



Board Direction

Ref: 028.RL3423

The submissions on this file and the Inspector's report were considered at a Board meeting held on February 15th 2016.

The Board decided, as set out in the following Order, that the ongoing playing pitch relocation at Beaumont Park, Ballintemple, Cork was development and was not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the ongoing playing pitch relocation at Beaumont Park, Ballintemple, Cork, is or is not development or is or is not exempted development;

AND WHEREAS Brian Walsh requested a declaration of this question from Cork City Council on the 2nd day of September 2015

AND WHEREAS the City Council issued a declaration on the 29th day of September 2015 stating that the development of these playing pitches was development and was exempted development

AND WHEREAS Brian Walsh referred this declaration for review to An Bord Pleanála on the 22nd day of October, 2015;

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Part 1 of Schedule 2 to those Regulations, including Class 33(c),
- (c) The absence of satisfactory evidence that the development was carried out pursuant to a contract entered into by the local authority concerned,

- (d) The extent of the works that have been carried out to date, based on the submitted documentation and the inspection carried out by the Board's Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The playing pitch relocation at Beaumont Park, Ballintemple, Cork, involves the carrying out of works, as defined, and is therefore development;
- (b) The development that has taken place does not come within the scope of Section 4 (1)(f) of the planning and Development Act, 2000, as amended, as there is no evidence that the development was carried out on behalf of, or jointly or in partnership with the relevant planning authority, pursuant to any contract entered into by the local authority concerned, and therefore cannot avail of the exemption provided under that Section;
- (c) The development that has taken place does not come within the scope of Class 33(c) of Part 1 of Schedule 2 to the Planning & Development Regulations, 2001, as amended, having regard to the extent of the works, including the significant raising and lowering of ground levels.

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 ongoing playing pitch relocation at Beaumont Park, Ballintemple, Cork, is development and is not exempted development.

In not accepting the Inspector's recommendation, the Board noted the fact that there was no specific contract between the Football Club and the local authority in this instance, and is satisfied that the provisions of Section 4 (1)(f) of the Planning and Development Act 2000, as amended, are clear in requiring that development carried out on behalf of, or jointly or in partnership with a local authority, can only constitute exempted development under this Section where it is carried out pursuant to a contract entered into by the local authority concerned. In the absence of satisfactory evidence of such a contract, the Board was satisfied that the development does not come within the scope of Section 4 (1)(f). In making this decision, the Board had regard to precedent referral cases where this issue was previously considered, including RL2376 and RL3334.

Furthermore in relation to Class 33(c) of Part 1 of Schedule 2 to the Regulations, the Board had regard to the extent of works that have taken place, as shown on the submitted documentation (including the tender document and photographs submitted by the Football club) and in the

inspection by the Board Inspector, and noted that the works comprised significant raising and lowering of pre-existing ground levels. In the circumstances, the Board considered that these works did not come within the scope of the “laying out and use of land” as set out in this Class. In making this decision, the Board had regard to precedent referral cases where this issue was previously considered, including RL2069, RL2071 and RL2076.

Board Member: _____ Date: 25th February 2016
Philip Jones