

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

**REFERENCE:** DEC 18/8

**NAME AND ADDRESS OF APPLICANT:** Fresh Start, C/o David Durney CEO, Unit 2, Deerpark Business Complex, Dublin Road, Carlow

**ADDRESS FOR CORRESPONDENCE:** C/o David Durney CEO, Unit 2, Deerpark Business Complex, Dublin Road, 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 of existing dwelling for use as a children's 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:** Cloneyhurke, Killeen, Portarlinton, Co. Offaly

**WHEREAS** a question referred to Offaly County Council on 07/09/2018, has arisen as to whether the change of use of existing dwelling for use as a children's home to meet the needs of young people in the care of the Child & Family Agency 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-

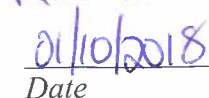
- (a) Section 2 and 3 of the Planning and Development Act 2000 as amended and
- (b) Schedule 2, Part 1, Class 14(f) of the Planning and Development Regulations 2001 - 2018.
- (c) Previous Board decisions.

✓ **AND WHEREAS** Offaly County Council has concluded that the proposed change of use does not constitute a material change in the use of the dwelling which would come within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended)

**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 proposed change of use of the existing dwelling for use as a children's home to meet the needs of young people in the care of the Child & Family Agency **Is NOT Development** at this location at Cloneyhurke, Killeen, 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*

  
\_\_\_\_\_  
*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.

## Planning Report Dec 18/8

### Section 5 Declaration

A question has arisen as to whether the use of an existing dwelling as a children's home to meet the needs of young people in the care of the Child & Family Agency at Cloneyhurke, Killeen, Portarlinton, Co Offaly is or is not development and is or is not exempted development. The Applicant seeks a Declaration of Exempted Development under Schedule 2, Part 1, Class 14(f) of the Planning and Development Regulations 2001.

### Background

The Applicant, Fresh Start, propose that the subject property at Cloneyhurke be used 'to provide for the care of children for a period not less than three (3) years and potentially for a significant period thereafter'. The Applicant advises that the unit can accommodate a maximum of four (4) young people of mixed gender up to the age of 18 years. The stated aim of the service is 'to care for young people until such a time that they can be returned home, moved onto a foster family or independent living'. The Applicant states that 'the number of persons with an intellectual or physical disability or mental illness living in any such residence shall not exceed four (4) and the number of resident carers shall not exceed two (2)'. Further the Applicant states that 'young people with an intellectual or physical disability or mental illness requiring care, attention and therapy only are referred and processed for admission to our service'.

### Assessment

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

2.— (1) In this Act, except where the context otherwise requires—

"development" has the meaning assigned to it by section 3, and "develop" shall be construed accordingly;

Section 3:

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) of the Planning and Development Act, 2000 (as amended) provides for exempted development namely 'the Minister may by regulations provide for any class of development to be exempted development'. These regulations are prescribed in the Planning and Development Regulations 2001 – 2018.

Schedule 2, Part 1, Class 14(f) of the Planning and Development Regulations 2001 – 2018 provides an exemption for 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 provided that 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.

The Applicant has advised in writing that 'young people with an intellectual or physical disability or mental illness requiring care, attention and therapy only are referred and

processed for admission to our service'. The Applicant states that 'the number of persons with an intellectual or physical disability or mental illness living in any such residence shall not exceed four (4) and the number of resident carers shall not exceed two (2). This meets the requirements of the above exemption at Class 14(f).

I have reservations as to whether all users of the facility have an 'intellectual or physical disability or mental illness' but detail the following precedent to allay concerns as to the limitations of Class 14(f).

***Offaly County Council & Fresh Start Ref. PL19.RL2430***

In 2007 Offaly County Council had issued a decision that the use of an existing house for the care of children at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly was not exempted development. Fresh Start then appealed this decision to An Bord Pleanála. The inspectors report details how the Council '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' i.e. Class 14(f). However, the Inspector recommended 'that it be found that the change of the existing house at 11 Eiscir Circle Road, Eiscir Meadows, Tullamore, County Offaly, is not development'. In September 2007 the Board agreed with the Inspector and issued a decision stating that the proposal was 'not development'.

***Westmeath County Council & Midland Health Board (Ref. PL. 25M.RL2059)***

Westmeath County Council made a referral to An Bord Pleanála regarding 'the alleged change of use from a dwelling house to residential accommodation and care to people in need of care, not necessarily being people having intellectual physical disability or mental illness'. The case was decided by An Bord Pleanála in August 2003. The Inspector decided that a material change of use occurred due to the 'institutional nature' of the use and that this comprised 'development' and was not exempted. The Board however did not accept this contention and concluded that 'the change of use of the house at Ories, Fardrum, Athlone, to provide residential care, does not comprise development' and was deemed exempted development.

***Westmeath County Council & Fresh Start (Ref. PL. 25.RL2460)***

Westmeath County Council made a referral to An Bord Pleanála 'as to whether the use of an existing house for the care of children at 33 Ardleigh Crescent, Mullingar, County Westmeath is or is not development or is or is not exempted development'. The Board decided in December 2007 'that the change of use of the said house does not constitute a material change in the use of the said house, which does not, therefore, come within the scope of section 3 (1) of the Planning and Development Act, 2000' and was deemed exempted development.

***Monaghan County Council & Ashdale Care Limited Ref. PL18.RL2552***

Monaghan County Council made a referral to An Bord Pleanála as to 'whether the change of use from a dwelling to a childcare facility is or is not development or is or is not exempted development'. In November 2008 the Inspector recommended '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'. The Board agreed and in January 2009 decided that 'the said change of use of a dwelling house to a childcare facility at Drumbenagh, County Monaghan is not development'.

In consideration of the Applicant's submission and previous Board decisions on the matter I consider the proposed change of use is not material and cannot be considered 'development'.

~~I would therefore recommend that the following Managers Order issue:~~ *omit on*

**WHEREAS** a question has arisen as to whether the use of an existing dwelling as a children's home to meet the needs of young people in the care of the Child & Family Agency pursuant to Schedule 2, Part 1, Class 14(f) of the Planning and Development Regulations 2001-2018 at Cloneyhurke, Killeen, Portarlinton, Co Offaly is or is not development and is or is not exempted development.

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

- (a) Sections 2 and 3 and of the Planning & Development Act 2000 as amended and
- (b) Schedule 2, Part 1, Class 14(f) of the Planning and Development Regulations 2001-2018
- (c) Previous Board decisions

**AND WHEREAS** Offaly County Council has concluded that the proposed change of use does not constitute a material change in the use of the dwelling which would come within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended)

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that the proposed change of use of the existing dwelling at Cloneyhurke, Killeen, Portarlinton, Co Offaly is not development.



D. Lardner  
Assistant Planner  
18/09/2018

*Carroll Melia*

*A/SEP*

*28/9/2018*