

OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 17/2

NAME AND ADDRESS OF APPLICANT: Fresh Start, Unit 1, Clayton Court, Staplestown Road,
Carlow, Co. Carlow

ADDRESS FOR CORRESPONDENCE: Unit 1, Clayton Court, Staplestown Road, Carlow, Co.
Carlow

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether the change of use from private dwelling for use as a childrens home to meet the needs of young people in the care of the Child & Family Agency is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Garryhinch, Portarlinton, Co. Offaly

WHEREAS a question referred to Offaly County Council on 14/02/2017, has arisen as to whether the change of use from private dwelling for use as a children's home to meet the needs of young people in the care of the Child & Family Agency serving 3 young people with intellectual or physical disability or mental illness along with 2 resident carers rostered on duty at any given time is considered exempted development in the Planning and Development Act 2000, (as amended)

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Section 2, 3 and 4 of the Planning and Development Act 2000 as amended.
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended.
- (c) Class 14 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –
The proposed development **IS Development** and **IS Exempted Development**.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended, hereby decides that the change of use from private dwelling for use as a residence for where the number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed three (3) and the number of residents carers shall not exceed two (2) **Is Development** and **Is Exempted Development** at this location at Garryhinch, Portarlinton, Co. Offaly

MATTERS CONSIDERED In making its decision, the Planning Authority 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.



Administrative Officer

13/3/2017
Date

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

Dec 17/2

Planning Report

Section 5 Declaration

A Question has arisen as to whether a change of use from private dwelling for use as a children's home to meet the needs of young people in the care of the Child & Family Agency in which the number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed three (3) and the number of residents carers shall not exceed two (2), is considered exempted development in the Planning and Development Act 2000 (as amended).

Address of correspondence: Fresh Start, Unit 1 Clayton Court, Staplestown Road, Carlow, Co. Carlow

Location of development: at Garryhinch, Portarlinton, Co. Offaly

Whereas a question has arisen as to whether the above development is exempted development under Schedule 2, Part 1 Class 14(f) of the Planning and Development Regulations 2001 (as amended)

Development Plan Policy:

The subject site is on unzoned / whitelands in the countryside of county Offaly.

SITE HISTORY

PL2/99/670 - Damien McCormack granted permission for bungalow & septic tank at Garryhinch, Portarlinton

PL2/03/468 - Damien McCormack granted permission for change of house plan design and the site layout plan from the already granted permission for planning reference PL2/99/670

PL2/05/252 - Damien McCormack granted permission for domestic garage/fuel store

LEGISLATIVE FRAMEWORK

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

Statutory Provisions:

Section 2 (1) Planning and Development Act 2000, as amended, states as follows:

"house" means 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, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

Section 3 (1) Planning and Development Act 2000, as amended, defines development.

“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 - Exempted Development.

4 (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,

Regulatory Provisions:

Article 6 of the Planning and Development Regulations 2001, as amended, states, *inter alia*, that:

“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 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

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

Class 14 of Part 1, Schedule 2 of the regulations “Change of use”;

Development consisting of a change of use –

*(f) from use of 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*

Provided;

*The number of persons with an **intellectual or physical disability or a mental illness** living in such a residence shall not exceed 6 and the number of resident carers shall not exceed 2.*

PROPOSAL BY APPLICANTS:

The applicant Fresh Start wishes to ascertain whether the use of a dwelling house for the residential care of children under to the age of 18. The length of stay will be largely dependent on the needs of the young people living there. The maximum number of young people living in the house at any one time is 3 with 2 resident carers rostered on duty at any given time. Those attending will be young people with an intellectual or physical disability or a mental illness requiring care.

ASSESSMENT:

Is this Development considered 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).

Class 14 of Part 1 specifies six exempted changes of use of which Class 14(f), quoted previously, 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.

Having regard to the details submitted by the applicant, the Planning Authority considers that the use of the existing dwelling as a residential house for the care of Children with an intellectual or physical disability or a mental illness is considered exempted development under the provisions of Schedule 2, Part 1, Change of Use, Class 14. of the Planning and Development Regulations, 2001, as amended.

The proposal does not contravene Article 9 of the Planning and Development Regulations 2001 (as amended), in relation to grant of planning permissions Ref No PL2/99/670, PL2/03/468 and PL2/05/252.

Conclusion:

Having considered Section 4 of the Planning and Development Act 2000 (as amended) and the provisions of the Planning and Development Regulations, as amended, the proposed development is considered to be Exempted Development.

C.M.


B O'Brien
Assistant planner
2nd March 2017.

L. Mitchell rep 8/3/17
Report noted
J. Kieran 13/3/17.

WHEREAS a question has arisen as to whether:

A change of use from private dwelling for use as a children's home to meet the needs of young people in the care of a Child & Family Agency serving 3 young people with an intellectual or physical disability or a mental illness along with 2 resident carers rostered on duty at any given time, is considered exempted development in the Planning and Development Act 2000 (as amended).

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to-

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended.
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended.
- (c) Class 14 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

The proposed development IS Exempted development.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by section 5 (2) hereby decides that the change of use from private dwelling for use as a residence for where the number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed three (3) and the number of residents carers shall not exceed two (2), is ^{development and} Exempted development at this location in Garryinch, Portarlinton, Co. Offaly

L. M. M. O'Connell rep

8/3/17

*Joseph Joseph
12/8/17*

L.M.