

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 25/2

NAME OF APPLICANT: Harmony Residential Care

ADDRESS FOR CORRESPONDENCE: C/O Niall Hegarty, BLDG Chartered Surveyors, Unit 4, 84 Strand Street, Skerries, Co. Dublin, K34 VW93.

NATURE OF APPLICATION: request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the change of use from residential to residential care facility for children at risk, including those with learning difficulties is or is not development and is or is not exempted development

LOCATION OF DEVELOPMENT: Ballindrennan, Kilcormac, Co. Offaly, R42 PY22.

WHEREAS a question has arisen as to whether the change of use from residential to residential care facility for children at risk, including those with learning difficulties is or is not development and, where it is development, whether or not it is or is not exempted development at Ballindrennan, Kilcormac, Co. Offaly, R42 PY22.

AS INDICATED on the particulars received by the Planning Authority on the 15th January 2025.

AND WHEREAS Harmony Residential Care C/O Niall Hegarty, BLDG Chartered Surveyors, Unit 4, 84 Strand Street, Skerries, Co Dublin, K34VW93 requested a declaration on the said question from Offaly County Council.

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

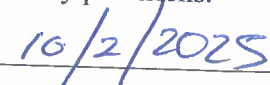
- Sections 2, 3 and 4 of the Planning & Development Act 2000 as amended.
- Articles 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the change of use from residential to residential care facility for children at risk, including those with learning difficulties is **development** and is **exempted development** at Ballindrennan, Kilcormac, Co. Offaly, R42 PY22.

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 include 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 - Section 5 Declaration

File Reference:	Dec 25/02
Question:	<i>Whether the change of use from residential to residential care facility for children at risk, including those with learning difficulties is or is not development and is or is not exempted development.</i>
Applicant:	Harmony Residential Care
Correspondence Address:	c/o Niall Hegarty, BLDG Chartered Surveyors, Unit 4, 84 Strand Street, Skerries, Co Dublin, K34VW93
Location:	Ballindrennan, Kilcormac, Co. Offaly, R42 PY22.

1. Introduction

The question has arisen as to whether the change of use from residential to residential care facility for children at risk, including those with learning difficulties is or is not development and is or is not exempted development at Ballindrennan, Kilcormac, Co. Offaly, R42 PY22.

2. Site Location and Description

The subject site which amounts to c.0.385ha is located in the open countryside approximately 2.3km to the southeast of Ballyboy Sráid. The site is bordered by agricultural lands to the rear and north; a local road to the west and a residential property to the south.

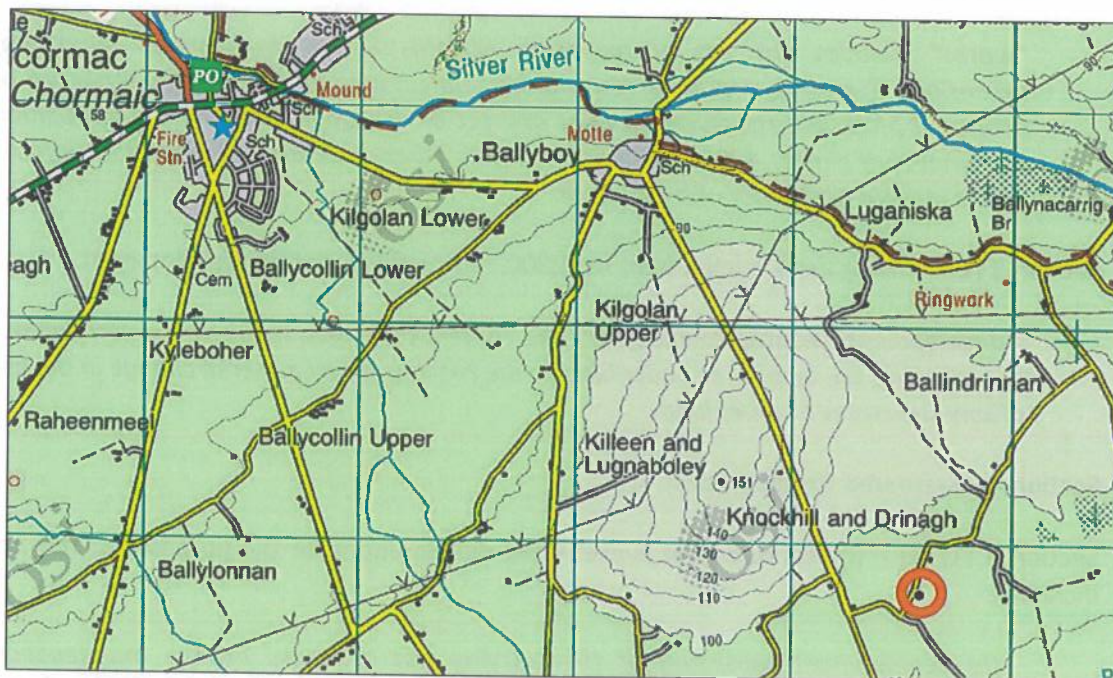


Figure 1 – Site Location.

3. Site History

The following planning applications have been made on the subject site:

- 04/479: Donal McIntyre sought permission for a dormer residence, garage, new entrance and approved proprietary sewage treatment system – **Granted**.
- 05/941: Carmel Boyle sought permission for the construction of a detached dormer dwelling house, domestic garage, effluent treatment system and ancillary services thereto – **Granted**.

A Section 47 Agreement (ref. S47/109) with a Managers Order dated 25th August 2005 applies to the subject site. This relates to planning application ref. 05/214 which is a permitted development located to the north of the subject site and part of the overall landholding. In this instance, the applicant was Frank Fitzpatrick and the landowner was listed as John Gleeson.

Enforcement: No record of any enforcement matters on the subject site.

Adjoining Lands: No recent planning history associated with the adjacent lands.

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 states the following in the submitted planning documentation:

The proposed is an application for a declaration of exempted development under Schedule 2, Part 1, Class 14(f) of the Planning and Development Regulation 2001, regarding the change of use from Residential to provide a residential care facility for children at risk, including those with learning difficulties.

In line with Schedule 2, Part 1, Class 14(f) of the Planning and Development Regulation 2001, the number of residents will not exceed 6, and the number of careers will not exceed 2.

Proposed Works - Fire remediation works including compartmentation of the escape routes and first-floor landing accounting for new fire doors where required. No other major works are required.

The Planner notes that the reference to 'children at risk including those with learning difficulties' by the Applicant. In this regard, the Planner refers to the An Bord Pleanála decision ref. ABP 309565-21 and other relevant decisions from the Board which are referenced in the Inspectors Report:

ABP ref. 309565-21 at Knockadreet, Roundwood, Co. Wicklow.

effective care support which includes the mental health of the child in care. It is highlighted that the subject facility would provide residential care for a vulnerable child in a community setting. It highlighted in the submitted documents that it is important that the dwelling remains discrete and anonymous and that it cannot be readily identifiable particularly by those who pose a threat to the child. Having regard to the nature of the proposed use as a residence to provide a care facility for a vulnerable child, I would note the case made by the referrer in relation to the matter of mental health issues where they highlighted that children availing of this type of care facility would in many cases have been subject to in an abusive or threatening relationship, being removed from that environment, or being separated from parents who are unable to care for them and that such circumstances would cause mental stress which may be described as mental illness. Therefore, I would consider the subject use would be covered under the provisions of Class 14(f).

ABP ref. RL15.RL3463 at Hampton Lodge, Tullydonnell, Dunleer, Co. Louth.

I note that the exemption under Class 14 (f) is for persons with intellectual, physical disability or mental illness. The planning authority raise question marks as to whether the individuals referred to are such persons, however the wording of the question is clear. The owner occupier TerraGlen Respite Services submit that they will operate within the meaning and intent of the exemption afforded under Class 14 (f) of the Planning and Development Regulations, and the limiting conditions provided thereunder. The term 'mental illness' is not defined within the

Planning Regulations and therefore is some ambiguity with regard to allowing for a change of use for a residence for persons with an intellectual or physical disability or mental illness. Regard is had to precedent cases and also to the four definitions of 'mental illness' as defined in Section 3(2) of the Mental Health Act 2001, The National Alliance on Mental Health, The Medicinet.net website and the World Health Organisation, as submitted by the respondent, see section 6.0 of this report above for full details of definitions.

Given An Bord Pleanála's ruling's in respect of 25RL.2059 (2003) and 29S.RL.2426 (2008) of which I consider, the nature and scale of the proposed use at Hampton Lodge, as a residence for up to four children, with particular needs for comprehensive care, staffing (two carers and a manager), guidance and accommodation facilities, similar, it is my opinion that the proposed use 'is development' and 'is exempted development'.

In view of the above and having read the contents of the submissions and inspected the subject area, it is my opinion that the change of use of a single dwelling to a residence for persons with intellectual / physical disability or mental illness and persons providing of care is development which is exempted development under the provision of Schedule 2, Part 1, Change of Use, Class 14 (f) of the Planning and Development Regulations, 2001

The Planner notes that there have been some external changes to the permitted dwelling design but given that these are minor in nature, they do not warrant any further assessment.

6. Evaluation

Question: *Is the proposed change of use of the existing dwelling to a residential care facility for children at risk, including those with learning difficulties considered as development?*

It is considered that the change from a use from a domestic dwelling to use as a residential care facility for children at risk, including those with learning difficulties represents a material change in the use of the structure and as such, the proposal constitutes development as defined by Section 3 of the Planning and Development Act (as amended).

Question: *Is this proposal considered 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'.

Having regard to the Board decisions referenced earlier in this report, the Planning Authority are satisfied that the use of the existing dwelling to residential care facility for children at risk including those with learning difficulties is classed as exempted development under the provisions of Class 14(f).

7. Evaluation

It is recommended that the change of use from residential to residential care facility for children at risk, including those with learning difficulties at the subject site is development and is exempted development.

Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether the change of use from residential to residential care facility for children at risk, including those with learning difficulties is or is not development and, where it is development, whether or not it is or is not exempted development at Ballindrennan, Kilcormac, Co. Offaly, R42 PY22.

AS INDICATED on the particulars received by the Planning Authority on the 15th January 2025.

AND WHEREAS Harmony Residential Care c/o Niall Hegarty, BLDG Chartered Surveyors, Unit 4, 84 Strand Street, Skerries, Co Dublin, K34VW93 requested a declaration on the said question from Offaly County Council;

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

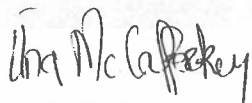
- (a) Sections 2, 3 and 4 of the Planning & Development Act 2000 as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- (c) Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

- The change of use from residential to residential care facility for children at risk, including those with learning difficulties **is development and is exempted development** at Ballindrennan, Kilcormac, Co. Offaly, R42 PY22.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.



Úna McCafferkey
A/Senior Executive Planner

10th February 2025

Date

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



Screening is used to determine if an AA is necessary by examining:

- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.

Planning Authority: OCC

Planning Application Ref. No: Dec. 25/02

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:

Proposed development:	Whether the change of use from residential to residential care facility for children at risk, including those with learning difficulties is or is not development and is or is not exempted development.		
Site location:	Ballindrennan, Kilcormac, Co. Offaly, R42 PY22		
Site size:	c.0.385	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Clonaslee Eskers and Derry Bog SAC – 3.53km Slieve Bloom Mountains SPA – 4.78km Slieve Bloom Mountains SAC – 7.73km		
Distance to European Site(s):	As above – all as crow flies		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	

(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):

The reasons for the designation of the European site(s):
<p>Clonaslee Eskers and Derry Bog SAC - Features of interest include:</p> <ul style="list-style-type: none"> • Alkaline fens [7230] • Vertigo geyeri (Geyer's Whorl Snail) [1013] <p>Slieve Bloom Mountains SPA – Features of interest include:</p> <ul style="list-style-type: none"> • Hen Harrier (Circus cyaneus) [A082] <p>Slieve Bloom Mountains SAC - Features of interest include:</p> <ul style="list-style-type: none"> • Northern Atlantic wet heaths with Erica tetralix [4010] • Blanket bogs (* if active bog) [7130] • Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]
The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)

Site Name: Clonaslee Eskers and Derry Bog SAC, Site Code: 000859

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000859.pdf>

Site Name: Slieve Bloom Mountains SPA, Site Code: 004160

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.pdf>

Site Name: Slieve Bloom Mountains SAC, Site Code: 000412

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000412.pdf>

(C) NPWS ADVICE:

Advice received from
NPWS over phone:

None Received

Summary of advice
received from NPWS in
written form
(ATTACH SAME):

None Received

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

*(The purpose of this is to identify if the effect(s) identified could be significant
– if uncertain assume the effect(s) are significant).*

If the answer is 'yes' to any of the questions below, then the effect is significant.
(Please justify your answer. 'Yes' / 'No' alone is insufficient)

Would there be...

... any impact on an Annex 1 habitat?
(Annex 1 habitats are listed in Appendix 1 of AA Guidance).

Not likely due to the location and type of development.
The site is sufficient distance from the European site.

... a reduction in habitat area on a
European site?

There will be no reduction in the habitat area.
The site is sufficient distance from the European site.

... direct / indirect damage to the physical quality of the
environment (e.g. water quality and supply, soil
compaction) in the European site?

Not likely due to the location and type of development
The site is sufficient distance from the European site.

... serious / ongoing disturbance to species / habitats for
which the European site is selected (e.g. because of
increased noise, illumination and human activity)?

Not likely due to the location and type of development
The site is sufficient distance from the European site.

... direct / indirect damage to the size, characteristics or
reproductive ability of populations on the European site?

None likely due to the location and type of development.
The site is sufficient distance from the European site.

Would the project interfere with mitigation measures put in
place for other plans / projects. [Look at *in-combination*
effects with completed, approved but not completed, and
proposed plans / projects. Look at projects / plans within
and adjacent to European sites and identify them]. Simply
stating that there are no cumulative impacts' is insufficient.

No other plans known of in the vicinity of the site.
The site is sufficient distance from the European site.

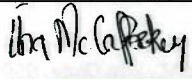
(E) SCREENING CONCLUSION:

Screening can result in:

1. **AA is not required** because the project is directly connected with / necessary to the nature conservation management of the site.
2. **No potential for significant effects / AA is not required.**
3. **Significant effects are certain, likely or uncertain.** (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.

Therefore, does the project fall
into category 1, 2 or 3 above?

Category 2

Justify why it falls into relevant category above:	There would be no likely significant impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site.		
Name:	Úna McCafferkey 		
Position:	A/Senior Executive Planner	Date:	10 th February 2025