



An
Bord
Pleanála

Inspector's Report ABP-310420-21

Question	Whether the creation of hard standing area for the storage of refuse bins is or is not development and is or is not exempted development.
Location	Valley Drive, Druids Valley, Cherrywood, Dublin 18
Declaration	
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	47/21
Applicant for Declaration	Tullyvale Management Company
Planning Authority Decision	Is development and is not exempted development
Referral	
Referred by	Tullyvale Management Company
Observer(s)	None
Date of Site Inspection	24 th June 2022
Inspector	Phillippa Joyce

1.0 Site Location and Description

- 1.1. The referral site is located at Valley Drive, Druids Valley, Cherrywood, Dublin 18. The site is located at the end of the Valley Drive public road, which is a cul-de-sac with a turning head. The site is located to the northeast of the corner apartment block (No.s 97-106) in the East Courtyard element of the Tullyvale apartment scheme, and to the northwest of 12 Valley Drive (a detached two storey dwelling).
- 1.2. The site comprises an area of cobblelock hardstanding with kerbing and bollards. The site is an irregular rectangular shape (I estimate as measuring c.85sqm (c.17m in width and c.5m in depth, no measurements are provided by the referrer in the case documentation).
- 1.3. Adjacent to the south of the site is the paved pathway/ emergency access route providing access further into the Tullyvale apartment scheme, to the north and northwest is public open space, while to the southeast is the Valley Drive paved roadway/ turning head. The Loughlinstown River (Carrickmines Stream) is c.140m northeast of the site, at a notably lower ground level, in the valley of the adjacent public open space/ amenity area.

2.0 The Question

- 2.1. A question has arisen pursuant of section 5 of the Planning and Development Act 2000, as amended, as to whether the creation of a hardstanding area for the storage of refuse bins is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Dún Laoghaire Rathdown County Council, in accordance with section 5 of the Planning and Development Act 2000 as amended, decided to issue a notification of declaration on 6th May 2021 stating that the development as described would constitute development and would not be exempted development.

3.2. Planning Authority Reports

- 3.2.1. Planning Report

The planner's report serves as the basis for the declaration decision, the main points of which include:

- Reference to enforcement case PA Ref. ENF 016/21 which relates to the creation of the hardstanding area for the storage of refuse bins at the site;
- Site is part zoned as objective 'A' 'To protect and/ or improve residential amenity' in the Dún Laoghaire Rathdown County Development Plan 2016-2022 and part 'Green Infrastructure' in the Cherrywood Planning Scheme;
- Site had previously been in grass and part of the overall amenity area for the Tullyvale apartment development;
- Creation of the hardstanding area for the storage of bins included the reprofiling of lands, provision of a kerb, and the insertion of bollards and cobblelock;
- Change of surface from soft landscaped grass to hard cobblelock surface is a material change in surface, which constitutes works as per section 2(1) and development as per section 3(1) of the Planning and Development Act;
- Development has clearly resulted in a material change of use of the land from an amenity function to bin storage area;
- Development is considered to come within meaning of 'structure' as per section 2(1) of the Act;
- Consideration given to the scope of the exempted development provisions for structures in section 4(1)(h) of the Act;
- Found not to apply as the structure did not exist on the lands prior to the works being undertaken;
- No available planning exemption in article 6(1) of the Planning and Development Regulations 2001 for the proposal;
- No EIA or AA requirement affecting section 4(4) of the Act; and
- Concludes works have created a structure that is not consistent with the site prior to the commencement of the development, and constitutes a material change of use of the lands.

3.2.2. There are no other Technical Reports from internal departments on the declaration case.

4.0 Planning History

4.1. Referral Site History

PA Ref. ENF 016/21: Warning letter issued to the applicant in respect of the creation of a hard standing area for the storage of refuse bins.

D95A/0247, ABP PL06D.098232:

Parent permission for the Tullyvale apartment scheme, granted permission in August 1996 with subsequent amending permissions.

4.2. Previous Board References/ Referrals

No previous referrals were found to be of direct relevance to this referral case on the Board's database.

5.0 Policy Context

5.1. Local Planning Context

Change between Dún Laoghaire Rathdown County Development Plans

5.1.1. The Dún Laoghaire Rathdown County Development Plan 2016-2022 (2016 CDP) was in effect at the time the declaration was lodged and assessed, and when the referral was made to the Board on the planning authority decision.

5.1.2. In the interim, the Dún Laoghaire Rathdown County Development Plan 2022-2028 (2022 CDP) came into effect on the 21st April 2022 (the Draft Ministerial Direction issued to the planning authority is not applicable to the appeal case). Accordingly, regard is had to the provisions of the 2022 CDP as relevant in this referral.

Dún Laoghaire Rathdown County Development Plan 2022-2028

5.1.3. The relevant 2022 CDP map based designations include:

- Site is part zoned as 'A' with the stated objective '*To provide residential development and improve residential amenity while protecting the existing residential amenities*';

- Site is part located in ‘Green Infrastructure’ within the development boundary of the Cherrywood Planning Scheme; and
- The site does not contain, is not located within, nor subject to any other CDP designations (e.g. protected structures, architectural conservation area, sensitive landscape character area), or other map based SLOs.

5.2. Natural Heritage Designations

- 5.2.1. The referral site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA). There are no watercourses at or directly adjacent to the site.
- 5.2.2. The Loughlinstown River (also referred to as Carrickmines Stream, EPA) is located c.140m northeast of the site, at a lower ground level. The river flows in a southeasterly direction through Loughlinstown Woods (pNHA) towards Dublin Bay.
- 5.2.3. The natural heritage and European Site designations in proximity to the referral site include (measured at closest proximity):
- Loughlinstown Woods pNHA (site code: 001211) is c.544m to the southeast, and
 - Rockabill to Dalkey SAC (site code 003000) is c.3,493m to the east.

6.0 The Referral

6.1. Referrer’s Case

- 6.1.1. The main points raised in the referrer’s case include:
- Context given for the construction of the hardstanding area (changes to the bin storage/ collection point – initially had been adjacent to Valley Drive public road, then at the tarmac surface area adjacent to the scheme’s pathway entrance/ emergency access, and most recently (due to bins blocking fire tender access) on the adjacent grassed area);
 - Grassed area difficult for staff to move bins and a hard surface was required so new cobblelock area constructed as a set down area for the refuse bins to be collected from;

- Refuse bins taken out from basement level for weekly collection, so area used occasionally for a few hours each week;
- Accepts planning authority's decision that the construction of the hardstanding area is 'works';
- Disputes planning authority's decision that hardstanding area is inconsistent with the site and that it is a material change of use;
- Refers to other pathways and walkways in the scheme which are of cobblelock construction;
- Increase in area of cobblelock associated with the hardstanding area is a 'de minimis' change;
- Change is in keeping with the existing pattern of development in the estate;
- Hardstanding area is limited in size (no measurement/ dimensions provided) and extent (in comparison with the remaining area of open space);
- Proposal does not alter the nature of the open space, is at a marginal location, and lots of space remaining for amenity use;
- Use of the area is occasional and cannot be reasonably regarded as a material change of use;
- 2001 Regulations do not list every exempted development, and this does not rule out an exemption automatically; and
- Concludes the proposal is exempted development and does not require planning permission.

6.2. Planning Authority Response

- 6.2.1. A response has been received from the planning authority referring the Board to the previous planner's report, and stating that no new matter is raised which would justify a change of attitude to the proposal.

7.0 Statutory Provisions

7.1. Planning and Development Act 2000, as amended

- 7.1.1. Section 2(1) – Interpretation

The following definitions are relevant to the subject question:

works 'includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'

structure means –

'any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of any structure so defined and –

(a) where the context so admits, includes the land on, in or under which the structure is situate...' and

land 'includes any structure ...'

7.1.2. Section 3(1) – Development

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'.

7.1.3. Section 4 – Exempted Development

Section 4(1) sets out development that is exempt from requiring planning permission. Section 4(1)(h) is relevant:

'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'

Section 4(4) counters:

'Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.'

7.2. **Planning and Development Regulations 2001, as amended**

7.2.1. While article 6(1) of the Planning and Development Regulations 2001, as amended, includes for exempted development provisions in respect of hardstanding/ hard

surface areas for single houses (Class 6) and industrial development (Class 21), there are no provisions of relevance for the referral case.

8.0 **Assessment**

8.1. In the interest of clarity, the purpose of the referral is not to determine the acceptability or otherwise of the works in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

8.2. **Is or is not development**

8.2.1. The proposal has involved the construction of a hardstanding area with kerbing and bollards. The hardstanding area was constructed on a grassed area previously used as open space, and the hardstanding area is to be used for the storage of the scheme's refuse bins for collection.

8.2.2. Having regard to section 2(1) of the Planning and Development Act 2000, as amended, I consider that the proposal involved an act of construction and is therefore 'works', the hardstanding area is a 'thing constructed...on...land' and is therefore a 'structure', and that 'land' means land and/ or a structure.

8.2.3. From the above, having regard to section 3(1), as the proposal has involved 'the carrying out of works on...land or the making of any material change in the use of any structures or other land', I consider the proposal is 'development' within the meaning of the Act.

8.2.4. While the applicant accepts the planning authority's decision that the proposal comprises works, the determination of a material change of use is disputed. From a review of the information on the case file and my site inspection, I concur with the planning authority and consider that there has been a material change in use of the land. I determine this due to there being an actual change in how the land is used (altered use from amenity open space purposes to use as a storage area for refuse bins), the character of the land has been altered by the change (landscaped grassed surface replaced with constructed hard surface), and the quality of that change is of

a material nature (new and different activities on land now facilitated, and visual amenity, biodiversity, and engineering related changes).

8.3. Is or is not exempted development

- 8.3.1. As outlined above, I consider the proposal to be two-fold, comprising both construction works, and a material change of use of the land. There are no provisions under the Planning and Development Act 2000 and/ or the Planning and Development Regulations 2001 which would render the development to be exempted development.
- 8.3.2. The planning authority considered the scope of section 4(1)(h) of the Act, determining that as the hardstanding was a new structure, section 4(1)(h) did not apply as the structure did not exist on the lands prior to the works being undertaken and also that the development was inconsistent with the site prior to the commencement of the development. I concur with the planning authority's position. I find that section 4(1)(h) does not apply as the carrying out of works were not for the maintenance, improvement, or other alteration of the structure, but for its initial construction.
- 8.3.3. I highlight to the Board that the applicant does not state how or identify under what legislative provision the development is exempted development, relying instead on general arguments about the minimal nature and scale of the development, that it is not material in terms of changed use, and therefore it is exempted development.

8.4. Appropriate Assessment Screening

- 8.4.1. Notwithstanding the absence of any legislative provisions under which the development could be determined to be exempted development, and thereby require consideration of section 4(4) of the Act (i.e. if an appropriate assessment is required a development shall not be exempted development), in the interests of completeness I determine the following to be the case.
- 8.4.2. The proposal has involved the construction of a hardstanding area (estimated as measuring c.85sqm) for the storage of refuse bins included the reprofiling of lands, laying of a cobblelock surface, provision of a kerb, and the insertion of bollards. I highlight to the Board that the referral case does not include any plans or particulars of the hardstanding area, including any information on surface water runoff, design,

and servicing. There is no technical report from the Water Services Section on the case file.

- 8.4.3. I note that the site is located c.140m uphill of the Loughlinstown River (Carrickmines Stream) and consider (in the absence of information indicating otherwise) there to be potential for surface water runoff from the hardstanding area to drain downhill towards the watercourse. From available sources of information, the river flows through the Loughlinstown Woods (pNHA) towards Dublin Bay.
- 8.4.4. The most proximate European Site with a potential connection to the referral site (based on the principle of source-pathway-receptor) is the Rockabill to Dalkey SAC (site code 003000). The Site's conservation objective is 'To maintain the favourable conservation condition of the Annex I habitat(s) and/ or the Annex II species for which the SAC has been selected', and the qualifying interests are reefs [1170] and harbour porpoise (*Phocoena phocoena*) [1351].
- 8.4.5. On the basis of the information provided with the referral case, in the absence of an appropriate assessment screening report and/ or a natura impact statement, the Board cannot be satisfied that the proposal individually or in combination with other plans or projects would not result in an adverse affect on the integrity of a European Site.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the creation of a hardstanding area for the storage of refuse bins at Tullyvale, Valley Drive, Druids Valley, Cherrywood, Dublin 18, is or is not development or is or is not exempted development:

AND WHEREAS Tullyvale Management Company requested a declaration on this question from Dún Laoghaire-Rathdown County Council and the

Council decided to issue a declaration on the 6th day of May 2021 stating that the matter was development and was not exempted development:

AND WHEREAS Tullyvale Management Company referred this declaration for review to An Bord Pleanála on the 1st day of June 2021:

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

- (a) sections 2(1), 3(1), and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) the planning history of the site, and
- (c) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that the construction of a hardstanding area for the storage of refuse bins and the associated material change in the use of the land from open space to bin storage is development and is not exempted development.

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 works as described is development and is not exempted development.

Phillippa Joyce
Senior Planning Inspector

27th June 2022