

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 2013

NAME OF APPLICANT:  
ADDRESS

LESLEY KEENAGHAN

ADDRESS FOR CORRESPONDENCE:

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours ) is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: BALLYHEARTH, CLONFLANLOUGH, CO. OFFALY.

WHEREAS a question referred to Offaly County Council on 5<sup>th</sup> August 2020 as to whether a change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) is not development and is or is not exempted development at Ballyhearth, Clonfanlough is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

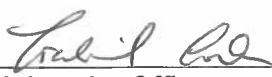
AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

(a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended)

AND WHEREAS Offaly County Council has concluded that a change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) in accordance with particulars received on 5th August 2020 is not 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 a change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) at Ballyhearth, Clonflanlough, Co. Offaly **IS NOT 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

31/08/2020  
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

|                                |                                                                                                                                                                                    |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>File Reference:</b>         | <b>Dec 20-13</b>                                                                                                                                                                   |
| <b>Question:</b>               | <i>Whether a change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) is or is not development and is or is not exempted development.</i> |
| <b>Applicant:</b>              | <i>Lesley Keenaghan</i>                                                                                                                                                            |
| <b>Correspondence Address:</b> |                                                                                                   |
| <b>Location:</b>               | <i>Ballyhearth<br/>Clonfanlough</i>                                                                                                                                                |

### 1. Introduction

The question has arisen as to whether a change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) is or is not development and is or is not exempted development at Ballyhearth, Clonfanlough.

### 2. Site Location & Description

The site is located in the countryside of Co. Offaly. There is an existing dwelling with an associated garage on site. There is ~~a~~ also a separate playschool structure located to the rear of the dwelling.

### 3. Relevant Planning History

06689:

Permission granted for the construction of a dwelling house and effluent treatment system (on foot of outline permission ref: pl2/04/1246)

12/85:

Retention granted for a change of use of partial ground floor space from residential to sessional preschool use.

16/275:

Retention granted for a new entrance lobby and toilets, change of use of existing room to sessional childcare use and associated ancillary works

18/100:

Permission granted for an extension to the rear to accommodate afterschool children separate from preschool children

It is noted that there is nothing in the particulars of the permissions (and associated applications) that would restrict the hours of operation of the pre-school/afterschool.

### 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:**

*“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.*

*‘structure’ means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and— (a) where the context so admits, includes the land on, in or under which the structure is situate,*

**Section 3 (1) Planning and Development Act 2000 (as amended) defines development as:**

*“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.*

### **5. Proposal by Applicant**

The Applicant wishes to ascertain whether a change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) is or is not development and is or is not exempted development

### **6. Evaluation**

**Question: Is the following works considered as Development?**

It is considered that the proposal to change the hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) does not constitute development or works within the meaning of the Act. It is not considered that the development constitutes a material change in use, as no change of use is proposed.

**Question: Is the following works proposal considered as Exempted Development?**

It is not necessary to consider this question as it is considered that the proposal to change the hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) is not development.

### **7. Appropriate Assessment Screening**

Screening is not required as no development occurs.

### **8. Recommendation**

It is recommended that a change of hours of operation from sessional preschool (3.5hours) to half day care (up to 5 hours) is not 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 a change of hours of operation from sessional preschool (3.5 hours) to half day care (up to 5 hours) is not development and is or is not exempted development at Ballyhearth, Clonfanlough.

~~**AS INDICATED** on the plans and particulars received by the Planning Authority on 5<sup>th</sup> August 2020,~~

**AND WHEREAS** Lesley Kennaghan requested a declaration on the said question from Offaly County Council;

**AND WHEREAS** Offaly County Council as the Planning Authority, in considering this declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended);

**AND WHEREAS** Offaly County Council has concluded that the intensification of occupancy of the childcare facility does not constitute development as no works are proposed and no material change of use occurs. The question of exempted development therefore does not arise.

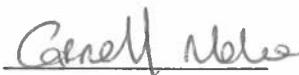
**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that a change of hours of operation from sessional preschool (3.5 hours) to half day care (up to 5 hours) is not development.

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.



Elaine Clarke  
Executive Planner

27/08/20



Carroll Melia  
A/Senior Executive Planner

28/8/2020