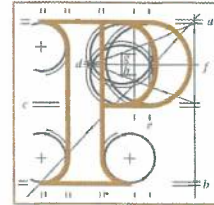


Our Case Number: ABP-305016-19

Planning Authority Reference Number: DEC 19/10



An
Bord
Pleanála

Offaly County Council
Áras an Chontae
Charleville Road
Tullamore
Co. Offaly



Date: 23 FEB 2021

Re: Whether or not Proposed use of a dwelling as a residence for persons with intellectual or physical disabilities or mental illness and persons providing care for such persons is development which is exempted development.
Grove, Cloghan County Offaly

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned referral under the Planning and Development Acts 2000 to 2020. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

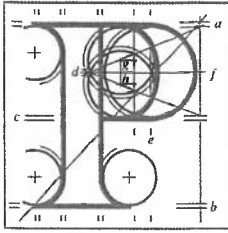
Miriam Baxter
Executive Officer

RL100n



Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902



An
Bord
Pleanála

Board Order
ABP-305016-19

Planning and Development Acts 2000 to 2020

Planning Authority: Offaly County Council

Planning Register Reference Number: DEC 19/10

WHEREAS a question has arisen as to whether the proposed use of the dwelling as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons at Grove, Cloghan, County Offaly is or is not development or is or is not exempted development:

AND WHEREAS Maple Healthcare Limited of The Atrium, John's Lane, Naas, County Kildare requested a declaration on this question from Offaly County Council and the Council issued a declaration on the 3rd day of July, 2019 stating that the matter is development and is not exempted development:

AND WHEREAS Maple Healthcare Limited referred the declaration for review to An Bord Pleanála on the 30th day of July, 2019:

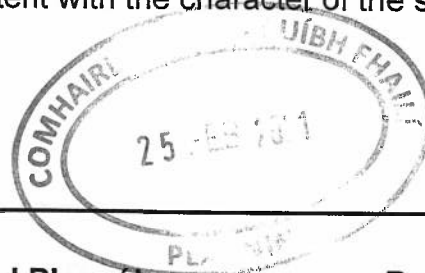
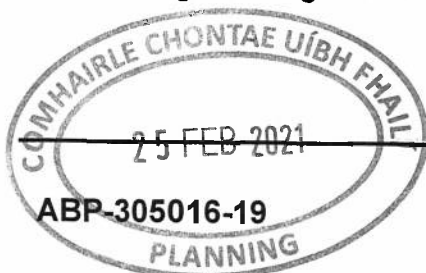


AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and Classes 3, 6(b), 14(f) and 50(a) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site, and
- (d) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the change of use is development and is exempted development as it falls within the scope of Class 14(f) of the Planning and Development Regulations, 2001, as amended,
- (b) the associated internal layout changes are development and exempted development as they fall within the scope of section 4(1)(h) of the Planning and Development Act, 2000, being works affecting only the interior of the structure,
- (c) the associated external modifications to windows and doors are development and are exempted development as they fall within the scope of section 4(1)(h) of the Act, being works of a minor nature that 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,



- (d) the associated detached recreation room is development and is exempted development as it falls within the scope of Class 3 of Part 1 of Schedule 2 of the Regulations being less than 25 square metres in floor area and not exceeding three metres in height,
- (e) the additional hard surfacing areas are development and are not exempted development, as the cumulative area exceeds the relevant limit of 25 square metres as provided for in Class 6(b) of Part 1 of Schedule 2 of the Regulations, and
- (f) the demolition of the former garage is development and is not exempted development, as the garage exceeded the relevant floor area limit of 40 square metres as provided for in Class 50(a) of Part 1 of Schedule 2 of the Regulations:

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, at Grove, Cloghan, County Offaly –


- (a) the change of use of the dwelling to a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons and the associated works comprising; internal layout changes; external modifications to windows and doors; and the construction of a detached recreation room is development and is exempted development, and
- (b) the additional hard surfacing areas and the demolition of the former garage is development and is not exempted development.



A handwritten signature in black ink, appearing to be 'SB', located to the right of the official stamp.

Matters Considered

In making its decision, the Board 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.



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

Dated this 28 day of February 2021.



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

REFERENCE: DEC 19/10

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

ADDRESS FOR CORRESPONDENCE: The Atrium
John's Lane
Co. Kildare

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

LOCATION OF DEVELOPMENT: Grove, Cloghan, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 6th June 2019 has arisen as to whether the proposed use of the dwelling, as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Grove, Cloghan, Co. Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

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

- (a) Sections 2, 3 & 4 of the Planning and Development Act 2000, as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations 2001-2018 as amended.
- (c) Class 3, 14(f) and 50 of Part 1 of Schedule 2 of the said Regulations.

AND WHEREAS Offaly County Council has concluded that –

The proposed works **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 the proposed use of the dwelling, as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Grove, Cloghan, Co. Offaly **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

3/7/19

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 19/10
Question:	<i>Whether the proposed use of the dwelling, as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons is development which is exempted development?</i>
Applicant:	<i>Maple Healthcare Ltd.</i>
Correspondence Address:	<i>The Atrium, John's Lane, Naas, Co. Kildare</i>
Location:	<i>Existing dwelling at Grove, Cloghan, Co. Offaly.</i>

1. Introduction

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

2. Background

The subject site is on unzone/whitelands in the countryside of County Offaly and occupied by a single storey dwelling with an outbuilding referred to as a recreation room (with W/C and utility room).

3. Site History

- 02/809: Kieran Kelly & Mary Carroll sought permission for dwelling house, garage and septic tank: Granted.

4. Legislative Context

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;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the

application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

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

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

(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 and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of other structures or neighbouring structures.

Section 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.

Article 10 relates to changes of use. 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, providing that the development if carried out would not

- (a) involve the carrying out of any works other than the 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 permission,
- (d) be a development where the existing use is an unauthorised use save where such a change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Schedule 2, Part 1 of Article 6 contains the following specific class of development under Class 14(f):

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.

5. Proposal by Applicants

The applicant Maple Healthcare wishes to ascertain whether the proposed use of the dwelling, as a residence for person with intellectual or physical disability or mental illness and persons providing care for such persons is development which is exempted development.

6. Evaluation

Question: *Is the proposed use of the dwelling as a residence for person with intellectual or physical disability or mental illness and persons providing care for such persons considered as Development?*

The change from a use as a domestic dwelling to use as a residential care home represents a material change in the use of the structure and as such, the proposal constitutes development.

However, having visited the subject site on 27th June 2019, it is clearly evident that in addition to the proposed change of use, there are also physical 'works' as defined in the Act currently being undertaken as part of the proposed development. The documentation submitted with the Section 5 Declaration, Maple Healthcare Ltd. includes a ground floor plan (dwg. no. 056-03). When compared to the approved drawings as per grant of planning permission PL2/02/809, a number of amendments are evident:

- (a) **Material alterations to dwelling:** the submitted plans show the following proposed alterations.
 - (i) Dwelling amendments: east (side) elevation = window (previously ensuite) changed to fire escape door.
 - (ii) Dwelling amendments: west (side) elevation = window (previously family room) changed to garden access door.

- (iii) Dwelling amendment: south (rear) elevation = window (previously bedroom 2) changed to garden access door.
 - (iv) Internal configuration of dwelling = changes to the layout will provide 3 no. bedrooms each with their own private sitting room along with an office and a communal kitchen/dining area with adjoining sunroom.
 - (v) Additional hard surfacing = while on site, it was noted that a section of the front garden had been removed and replaced by hard surface area to provide additional car parking spaces. The hard surface area located on both sides of the dwelling has also been increased.
- (b) **Demolition of garage:** The Planning Officer was advised by the Site Manger that this structure was recently demolished. It is noted that this garage was located in the south eastern corner of the site and not on the western boundary as shown on the approved drawings as per grant of planning permission PL2/02/809.
- (c) **Erection of an outbuilding** comprising of a recreation room, WC and utility room: Submitted plans and documentation advise that this is currently in place (pg. 2 "*there is also a detached recreation building to the rear serving as a recreation room. This is 25m² in area*"). A site visit confirmed that this has yet to be built. Submitted plans show the maximum height of the roof pitch as 5.6m above NGL while dimensions are 6.8m (length) and 5m (width) resulting in a total area 34m² and not 25m² as stated by Maple Healthcare Ltd.

Question: Is this proposal considered as Exempted Development?

Under Class 14(f) of the Planning and Development Regulations 2001 (as amended), development consisting of a '*change of use 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*' is exempted development provided that '*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*'.

With regard to the 'works' which are described in the submitted documents and which are currently being carried out, the Planning Authority notes the following:

- (a) **Material alteration to dwelling:** It is the view of the Planning Authority that the amendments which have been outlined above in Section 6, Item (a) (i – iii) (external amendments) and (v) (additional hard surfacing) would materially alter the appearance of the dwelling. This results in the development contravening Condition 1 of the grant of planning permission for PL2/02/809 which states:

'The development shall be in accordance with plans and particulars submitted on 14/08/02 and as amended by the documents and details submitted on the 07/10/02, except where conditions hereunder specify otherwise.'

Therefore, in accordance with Article 9 (1) of the Regulations, the development is not considered as exempted development.

- (b) **Demolition of garage:** While the area of the now demolished garage has not been provided, permission was granted for a 48m² (Ref. 02/809) however an assessment of aerial photograph would suggest the garage was larger than this. The demolition of this garage is not exempted development¹ as it was larger than 40m²; permission should have been sought prior to its demolition.
- (c) **Erection of detached building:** Class 3 allows for the erection of a greenhouse, garage, store, shed or other similar structure as exempted development. The Applicants have advised that they intend to construct a detached building which will serve as a recreation room. The total area of the building would be 34m² and the height of the roof pitch is 5.6m above NGL. This structure does not qualify as exempted development under Class 3 of the Regulations² due to the nature of the proposed use and its area/height which do not comply with the exemption conditions³.

In addition, ambiguity still remains with regard to the following:

- Where will the resident carers live and sleep on the premises;
- The number of care staff (including team leader) that will be on the premises during the daytime; and,
- Will there be office staff on the premises at all times in addition to the carers and team leader.

It is concluded that the proposed use of the dwelling as proposed is not exempted development. This is due to the cumulative effect of the material alterations to the dwelling; the proposed construction of the detached outbuilding; and, the demolition of the garage which all require planning permission.

7. Conclusion

WHEREAS a question has arisen as to whether or not the use of a dwelling 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, where it is development, whether or not it is or is not exempted development at Grove, Cloghan, Co. Offaly.

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

- (a) Sections 2, 3 and 4 of the Planning & Development Act 2000, *as amended.* *ca*

¹ Schedule 2, Part 1 – Exempted Development – General: Class 50: **The demolition of a building, or buildings, within the curtilage of— (i) a house..... The cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres.**

² Schedule 2, Part 1 – Exempted Development – General: Class 3: **The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.**

³ Column 2 – Conditions and Limitations: Class 3:

- No. 2: **The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.**
- No. 5: **The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.**

(b) Articles 6, 9 and 10 of the Planning and Development Regulations 2001-2018 as amended.

(c) Class 3, 14(f) and 50 of Part 1 of Schedule 2 of the said Regulations.

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 the powers conferred on it by Section 5 (2) of the Planning and Development Act, as amended, hereby decides;


That the use of the dwelling as a residence for persons with intellectual or physical disability or mental illness and persons providing care for such persons at Grove, Cloghan, Co. Offaly is development and is not exempted development.



Una McCafferkey
Assistant Planner

3/7/19

Date



Carroll Melia
(A/Senior Executive Planner)

3/7/2019

Date

Grove, Cloghan – Maple Healthcare Ltd facility (site visit 27th June 2019)



Proposed carparking area at the front



Location of garage (has been demolished)



Location of garage (has been demolished)



Works to the rear of dwelling (individual gardens to be created)



Works underway at the west elevation.



Works underway at the east elevation.