



An  
Bord  
Pleanála

## Inspector's Report ABP-312955-22

<b>Development</b>	Retention of 2 playing pitches and 5 pre-fabricated structures.
<b>Location</b>	Ballincollig AFC, The Landing Field, Powdermills, Ballincollig Cork.
<b>Planning Authority</b>	Cork City Council
<b>Planning Authority Reg. Ref.</b>	2140327
<b>Applicant(s)</b>	Ballincollig AFC C/o Gerardene McNamara.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Ballincollig AFC C/o Gerardene McNamara.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	15.10.2022.
<b>Inspector</b>	Fiona Fair

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## **1.0 Site Location and Description**

- 1.1. The subject appeal site, with a stated area of 2.479 ha, is located to the north of Ballincollig. The site comprises of sports grounds with five number prefabricated structures, containing dressing rooms, associated showers, w.c.'s kitchenette and stores located to the east of the southern pitch.
- 1.2. The portacabins are mounted on concrete blocks sitting on hardcore. The portacabins are 4.2m high. They are positioned to a high stone wall with an arched recess and a number of blocked windows with red brick surrounds.
- 1.3. Ballincollig Regional Park approx. 134 acres in size, is located to the north, it adjoins the River Lee and is used for recreation and amenity purposes. Leslie's Arch residential area is located to the south. The wastewater treatment plant for Ballincollig is located to the east. Also, to the east is Ballincollig AFC, The Landing Field and Ballincollig GAA club and Le Cheile Secondary School.
- 1.4. The playing pitches to be retained, the subject of this application are located on two fields separated by a Mill race and a heavily wooded boundary. The Mill race is associated with the gunpowder Mills runs in an east – west direction between the playing pitches.
- 1.5. The site is within the zone of archaeological potential for recorded monument CO 073-0243, Ballincollig Gunpowder Mills. A number of protected structures are located within Ballincollig Regional Park 00816 – 00819, inclusive.
- 1.6. The site is accessed from the public road in Ballincollig, via a narrow right of way passageway serving the Irish Water Treatment Plant.

## **2.0 Proposed Development**

- 2.1. Permission for retention of 2 no. playing pitches and 5 no. pre-fabricated structures consisting of 5 no. dressing rooms, associated showers, w.c's, kitchenette and stores and all associated ancillary site development works including boundary treatment, footpath, site services, landscaping and associated works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Subsequent to Further Information being requested a Split Decision was issued:

- Grant Retention Permission of the playing pitches subject to two number conditions, namely (i) standard condition (ii) “This planning permission is for a limited period of 10 years from the date of this grant of planning permission at which date the permission shall cease unless further permission has been granted before the expiry date of this permission.

Reason: In the interest of orderly development.

AND

Refuse Retention Permission for the prefabricated structures, for the following reason.

“There is an existing drainage asset, an existing 2400mm storm sewer, passing from south to north through the eastern portion of the subject site. Based on the information submitted, the 5 no prefabricated structures within the compound area in the eastern part of the site are located directly on top of this storm sewer. It is considered that that the retention of the 5 no prefabricated structures/compound area would detrimentally impact upon an existing drainage asset, would be contrary to Section 104 of the Water Services Act (2007) and would be prejudicial to public health. Therefore, it is considered that the retention of the prefabricated structures would be contrary to the proper planning and sustainable development of the area”.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

Cork City Council are the owners of the site and there is a letter of consent to the making of the application.

It is stated that it appears that the playing pitches and portacabins have been in existence since 2012.

The site is part of the town centre zoning in the Ballincollig LAP and adjoins a large area of open space to the north. The specific objective is for completion of the Ballincollig Town Centre (former Murphy Barracks) site for town centre uses. There is no planning history on this site. Of note is that it did not form part of the large mixed - use town centre development site which included residential, retail/service, civic and office uses permitted under planning ref 03/122. The site has poor road access, and it is not accessible from the Old Quarter residential area to the south. The lands are in public ownership and at a remove from the Ballincollig core town centre. The Cork County Development Plan 2014 has objectives supporting recreational facilities for communities.

It is considered the proposed development would not contravene the specific zoning objective applicable to the site.

The visual impact of the playing pitches and fencing is acceptable. These structures are not designed to be permanent. Accordingly, it may be necessary to grant a temporary permission.

Further information was requested re: (i) storm water sewers not shown on drawings, (ii) no details of private drainage serving the pitches or hardstanding areas, (iii) further details of the impact of the development on the Mill Race (iv) further details for the crossing across the mill race, (v) details of the use of the pitches, opening hours, number of matches, training sessions per week...etc

The Planner report subsequent to FI concludes that the applicants have a long - term lease on the lands from Cork City Council. Therefore, it is considered reasonable to grant a temporary permission – and it is recommended that a ten - year duration is granted.

The location of the compound/prefabricated structures is not acceptable. As this an application for retention of the prefabricated structures at their present location it is not feasible to address this by a request for clarification or condition. The compound will have to be removed from its present location. A new location for the prefabricated structure/ compound would be appropriately addressed by a planning application. The applicant is advised to engage with Cork City Council prior to the lodging of a new application.

### 3.2.2. Other Technical Reports

Archaeology: No objection

Area Engineer: No objection subject to conditions

Drainage: Recommends further information and subsequently report recommends refusal as the prefabricated structures are located directly over an existing 240mm storm sewer and manhole

Parks: Have no objection in principle to the retention of the two sports pitches, 5no portacabins, access roads and boundary fences on condition that the existing causeway (temporary measure to link both pitches at present) will have to be replaced at a future date by a suitable bridge structure to facilitate the reinstatement of the Mill Race.

### 3.3. Prescribed Bodies

Irish Water: No objection

### 3.4. Third Party Observations

- None relevant

## 4.0 Planning History

PA Reg Ref: 195124 – WITHDRAWN Application for retention permission 5 no. prefabricated structures consisting of 5 no. dressing rooms, associated showers, w.c's, kitchenette and stores and all associated ancillary site development works including boundary treatments, footpaths, drainage, site services, landscaping and associated works

Enforcement File:

EF0801011 – The planners report sets out that enforcement file was closed in 2019.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The application was assessed by the PA under the Cork County Development Plan 2014 and Ballincollig Municipal District Local Area Plan 2017.

The Planner report sets out that the site is zoned 'BG-T-03' in the Ballincollig Carrigaline Municipal District LAP 2017.

- 5.1.2. This has an objective of 'Completion of the Ballincollig Town Centre (former Murphy Barracks) site for town centre uses. The re - development of vacant properties for office based activities including incubator units and start-ups will be considered in this area.' The site within the gunpowder mills is a protected structures on the RPS ref no. 00817, 00818, 00819. The subject prefabs to be retained are within 37m of RP S 00 818.

- 5.1.3. There is a proposed Natural Heritage Area Lee Valley ref. 000094 to the west.

- 5.1.4. **The Cork City Development Plan 2022 – 2028 is now the most up to date Statutory Plan and it includes Ballincollig.**

**The site is now zoned ZO 15: “Public Open Space”.** The objective of which is “To protect, retain and provide for passive and active recreational uses, open space, green networks, natural areas and amenity facilities”.

I consider the following sections of the new Development Plan are of relevance.

#### ZO 15.1

This zone includes strategic public open space and amenity lands. Lands in this zone comprise a wide range of passive and active recreational and amenity resources for the community including parks, sport and water sports, leisure facilities, amenity areas and natural areas including ecological networks, woodlands and other habitats. The primary purpose of this zone is to preserve all land in this zone for open space and amenity use.

#### ZO 15.2

There is a presumption against developing land zoned Public Open Space for alternative purposes.

### ZO 15.3

Ancillary and incidental uses such as small cafés and other amenities that add to the vitality and support the public open space and public recreational infrastructural role of an appropriate public open space, such as a park, may be open for consideration. Such ancillary and incidental service facilities shall be commensurate to the nature and scale of the public open space and must integrate with the public open space and not conflict with the primary zoning objectives.

### ZO 15.4

Many green areas in residential housing estates throughout the City function as public open spaces and amenity areas but are zoned ZO 1 Sustainable Residential Neighbourhoods (or another land use zoning objective). For zoning objectives relating to these areas, refer to ZO 1 Sustainable Residential Neighbourhoods above, and to the paragraph on 'Open Space in Residential Areas' above.

**It is notable that ZO 16 – “Sports Grounds and Facilities”**, seeks: “To protect, retain and enhance the range and quality of sports facilities and grounds”.

### ZO 16.1

This zone includes a wide range of sports grounds and facilities. The primary purpose of this zone is to preserve all land in this zone for sports facilities and grounds.

### ZO 16.2

There is a presumption against the loss of land zoned Sports Grounds and Facilities to other forms of development. Only development that is ancillary to the principal use of the site for sports and which will only affect lands incapable of forming part of the playing pitches, courts, tracks, courses or similar, will be considered in these areas. Ancillary uses include other sport and leisure facilities such as clubhouses, changing rooms, meeting rooms, gyms, sports training halls, catering facilities, caretaker accommodation and appropriate car parking facilities. Crèches and community uses are open for consideration, provided they are linked to the sports use.



## **5.2. Natural Heritage Designations**

The relevant European sites are the Cork Harbour SPA (Site Code 004 030) and the Great Island Channel cSAC (site code 001058).

The Planners report states: "Having regard to its nature, scale and location it is considered that the proposed development would not affect the integrity of the sites referred to. Accordingly it is considered that a Natura impact statement for the purposes of Article 6 of the Habitats Directive is not required to be submitted.

## **5.3. EIA Screening**

- 5.3.1. Having regard to the nature of the proposed development comprising of extension and alteration of an existing residential structure in an established urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. First Party appeal by BG Architects on behalf of the applicant's Ballincollig AFC C/O Gerardene McNamara. It is summarised as follows:

- Appeal against Condition 2, solely.
- This will allow BAFC to apply for Capital Sports Grants to further develop the club's pitches and amenities into the future.
- There is a long history of Ballincollig AFC on the subject site 'The Landing Field'.
- Following the closure of Murphy Barracks, part of the lands owned by the Minister of Defence was earmarked for use by local sporting organisations. Specifically the land where the landing field is located was allocated with two playing fields and some ancillary land to be granted to Ballincollig AFC.

- It was intended that the Minister for Defence would transfer the land to the local authority, cork County Council who would in turn assign the property onwards at a nominal consideration to the respective sporting organisations,
- At some point it appears that a decision was made to alter the terms of the proposed sub sale and instead that Ballincollig AFC would receive a long-term lease of 99 years.
- It was a condition of the final transfer of the property to the Council by the Department of Defence that the land could only be used for sporting or recreational use. The land was transferred to Cork County Council on 22<sup>nd</sup> May 2007.
- Since that time Ballincollig AFC have been in constant contact with Cork County Council and now Cork City Council (City boundary extension in 2019) requesting that they make good on the original intention for the lands.
- Initially advised that the delay in furnishing a long lease was to do with access issue. Because surrounding land was acquired for development an access had to be established out to the Landing Field.
- Advised by the Council in late 2013 and again in October 2014 that it had acquired this access and that thereafter contracts, and a draft long lease would be furnished.
- In 2017 finally issued with a 999 year lease. This was signed by the clubs trustees in good faith and returned to the Council through the clubs solicitors but the lease was never completed by the Council.
- Since that time the club has been set a number of preconditions by the Council before they would enter into the lease, which they have sought to resolve. The most significant of those has related to the temporary dressing rooms which are on site.
- Advised that once the planning permission for the prefabs and the playing pitches was resolved the lease would be completed.
- The application in respect of the dressing rooms (which are temporary prefabs) has been refused, while the application for the pitches themselves

has only been granted for 10 years. This is hard to understand given that the express use in the agreement of the land is for sporting use.

- In a situation that the Council won't complete a lease that was promised 20 years ago because planning needs to be rectified.
- Happy to meet with the Council and agree an alternative site for the temporary changing rooms.
- The two number pitches and associated changing rooms (prefabricated accommodation cabins) have now been in existence since 2012.
- At no stage have BAFC sought to enforce the '7-year rule' under section 154 (4) of the Planning and Development Act 2000.
- Under the current LAP for Ballincollig the subject site has been zoned "BG-T-03" completion of Ballincollig town centre for Town Centre uses. No cognisance afforded to the playing pitches. Within the same LAP Playing pitches within close proximity of BAFC have been zoned "BG-0-04", this zoning protects existing playing pitches.
- Why are certain pitches protected and BAFC are subject to a 10 year permission.
- The Draft Cork City Development plan 2022 has zoned the subject site as Z0-01 'Sustainable residential Neighbourhoods', with no cognisance afforded to the playing pitches.
- BAFC operate on a licence from CCC and they cannot apply for significant sports capital funding because they do not have a lease.
- In relation to the temporary accommodation BAFC will engage with CCC to determine a more suitable location within the subject site. Needed for player welfare.
- Before BAFC can apply for funding to replace the temporary structure they need to be in a position that they can avail of funding.
- BAFC have been in existence 50 years, the situation is not tenable.

## **6.2. Applicant Response**

- None Received.

## **6.3. Planning Authority Response**

- None Received.

## **6.4. Observations**

- None Received.

## **6.5. Further Responses**

- None Received.

## **7.0 Assessment**

- 7.1.1. I have read through the file documentation, the relevant provisions of the statutory Cork City Development Plan and have carried out a site inspection. I highlight that the subject appeal is a first party appeal, solely, against the attachment of a condition. Given the foregoing and having regard to section 139 (1) of the Planning and Development Act, 2000, as amended, I consider that a 'de novo' consideration of the development is not warranted in this instance.
- 7.1.2. In my judgement the principle factors for consideration in this appeal relates to evaluation of Condition 2, attached to Reg. Ref. 2140327 which states:
- (ii) "This planning permission is for a limited period of 10 years from the date of this grant of planning permission at which date the permission shall cease unless further permission has been granted before the expiry date of this permission.
- Reason: In the interest of orderly development".
- 7.1.3. I have had due regard to the change in zoning appropriated to the subject lands. Under the Cork County Development Plan 2014 and the Ballincollig Municipal District Local Area Plan 2017, the application site was zoned 'BG-T-03', "Town Centre / Neighbourhood Centre". There was an objective attached to the lands for 'Completion of the Ballincollig Town Centre (former Murphy Barracks) site for town

centre uses. However, the newly adopted Cork City Development Plan 2022 – 2028 is now the most up to date Statutory Plan and it includes Ballincollig (the city boundary having been extended in 2019). The subject appeal site and the adjoining lands to the east in use as playing pitches with ancillary uses are now zoned ZO 15: “Public Open Space”. The objective of which is “To protect, retain and provide for passive and active recreational uses, open space, green networks, natural areas and amenity facilities”.

- 7.1.4. Regard being had to the provisions of the ZO 15 zoning objective and the provisions of ZO 15.1, ZO 15.2, ZO 15.3 and ZO 15.4 I consider that this zoning does not preclude the nature of the use proposed i.e. playing pitches.

ZO 15.1 states:

“This zone includes strategic public open space and amenity lands. Lands in this zone comprise a wide range of passive and active recreational and amenity resources for the community including parks, sport and water sports, leisure facilities, amenity areas and natural areas including ecological networks, woodlands and other habitats. The primary purpose of this zone is to preserve all land in this zone for open space and amenity use”.

- 7.2. From the information contained on the file the playing pitches, the subject of this application have been in place for a number of years, it is contended since 2012. From my site visit I can confirm that the pitches comprise grassed pitches, with no flood lighting or stands, just a barrier demarcating the pitch closest to the prefabricated changing rooms and goals on the second demarcated grassed playing pitch. I consider that the retention of the playing pitches would not contravene the specific zoning objective applicable to the site and would be acceptable in principle. The Cork City Development Plan 2022 - 2028 has objectives supporting recreational facilities for communities.
- 7.3. These lands are in public ownership and at a remove from the Ballincollig core town centre. The issue of the lease between Cork City Council and Ballincollig AFC is wholly a legal matter and is outside of the remit of this planning appeal. The applicants have a licence, and this is not disputed, they have sufficient interest in the lands to make the planning application and this was accepted and considered valid

by the City Council. A letter of consent from Cork City Council consenting to the club making the application is attached to the file.

- 7.4. Section 7.5 Temporary Permissions of Chapter 7 Drafting Planning Conditions / Reasons for Refusal of the Development Management Guidelines for Planning Authorities June 2007, sets out whether a temporary permission, which can apply to a particular structure or use, is appropriate, it states:

“...three main factors should be taken into account. First, the grant of a temporary permission will rarely be justified where an applicant wishes to carry out development of a permanent nature that conforms with the provisions of the development plan. Secondly, it is undesirable to impose a condition involving the removal or demolition of a structure that is clearly intended to be permanent. Lastly, it must be remembered that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development, they can only be safeguarded by ensuring that it does not take place”.

- 7.4.1. The PA requested a detailed subsequent information request from the applicants with regard to the use of the pitches, seasons, match times, training times, number of children per session, car parking, spectator stands, average spectator attendance, noise etc.
- 7.4.2. The response from the applicant details that it is a recreational facility for the community. It is not foreseen that noise levels would be significant from the sports ground given the set back from neighbouring houses and surrounding use. The attendance levels (approx. 30 people) would be on the low side, and any matches and training sessions would be of a short duration. I agree with the PA that the sportsgrounds are not considered to give rise to significant noise or traffic impacts, and consequently would not have a negative impact on established residential amenity. No third party objections were submitted or observations to the appeal.
- 7.4.3. I consider that the pitches are acceptable in principle on Z0 15 zoned lands, not a bad neighbour. The club have expenditure costs necessary to carry out upgrades for

drainage and need for funding for permanent and fit for purpose associated ancillary changing rooms, toilets and storage. I consider that a temporary permission would not be reasonable in light of the duration of time the pitches have been in operation as playing pitches, the development of same and operational costs. Regard is had to the advice set out in the Development Management Guidelines for Planning Authorities June 2007, I therefore recommend that Condition 2 be omitted in its entirety.

## **8.0 Recommendation**

- 8.1. Having read the appeal and documentation on file, had due regard to the provisions of the Cork City Development Plan 2022 - 2028, carried out a site visit and all other matters arising. I recommend that the planning authority be directed under section 139 (1) of the Planning and Development Act, 2000, as amended, to omit Condition 2 in its entirety.

## **9.0 Reasons and Considerations**

- 9.1.1. Having regard to –

- (a) Cork City Development Plan 2022 – 2028
- (b) The Zoning “ZO 15”, “Public Open Space”, the objective of which is “To protect, retain and provide for passive and active recreational uses, open space, green networks, natural areas and amenity facilities”.
- (c) The length of time the playing pitches have been in use as playing pitches and advice set out in in the Development Management Guidelines for Planning Authorities June 2007. That the sportsgrounds are not considered to give rise to significant noise or traffic impacts, and consequently would not have a negative impact on established residential amenity and would otherwise accord with the provisions of the current City Development Plan and with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. Condition 2 be omitted in its entirety.

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Fiona Fair  
Planning Inspector

19.10. 2022