



An
Bord
Pleanála

Inspector's Report ABP 320887-24

Question

Whether the laying of a football pitch is or is not development and is or is not exempted development.

Location

Tower Road, Mornington, Co. Meath.

Declaration

Planning Authority

Meath County Council.

Planning Authority Reg. Ref.

LBS52451.

Applicant for Declaration

Eastern Gaels GAC.

Planning Authority Decision

Development is not exempt.

Referral

Referred by

Eastern Gaels GAC.

Owner

VCL Consultants.

Observer

Colin Blake.

Date of Site Inspection

15 January 2025.

Inspector

B. Wyse.

1.0 Site Location and Description

- 1.1. The site comprises an irregular shaped parcel of land at Tower Road (R151), Mornington Road, County Meath. The lands are currently under grass. The northern rectangular part is laid out as a football pitch with what appear to be temporary goalposts. Access is via gates and a splayed entrance from the public road, partly along an access road and partly across a grass track. The pitch area is bordered by vegetated mounds or berms along the western and northern sides.
- 1.2. There is a former driving range to the north. Agricultural fields extend generally to the east and south, with some single housing along the road frontage in the vicinity. The main housing area of Mornington is a short distance to the east. The Boyne Estuary is a short distance to the west and north. The R151 in the vicinity is a relatively straight single carriageway road with a solid white centre line. It is subject to an 60kph speed limit.

2.0 The Question

- 2.1. The application for a declaration as submitted to the planning authority describes the development as the *laying out of football pitch as Class 33(c) development to Column 1 of Part 1 to the Second Schedule of the Planning and Development Regulations*.
- 2.2. The question, therefore, can be stated as follows:
 - Whether the laying of a football pitch is or is not development and is or is not exempted development.
- 2.3. The application documentation included an appropriate assessment screening report that concludes that the development would not have a significant effect on any European sites and, therefore, that appropriate assessment is not required.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority decided that the development is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for planning authority decision. Includes:

- The laying out of a football pitch falls within the statutory interpretation of works and, therefore, within section 3(1) Planning and Development Act 2000 definition of development.
- The works come within the scope of Schedule 2, Part 1, Class 33 (Development for amenity or recreational purposes) of the Planning and Development Regulations 2001, as amended.
- Notes the restriction on exemption under Article 9(1)(a)(viiB) of the Regulations in relation to appropriate assessment.
- By reference to the planning history of the site and the adjacent site to the north, and, in particular, to the Boards previous decision to refuse permission for development on the latter site for reasons that included appropriate assessment (PA Ref.LB/180961, ABP Ref. 302948-18), it was considered that the applicants appropriate assessment screening report did not provide sufficient evidence that the proposal would not have any impacts on the conservation interests of the Boyne Estuary SPA.
- To rule out impacts on the SPA the appropriate wintering bird survey of the site should be carried out at the appropriate time of year.
- The screening report fails to take account of potential impacts of operational noise on Natura sites.
- Pitch drainage measures do not appear to have been considered.
- On this basis the proposed development was not considered exempt.

4.0 Planning History

PA Ref. LB/S52341

This is an August 2023 declaration that the laying out of two football pitches on the lands is development requiring planning permission, also on the basis of a requirement for appropriate assessment.

Adjacent lands to the North

PA Ref. LB/180961, ABP Ref. 302948-18

This is a 2019 refusal of permission for a change of use from a golf driving range (permitted under PA Ref. SA/40248) to a touring campsite that provided for 75 hard-standings, camping areas, office, laundry and toilet block, access road upgrade, waste water treatment plant decommissioning and new mains connection and associated development. The reasons for refusal refer to appropriate assessment and to flood risk.

5.0 Policy Context

5.1. Development Plan

Meath County Development Plan 2021-2027

No policies or objectives of relevance.

5.2. Natural Heritage Designations

The European sites Boyne Estuary SPA (Site Code: 004080) and Boyne Coast and Estuary SAC (Site Code: 001957) are located to the west and north of the subject lands.

The Boyne Coast and Estuary pNHA (Site Code: 001957) is similarly located.

6.0 The Referral

6.1. Referrer's Case

The referrer's submission includes the appropriate assessment screening report as originally submitted to the planning authority and an additional bird survey document.

The grounds of appeal (referral) document includes:

- The subject land had previously been used as a football pitch in the late 1970's. It has since lain fallow and has been used for silage production.
- The site was attractive for a football pitch as it required little or no development work, just ploughing, re-seeding and the erection of goalposts.
- The only intended use is to provide training facilities for adult members in the Spring and Summer months and as an academy for one hour every week for young boys and girls.
- The club recognises the sensitivity of the adjoining area and there are no further development plans or ambitions for the site. All competitive matches are played on existing facilities in Gormanston College.
- The development site is located wholly outside of any European sites. The closest such sites are the Boyne Coast and Estuary SAC and the Boyne Estuary SPA approximately 100m west of the proposed pitch at its closest point and separated by a berm. There are no watercourses within the development site. The closest watercourse is the Mornington Stream approximately 300m to the east as it enters the Boyne Estuary.
- The planning authority planners report relies heavily on the Planning Inspectors assessment under PA Ref. LB/180961, ABP Ref. 302948 which refers to a planning application on a separate and distinct site for a totally different type of development. This should not have been given such weight.
- The applicants appropriate assessment screening report makes specific reference to winter bird surveys undertaken directly west of the development site in 2018 to inform the Boyne Greenway planning application. Results indicated that the area of the estuary closest to the development site is not utilised by significant numbers of waterbirds and no significant roosting sites were identified in this area. This supports previous survey data collected to inform the Boyne Estuary SPA (2011/12) which also shows no roosting locations of SCI (Special Conservation Interest) species of the SPA in this area.
- The screening report also indicates that there are no habitats within the development site (comprising terrestrial grassland) that conform to those

listed in Annex ii of the Habitats Directive. It indicates that some of the SCI overwintering waterbird species of nearby SPAs can utilise terrestrial habitats to varying degrees for foraging at times during the winter. These species rely on short sward heights and are known to utilise grazed agricultural grassland/pasture, managed amenity grassland and arable/stubble farmland.

- The screening report indicates that the development site comprises part of an agricultural field that has been used for silage production, a habitat type not typically favoured for foraging for the SCI species, unless the sward is kept low for the winter months. The short sward amenity grassland of sports pitches are suitable foraging grounds for such species. The sports pitch, therefore, will create additional ex-situ foraging ground for these species.
- As there are no watercourses within the development site the screening report indicates that there is no suitable habitat for the other qualifying species of the European sites (otter, kingfisher, lamprey and salmon) so there is no potential for ex-situ effects in relation to these.
- The attached bird survey document sets out the results of an overwintering bird survey carried out by the promoter of the touring campsite on the adjacent site subsequent to the decision of ABP on that proposal (PA Ref. LB/180961, ABP Ref.302948). It clearly indicates that the subject lands are not utilised by any of the qualifying species as an ex-situ site for roosting or foraging.
- In relation to dust and noise the screening report states that the proposed works are minor and of short duration, consisting of setting out a sports pitch over approximately 1-2 days, and will not generate significant levels of dust or noise with no potential for indirect effects on the qualifying interests.
- There was no consideration to drainage issues because drainage is not required and does not form part of the development. The screening report specifically stated that no earthworks or drainage will be required.
- The issue of flood risk is not relevant to the subject development for the laying out of a football pitch.

- The development fully complies with the limitations applied under Class 33 and is exempted development.

6.2. Planning Authority Response

The Board is requested to uphold the decision of the planning authority.

6.3. Owner Response

None received.

6.4. Observation

This is submitted on behalf of Colin Blake. It includes:

- It appears that the pitch has already been laid out and is in use.
- A full description of the nature of the works or intended use has not been provided. The planning authority raised concerns about the lack of drainage details. The term 'laying out ' is not defined and there are no particulars of the intended use or other matters such as sanitary facilities, lighting or parking.
- The Boyne Greenway surveys did identify significant qualifying interest species in the vicinity (results attached).
- The site specific conservation objectives for the SPA are completely out of date, not having been reviewed since 2013. In the meantime there will have been changes to the baseline environment, development in the area and changes in the state of scientific knowledge. Without current and reliable conservation objectives it is impossible to conduct appropriate assessment.
- It is not appropriate to refer to data that is not on the file.
- If the grass is used for sports pitches, and would then be suitable for wintering birds, then this confirms that the subject site supports and is ecologically part of the Boyne Estuary SPA.
- The site is hydrologically connected to the Boyne because it is in the floodplain of the river – Meath Strategic Flood Risk Assessment (SFRA) details attached. This is not identified in the applicants documents.

6.5. Further Responses

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Section 2(1) *'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*

Section 3(1)(a) *'development' means the carrying out of any works in, on, over or under land, or the making of any material change in the use of land or structures situated on land.*

7.2. Planning and Development Regulations, 2001 (as amended)

Article 6(1) provides that, subject to Article 9, certain classes of development specified in column 1, Part 1 (Exempted Development – General), Schedule 2 shall be exempted development.

The relevant class of development is:

Development for amenity or recreational purposes.

Class 33(c) development consisting of the laying out and use of land for athletics or sports....where no charge is made for admission of the public to the land. Note – there are no relevant limitations.

Article 9(1) includes the following restrictions on Article 6 exemptions:

*If the carrying out of such development would –
(a)(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.*

7.3. Previous Relevant Decisions

ABP Ref. RL2076

This is a 2004 decision that the laying out and use of a field as a hard surface area for sports and recreation use is development and is not exempted development. The Board had particular regard to the extent of the works which included raising and lowering ground levels and the importation of large quantities of fill material.

ABP Ref. RL2414

This is a 2007 decision that the laying out and use of open space for football pitches is development and is exempted development.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. There is no dispute in this case that the laying out of the football pitch as described constitutes development. Both the planning authority and the Referrer focus on the 'works' element of development in arriving at this conclusion. Though very minor in nature I am satisfied that the works as described, comprising ploughing, re-seeding and the erection of goalposts to form a football pitch can, by reference to the last item, be considered to fall within the definition of 'works' as provided for under Section 2 of the Act. I also consider that the laying out of the football pitch over an area most recently used for agricultural purposes (silage production) constitutes a change of use and a material change of use and is, therefore, development also by reference to the 'use' element of development as defined in Section 3(1)(a) of the Act.

8.2. Is or is not exempted development

- 8.2.1. There is no relevant exemption under the Act for the development in question.
- 8.2.2. There is agreement amongst the parties that the development falls to be considered by reference to Class 33(a) under the Regulations and I concur with this position. The laying out of a football pitch falls clearly within the scope of that class as described (see Section 7.2 above) and there are no relevant limitations to consider.

At first instance, therefore, the development is exempted development by reference to Article 6(1) of the Regulations.

8.3. Restrictions on exempted development

- 8.3.1. As indicated Article 6 exemptions are subject to Article 9 restrictions on exemption where relevant. The relevant restriction in this case is Article 9(a)(viiB) which overrides any exemption under Article 6 if the development in question requires appropriate assessment (see Section 7.2 above). The planning authority decision, that the development is not exempt, is based on its view that appropriate assessment is required and the Observer is of the same view. The Referrer contests this position. The Board must determine the issue by carrying out a screening for appropriate assessment.

8.4. Appropriate Assessment Screening

Introduction

- 8.4.1. As indicated the application documents in this case include an appropriate assessment screening report. The report concludes that the subject development would not give rise to likely significant effects on any European site. The planning authority screening determination is that such effects cannot be ruled out in relation to the Boyne Estuary SPA. The planning authority planner's report indicates that to rule out such effects a wintering bird survey of the lands would be needed. It also refers to an absence of consideration of operational noise and pitch drainage measures. The applicants appeal (referral) includes a winter bird survey and it also addresses these other matters. The observer submission raises further issues generally in support of the planning authority determination.

Subject Development

- 8.4.2. The subject development comprises:
- Laying out of one sports pitch for which ploughing and seeding has already taken place. Although most recently used for silage production it appears that the area was previously used as a football pitch so no ground levelling or earthworks were required. Movable goalposts have been placed in the area. It appears that fixed goalposts may also be installed.

- Noting the planning authority reference it is clearly stated that no drainage works are required. And there are no watercourses within the subject lands.
- Setting out (marking) as a football pitch.
- Existing access road to be used.
- The only intended use is for training for adults in the Spring and Summer months and as an academy for 1 hour every week for young boys and girls.
- There are no further plans/ambitions for the site. Competitive matches are played at the existing facilities at Gormanston College.

8.4.3. I consider that the works are of a very minor nature and the proposed level of use is also very low intensity. The observer submission refers to sanitary facilities and lighting – there is no proposal for either of these. It also refers to parking. While a facility of this type is likely to generate some vehicular traffic and parking such is the low level of use proposed that any parking demand that arises in this instance is likely to be limited. The subject lands can easily accommodate this.

European Sites

8.4.4. The development is not connected to or necessary for the management of a European site.

8.4.5. The development is not located within any European site.

8.4.6. The applicants appropriate assessment screening report considers all European sites within a 15km radius of the subject lands (Table 1 of the report). The potential for likely significant effects is ruled out for all 7 of the sites. Only the conclusions in relation to the Boyne Estuary SPA are disputed in this case and I am satisfied that the other European sites need not be considered any further.

8.4.7. The Boyne Estuary SPA (Site Code 004080) covers most of the Boyne Estuary. At its closest point, to the west, it is approximately 10m from the development site as identified. However, it is about 100m from the football pitch. The qualifying Interests are:

Shelduck; Oystercatcher; Golden Plover; Grey Plover; Lapwing; Knot; Sanderling; Black-tailed Godwit; Redshank; Turnstone; Little Tern; and Wetlands. Conservation objectives refer to the maintenance of favourable conservation condition.

Likely Significant Effects

- 8.4.8. Given the very minor nature of the works in this instance, and the absence of any watercourses on the development site, and hence no functional hydrological connection to the SPA, I am satisfied that the potential for likely significant effects can be ruled out. In relation to the works element (construction phase) of the development, therefore, I concur with the conclusions drawn in the applicants screening report in relation to this.
- 8.4.9. The main potential, in my view, for likely significant effects on the SPA, arises from the use element (operational phase). When the facility is in use there is potential for disturbance to SPA qualifying interest birds given the relatively close proximity. This is alluded to in the planning authority assessment in the reference to operational noise. I agree that the screening report does not adequately address this issue.
- 8.4.10. The winter bird survey submitted was carried out subsequent to the Boards decision in relation to the adjacent proposed campsite development (PA Ref. LB/180961, ABP Ref. 302948). The survey was conducted between November 2020 and March 2021. The development site, as identified in the report, included the subject lands. The survey results include:
- Low tide counts of the exposed mudflats to the west and north of the subject lands indicate the use of the area for feeding by 8 of the qualifying interest bird species for the SPA. Numbers recorded vary considerably. The Grey Plover and the Knot were recorded in nationally significant numbers on two occasions.
 - No ex-situ feeding was recorded on the identified development site.
 - High tide counts of the key roosting areas, again to the west and north of the subject lands, indicate the use of these areas by 7 of the qualifying interest species for the SPA. Numbers recorded vary considerably. No species was recorded in nationally significant numbers.
 - No species was recorded roosting on the identified development site.
 - The author is of the opinion that the retention of the high berms to the west and north of the development site will result in no disturbance to the species either feeding on the mudflats or roosting on the boundaries.

- 8.4.11. While these survey results do confirm the presence of qualifying interest species within the SPA in the general vicinity of the subject lands, as referred to in the observer submission, the report author was still of the view that the existing berms to the west and north would ensure that no disturbance to these species would occur as a result of the proposed campsite development.
- 8.4.12. The campsite development proposal, in terms of its nature and scope, was several orders of magnitude greater than the subject development in this referral. In addition, the subject development (a football pitch) is further removed from the feeding and roosting areas identified and it is also separated from the SPA by berms to the west and north. It is also the case that the use of the pitch by adults for training will be confined to the Spring and Summer months while its use by young boys and girls will be for just 1 hour per week. The potential for disturbance, therefore, from the subject development is negligible.
- 8.4.13. In light of the above I am satisfied that is no potential for likely significant effects on the SPA arising from the use element (operational phase) of the development.
- 8.4.14. It follows that I do not consider that significant in-combination effects are likely to arise either.
- 8.4.15. In so far as the ex-situ issue is concerned the evidence is that the football pitch area in its former use for agricultural purposes did not provide suitable foraging habitat for qualifying interest species of the SPA. As indicated the maintenance regime required for the football pitch may provide suitable foraging ground and this could be seen as a positive effect. I do not accept the argument advanced by the observer that such an outcome confirms that the subject lands support and are ecologically part of the SPA.
- 8.4.16. In relation to other matters raised in the observer submission I would comment as follows. I consider that the nature of the works and the use involved in the subject development have been adequately described and can be properly understood. I do not consider the 2013 date for the latest review of the site specific conservation objectives for the SPA to be inadequate for the purposes of appropriate assessment. Given the nature of the development, a football pitch, any flood risk at the subject lands does not give rise to any concerns in relation to appropriate assessment in this instance.

Conclusion

8.4.17. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this appropriate assessment screening, I conclude that the subject development, individually or in combination with other plans or projects, would not be likely to give rise to significant effects on the Boyne Estuary SPA (Site Code 004080), or any European Site. Appropriate assessment is not required.

8.4.18. This determination is based on:

- The very minor nature of the development, both in terms of works and use;
- The absence of any hydrological connection to the SPA;
- The intervening berms that ensure no significant disturbance to qualifying interest species.

8.5. Referral Conclusion

8.5.1. I conclude that the said laying of a football pitch is development and is exempted development.

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 laying of a football pitch at Tower Road, Mornington, County Meath is or is not development or is or is not exempted development:

AND WHEREAS Eastern Gaels GAC requested a declaration on this question from Meath County Council and the Council issued a declaration on the 27th day of August, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 23rd day of September, 2024:

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

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 33(c), Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Article 9(1) (a)(viiB) of the Planning and Development Regulations 2001, as amended,
- (e) The planning history of the site and in the vicinity,
- (f) The documentation on file and the report of the Planning Inspector;

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The football pitch constitutes a very minor development both in terms of works and use;
- (b) The laying of the football pitch falls within the scope of Class 33(c) of the Regulations; and
- (c) There is no requirement for appropriate assessment so that the restriction on exemption under Article 9(1)(a)(viiB) of the Regulations does not apply.

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 laying of a

football pitch at Tower Road, Mornington, County Meath is development and is exempted development.

B. Wyse
Planning Inspector

22 January 2025