

The Secretary,  
Planning Section,  
Offaly County Council  
Áras an Chontae,  
Charleville Road,  
Tullamore,  
Co. Offaly.



29 FEB 2024

Referral

Re: Whether the use of buildings A,B,C and D in accordance with the use specified is or is not development or is or is not exempted development  
Millhouse, Killeenmore, Tullamore, Co. 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 2022. 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](http://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.

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

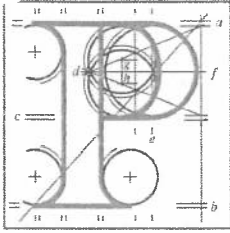
Yours faithfully,

Miriam Baxter  
Executive Officer

Encl:

RL 100





An  
Bord  
Pleanála

**Board Order**  
**19.RL.3577**

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Offaly County Council**

**Planning Register Reference Number: DEC 17/5**



**WHEREAS** a question has arisen as to whether the use of buildings A, B, C and D to a use for persons with an intellectual or physical disability or mental illness and persons providing care for such persons under the provisions of Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, at Millhouse, Killeenmore, Tullamore, County Offaly is or is not development or is or is not exempted development:

**AND WHEREAS** Niall Stack of Killeenmore, Tullamore, County Offaly requested a declaration on this question from Offaly County Council and the Council issued a declaration on the 5<sup>th</sup> day of April, 2017 stating that (i) the use of Buildings A, C and D is development and is not exempted development, and (ii) the use of Building B is development and is exempted development:

**AND WHEREAS** Niall Stack referred this declaration for review to An Bord Pleanála, on the 27<sup>th</sup> day of April, 2017:

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

- (a) Sections 2(1), 3(1) and 4(1)(a) of the Planning and Development Act, 2000,
- (b) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 3 of Schedule 2 of those Regulations, and
- (d) the planning history of the site.



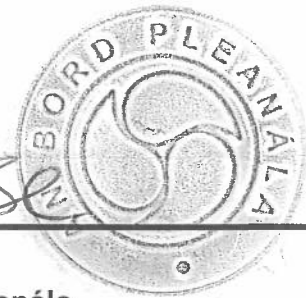
**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the change of use of buildings A, B, C and D from former uses and permitted uses to a use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons, involves a material change of use within the meaning of Sections 2 and 3 of the Planning and Development Act, 2000 and therefore constitutes development under Section 3 of that Act,
- (b) the development relating to buildings A, B, C and D do not fall within the scope of Article 6(1) of the Planning and Development Regulations, 2001, as amended, in that the development is not of a class specified in column 1 of Part 1 of Schedule 2, Class 14(f) of those Regulations,
- (c) having regard to condition number 3 of planning register reference number PI 95/140, the development relating to Building C does not fall within the scope of Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended, and

- (d) No requirement for Environmental Impact Assessment or Appropriate Assessment arises:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the use of buildings A, B, C and D to a use for persons with an intellectual or physical disability or mental illness and persons providing care for such persons at Millhouse, Killeenmore, Tullamore, Co. Offaly is development and is not exempted development.

*Una Crosse*



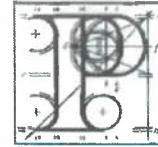
Una Crosse

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

Dated this *29<sup>th</sup>* day of *February* 2024







An  
Bord  
Pleanála

## Judicial Review Notice

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000, as amended, contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that any application for leave to apply for judicial review must be made within 8 weeks of the date of the decision of the Board, save for decisions made pursuant to a function transferred to the Board under Part XIV of the Planning and Development Act 2000, where any application for leave to apply for judicial review must, as set out in sub-section 50(7), be made within 8 weeks beginning on the date on which notice of the decision of the Board was first sent (or as may be the requirement under the relevant enactment, functions under which are transferred to the Board, was first published). These time periods are subject to any extension which may be allowed by the High Court in accordance with sub-section 50(8).

Section 50A(3) states that leave for judicial review shall not be granted unless the Court is satisfied that (a) there are substantial grounds for contending that the decision is invalid or ought to be quashed and (b) the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the costs of certain judicial review proceedings in the High Court; pursuant to Section 50B(1), Section 50B applies to the following proceedings:

(a) proceedings in the High Court by way of judicial review, or of seeking leave to apply for judicial review, of—

- (i) any decision or purported decision made or purportedly made,
- (ii) any action taken or purportedly taken,
- (iii) any failure to take any action, pursuant to a statutory provision that gives effect to
  - I. a provision of the EIA Directive 85/337/EEC as amended to which Article 10a (as inserted by Directive 2003/35/EC) of that Directive applies,
  - II. the SEA Directive 2001/42/EC, or
  - III. a provision of the IPPC Directive 2008/1/EC to which Article 16 of that Directive applies, or
  - IV. Article 6(3) or 6(4) of the Habitats Directive; or

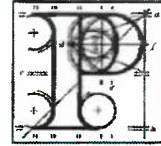
(b) an appeal (including an appeal by way of case stated) to the Supreme Court from a decision of the High Court in a proceeding referred to in paragraph (a);

(c) proceedings in the High Court or the Supreme Court for interim or interlocutory relief in relation to a proceeding referred to in paragraph (a) or (b).

The general provision contained in section 50B(2) is that in proceedings to which the section applies each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant, to the extent that the applicant succeeds in obtaining relief, against a respondent or notice party, or both, to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on [www.citizeninformation.ie](http://www.citizeninformation.ie)

**Disclaimer:** The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.



An  
Bord  
Pleanála

## Fógra faoi Athbhreithniú Breithiúnach

Athbhreithniú breithiúnach ar chinntí an Bhoird Pleanála faoi fhorálacha na nAchtanna um Pleanáil agus Forbairt (arna leasú).

Ní fhéadfaidh duine ar mian leis nó léi agóid a dhéanamh in aghaidh bhailíocht chinneadh de chuid an Bhoird é sin a dhéanamh ach trí athbhreithniú breithiúnach. Tá forálacha in Alt 50, 50A agus 50B den Acht um Pleanáil agus Forbairt 2000, arna leasú, maidir le dúshláin i leith bhailíocht chinneadh an Bhoird.

Ní féidir bailíocht cinnidh arna ghlacadh ag an mBord a cheistiú ach amháin trí iarratas a dhéanamh ar athbhreithniú breithiúnach faoi Ordú 84 de Rialacha na nUaschúirteanna (S.I. Uimh. 15 de 1986). Ceanglaíonn fo-alt 50(6) den Acht um Pleanáil agus Forbairt 2000 go gcaithfear aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach a dhéanamh laistigh de 8 seachtaine ó dháta chinneadh an Bhoird, seachas cinní a dhéantar de bhun feidhme aistriú chuig an mBord faoi Chuid XIV den Acht um Pleanáil agus Forbairt 2000, i gcás nach mór aon iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach, mar atá leagtha amach i bhfo-alt 50(7), a dhéanamh laistigh de 8 seachtaine ag tosú ar an dáta ar ar tugadh fógra faoi chinneadh an Bhoird ar dtús (nó mar a cheanglófar faoin achtú ábhartha, ar aistriódh feidhmeanna faoi chuig an mBord, a foilsíodh den chéad uair). Tá na tréimhsí ama seo faoi réir aon síneadh a fhéadfaidh an Ard-Chúirt a cheadú de réir fho-alt 50(8).

Sonraítear in alt 50A(3) nach ndeonófar cead d'athbhreithniú breithiúnach mura bhfuil an Chúirt sásta (a) go bhfuil forais shubstaintiúla ann chun a áitiú go bhfuil an cinneadh neamhbhailí nó gur chóir é a chur ar neamhní agus (b) go bhfuil leas leordhóthanach ag an iarratasóir san ábhar is ábhar don iarratas nó i gcásanna a bhaineann le measúnú tionchair timpeallachta ar comhlacht é a chomhlíonann critéir shonraithe.

Tá forálacha in alt 50B maidir le costais imeachtaí athbhreithnithe bhreithiúnaigh áirithe san Ard-Chúirt; de bhun Alt 50B(1), tá feidhm ag alt 50B maidir leis na himeachtaí seo a leanas:

(a) imeachtaí san Ard-Chúirt mar athbhreithniú breithiúnach, nó trí chead a lorg chun iarratas a dhéanamh ar athbhreithniú breithiúnach, ar—

- (i) aon chinneadh nó cinneadh airbheartaithe a rinneadh nó a airbheartaítear a rinneadh,
- (ii) aon ghníomh a rinneadh nó a airbheartaítear a rinneadh,
- (iii) aon mhainneachtain aon ghníomh a dhéanamh, de bhun forála reachtúla a thugann éifeacht
  - I. d'fhoráil de Threoir EIA 85/337/CEE arna leasú lena mbaineann Airteagal 10a (arna cur isteach le Treoir 2003/35/CE) den Treoir sin,
  - II. do Threoir SEA 2001/42/CE, nó
  - III. d'fhoráil de Threoir IPPC 2008/1/CE a bhfuil feidhm ag Airteagal 16 den Treoir sin maidir léi, nó
  - IV. d'Airteagal 6(3) nó 6(4) den Treoir maidir le Gnáthóga; nó

(b) achomharc (lena n-áirítear achomharc de chás ráite) chun na Cúirte Uachtaraí i gcoinne breithe ón Ard-Chúirt in imeacht dá dtagraítear i mír (a);

(c) imeachtaí san Ard-Chúirt nó sa Chúirt Uachtarach le haghaidh faoisimh eatramhach nó idirbheitheach i ndáil le himeacht dá dtagraítear i mír (a) nó (b).

Is í an fhoráil ghinearálta atá in alt 50B(2) ná go n-íocfaidh gach páirtí in imeachtaí lena mbaineann an t-alt a chostais féin. Féadfaidh an Chúirt, áfach, costais a dhámhachtain in aghaidh aon pháirtí in imthosca sonraithe. Tá foráil ann freisin go ndéanfaidh an Chúirt costais imeachtaí nó cuid de chostais den sórt sin a dhámhachtain d'iarratasóir, a mhéid a éiríonn leis an iarratasóir faoiseamh a fháil, i gcoinne freagróra nó páirtí fógra, nó an dá cheann, a mhéid a chuir an chaingean nó an t-easnamh ar thaobh an fhreagróra nó an pháirtí fógra go páirteach leis an bhfaoiseamh atá á fháil.

Tá eolas ginearálta ar nósanna imeachta athbhreithnithe bhreithiúnaigh ar fáil anseo a leanas, [www.citizensinformation.ie](http://www.citizensinformation.ie).

**Séanadh:** Mar eolas atá an méid thuas ceaptha. Ní airbheartaíonn sé a bheith ina léirmhíniú ceangailteach ó thaobh dlí ar na forálacha ábhartha agus bheadh sé inmhólta do dhaoine atá ag smaoineamh ar chaingean dlí comhairle dlí a lorg.