



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-322212-25

### Questions

1. Whether the removal of a grass area of the park (c 243 sqm) and the installation of a new playing area with hardcore surface is or is not development and is or is not exempted development.
2. Whether the installation of a series of concrete plinths in previously green areas throughout the park is or is not development and is or is not exempted development.
3. Whether the fixing of new furniture on these concrete plinths, including benches and chess tables is or is not development and is or is not exempted development.
4. Whether the installation of a new signage board directly adjacent to the new playing area is or is not development and is or is not exempted development.

**Location** Burnaby Park, Greystones, Co. Wicklow.

**Declaration**

Planning Authority Wicklow County Council

Planning Authority Reference EX20/2025

Planning Authority Decision Would constitute exempted development.

**Referral**

**Referred by** Burnaby Residents Association

**Occupier** Wicklow County Council

**Date of Site Inspection** 27<sup>th</sup> June 2025

**Inspector** John Duffy

## Contents

1.0 Site Location and Description .....	4
2.0 The Questions .....	4
3.0 Planning Authority Declaration.....	4
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan and Draft Local Planning Framework.....	6
5.2 Natural Heritage designations.....	7
6.0 The Referral.....	7
6.1. Referrer's Case .....	7
6.2. Planning Authority response .....	9
7.0 Relevant Planning Legislation.....	10
7.1. Planning and Development Act, 2000 as amended .....	10
7.2. Planning and Development Regulations, 2001 as amended.....	11
8.0 Assessment.....	12
9.0 Recommendation.....	15

## **1.0 Site Location and Description**

- 1.1. The subject site relates to Burnaby Park, a well-maintained public park, which comprises a substantial urban green space with lawn areas and mature trees, located at the eastern side of Greystones. The Greystones Lawn Bowling Club is located at the southern end of the park, with the grounds enclosed by fencing and planting. A relatively new area for playing pétanque (often called boules) has been installed at the northern side of the park. This facility was in use at the time of my site inspection. There are park benches at various locations in the park and also a number of fixed chess tables and associated seating.

## **2.0 The Questions**

- 2.1. A number of questions have arisen pursuant to Section 5 of the Planning and Development Act 2000 as amended, as follows:
1. Whether the removal of a grass area of the park (c 243 sqm) and the installation of a new playing area with hardcore surface is or is not development and is or is not exempted development.
  2. Whether the installation of a series of concrete plinths in previously green areas throughout the park is or is not development and is or is not exempted development.
  3. Whether the fixing of new furniture on these concrete plinths, including benches and chess tables is or is not development and is or is not exempted development.
  4. Whether the installation of a new signage board directly adjacent to the new playing area is or is not development and is or is not exempted development.

## **3.0 Planning Authority Declaration**

- 3.1 The above questions were put to the planning authority by the current referrer. In determining the Declaration, the planning authority noted the following:

- Reference made to Section 4(1) (aa) of the Planning and Development Act 2000 as amended being ‘development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area).’
- It is considered that the works described in the documents submitted by the referrer would constitute exempted development having regard to Section 4(1) (aa) of the Planning and Development Act 2000 as amended.
- Noted that previous regeneration works within the park were deemed not be exempt (References EX 24/12 and EX 26/12 refer – see planning history below) on the basis that the works, which were not being undertaken by the local authority, were considered under the classes of exempted development (Class 11 and Class 33 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended).
- It is stated that Article 9 lists a number of circumstances whereby development which falls within the scope of the classes under Article 6 will not be exempt.
- Article 9 (a) (vii) ‘de-exempts’ development which would alter places or sites of historical interest, such as Architectural Conservation Areas (ACA’s), the preservation, conservation and protection of which is an objective of a development plan or local area plan.
- Notes that development which is exempt under Section 4(1) (aa) is not subject to the de-exemptions set out in Article 9.

## **4.0 Planning History**

### **4.1 Site History**

#### Planning Applications / Appeals

ABP Ref. ABP-316187-23 / PA Reg. Ref. 22/704 refers to a March 2024 decision to grant permission for one multi-store garden shed to north-east corner of bowling green and to refuse permission for relocation of western boundary to extend the bowling green area, on the basis that, inter alia, the proposed development would be visually conspicuous and overbearing and would seriously injure and adversely impact on the

amenities of Burnaby Park, the visual amenities, the character and integrity of Burnaby ACA, the public realm and property in the vicinity.

P.A. Reg Ref. 18/52: refers to a March 2018 decision to grant permission for removal of two timber structures and provision of a log cabin structure for use as a changing room.

P.A. Reg Ref. 15/388 refers to a July 2015 decision to grant permission for removal of two timber structures in use as changing areas and for installation of a steel structure for use as a changing area and ancillary works.

Declarations (as listed in planner's report)

EX 06 / 2025 refers to retention of a gate. Decision: Is development and is not exempted development. Applicant: Greystones Bowling Club.

EX 24/12 refers to renovation works to Burnaby Park. Decision: Is development and is not exempted development. The development would come within restrictions on exemption set out in Article 9(a)(vii) of the 2001 Regulations as amended. Applicant: Greystones Tidy Towns.

EX26/12 refers to renovation works to Burnaby Park. Decision: Is development and is not exempted development. The development would come within restrictions on exemption set out in Article 9(a)(vii) of the 2001 Regulations as amended. Applicant: Burnaby Residents Association.

## **4.2 Previous References / Referrals**

Nothing of direct relevance to this case was found on the database.

## **5.0 Policy Context**

### **5.1 Development Plan**

- 5.1.1. The operative Development Plan is the Wicklow County Development Plan 2022 – 2028.

- 5.1.2. Chapter 8 relates to Built Heritage. Section 8.3.3 relates to Architectural Conservation Areas (ACA's). Table 8.1 confirms that The Burnaby is one of five ACA's in Greystones. Map No. 08.03C identifies the ACA's in Greystones and it is evident that the subject site is located in The Burnaby ACA.

## **5.2 Greystones – Delgany and Kilcoole Local Area Plan (LAP) 2013-2019**

- 5.2.1. I note that in the Adopted Greystones-Delgany and Kilcoole Local Area Plan 2013-2019 the site which is the subject of this referral is zoned Open Space.

## **5.3 Draft Greystones-Delgany and Kilcoole Local Planning Framework 2025**

- 5.3.1 Proposed Variation No. 4 of the Wicklow County Development Plan 2022-2028 relates to the making of a new local land-use plan (a Local Planning Framework) for the towns of Greystones – Delgany and Kilcoole.
- 5.3.2 Under the Draft Greystones-Delgany and Kilcoole Local Planning Framework 2025 Burnaby Park is zoned as Open Space.

## **5.4 Natural Heritage Designations**

The following designated sites are within 5 km of the appeal site:

- The Murrough SPA (Site Code 004186) c 1 km to the south.
- Bray Head SAC (Site Code 000714) c 2 km to the north.
- Glen of the Downs SAC (Site Code 000719) c 2.7 km to the west.
- The Murrough Wetlands SAC (Site Code 000730) c 3 km to the south.

There are no designated Natural Heritage Areas or proposed Natural Heritage Areas in the vicinity of the site.

## **6.0 The Referral**

### **6.1 Referrer's Case**

A referral was submitted to An Bord Pleanála seeking a further determination in respect of the above questions by Liam Sweeney, Chairperson of Burnaby Residents Association. The grounds of referral are set out below.

- Burnaby Estate is one of Ireland's first planned housing estates and Burnaby Park is within it. The area is designated as an Architectural Conservation Area (ACA).
- Burnaby Park is a key public green space in the area, an important civic amenity and it contributes to the character of the ACA.
- The works commenced without notice in September 2024. An area of earth (stated to measure 243 sqm) was excavated in order to develop a boules / pétanque court. The development was completed in March 2025, when a sign board and seating were erected adjacent to the court.
- Other works undertaken by or on behalf of the Council between September 2024 and March 2025 included the installation of two chess tables on concrete plinths, 19 new benches and new bins.
- Contact was made with the Council regarding the lack of consultation and the absence of a planning process for the works. The Council stated that the works do not require planning consent as they do not meet the requirements for a Part 8 development. Further, the Council considered that the works do not materially affect the character of the ACA, and are unobtrusive with no elements above ground other than park benches.
- The referrer contends that at least some of the works at Burnaby Park requires planning permission. Construction of a boules court in the park involves the carrying out of works to the exterior of a structure located in an ACA. Planning legislation defines a 'structure' as any building, structure, excavation, or other thing constructed or made on, in or under land.
- The planning authority's report fails to reference section 82 (1) of the Planning Act. This states that 'the carrying out of works to the exterior of a structure located in an ACA shall be exempted development only if those works would not materially affect the character of the area.' There is nothing in Section 4 (1) (aa) that nullifies the provisions of section 82 (1).
- To avail of exempted development provisions the Council would have had to provide expert evidence to demonstrate that works would not materially affect the character of the area; no such evidence was provided.

The following attachments are submitted with the referral:



- Photographs of the boules court and chess tables.
- Copies of the referrers letters dated 5<sup>th</sup> and 6<sup>th</sup> of September 2024 to the local authority. These raise concerns regarding the absence of a planning process for the on-going works and the lack of consultation.
- Copy of response letter from the local authority dated 6<sup>th</sup> of September 2024 which may be summarised as follows:
  - The project does not meet any of the requirements for the undertaking of a Part 8 planning process.
  - No works are being carried out to a structure. The works do not materially affect the character of the area. The courts are unobtrusive The space measures 9 m by 17 m.
  - Significant public engagement was undertaken by central and local government relating to the funding for these projects.
- Copy of response letter from the referrer to the local authority dated 10<sup>th</sup> of September 2024 reiterating the view that the works come within the parameters of section 82 of the Planning Act and that public consultation and a partnership approach is required.
- A copy of the referrer's Section 5 application to the planning authority.
- A copy of the subsequent planning report dated 13<sup>th</sup> March 2025.
- A copy of the local authority's Manager's Order.

## 6.2. **Planning Authority response**

A response was received from the planning authority on the 17<sup>th</sup> of April 2025. It states the following:

- It is considered that by virtue of Section 4 (i) (aa), (e) and (f), all Local Authority development is exempted development, subject to the caveat for nearshore development contained in (aa). This is not affected by the provisions of Section 4 (4), which do not 'de-exempt' Local Authority development. The effect of Section 4 (4) is that an alternative approval process is required with the Board.

- Notwithstanding the above, the planning authority considers that neither Appropriate Assessment nor Environmental Impact Assessment are required for the subject development.

## **7.0 Relevant Planning Legislation**

### **7.1. Planning and Development Act, 2000 as amended**

#### **7.1.1 Section 2(1) – Interpretation**

The following are relevant to the subject questions:

‘structure’ means any building, structure, excavation or other thing constructed or made on, in or under any land, a 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

(b) in relation to a protected structure or proposed protected structure includes

- (i) the interior of the structure,
- (ii) the land lying within the curtilage of the structure,
- (iii) any other structures lying within that curtilage and their interiors and
- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraphs (i) or (iii)’

‘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.’

#### **7.1.2 Section 3(1) - Development**

In this, except where the context otherwise requires, ‘development’ means –

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).

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

4 (1) (aa) is relevant:

‘development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area)’

4 (1) (f) is relevant:

‘development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity’

7.1.4 Section 4(4) ‘Exempted development’

‘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.’

Section 82 (1) is relevant

‘Notwithstanding *paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.*’

7.1.5. Part 11– Development by Local and State Authorities etc.

Section 178 (1)

‘The council of a county shall not effect any development in its functional area which contravenes materially the development plan.’

Section 179 relates to Local Authority own development.

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

Part 8 of the Planning and Development Regulations 2001 as amended  
‘Requirements in respect of specified development by, on behalf of, or in partnership with local authorities’

Article 80 within Part 8 relates to development prescribed for purposes of section 179 of the Act.

## **8.0 Assessment**

- 8.1. I note firstly that the referrer states that the size of the boules playing area is 243 sqm. At the site inspection it became apparent that this area measures approximately 160 sqm.
- 8.1.1 It should also be stated at the outset of this assessment that the purpose of the referral is not to determine the acceptability or otherwise of the removal of grass to facilitate the new boules / pétanque playing area, the associated signage board, and the new park furniture including benches and chess tables affixed on concrete plinths, in respect of the proper planning and sustainable development of the area, but rather whether or not the matters in question constitute development, and if so, whether they fall within the scope of exempted development.
- 8.1.2 Furthermore, questions relating to whether or not the matters which are the subject of this referral should have been considered in a Part 8 planning process are not germane to the current questions before the Commission. Therefore, such issues can be set aside for the purposes of determining this Section 5 referral.

## **8.2 Development**

- 8.2.1 Wicklow County Council has undertaken works in the public park comprising removal of a grassed area and provision of a new boules playing area, erection of a new signage board associated with the boules playing area, and the provision of benches and chess tables affixed to concrete plinths.
- 8.2.2 The activities undertaken to construct the boules facility would, in my opinion, fall within the definition of 'works,' as the activities involved the 'excavation' of the area in question. Further, in my view, the erection of a signage board, and the provision of benches and chess tables, along with concrete plinths upon which the furniture is affixed, comprise 'works' within the meaning of the Act. Given that the activities undertaken fall within the definition of 'works,' it necessarily follows that the activities undertaken in the public park constitute development in accordance with Section 3 of the Act.

### 8.3 Is or is not exempted development

- 8.3.1 Having established that the 'works' undertaken amount to 'development,' the next issue to be considered is whether the development is exempted development or not. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended.
- 8.3.2 Section 4(1) of the Act defines certain types of development as being exempted development, including under Section 4(1) (aa), 'development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area).' Wicklow County Council is a coastal planning authority. The 'nearshore area' is an area below the high water mark and a distance of 3 nautical miles from the high water mark. It is clear that the development which has taken place in Burnaby Park is not within the nearshore area of the planning authority.
- 8.3.3 Section 82 (1) of the Act states that:
- 'Notwithstanding *paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.*'
- 8.3.4 Burnaby Park is located within the boundary of Burnaby ACA. Given that Section 82 (1) does not refer to Section 4(1) (aa), my interpretation is that the restriction on exemption specified therein does not apply in this instance.
- 8.3.5 Notwithstanding, it is my firm view that the developments comprising the removal of the grassed area, the boules facility and associated signage, along with the benches and chess tables and the concrete plinths upon which the furniture is affixed, do not materially affect the character of the area located in an ACA.
- 8.3.6 In this context, I note that Burnaby Park is a public town-centre park which caters for many activities and events. In my opinion, one would expect to find amenities akin to those which are the subject of this referral comprising, inter alia, outdoor furniture and sporting facilities in a town-centre park.

8.3.7 Having regard to the foregoing, I consider that the development comprising the removal of a grassed area and the installation of a boules playing area and associated signage, along with the provision of benches and chess tables and the concrete plinths upon which the furniture is affixed, constitute exempted development under Section 4 (1) (aa) of the Act, and that the restrictions on exemption, as indicated in section 4(4) of the Act, do not apply in this instance.

8.3.8 Section 178 (1) of the Act notes that a county council shall not effect any development in its functional area which materially contravenes the development plan. As noted in section 5.1.5 of this report, Burnaby Park is zoned as Open Space in the Draft Greystones-Delgany and Kilcoole Local Planning Framework 2025 and I do not consider that the provision of benches, seating, and excavation of a grassed area to facilitate a boules area with associated signage at the subject town-centre park location would contravene the Wicklow Development Plan 2022-2028 or the Draft Greystones-Delgany and Kilcoole Local Planning Framework 2025.

#### 8.4 **Other matter**

8.4.1 The referrer makes reference to Article 9 of the Planning and Development Regulations 2001, as amended, in the context of restrictions on exemptions. I note however that Article 9 is not relevant to development exempted under section 4(1) of the Planning and Development Act 2000 as amended. Section 4(1) is separate to and has primacy over the exempted development provisions of the Planning and Development Regulations 2001, as amended.

#### 8.5 **Appropriate Assessment (AA) Screening**

8.5.1 I have considered the development (which I have determined to be exempted development, as set out above in paragraph 8.4.7) in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The subject site is located approximately 1 km north of the nearest European Site, The Murrough SPA (Site Code: 004186).

8.5.2 Having considered the nature, scale and location of the development, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- Having visited the site and reviewed the Environmental Protection Agency's AA Mapping Tool, I note that there are no direct hydrological connections between the subject site and any designated site.
- Having regard to the distance from the European Sites regarding any other potential ecological pathways.
- Having regard to the relatively modest nature and scale of the development.
- Having regard to the planning authority's conclusion that the development would not give rise to any adverse impacts on the qualifying interests and conservation objectives of any Natura Site.

8.5.3 I conclude that on the basis of objective information, that the development would not likely have a significant effect on any European Site, either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## 8.6 **Environmental Impact Assessment (EIA)**

8.6.1 In relation to EIA, I consider that the development (which I have determined to be exempted development, as set out above in paragraph 8.4.7) is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening assessment.

## 9.0 **Recommendation**

9.1 Arising from my assessment above I consider that (i) the removal of a grass area of the park and the installation of a new boules playing area, (ii) the installation of a series of concrete plinths in previously green areas throughout the park, (iii) the fixing of new furniture on these concrete plinths including benches and chess tables, and (iv) provision of a signage board associated with the new boules area, at Burnaby Park in Greystones, is development and is exempted development and I therefore recommend that the Commission issue a determination as follows:

**WHEREAS** a question has arisen as to whether:

- (a) the removal of a grass area of the park and the installation of a new boules playing area with hardcore surface is or is not development and is or is not exempted development,
  - (b) the installation of a series of concrete plinths in previously green areas throughout the park is or is not development and is or is not exempted development,
  - (c) the fixing of new furniture on these concrete plinths including benches and chess tables is or is not development and is or is not exempted development and
  - (d) installation of a new signage board adjacent to the new boules area is or is not development and is or is not exempted development,
- all at Burnaby Park, Greystones, Wicklow,

**AND WHEREAS** Liam Sweeney of Burnaby Residents Association, care of Netherby, Erskine Avenue, Greystones, Wicklow requested a declaration on the said question from Wicklow County Council and the Council issued a declaration on the 13<sup>th</sup> day of March, 2025 stating that:

- (a) the removal of a grass area of the park and the installation of a new playing area with hardcore surface is development and is exempted development,
- (b) the installation of a series of concrete plinths in previously green areas throughout the park is development and is exempted development,
- (c) the fixing of new furniture on these concrete plinths including benches and chess tables is development and is exempted development, and
- (d) the installation of a new signage board directly adjacent to the new playing area is development and is exempted development,

**AND WHEREAS** Liam Sweeney of Burnaby Residents Association referred the declaration for review to An Bord Pleanála on the 4<sup>th</sup> day of April, 2025,



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

- (a) Sections 2(1), 3(1), 4(1) (aa), 82(1), 178(1) and 179 of the Planning and Development Act 2000, as amended,
- (b) the provisions of the Wicklow County Development Plan 2022-2028,
- (c) the provisions of the Greystones – Delgany and Kilcoole Local Area Plan 2013-2019,
- (d) the provisions of the Draft Greystones-Delgany and Kilcoole Local Planning Framework 2025, and
- (e) the pattern of development in the area,

**AND WHEREAS** An Coimisiún Pleanála has concluded that

- (a) the removal of a grass area of the park and the installation of a new playing area with hardcore surface is development and is exempted development,
- (b) the installation of a series of concrete plinths in previously green areas throughout the park is development and is exempted development,
- (c) the fixing of new furniture on these concrete plinths including benches and chess tables is development and is exempted development, and
- (d) the installation of a new signage board directly adjacent to the new playing area is development and is exempted development,

having regard to the nature of the development, the development comes within the scope of section 4(1) (aa) of the Planning and Development Act 2000, as amended.

**NOW THEREFORE** An Coimisiún 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:

- (a) the removal of a grass area of the park and the installation of a new playing area with hardcore surface is development and is exempted development,

- (b) the installation of a series of concrete plinths in previously green areas throughout the park is development and is exempted development,
- (c) the fixing of new furniture on these concrete plinths including benches and chess tables is development and is exempted development, and
- (d) the installation of a new signage board directly adjacent to the new playing area is development and is exempted development.

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

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John Duffy  
Planning Inspector

3<sup>rd</sup> July 2025