services. The following reasons for refusal were attached to this decision:

1. *The site of the proposed development lies within a rural area described as "an area under strong urban influence" in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of Environment, Heritage and Local Government in April 2005. The*

Guidelines recommend that development which is not rural generated should more properly be located in settlements within the Development Plan area. It is considered that the applicant has failed to demonstrate satisfactorily that the proposed development, which lies in a rural area in close proximity to the town of Monaghan, comes under the scope of the housing need criteria for development in areas under Strong Urban Influence as set out in the said Guidelines. The proposed development would, therefore, conflict with the settlement objectives of the Monaghan County Development Plan, 2007-2013 and be contrary to the proper planning and sustainable development of the area.

2. *Policy SP of the Monaghan County Development Plan 2007-2013 aims to "promote the development of all settlements, with an appropriate range of facilities and services, including social infrastructure, retail units, commercial office and local enterprise, in accordance with the settlement hierarchy outlined above". The proposed development is located outside of a defined settlement limit, in an unzoned rural area which lacks certain public services and would militate against the preservation of the rural environment. The development is considered inappropriate in this rural area for reasons relating to unsustainability, poor accessibility, social exclusion and visual intrusion and would conflict with Policy SP2 of the Development Plan and to the proper planning and sustainable development of the area.*

Monaghan County Council Reg. Ref: 05/548

2.5 Martina McKenna was granted permission on 6th October 2005 to erect a bungalow and insert a filter unit and percolation area at the subject site. A total of 8 no. conditions were attached to this decision relating to boundary treatments, access, levels, drainage, security bond and materials.

3. SITE LOCATION AND DESCRIPTION

3.1 The subject site is located in the townland of Drumbenagh in northern Co. Monaghan approximately 3km north-west of Monaghan town and 8km south of Emyvale. The site can be accessed off the N2 National Primary Route to the east, the R186 Regional Route to the west or directly from Monaghan down via High Street and a series of county roads.

3.2 The surrounding area is characterised by drumlin landscape with sporadic housing and farm buildings. The site is located to the west of a narrow county road opposite a detached dwelling and to the north of farm buildings. A 196 sq.m. single storey dwelling occupies a site of approximately 0.24 hectare. This dwelling comprises 5 no. bedrooms (2 en suite), kitchen/ utility, family room, lounge and bathroom. The dwelling sits above the height of the road with driveway leading to parking at the front and side.

4. THE REFERRER'S CASE

4.1 The Planning Authority's case, as per its letter of 30th June 2008, refers the question to the Board in accordance with Part 1 of Section 5(4) of the Planning and Development Act, 2000 as to whether the case is or is not exempted development.

4.2 It is the Planning Authority's opinion that the change of use of the dwelling to a childcare facility is not exempted development. Reference is made to Class 9 of Part 4 of the Second Schedule and to Class 14 (f) of the Second Schedule of the Planning and Development Regulations, 2001 as amended. It is submitted that the permitted use of the dwelling is excluded from Class 9 of Part 4 of the Second Schedule and that the exempted change of use as set out in Class 14 (f) of the Second Schedule of Part 1 is not applicable, as the persons being cared for do not specifically have an intellectual or physical disability or mental illness.

4.3 The Board's attention is drawn to Section 8, pages 18 & 19 of the Draft Statement of Purpose submitted along within the application for Declaration of Exempted Development which outlines admissions criteria and the type of problems suffered by the young people cared for.

5. RESPONSES

Owner

5.1 Solicitors acting on behalf of Ashdale Care (Ireland) Ltd. respond to the Council's referral by submitting that the use of the dwelling house for the residential care of young people constitutes exempted development pursuant to Class 14 (f) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended. Attached to the response, in addition to the information appended to the application to the Council for Exempted Development, is a final version of the Statement of Purposes and a letter from a psychiatrist confirming that a young person resident within Drumbenagh House is under her care.

5.2 Reference is made to the non-exhaustive list for admission to Drumbenagh House contained within its Final Statement of Purpose. It is noted that Drumbenagh House provides accommodation and therapeutic services to young people suffering from an intellectual or physical disability or mental illness but does not accommodate young people with severe intellectual or physical disability or psychiatric illness. The owner's solicitor also refers to a number of previous decisions by the Board which are considered relevant to this case. These are as follows:

PL29S.RL2430

5.3 In this case, a question arose as to whether the use of an existing house for the care of children in Tullamore, Co. Offaly was or was not development or was or was not exempted development.

5.4 Offaly County Council issued a declaration that the said development was development and was not exempted development but the Board concluded that the

change of use of the house does not constitute a material change of use which would come under Section 3(1) of the Planning and Development Act, 2000 and decided that the house for the care of children was not development.

PL25M.RL2059

5.5 The question arose in this case as to whether the use of a dwelling house in Athlone, Co. Westmeath to provide for residential care was or was development or was or was not exempted development. This referral was made by Westmeath County Council and the Board concluded that the change of use of the said dwelling house does not constitute a material change of use which would come under Section 3(1) of the Planning and Development Act, 2000 and decided that the use of the dwelling house to provide residential care is not development.

5.6 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. There were four children living in the house in this case.

PL29S.RL2426

5.7 The question arising in this case was whether the change of use from a parochial house to a home for children on the South Circular Road, Dublin was or was not development and was or as not exempted development. Dublin City Council issued a declaration saying that the said development was exempted development and the declaration was referred to the Board for review who also concluded that the proposed development was development and was exempted development pursuant to Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001.

6. RELEVANT LEGISLATION

6.1 In order to assess whether or not the works to be carried out constitute development or exempted development, regard must be had to the following items of legislation:

Planning and Development Act, 2000 - 2007

6.2 Under Section 2 (1) of the Act, *"house"* is defined as *"a building or part of a building which is being or has been occupied as a dwelling..."*

6.3 Section 3 (1) of the Act defines "development" as :

> *"...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."*

6.4 Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act. Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001.

Planning and Development Regulations, 2001

6.5 Article 6 (1) states as follows:

> *"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."*

6.6 The following change of use development is exempted under Class 14 (f) of Part 1 of Schedule 2:

> *Description of Development:*
>
> *"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 person."*
>
> *Conditions and Limitations:*
>
> *"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."*

6.7 Article 10 states that 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. The Regulations identify Class 9 as follows:

> *Use –*
>
> *a) For the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),*
>
> *b) As a hospital or nursing home,*
>
> *c) As a residential school, residential college or residential training centre.*

7. ASSESSMENT

7.1 This referral has arisen from a request for a declaration of exempted development received by Monaghan County Council from Ashdale Care (Ireland) Ltd. for the change of use of a dwelling to a childcare facility. The case has been referred to the Board by the Council following a refusal of a planning application for same in May 2008. The Council is of the opinion that a change of use has occurred which is not exempted development. However, the owner of Drumbenagh House, Ashdale Care (Ireland) Ltd., considers that the change of use of the dwelling house to a childcare facility is not development and would be exempted development is any case under Class 14 (f) of Part 2 of Schedule 2 of the Regulations.

7.2 The first part of the question to be examined is whether or not a change of use has occurred. The second part to the question is whether any change of use is a *material* change of use and therefore development. If any change of use is not material, no further question arises but if on the other hand there is a material change of use, the third part of the question arises as to whether or not the material change of use is exempted development by reference to the Act and Regulations.

The Question of whether or not a change of use has occurred

7.3 A house is defined within the Act as *'a building or part of a building which is being or has been occupied as a dwelling…'* A dwelling is usually the permanent place of residence for an individual person or group of persons; however, individuals or groups of people may also permanently reside in places not defined as a "house" within the Act.

7.4 The current referral case relates to the provision of residential care within a bungalow located in a rural area for three children and including accommodation for two staff members. No physical change, other than to comply with fire regulations, is proposed. It is stated within the Application for a Declaration of Exempted Development that Drumbenagh House *'in effect becomes* (the young persons') *permanent home and with the intensive support from care staff and the provision of therapeutic services, the young people are helped to integrate within the local community in terms of involvement in schools and other community based activities.'*

7.5 Notwithstanding the fact that Drumbenagh House becomes a permanent dwelling house for its residents, I am of the view that some change of use has occurred. Drumbenagh House is described by its owners as a childcare facility where a range of care services are provided to its residents by professionally trained staff. I acknowledge that the external appearance of the structure remains largely the same but consider that a change of use has occurred from its use as a conventional 'house.'

The Question of whether of not the change of use is Development

7.6 Leading from the previous question it is now examined if the change is use is a material change of use and therefore development. In determining whether or not a material change of use has occurred in this case, I consider that it is important to assess the *nature* and *scale* of the change of use.

7.7 In terms of *nature*, Drumbenagh House comprises a 5-bedroom bungalow to be occupied by three children/ young persons in separate bedrooms who will attend school and have social and recreational attachments to the area. The remaining two bedrooms will be occupied by staff members. The nature of the use of the house is therefore to provide residential care for children.

7.8 I concur with Ashdale Care Ltd. that the house effectively becomes the permanent residence of the children/ young persons. Care will be provided to young persons between the ages of 11 to 17 and essentially, a young person could reside in the house for all of these years. I also note the objectives of the facility are to provide a healthy environment where a young person can reach their educational potential whilst

securing emotional and behavioural development and retaining family and social relationships.

7.9 In my opinion the appearance, both internally and externally, of Drumbenagh House should still resemble that of a family home. Furthermore, the patterns of activity should also remain consistent with the upbringing of children, albeit in a more specialist environment. Therefore, I consider that in terms of nature, the change of use should not be considered material.

7.10 With respect to the scale of the proposed development, I consider that the use of the facility is not of an extent that would represent a significant change from its use as a conventional house. The house will be occupied by no more than five persons overnight with visitations from other specialist staff members occurring during the day. I acknowledge that this may necessitate additional traffic movement but in my view, not to a significant degree.

7.11 In light of the foregoing, I am of the view that a *material* change of use will not occur in the provision of ongoing care within a residential setting to three young persons with staff accommodation for two members.

Exempted Development

7.12 If the Board is minded to conclude that the proposed development *is* a material change of use, the question arises as to whether of not it is exempted development.

7.13 The Council refer to Class14 (f) of Part 1 of Schedule 2 when forming the opinion that the change of use does not constitute exempted development. Class 14 (f) of Part 1 of Schedule 2 states that a change of use from a house to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such person is exempted 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.

7.14 The owner submits that the use of the house falls within the exemption under Class 14 (f). A letter is appended to the submission from a psychiatrist to confirm that an adolescent from Drumbenagh House attends the Child & Adolescent Mental Health Care Service in Navan. The Statement of Purpose also outlines the admissions criteria as including mild moderate intellectual, physical or sensory disability but excluding severe mental health or profound intellectual, physical or sensory disability.

7.15 As Class 14 (f) of Part 1 of Schedule 2 does not distinguish between severity of intellectual disability or mental illness, I am satisfied that if the use of the house is seen as a material change of use, it is exempted development.

Precedent

7.16 Both Monaghan County Council and the solicitors acting on behalf of the owner of Drumbenagh House considered that this referral is readily comparable to case PL25M.RL2059 at Athlone, Co. Westmeath. The Council paid particular regard to this case when reaching an opinion that the change of use from the dwelling to a childcare facility is not exempted development. The Council enclose a copy of the

Inspector's Report in this case which concluded that the change of use of the dwelling house to provide residential care was a *material* change of use as *'the nature of the use falls outside the range of users who might occupy a dwelling house and that this use is essentially of an institutional nature.'*

7.17 Monaghan County Council appears to have based its opinion that a material change of use had occurred on the findings contained within the Inspector's Report in case PL25M.RL2059. On the other hand, the solicitors acting on behalf of the owners of Drumbenagh House correctly point out that the Board did not agree with the conclusion of its Inspector and considered that the change of use, by *reason of its nature and scale,* did not constitute a material change of use which would come within the scope of section 3(1) of the Planning and Development Act, 2000.

7.18 In the case of referral RL2430 in Tullamore, the Board determined that the change of use of a house for the care of children was not a material change of use. I agree that this case also has similarities with the current case.

7.19 With respect to referral case RL2426 on the South Circular Road, Dublin, it was determined that the change of use from a parochial house to a care home for children constitutes development but is exempted development under Class 14 of Part 1 of Schedule 2. When assessing if a change of use had occurred in this case, the Inspector noted the children would reside in the house on a temporary basis to be cared by 14 staff, thus representing a fairly intensive institution use.

RECOMMENDATION

Having regard to the above, I recommend that it be found that the change of use of the dwelling house to a childcare facility at Drumbenagh, Co. Monaghan is not development within the context Section 3 (1) of the Planning and Development Act, 2000, as amended. Accordingly, I recommend an Order in the following terms:

WHEREAS a question has arisen as to whether the use of a dwelling house at Drumbenagh, Co. Monaghan to provide a childcare facility is or is not development or is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Monaghan County Council on the 30th day of June, 2008:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to sections 2 and 3 of the Planning and Development Act, 2000:

AND WHEREAS An Bord Pleanála has concluded that the change of use of the said dwelling house does not constitute a material change in the use of the said dwelling house, which would come within the scope of section 3(1) of the Planning and Development Act, 2000:

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 use of the said dwelling house at Drumbenagh, Co. Monaghan to provide childcare is not development.

_____

Donal Donnelly
Inspector

17th November 2008

An Bord Pleanála

Board Direction

Ref: 18.RL 2552

The submissions on this file and the Inspector's report were considered at a Board meeting held on 8th January, 2009.

The Board generally approved of the terms of the attached draft order, subject to the amendments shown in manuscript.

The Board decided that –

Is not development.

Board Member _____ Date 8th January, 2009

Mary Mac Mahon

An Bord Pleanála

PLANNING AND DEVELOPMENT ACTS 2000 TO 2007

Monaghan County

An Bord Pleanála Reference Number: 18.RL.2552

WHEREAS a question has arisen as to whether the change of use of a dwellinghouse to a childcare facility at Drumbenagh, County Monaghan is or is not development or is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Monaghan County Council on the 7th day of July, 2008:

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

(a) sections 2 and 3 of the Planning and Development Act, 2000,

(b) class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and

(c) the nature and scale of the use of the house:

AND WHEREAS An Bord Pleanála has concluded that the change of use of the said dwellinghouse does not constitute a material change in the use of the said dwellinghouse, which would come within the scope of section 3(1) of the Planning and Development Act, 2000:

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 said change of use of a dwellinghouse to a childcare facility at Drumbenagh, County Monaghan is not development.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Member of An Bord Pleanála duly authorised to authenticate the seal of the Board.

Dated this day of 2009.

APPENDIX IX

CORK COUNTY COUNCIL SECTION 5 DECLARATION R563/20

Comhairle Cathrach Chorcaí
Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Attuned Programmes Ireland Ltd.
T/A FutureScape,
4 Rogan's Court,
Patrick Street,
Dun Laoghaire,
Co. Dublin

19th March, 2020

RE: R563/20 – Section 5 Declaration
Property: 5 Silverlands, Maryborough Woods, Douglas, Cork

Dear Sir/Madam,

With reference to your request for a section 5 Declaration at the above named property, I am asked to advise as follows:

Having regard to:

- Sections 4(4), 4(4A) and 177U(9) of the Planning and Development Act 2000 (as amended)

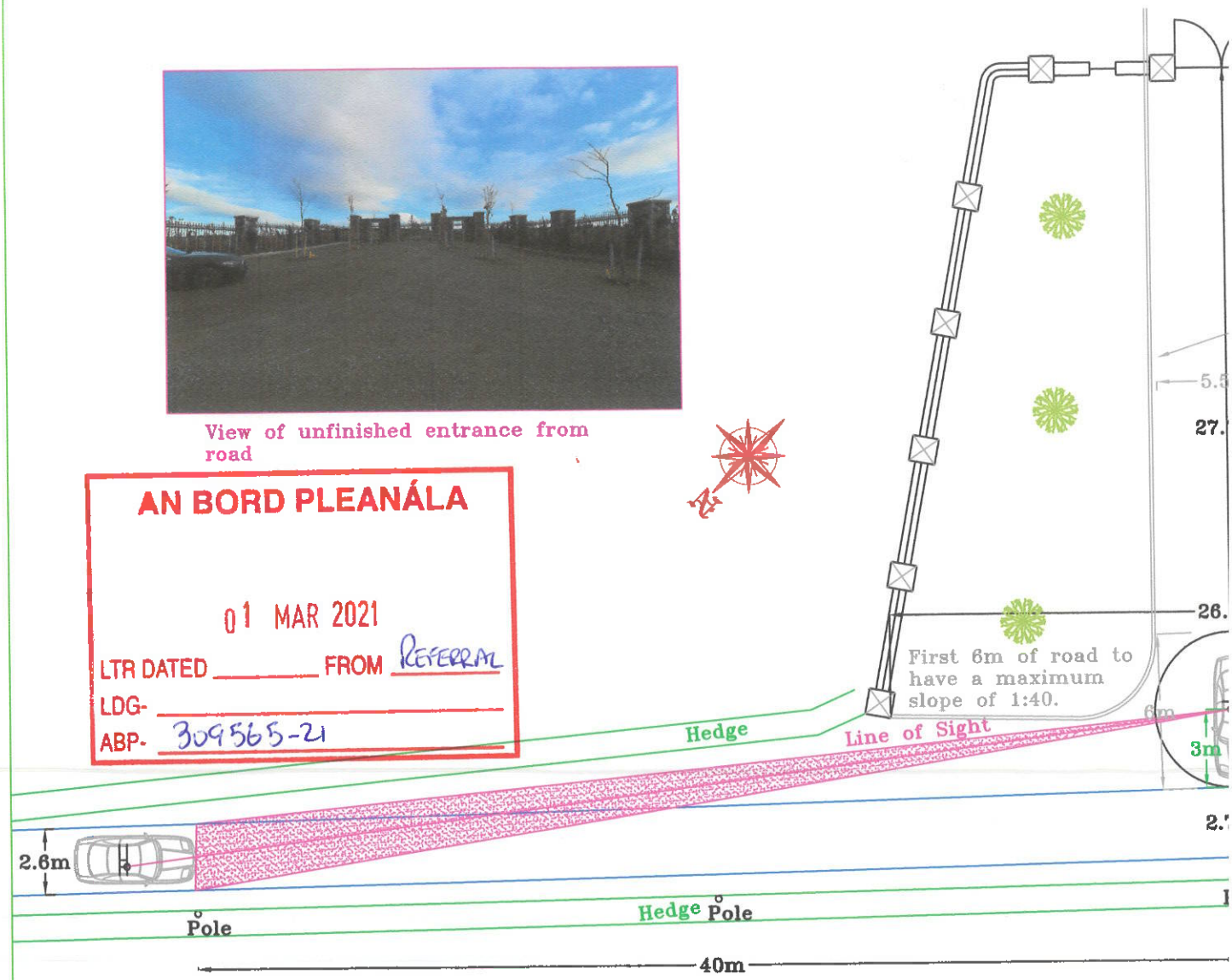
the Planning Authority considers that –

the change of use of the dwelling house to a registered children's residential home **IS NOT DEVELOPMENT.**

Yours faithfully,

A/Assistant Staff Officer
Community, Culture and Placemaking
Cork City Council

View of unfinished entrance from road



View from 40m to northeast towards entrance.
Second Pole on right is close to centreline of entrance.

View from centre of entrance 1m above Ground Level 3m back from edge of road towards northeast.
Second Pole is 40m from centreline of entrance.

William Doran (Tech IEI)
Planning & Project Management Consultant, Land & Property Surveys.
Fire Services & Disability Consultant.
7, St. Mary's Road South, Ballsbridge, Dublin 4.
Mobile: 087 2511 579
e-mail: bill@billdoran.net
Tel: 6630288

Project: Knockadreet, Ro

Drawing: Entrance Surv