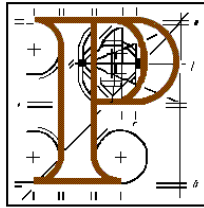


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Cork City

Planning Authority Reference Number: R401/15

An Bord Pleanála Reference Number: 28.RL3423

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

AND WHEREAS Brian Walsh of 3 Upper Beaumont Drive, Ballintemple, Cork requested a declaration on this question from Cork City Council and the Council issued a declaration on the 29th day of September, 2015 stating that the matter was development and was exempted development:

AND WHEREAS Brian Walsh referred the 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, and

- (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 involves the carrying out of works, as defined under section 3(1) of the Planning and Development Act, 2000, 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 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, and
- (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 and Development Regulations 2001, 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, hereby decides that the ongoing playing pitch relocation works 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, 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) of the said Act. In making this decision, the Board had regard to precedent referral cases where this issue was previously considered, including 66.RL.2376 and 93.RL.3334.

Furthermore, in relation to Class 33(c) of Part 1 of Schedule 2 to the said 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's 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 06D.RL.2069, 11.RL.2071 and 06D.RL.2076.

MATTERS CONSIDERED

In making its decision, the Board 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.

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

Dated this day of 2016.