

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

REFERENCE: DEC 19/20

NAME OF APPLICANT: Malcolm Spain

ADDRESS FOR CORRESPONDENCE: Malcolm Spain
Rath, Birr,
Co. Offaly
R42 P446

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the change of use of a section of the existing Rath Community Hall to a child care facility (pre-school) is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Rath Parish Hall
Tinnacross
Fivealley, Birr,
Co. Offaly
R42 C588

WHEREAS a question referred to Offaly County Council on 05th December 2019 has arisen as to whether the change use of a section of the existing Rath Community Hall to a child care facility (pre-school) 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) Section 2(1) & 3(1) of the Planning and Development Act 2000, as amended.
- (b) Schedule 2, Article 10(1) – Changes of Use and Schedule 4, Article 10: Exempted Development - Classes of Use of the Planning and Development Regulations 2001, as amended.

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 change of use of a section of the existing Rath Community Hall to a child care facility (pre-school) at Rath Parish Hall, Tinnacross, Fivealley, Birr, 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

15/11/2020

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:	<i>Dec 19/20</i>
Question:	<i>Is the childcare facility (Little Starts Pre-School) which currently operates within the Rath Parish (Community) Hall development and if so, is it exempted development?</i>
Applicant:	<i>Malachy Spain</i>
Correspondence Address:	<i>Rath, Birr, Co. Offaly. R42 C588</i>
Location:	<i>Little Stars Preschool @ Rath Parish (Community) Hall, Tinnacross, Fivealley, Birr, Co. Offaly. R42 X471.</i>

1. Introduction

The question before the Planning Authority is whether the existing preschool which is operated from the Rath Parish (Community) Hall is considered to be development and if so, is it exempted development?

2. Background

Rath is a Sráid which is located at a crossroads, linking two county roads; Birr/Kilcormac with Fivealley/Killyon). The community centre which is located to the north of the crossroads. While the date of its construction is unknown, the Planner notes that the 1995 OSI aerial photography survey show the hall as existing.

In the submitted documentation, the Applicant has advised that they took over operation of Little Stars preschool in September 2003 in the community hall. In a phone conversation with the Planner, the Applicant advised that the preschool has been in operation for some time prior to this takeover. Currently, the number of children attending the service is 22 for the morning session and 15 for the afternoon session.

In order to comply with recent requirements issued by TULSA (Child and Family Agency), the Applicant is seeking confirmation from the Planning Authority that the current preschool is to the satisfaction of planning requirements.

3. Site History

There is no planning history on file for the community hall however the following appears to relate to an application for development on the grounds of the hall.

- 81/545: Department of Posts & Telegraphs sought permission for the erection of a public telephone kiosk at Rath – **Granted**. Maps submitted with this application show the community hall.

At some stage, prior to 2003, a section of the existing Rath Community Hall was converted to a preschool. As this constituted a 'change of use' from community facility to childcare facility, planning permission should have been sought however there is no record of any such planning application having been received by the planning authority.

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:

Planning and Development Act, 2000

The following statutory provisions are relevant in this case Section 2(1) of the Planning and Development Act 2000 as amended states as follows:

"In this Act, except where the context otherwise requires – "development" has the meaning assigned to it by Section 3.1 of the Planning and Development Act. The Act states as follows:

Section 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.

The Act defines 'works' as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Planning and Development Regulations (as amended)

Part 2, Article 10 (1) - Changes of Use states:

'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'.

Part 4, Article 10: Exempted Development – Classes of Use includes the following:

CLASS 8: Use for the provision of:

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose)
- (b) as a crèche
- (c) as a day nursery
- (d) as a day centre

CLASS 10: Use for the provision of:

- (a) an art gallery (but not for the sale or hire of works of art)
- (b) a museum
- (c) a public library or public reading room
- (d) a public hall
- (e) an exhibition hall
- (f) a social centre, community centre or non-residential club

but not as a dance hall or concert hall.

5. Evaluation

a) "Is or is not Development"

In this instance, the proposal involved the ^{material} ~~material~~ change of use of a section of the existing Rath Community Hall to a child care facility (preschool) would involve "works" within the meaning of Section 3 of the Act. Such works constitute "development" within the meaning of the Act.

b) "Is or is not Exempted Development"

The change of use from a community hall to a childcare facility does constitute a change of use from Class 10 to Class 8 and therefore does not constitute exempted development under the above mentioned Act and Regulations.

Planning Enforcement

Section 157 (4) (a) *Prosecution of Offences* of the Planning and Development Act (as amended) states:

'No warning letter or enforcement notice shall issue and no proceedings for an offence under this Part shall commence—(i) in respect of a development where no permission has been granted, after seven years from the date of the commencement of the development'.

6. Conclusion

I conclude that the proposal as outlined in submission is not exempted development

WHEREAS a question has arisen as to whether:

The change of use of a section of the existing Rath Community Hall to a child care facility (preschool) be exempt development under 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(1) & 3 (1) of the Planning and Development Act 2000, as amended.
- (b) Schedule 2, Article 10 (1) - Changes of Use and Schedule 4, Article 10: Exempted Development – Classes of Use of the 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 the change of use of a section of the existing Rath Community Hall to a child care facility (preschool) is development under the Planning and Development Act 2000 (as amended) and is not exempted development.

Notwithstanding the above, in accordance with the provisions of Section 157 (4) (a) *Prosecution of Offences* of the Planning and Development Act (as amended), the planning authority cannot apply enforcement action against an unauthorised development after a seven-year period has passed. As there is evidence that the existing childcare facility (currently operating as Little Stars Preschool) has been in use at the Rath Community Hall for more than 7 years, no enforcement action shall be taken by the Planning Authority. However, the Applicant should note that rectification of the planning status will be required if any subsequent alterations or statutory applications are to be made or, if the related property is to be sold.

Una McCaffrey

Una McCaffrey
Assistant Planner

Date: 14/1/2020

Carroll Melia

Carroll Melia
A/Senior Executive Planner

Date: 14/1/2020

Repost note!

Carroll Melia
15/1/20