



Planning and Development Acts 2000 to 2018

Planning Authority: Tipperary County Council

Planning Register Reference Number: TUD-15-045

WHEREAS a question has arisen as to whether works carried out on a railway footbridge which include (a) removal of existing stone steps and hand rail to the north and south of an existing footbridge, (b) removal of boundary wall to the north and south of the footbridge, and (c) installation of steel frame steps to the north and south of the footbridge, at Ard Mhuire/Collins Park, Carrick-on-Suir, County Tipperary, are or are not development or are or are not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Tipperary County Council 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,
- (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, and
- (e) Relevant case law, including the Supreme Court judgment in Michael Cronin (Readymix) Limited v An Bord Pleanála Supreme Court Appeal No: 304/2010 (30th May 2017) and, the High Court judgment in Iarnród Éireann v An Bord Pleanála [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, that is 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 a railway footbridge at Ard Mhuire/Collins Park, Carrick-on-Suir, County Tipperary, is development and is not exempted development.

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
2019**