

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 18/9

NAME AND ADDRESS OF APPLICANT: Maple Healthcare Ltd.,  
The Atrium, John's Lane,  
Naas,  
Co. Kildare

ADDRESS FOR CORRESPONDENCE: Maple Healthcare Ltd.,  
The Atrium,  
John's Lane,  
Naas,  
Co. Kildare

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Ballaghanoher, Birr, Co. Offaly R42 PT82, is or is not development and is or is not exempted development under the Planning and Development Act 2000, as amended

**LOCATION OF DEVELOPMENT:** Ballaghanoher, Moneygall, Birr, Co. Offaly R42 PT82

**WHEREAS** a question referred to Offaly County Council on 21<sup>st</sup> September 2018 has arisen as to whether the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Ballaghanoher, Birr, Co. Offaly R42 PT82, is or is not development and is and is not exempted development under the Planning and Development Act 2001, (as amended).

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

- (a) Section 2 of the Planning & Development Act 2000, as amended
- (b) Section 3 (1) of the Planning & Development Act 2000, as amended
- (c) Section 4 (1) (h) of the Planning & Development Act 2000, as amended
- (d) Articles 6, 9 and 10 of the Planning and Development Regulations 2001, as amended
- (e) Class 14(f) of Part 1, Schedule 2 Planning and Development Regulations 2001. as amended

**AND WHEREAS** Offaly County Council has concluded that –

The proposed development **Is Development and IS NOT 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 the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Ballaghanoher, Birr, Co. Offaly, R42 PT82 **IS DEVELOPMENT AND IS NOT EXEMPTED DEVELOPMENT**

**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

17/10/2018

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

### Section 5 Declaration

**FILE REFERENCE:** Dec 18/9

**QUESTION:** *A question has arisen whether the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and is or is not exempted development.*

**APPLICANT:** Maple Healthcare Ltd

**CORRESPONDENCE ADDRESS:** The Atrium  
John's Lane  
Naas,  
Co Kildare

**LOCATION:** Ballaghanoher,  
Birr,  
Co Offaly

*A question has arisen whether the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and is or is not exempted development.*

**Development Plan Policy:** The subject site is located in the open countryside and is accessed off the R439 a Restricted Regional Road.

#### **SITE HISTORY**

99/902 – Noel O'Keefe sought permission for dwelling house, septic tank and garage. **This was granted permission.**

#### **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:

**Planning and Development Act, 2000 as amended**  
**Section 2 provides a definition of:**

“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

**Section 3 provides a definition of development.**

S.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.

S. 4 (1) The following shall be exempted development for the purposes of this Act:-

(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”.

**Planning and Development Regulations 2001**

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,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Article 10 relates to Change of Use.

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.

### **Planning and Development Regulations 2001**

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 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 wishes to provide residential care for adults, both male and female with intellectual and other disabilities.

The total floor area of the dwelling is 395.5sqm. The proposed dwelling will accommodate a maximum of 5 No. residents service users and one night staff member sleeps while a second staff member works a waking night shift. The proposed dwelling will have 6 No. ensuite bedrooms.

The care home will be staffed by approximately 8 full-time day-care staff in addition to a team leader who manages the house Monday-Friday 9-5pm. The maximum number of resident carers staying overnight will not exceed 2.

### **ASSESSMENT:**

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) and Section 4(2) of the Act.

*cm*  
Class 14 of Part 1 specifies six exempted changes of use of which Class 14(f), quoted previously, is <sup>which one of</sup> ~~that of possible~~ relevance to this case. This allows for a change of use as a residence for persons with specific disabilities together with persons providing care for such persons.

*Details provided by the applicant:*

The details provided with this S.5 Declaration, including the drawings have been assessed.

- The dwelling has a stated total floor area of 395.3sqm.
- The dwelling has a total length of 22m and a depth of 10.8m.
- The total length of the basement is 20m x 4.7m wide.

*Drawings granted permission under planning Ref: PL2 99/902:*

- The total floor area of dwelling granted permission is 249.8sqm.
- The dwelling granted permission had a total length of 21m and depth of 9.8m.
- The total length of the basement granted permission was 9.8m x 4.6m wide.

The Planning Authority considers that the proposal does contravene Article 9 of the Planning and Development Regulations 2001 (as amended) as the proposed 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,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

The proposal also contravenes Article 10 of the Planning and Development Regulations 2001 (as amended) as the proposed development would:-

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

(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.

The proposed dwelling is 145.5sqm larger than what was granted permission under PL2 99/902 and therefore the development is unauthorised.

The details submitted on the planning file indicated that the proposed Puraflow system and percolation area was designed to cater for a maximum No. of 6 persons.

It is on this basis that the proposed use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is contrary to Article 9 and 10 of the Planning and Development Regulations 2001 (as amended) and therefore no exemptions are applicable.

Having regard to the details submitted by the applicant, the Planning Authority considers that works which involve "the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is NOT considered exempted development.

**Conclusion:**

Having considered Article 9 and 10 of the Planning and Development Regulations 2001 (as amended) the proposed development is considered to be Development and is not Exempted Development.

*Suzanne O'Toole*

S O'Toole A.P  
16<sup>th</sup> October 2018

*Correll Nela*

*A/SEP*

*17/10/2018*

**WHEREAS** a question has arisen as to whether:

A question has arisen whether the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons 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) Section 2 of the Planning and Development Act, 2000, as amended.
- (b) Section 3 (1) of the Planning and Development Acts, 2000 as amended.
- (c) Section 4 (1)(h) of the Planning and Development Acts, 2000 as amended.
- (d) Articles 6, 9 and 10 of the Planning and Development Regulations 2001 as amended.
- (e) Class 14(f) of Part 1, Schedule 2 Planning and Development Regulations 2001 as amended.

**AND WHEREAS** Offaly County Council has concluded that –

The proposed development IS development and IS NOT 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 works which involves the use of a house as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Ballaghanohar, Birr, Co. Offaly **IS Development** and is **NOT Exempted** development.