



Board Direction

Ref: RL92. RL3460

The submissions on this file and the Inspector's report were considered at a Board meeting held on 07/12/2018.

The Board decided, as set out in the following Order, that

WHEREAS a question has arisen as to whether works carried out on a railway footbridge at Ard Mhuire/Collins Park, Carrick on Suir, County Tipperary, is or is not development or is or is not exempted development:

AND WHEREAS Tipperary County Council referred this question to An Bord Pleanála on the 12th day of February, 2016:

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

- (a) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1)(h) of the Planning and Development Act, 2000, as amended, and
- (c) Class 23 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The nature and overall character of the footbridge over the railway line prior to, and after, carrying out of the subject works.
- (e) Relevant case law, including the Supreme Court judgement in Cronin (Readymix) Ltd v ABP and ors [2017] IESC 36 (30th May 2017) and,

the High Court judgement in *Iarnród Éireann v ABP and Clare County Council* [2015/195 J.R.].

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works carried out constitute development within the meaning of Section 3 of the Planning and Development Act 2000, as amended.
- (b) The development that has taken place consists of the carrying out of works for the alteration of the existing bridge structure, but these works, and in particular the railings on the stairwells, materially affect the external appearance of this structure as a whole so as to render the appearance inconsistent with the character of this structure (when compared to the appearance of this structure prior to the carrying out of the subject works), and accordingly are outside the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- (c) The development would not be within the scope of the exemption afforded under Class 23 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, because the subject works involve an alteration of the existing bridge structure in such a way as to materially affect the external appearance thereof, and the development is therefore not exempted development.

In deciding not to accept the Inspector's recommendation that the works carried out on the railway footbridge are development and are exempted development, the Board considered that the alterations carried out were a marked departure from the pre-existing structure, and having regard to case law and, for the reasons outlined in the Order, did not accept that the development in question was within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended or Class 23 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended.

Furthermore, the Board did not consider that the purpose and function of the subject works i.e. for the safety of persons using the bridge (as suggested

by the Inspector) is a material consideration when assessing the external appearance and overall character of the structure as a whole, in the context of Section 4(1)(h) of the Planning and Development Act 2000, as amended or Class 23 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the works carried out on the footbridge is development and is not exempted development.

Board Member: _____ Date: 14th, December 2018
Stephen Bohan