



An  
Bord  
Pleanála

## Inspector's Report ABP-321361-24

### Question

Whether John Behan sculpture (1900mm high/3000mm long/1450mm wide) seated on a 150mm high concrete plinth on Atlantic Technological University campus grounds is or is not development or is or is not exempted development.

### Location

Atlantic Technological University,  
Dublin Road, Galway, H91 T8NW

### Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

S5.33.24

Applicant for Declaration

Atlantic Technological University.

Planning Authority Decision

Is not exempted development

### Referral

Referred by

Atlantic Technological University.

Owner/ Occupier

Atlantic Technological University.

Observer(s)

None.

**Date of Site Inspection**

27<sup>th</sup> February 2025.

**Inspector**

Ciarán Daly

## 1.0 Site Location and Description

- 1.1. The subject site consists of a small roadside part of the campus of Atlantic Technological University, Galway. The relevant part of the site is the roadside landscaped front area adjacent to the iHub Extension building which is located towards the south-west front corner of the site. This building is to the west of the three to four storey library building with distinctive sculptural style frontage design which acts as a local landmark in the streetscape. The area to the front of the iHub extension consists of a grass area with paved footpath parallel to the building adjacent to the road and footpath leading up to the front entrance. This front area gently slopes uphill from south to north.
- 1.2. The remainder of the campus is located to the east and rear/north and consists mainly of two and three storey buildings, internal roadways, some surface parking areas adjacent to buildings and a large surface car parking area to the north.
- 1.3. The area directly opposite the site to the south consists of a large football pitch and a vacant site with old large shed and a grass field. To the west, north and across the road to the east of the campus are located traditional suburban residential estates.

## 2.0 The Question

- 2.1. Whether a *‘John Behan sculpture 1900mm high / 3000mm long / 1450mm wide seated on a 150mm high concrete plinth’* is or is not development and is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The Planning Authority declared that *“the proposed John Behan sculpture 1900mm high/3000mm long / 1450mm wide seated on a 150mm high concrete plinth on ATU campus grounds is not exempted development and requires planning permission. The development, submitted to the Planning Authority on 10<sup>th</sup> of October 2024 is deemed not to be exempted development as there is no exemption development classes under the Planning and Development Regulations 2001-2024 that are*

*applicable to the development proposed and therefore the proposed sculpture requires planning permission”.*

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

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

The report noted no exemption classes available under the regulations for the proposal.

### **4.0 Relevant Planning History**

**23/56:** Permission granted by the Planning Authority for a new sculptural stone monument incorporating a memorial wall for deceased students of Atlantic Technological University Galway City. The proposed memorial will replace an existing memorial on site. To be located at rear/east side of the library building.

**17/366:** Permission granted by the Planning Authority for a three storey extension and minor alterations to the existing IHub Building, amendments to existing car parking and landscaping and provision of new car parking.

**99/352:** Permission granted by the Planning Authority and on appeal (ABP ref. PL.61.117153) to erect a Library, IT centre, 7 Lecture Theatres, 11 Classrooms, Link Building to existing Institute, Administration Area, Plant room and Ancillary Facilities, incorporating new pedestrian and vehicle access from the Ballybann Road and Pedestrian access from the Ballybann Road and Pedestrian access from the Dublin Road.

### **5.0 Policy Context**

#### **5.1. Galway City Development Plan 2023 - 2029**

- 5.1.1. Under the Galway City Development Plan (the CDP), the site is zoned under Objective CF (community, cultural and institutional) which is *“To provide for and facilitate the sustainable development of community, cultural and institutional uses and development of infrastructure for the benefit of the citizens of the city”.*

- 5.1.2. Among the uses which are listed as ‘compatible with and [which] contribution to the zoning objective’ are: ‘Outdoor recreational use’.

## 5.2. Natural Heritage Designations

- 5.2.1. In relation to designated sites, the subject site is located:

- c.0.85km north of Galway Bay Complex Special Area of Conservation (SAC) and Proposed Natural Heritage Area (PNHA) (site code 000268).
- c.2.6km east of Lough Corrib SAC (site code 000297).
- c.3.2km east of Lough Corrib PNHA (site code 000297).
- c.5.3km south-west of Kiltullagh Turlough PNHA (site code 000287).
- c.5.8km north-west of Cregganna Marsh Special Protection Area (SPA) (site code 004142).

## 6.0 The Referral

### 6.1. Referrer’s Case

- 6.1.1. The referrer disagrees with the P.A.s decision that the following item is not exempted development: *‘John Behan sculpture 1900mm high / 3000mm long / 1450mm wide seated on a 150mm high concrete plinth’*
- 6.1.2. The referrer draws attention to the following in this regard:
- The sculpture is exempt under Class 36, Schedule 2, Part 1 of the regulations.
  - It was exhibited in a public space in Dublin and did not require planning permission.
  - While the grounds are not formally classified as a park, the campus is defined as “institutional open space” providing open access to the wider public within Galway City Council’s “open spaces within the green network” hierarchy list per Table 5.2 of the Development Plan.

- The term “park” has been too narrowly applied in this case and does not reflect the definition of “public open space” in the Development Plan or the dictionary definition.

## 6.2. Planning Authority Response

6.2.1. No response received.

## 7.0 Statutory Provisions

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

7.1.1. Section 3(1): Development

*In this Act, “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.*

7.1.2. Section 2(1): Interpretation

*“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;*

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure;*

*“land” includes any structure and any land covered with water (whether inland or coastal);*

*“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and— (a) where the context so admits, includes the land on, in or under which the structure is situate,*

7.1.3. Section 4(1) lists types of development that shall be exempted developments none of which are applicable in this case. Section 4(2) provides that the Minister, may

provide for any class of development to be exempted development and this can be carried out by regulations.

## **7.2. Planning and Development Regulations, 2001 (the Regulations)**

### **7.2.1. Article 6(1): Exempted Development**

*Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.*

### **7.2.2. Schedule 2, Part 1 of the Regulations deals with Exempted Development – General.**

### **7.2.3. Article 9 sets out restrictions on the operation of article 6 above.**

### **7.2.4. The main class of relevance is Class 36 (a) which refers as follows:**

*(a) Development consisting of the carrying out by or on behalf of a State authority or other public body, on land used by the authority or body as a public park, of works incidental to that use, including the provision, construction or erection of any structure in connection with or for the purposes of the enjoyment of the park or which is required in connection with or for the purposes of the management or operation of the park.*

### **7.2.5. This is subject to the following restriction:**

*1. The floor area of any building constructed or erected shall not exceed 40 square metres.*

*2. The height of any building or other structure constructed or erected shall not exceed 10 metres.*

*3. Any car park provided or constructed shall incorporate parking space for not more than 40 cars.*

## 8.0 Assessment

### 8.1. Is or is not development

- 8.1.1. Having inspected the site and location for the sculpture, it is evident that the placement of the plinth and sculpture on the area of land to the front of the iHub extension building would constitute “works” as defined above being an act or operation of “*construction, excavation, demolition, extension, alteration, repair or renewal*”. I do not consider the placing of the sculpture at this location would constitute a material change in the use of the land as such placement is ancillary to the land use at the location and does not materially impact on same to any significant degree. Therefore, I consider that this constitutes development having regard to Section 3(1) of the 2000 Act, as amended.

### 8.2. Is or is not exempted development

- 8.2.1. While I do not consider the proposal to constitute “development”, should the Board disagree with this, I will also examine if the proposal falls within the criteria for exemption under the Act and under Class 36(a) as asserted in the appeal. Having regard to Section 4(1) of the 2000 Act, as amended, I note the placement of the plinth and sculpture that are the subject of this referral would not constitute exempted development under this section of the Act. I propose to now consider whether the proposal constitutes exempted development under Article 6 of Part 1 of the Planning and Development Regulations 2001 (as amended).
- 8.2.2. The referrer has asserted that the Class 36 exemption is available on the basis that the college grounds, while not classified as a public park, is defined as “*institutional open space*” with open access to the public provided with the Council’s green network.
- 8.2.3. I note Class 36(a) refers to development by a “*State Authority or other public body*”. I note the site owner is Atlantic Technological University which was established under the Technological Universities Act 2018. These are bodies effectively under the auspices of the Department of Public Expenditure and Reform in relation to land and property and their primary function relates to the provision of teaching. Having regard to Chapter 2 of this Act, I am satisfied that ATU can be considered to be a



*“public body”*. Class 36 relates to land use by the body as a public park and this is not formally defined in the Regulations.

- 8.2.4. I note that the landscaped grounds of the ATU campus have not been formally designated to be a public park and are in fact campus grounds / open space for the main use / function of the site which is for teaching and education related uses. I note the campus grounds are ancillary to this education use and where landscaped they serve to provide an attractive walkway to and from the campus buildings and other parts of the grounds. I note the lands in question are not used by the State authority for such purpose as a public park and are not designated as a public park.
- 8.2.5. I note that the Objective CF zoning relates to institutional land uses which covers the education use of the site by the University institution. While this provides for *“outdoor recreational use”* as a use which is compatible with the zoning, this is ancillary to the educational/institutional use of the site. I note the landscaped grounds in this regard where the proposed development would be located, albeit to the front of an existing building, can be considered open space associated with such use given they provide attractive public open space with paths, landscaped grounds and trees. However, it does not follow that they can be considered to be a “public park” or “park”.
- 8.2.6. I note that while this is consistent with a type of open space noted in Table 5.1 (Open Spaces within the Green Network) of the CDP, that the provisions of the Development Plan do not define what is stated in the Regulations. Reference to Table 5.2 which specifically lists the ATU grounds as *“institutional open space”* is therefore not relevant while noting that this table of the CDP defines their function as *“open space as part of educational, health, religious or residential institutional use, often with some access to the wider public”*. This relates to open space and is not relevant to the Regulations in any event. Neither the 2000 Act or the Regulations define a “park” or “public park”. I note the dictionary definition of a park (see Collins online English dictionary) part of which definition includes the following *“a piece of open land in a town with public amenities...”*.
- 8.2.7. While I note the paths through the subject site and in the vicinity through the landscaped grounds provide for open public access and provide for active amenities/recreation, mainly walking from my observations on my visit, the area of

land in question cannot be considered to be sufficiently open, being an ancillary linear strip of land between a campus building and a footpath and it cannot be considered to provide public amenities normally associated with a public park being of such a small scale and ancillary linear area of land fronting a university building. I note that the land is not designated or used by the University as “*land used by the authority or body as a public park*” or as a park.

8.2.8. In this context, I also consider the provision of the plinth and sculpture not to constitute “*the provision...of any structure in connection with or for the purposes of the enjoyment of the park*” noting that the land in question is not a “public park” or “park” while I accept the structure is intended to provide a point of interest for passers-by as well as visitors to ATU. Accordingly, I consider the proposed development, in this instance, to not meet the criteria under Class 36, Part 1, Schedule 2 of the Regulations to be considered exempted development.

8.2.9. To note and confirm, based on the above assessment I do not consider that Class 33 as it relates to a park is applicable in this case.

### 8.3. Restrictions on exempted development

#### Appropriate Assessment

8.3.1. The restrictions on the specific operation 36 do not apply in this instance given that the proposal does not strictly meet the Class 36 definition. I note Section 4(4) of the 2000 Act (as amended) and Article 9(1)(a)(viiB) where development cannot be exempted development if an EIA or AA of the development is required. In relation to the proposed development, the closest European sites are within c.0.85km at Galway Bay Complex SAC and within 2.6km east at Lough Corrib SAC. There are also a number of European sites within 15km as listed in Section 5.2.1 above. Noting the nature and modest scale of the development, with no works required in the natural environment, I am satisfied that there is no real likelihood of significant effects on European Sites including on those in close proximity to the site.

8.3.2. This determination is based on the following:

- The absence of works in the natural environment.
- The location in an established urban area that is suitably serviced.

- The separation from and lack of connectivity to any European Sites.

8.3.3. This screening determination is not reliant on any measures intended to avoid or reduce potentially harmful effects of the project on a European Site.

#### EIA Screening

8.3.4. I note that per Section 4(4) of the 2000 Act (as amended), development which requires an Environmental Impact Assessment cannot be exempted development. Schedule 5, Parts 1 and 2 of the Regulations specifies types of development for which EIA is mandatory and which requires EIA Screening.

8.3.5. See Appendix 1 – Form 1 attached to this report. The proposed development comes within the definition of a ‘project’ for the purposes of EIA, but is not a class of development, as defined.

#### Article 9

8.3.6. In terms of the remaining Article 9 restrictions on exemptions, I note that the proposed development would not contravene a condition of an applicable permission and would not meet any of the other article 9 criteria for de-exemption such as constituting a traffic hazard or being in an area to which a special amenity area order relates.

8.3.7. Therefore, the provisions of Article 9 do not apply as a restriction on the exemption available under Class 36, Part 1, Schedule 1.

## 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 a *‘John Behan sculpture 1900mm high / 3000mm long / 1450mm wide seated on a 150mm high concrete plinth’* is or is not development or is or is not exempted development:

**AND WHEREAS** Atlantic Technological University requested a declaration on this question from Galway City Council and the Council issued a

declaration on the 24th day of October, 2024 stating that the matter was not exempted development:

**AND WHEREAS** Atlantic Technological University referred this declaration for review to An Bord Pleanála on the 20th day of November, 2024:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area,
- (h) the Development Plan for the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the placement of the plinth and sculpture on the area of land to the front of the iHub extension building would constitute works and comes come within the meaning of Section 3 of the Planning and Development Act 2000 (as amended) and is, therefore, development.

(b) the placement of the plinth and sculpture on the area of land to the front of the iHub extension building is not within the scope of Class 36 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), not being development by a public body on land used by that body as a public park which provision is in connection with the enjoyment of the land as a park.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the 'John Behan sculpture 1900mm high / 3000mm long / 1450mm wide seated on a 150mm high concrete plinth' is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Ciaran Daly  
Planning Inspector

8<sup>th</sup> April 2025

## Appendix 1 – Form 1

### EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-321361-24		
<b>Proposed Development Summary</b>	Placement of a John Behan sculpture 1900mm high / 3000mm long / 1450mm wide seated on a 150mm high concrete plinth.		
<b>Development Address</b>	Atlantic Technological University, Dublin Road, Galway, H91 T8NW		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			
<b>No</b>	X		
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>	N/A		

<b>No</b>	N/A		
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>	N/A		

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	N/A	<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<b>Yes</b>	N/A	<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_