

An  
Bord  
Pleanála

Board Order  
ABP-315234-22

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Laois County Council**

**Planning Register Reference Number: S5/2022/37**

**WHEREAS** a question has arisen as to whether the change of use of Ballaghmore Old National School, to a childcare facility at Ballaghmore Old National School, Ballaghmore, Borris-in-Ossory, Portlaoise, County Laois is or is not development or is or is not exempted development:

**AND WHEREAS** Grainne Harte care of Limford Building Surveyors of 21 The Orchard, Millersbrook, Nenagh, County Tipperary requested a declaration on this question from Laois County Council and the Council issued a declaration on the 16<sup>th</sup> day of November, 2022 stating that the matter was development and was not exempted development:

**AND WHEREAS** Grainne Harte referred this declaration for review to An Bord Pleanála on the 28<sup>th</sup> day of November, 2022:

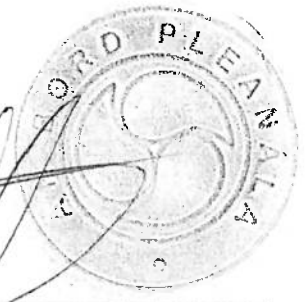

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1), 3(1) and 4(2) of the Planning and Development Act, 2000, as amended,
- (b) articles 5, 9(1) and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) the meaning of ‘school’ as assigned to it by the Education Act, 1998,
- (d) Part 4 of Schedule 2 to those Regulations,
- (e) the planning history of the site, and
- (f) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) there is no provision for exemption within any of the classes as set out in Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, for a change of use from a previous school building to a childcare facility under the exempted development provisions of those Regulations,
- (b) the use of the building as a childcare facility constitutes a change of use, and such a change of use is material, and
- (c) the change of use, being material, is development and is not exempted development:

**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 change of use of Ballaghmore Old National School, to a childcare facility at Ballaghmore Old National School, Ballaghmore, Borris-in-Ossory, Portlaoise, County Laois is development and is not exempted development.

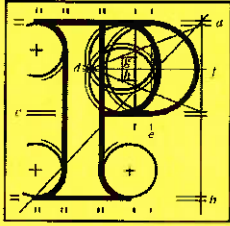


**Tom Rabbette**

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

Dated this 19<sup>th</sup> day of Jan, 2024.





An  
Bord  
Pleanála

**Board Direction**  
**BD-015039-24**  
**ABP-315234-22**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/01/2024.

The Board decided as set out in the Order hereunder.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the change of use of Ballaghmore Old National School, to a childcare facility is or is not development or is or is not exempted development:

**AND WHEREAS** Grainne Harte requested a declaration on this question from Laois County Council and the Council issued a declaration on the 16<sup>th</sup> day of November, 2022 stating that the matter was development and was not exempted development:

**AND WHEREAS** Grainne Harte referred this declaration for review to An Bord Pleanála on the 28<sup>th</sup> day of November, 2022

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (d) article 5 of the Planning and Development Regulations, 2001, as amended,
- (e) the meaning of 'school' as assigned to it by the Education Act 1998.
- (f) article 9 (1) of the Planning and Development Regulations, 2001, as amended,
- (g) article 10 of the Planning and Development Regulations, 2001, as amended,
- (h) Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (i) the planning history of the site,
- (j) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) there is no provision for exemption within any of the classes as set out in Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, for a change of use from a previous school building to a childcare use under the exempted development provisions of those Regulations,
- (b) the use of the building as a childcare facility constitutes a change of use and such a change of use is material,
- (c) the change of use, being material, is development and is not exempted development.

**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 use of

Ballaghmore Old National School, as a childcare facility is development and is not exempted development.

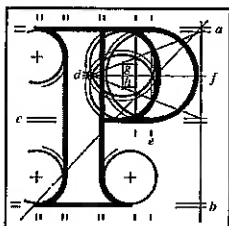
Board Member:

  
\_\_\_\_\_  
Tom Rabbette

Date: 12/01/2024







An  
Bord  
Pleanála

## Inspector's Report ABP-315234-22

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<b>Question</b>	Whether the change of use of Ballaghmore Old National School to a childcare facility is or is not development or is or is not exempted development.
<b>Location</b>	Ballaghmore, Borris in Ossory, Portlaoise, Co. Laois
<b>Declaration</b>	
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	S5/2022/37
Applicant for Declaration	Grainne Harte
Planning Authority Decision	Is not exempted development
<b>Referral</b>	
<b>Referred by</b>	Grainne Harte
<b>Owner/ Occupier</b>	Ballaghmore Parish Council
<b>Date of Site Inspection</b>	12 <sup>th</sup> July 2023
<b>Inspector</b>	Dolores McCague

## Contents

1.0 Site Location and Description.....	3
2.0 The Question.....	3
3.0 Planning Authority Declaration .....	4
3.1. Declaration .....	4
3.2. Planning Authority Reports.....	4
4.0 Planning History .....	4
5.0 Policy Context .....	5
5.1. Development Plan .....	5
5.2. Natural Heritage Designations.....	6
6.0 The Referral .....	7
6.1. Referrer’s Case.....	7
7.0 Statutory Provisions .....	7
7.1. Planning and Development Act, 2000 (as amended).....	7
7.2. Planning and Development Regulations, 2001 (as amended).....	8
7.3. Other.....	9
7.4. Planning History of the Site .....	9
7.5. Relevant Precedent Cases .....	9
8.0 Assessment.....	10
8.1. Is or is not development.....	10
8.2. Is or is not exempted development.....	11
9.0 Recommendation .....	11

## **1.0 Site Location and Description**

- 1.1.1. The site is located at Ballaghmore, Borris in Ossory, Portlaoise, Co. Laois.
- 1.1.2. The shallow site, which is shallow in depth from the road, is located adjoining the public road, close to a junction, within the village of Ballaghmore, adjoining the Catholic Church to the north-west, and the primary school to the south and west. The cemetery is to the rear of the Church and separated from the subject site by the primary school. The local GAA Club building and grounds are on the opposite side of the road. A single storey building with a pitched roof, formerly a school, and in good condition, occupies the site. The boundary with the Church grounds is defined by a wall. A boundary wall extends along part of the roadside north of the subject building. The remaining boundaries are undefined.
- 1.1.3. Temporary single storey buildings within fenced enclosures, associated with a Gael Scoil, and a toilet block, occupy the land to the rear.
- 1.1.4. The site is given as 0.25ac / 0.10ha.

## **2.0 The Question**

- 2.1.1. The question before the Board is whether the change of use of Ballaghmore Old National School, to a childcare facility is or is not development or is or is not exempted development.
- 2.1.2. The building drawings which accompanied the referral state that there are no proposed changes to the external envelope of the building. Building drawings, scale 1:100, were submitted to the planning authority and were accompanied by a site layout plan, scale 1:500 and a map, scale 1:2,500.
- 2.1.3. The application to the planning authority stated that the building is a c1900 national school.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. The planning authority have declared that as the development did not accord with the conditions/limitations of Article 10, Part 4, Schedule 2 of the Planning and Development Regulations, 2001 (as amended), it considered that the change of use is a 'material' change of use and therefore it constitutes development which is not exempted development.

### **3.2. Planning Authority Reports**

3.2.1. Planning Reports:

The planning report includes:

- The structure was constructed prior to 1963 but was in use up to recent times as a national school. There is no record of any planning history for the site. The use as a childcare facility would constitute a change of use.
- The change of use is not provided for under part 4 of schedule 2 of the Planning and Development Regulations. It is considered that the use constitutes a change of use that is 'material' and therefore constitutes development for the purposes of the Planning and Development Act and is not exempted development.

## **4.0 Planning History**

Adjoining lands:

18/41 planning permission granted to Board of Management Scoil tSlí Dála to erect a new standalone portacabin classroom including connection to all ancillary site services. The application is located within the curtilage of a protected structure – Reg No RPS-370.

18/445 planning permission granted to Board of Management Scoil tSlí Dála to retain 3 existing prefabricated classroom buildings, detached boiler house and storage shed and to further extend the period of permission for 1 prefabricated classroom

building all associated site works. The application is located within the curtilage of a protected structure – Reg No RPS-370.

10/237 planning permission granted to Board of Management Scoil tSlí Dála to retain temporary school buildings, comprising 1 classroom, store, toilet and detached boiler house including all ancillary site services. The application is located within the curtilage of a protected structure – Reg No RPS-370.

09/621 planning permission granted to Board of Management Scoil tSlí Dála to retain temporary school buildings, comprising 2 classroom, offices and toilets, perimeter fence to enclosed playground including all ancillary site services.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. Laois County Development Plan 2021 – 2027 is the operative plan. Relevant provisions include:

Chapter 5 Quality of Life & Sustainable Communities

Aim: To facilitate the delivery of social infrastructure throughout the county, improve physical access to services, facilitate the maintenance and upgrading of cultural and heritage facilities for communities and to enhance the environmental, amenity and physical attributes of communities which creates healthy placemaking.

5.3.2 Childcare Facilities - Access to affordable and high-quality childcare is an essential requirement for an equitable society, a thriving economy and sustainable communities and is a critical part of the County's infrastructure. Laois County Childcare Committee supports early childcare services, throughout the County catering for full day care, after school and preschool care. Whilst the Council is not directly involved in the provision of childcare services, the Plan will seek to ensure sufficient facilities are provided in the areas required.

CCPO 1 Encourage, promote and facilitate the provision of childcare facilities in accordance with national policy and the Department of the Environment, Heritage and Local Government Planning Guidelines on Childcare Facilities: Guidelines for

Planning Authorities (DoEHLG, 2001) and any other relevant statutory guidelines which may issue during the period of this Plan.

CCPO 2 Ensure the provision of quality affordable childcare throughout the County in consultation with the Laois County Childcare Committee, and the Department of Children and Youth Affairs, Tusla Child and Family Agency.

CCPO 3 Promote and encourage the provision of a network of childcare facilities that reflect the distribution of the residential population in the County and to minimise travel distance and maximise opportunities for disadvantaged communities;

DM CC 1 Childcare Facilities - Require the provision of childcare facilities of an appropriate type and scale in suitable locations throughout the County and comply with the Section 28 Guidelines on Childcare Facilities, 2001 (and any subsequent update). In particular, the development of childcare facilities at the following locations will normally be required;

- areas of concentrated employment and business parks;
- neighbourhood centres;
- integrated into large retail developments and retail warehouse parks;
- in, or in the vicinity of, schools or major educational facilities;
- adjacent to public transport nodes;
- in, or adjacent to, community centres and
- within new and existing residential development.

## **5.2. Natural Heritage Designations**

- 5.2.1. The Slieve Bloom Mountains SPA (site code 004160), located c460m distance to the north, is the nearest Natura site. No appropriate assessment issues arise.

## **6.0 The Referral**

### **6.1. Referrer's Case**

6.1.1. The referral by Limford Building Surveyors Ltd on behalf of Grainne Harte of Caterpillars Childcare states that the use of the disused school as a preschool is not development under section 3 of the Planning and Development Act, 2000 (as amended).

- The National Síolta Aistear Initiative (NSAI) was established in 2016 to support the coordinated roll-out of Síolta and Aistear, the national quality and curriculum Frameworks for the early learning and care sector. The curriculum for inspection is called AISTEAR, the early years curriculum for children from birth to 6 years of age. The Department of Education is the governing body.
- Both existing and proposed uses are educational, therefore not development.

## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000 (as amended)**

Section 2(1)

In this Act, except where the context otherwise requires—

'exempted development' has the meaning specified in section 4.

'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-

Where the context so admits, includes the land on, in or under which the structure is situate....

'use', in relation to land, does not include the use of the land by the carrying out of works thereon.

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3(1)

In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

#### Section 4 (2)

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act...

## **7.2. Planning and Development Regulations, 2001 (as amended)**

### Part 2 Exempted Development

#### Article 5 Interpretation for this Part.

'school' has the meaning assigned to it by the Education Act 1998.

Article 9. (1) (a) (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

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

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

### Schedule 2

#### Part 4 Exempted Development – Classes of Use



## CLASS 8

Use— (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),

(b) as a crèche,

(c) as a day nursery,

(d) as a day centre.

### 7.3. Other

Education Act 1998

'School' means an establishment which—

(a) provides primary education to its students and which may also provide early childhood education, or

(b) provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training,

but does not include a school or institution established in accordance with the Children Acts, 1908 to 1989, or a school or institution established or maintained by a health board in accordance with the Health Acts, 1947 to 1996, or the Child Care Act, 1991

Children Acts, 1908 to 1989 – these refer to young persons in care.

### 7.4. Planning History of the Site

7.4.1. The previous use was as a school; there is no planning history for the subject building.

### 7.5. Relevant Precedent Cases

RL3443

whether the use of a previous school building as an afterschool/montessori facility is or is not development or is or is not exempted development

The Board concluded that:

- (a) there is no provision for exemption within any of the classes as set out in Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, for a change of use from a previous school building to an after school and montessori facility under the exempted development provisions of those Regulations,
- (b) the use of the building as a Montessori school constitutes a change of use, but in this particular case is not a material change of use, having regard to the characteristics of the site and site layout and to the character of development in the vicinity of the site, and
- (c) the change of use, not being material, is not development.

## 8.0 Assessment

### 8.1. Is or is not development

- 8.1.1. The proposal involves use only. No works are proposed.
- 8.1.2. The use as a school is not a class of use. It is therefore *sui generis*.
- 8.1.3. The use as a childcare facility falls within a class of use:  
CLASS 8 of Part 4 Exempted Development – Classes of Use of Schedule 2.
- 8.1.4. A school is defined under the Education Act 1998 as an establishment which—  
provides primary education to its students and which may also provide early childhood education.
- 8.1.5. Although formerly a school building, and located adjoining a primary school, and which might be considered to be providing early childhood education, the subject development is under separate control and therefore I do not consider the proposed use to be 'a school'.
- 8.1.6. As stated earlier in this report, the Board determined under ref RL3443, (copy of decision attached as appendix 3), that use of a previous school building as an afterschool/montessori facility is a change of use but that the change of use, not being material, is not development.

8.1.7. I consider that the use of Ballaghmore Old National School, to a childcare facility involves a change of use, but the change of use is not a material change of use having regard to the characteristics of the site and to the character of development in the vicinity of the site.

## 8.2. Is or is not exempted development

8.2.1. I consider that the use of Ballaghmore Old National School, a disused primary school, to a childcare facility is not development.

## 9.0 Recommendation

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

**WHEREAS** a question has arisen as to whether the change of use of Ballaghmore Old National School, to a childcare facility is or is not development or is or is not exempted development:

**AND WHEREAS** Grainne Harte requested a declaration on this question from Laois County Council and the Council issued a declaration on the 16<sup>th</sup> day of November, 2022 stating that the matter was development and was not exempted development:

**AND WHEREAS** Grainne Harte referred this declaration for review to An Bord Pleanála on the 28<sup>th</sup> day of November, 2022

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,

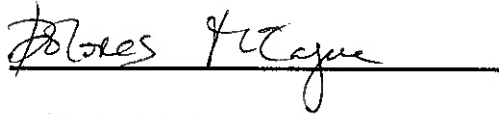
- (c) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (d) article 5 of the Planning and Development Regulations, 2001, as amended,
- (e) article 9 (1) of the Planning and Development Regulations, 2001, as amended,
- (f) article 10 of the Planning and Development Regulations, 2001, as amended,
- (g) Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (h) the planning history of the site,
- (i) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) there is no provision for exemption within any of the classes as set out in Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, for a change of use from a previous school building to a childcare facility under the exempted development provisions of those Regulations,
- (b) the use of the building as a childcare facility constitutes a change of use, but in this particular case is not a material change of use, having regard to the characteristics of the site and to the character of development in the vicinity of the site, and
- (c) the change of use, not being material, is not development:

**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 use of Ballaghmore Old National School, as a childcare facility is not development.

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



Planning Inspector

13<sup>th</sup> July 2023

**Appendices:**

Appendix 1 Photographs

Appendix 2 Laois County Development Plan 2021-2027, extracts

Appendix 3 copy of Board Decision RL3443

Appendix 4 Planning and Development Regulations, 2001 (as amended), extracts

