

Laura Grady Lawlor

From: Maebh Gogarty <mgogarty@smythandson.ie>
Sent: Friday 9 May 2025 09:28
To: Appeals2
Subject: Our Client Patrick Mc Quaid | APB322247-25
Attachments: Email to An Board Planala_1512254.pdf; Email to Donegal County Council_1493688.pdf

Importance: High

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Dear Sirs

Please find attached.

Kind Regards

Maebh

Maebh Gogarty
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An Bord Pleanála
64 Marlsborough Street
Dublin 1

Our Ref: MG/MG/AST001/0005

Date: 09 May 2025

Email: appeals@pleanala.ie

RE: Case No ABP-322247-25
Planning Authority Reference no S525/04
Our Client: Patrick Mc Quade/ Astoria Care Unlimited Company

Dear Sirs,

Reference the above-mentioned matter together with your letter dated 15 April 2025 a copy of which has been furnished to us.

On review of the referral lodged by the Cornagill Residents dated 8 April 2025 while on the face of it they appear to be lodging an appeal in respect of Donegal County Council Planning Reference No S525/04 re Section 5 Declaration issued on the 14th of March, it is in effect a challenge against Donegal County Council Planning reference No S524/93. This is evident from their letter dated 8th April 2025 wherein we note on page 2 paragraph 1 of this letter the appellant identify Section 5 Declaration (S524/93) as *Section 5 Declaration No 1* and go on to state at page 2 paragraph 3 *"We respectfully request that the Board determine our appeal in respect of Section 5 Declaration No 1 and overturns it on the basis of the following information ..."*.

On page 4 of their letter the appellant states *"For the avoidance of any doubt we sought and agree with Section 5 Declaration No 2.(Planning reference S525/04) which confirms that inter alia planning permission is required before a private dwelling house may be used for social care (we appreciate the merits of any such application are not relevant to the Board's consideration of this appeal and we have therefore refrained from any comment, in this regard)... In conclusion we respectfully request that the Board overturn DCC's Section 5 Declaration No 1"*

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Donegal County Council Planning reference No S524/93 related to a Section 5 Declaration issued by the planning authority on the 6th of January 2025 therefore the time limit for lodging an appeal to an Bord Pleanála expired on the 2nd of February 2025 therefore the appeal lodged is out of time.

The appellant appears to suggest that by virtue of the planning authority affirming that the section 5 declaration under reference S524/93 remains valid within its decision pursuant to reference S525/04 that this extends the time period within which they may make a challenge to planning reference S524/93. This argument is without basis or merit. Timelines for appeal are strict and explicitly provide that a party has four weeks beginning on the date the planning authority's chief executive order is signed which in this instance occurred on the 6th of January 2025.

This referral to the Board in whole and/ or in part, is an impermissible collateral attack on Section 5 declaration under reference S5 24/93 issued by Donegal County Council on 6th of January. In circumstances where it is an impermissible collateral attack on Section 5 declaration under reference S5 24/93 it should not be considered by the Board.

Further and/ or in the alternative the Board should use its discretion under Section 138 of the Planning and Development Act 2000 (as amended) to dismiss this referral as the grounds of the referral is vexatious, frivolous and without substance or foundation and/ or the referral should not be further considered by the Board having regard to the nature of the appeal.

We rely on submissions made by this office on behalf of our client submitted to Donegal County Council on 10th March 2025 which we include as part of this submission.

Without prejudice to our submission that the appellants referral is out of time we must address the comments made by the appellants that our clients application pursuant to S524/93 was made on the basis of misrepresentation made to the planning authority. Our Clients' wholly refute the allegations made by the appellant. The appellant refers to a recorded conversation held in our client's office. As the Board will appreciate our clients are not in a position to share medical diagnosis of the children in their care with the general public owing to basic confidentiality rights of the children involved and our clients agreement with TUSLA together with obligations pursuant to GDPR. We can confirm that our client will receive referrals from TUSLA for young people with an intellectual and/ or physical disability and/ or mental illness.

Further we refer to the definition of disability as accepted by An Bord Pleanála determination ABP RL2426 which makes reference to '*... the conditions of the young adults in question as ranging from emotional disturbance to clinical systems such as Attention Deficit Hyperactivity Disorder (ADHD), Obsessive-compulsive Disorder (OCD) and Depression*'.



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With respect to submissions made concerning the title deeds and an alleged breach of the covenants and conditions contained therein our clients change of use is in line with planning reference S525/93 and therefore is not a breach of the covenants and conditions contained therein as the current use of the property is an exempted development.

We are aware the property is connected to the public road byway of a right of way granted to all owners within the development, there is no difficulty in this regard.

Regarding the claim that our client is still only advertising jobs/ roles regarding Social Care only, all staff have to be appropriately qualified, and are qualified, in a range of different disciplines.

In Tusla's Strategic Plan for Residential Care Services for Children and Young People 2022-2025, they name the dearth of children's residential placements citing 'There is inadequate capacity to meet the demand for placements across the country, with significant challenges sourcing appropriate placements for children and young people, particularly those with complex presentations, younger children, or those in an emergency'.

Residential care providers like our Client's work within therapeutic models of care, utilizing clinical supports such as Occupation Therapists and Psychologists to provide the best possible outcomes for young people who are in need of enhanced care and support.

Yours faithfully,

****sent by email therefor bears no signature***

Maebh Gogarty
Smyth & Son, Solicitors

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ATTN SEAN O'NEILL
Donegal County Council
County House
Lifford
Co. Donegal
F93Y622

Our Ref: MG/SW/AST001/0005

Date: 10 March 2025

Email only: planning@donegalcoco.ie

RE: Cornagill, Letter Kenny, Co. Donegal F92P30R
Our Client: Patrick Mc Quaid - Astoria Care Unlimited Company
S5 Declaration Reference S525/04

Dear Sirs,

Reference the above mentioned together with your letter dated 17 February affording our client the opportunity to set out the nature and extent of the development at Cornagill, Letterkenny, Co. Donegal F92P30R (the "Property").

On or about 28th of November our Client Mr. Patrick McQuade made an application to Donegal County Council under Section 5 of the Planning and Development Act, in relation to this property at Cornagill Letterkenny County Donegal F92 P30R- Folio DL86819F. The Declaration sought was as to whether Development consisting of a change in use of the property 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 was exempted development. The application confirmed that there would be no change to the structure or design of the property. The number of persons cared for with an intellectual or physical disability or mental illness would not exceed six and number of resident persons providing care for such persons would not exceed two.

On or about 6th of January 2025 Donegal County Council issued a Declaration (Ref. No. S5 24/93) that such Development was an Exempted Development.

Our Client is entitled to rely on Section 5 Declaration Ref. No S5 24/93 that the proposed change of use of the Property is exempted development. In reliance on said Section 5 Declaration our Client has purchased the property, carried out works internally to bring the

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property in line with Tusla regulations, obtained Tusla permission's, recruited and trained a team of staff incurring significant expense,

The change of use remains the same. The Section 5 application made by Third Parties dated 17th January 2025 bearing your reference S5 24/04 is an impermissible collateral attack on Declaration Ref. No. S5 24/93. This position is supported by numerous Superior Court Decisions including inter alia the Court of Appeal in *Narconon Trust v An Bord Pleanála* [2021] IECA 307 and more recently in the High Court in *Sweetman v An Bord Pleanála* [2023] IEHC 89. The impermissible collateral attack by the making of Section 5 Application (S5 24/04) should not be considered further by Donegal County Council.

Without prejudice to the foregoing objection to the consideration of the Section 5 Application we say as follows;

1. The development at the Property consists of a change in use of the property 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 an exempted development. There will be no change to the structure or design of the property. The number of persons cared for with an intellectual or physical disability or mental illness would not exceed six and resident persons providing care for such persons would not exceed two.
2. With respect to this development, on or about 6th of January 2025 Donegal County Council issued a Declaration (Ref. No. S5 24/93) that same was Development and was Exempted Development. Therefore this change of use is exempted development.
3. We further say that the property is a seven bedroomed property. In compliance with the limitations specified under Class of Exempted Development specified in Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) there will be five children ranging from the ages of 13-17 with varying degrees of intellectual or physical or mental illness who require full time care individually occupying each of five bedrooms. There will be two resident carers in the property occupying the two remaining bedrooms. These carers will provide care and support to the young people including help with physical, intellectual or social needs. The five children and two resident carers will be supported by a Centre Manager and Social Care Worker during the day.
4. Whilst our client has to hold the utmost confidentiality around the young people in their homes, we can confirm that our client will receive referrals from TUSLA for young people with an intellectual, physical disability or mental illness.



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As specified by Donegal County Council in Declaration Ref. No. S5 24/93 this change of use is Exempted Development, and falls under the Class of Exempted Development specified in Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Yours faithfully,

Sent electronically so bears no signature

Maebh Gogarty
Smyth & Son, Solicitors