



**Question**

Whether the removal of an existing pedestrian public footpath within Pearce Brothers Park, is or is not development or is or is not exempted development.

**Location**

Pearse Brothers Park, Park Estate, Ballyboden, Dublin 16

**Declaration**

Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	ED25/0044
Applicant for Declaration	Ballyboden Tidy Towns clg.
Planning Authority Decision	No declaration

**Referral**

Referred by	South Dublin County Council
Owner/ Occupier	South Dublin County Council
Observer(s)	None

**Date of Site Inspection**

26<sup>th</sup> November 2025

**Inspector**

Kenneth Moloney

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## 1.0 Site Location and Description

- 1.1. The referral site is located within an established suburban housing estate, i.e. Pearse Brothers Park, in Ballyboden, Dublin 16.
- 1.2. The subject site comprises of an area of public open space associated with the housing estate.
- 1.3. Construction works are currently ongoing on the referral site, and this involves the implementation of the Part 8 approval (SD218/0008) which relates to the construction of 10 no. housing units for Independent Living for Older Persons.

## 2.0 The Question

- 2.1.1. The question contained in the Section 5 application form submitted to the Planning Authority, states as follows:

*The removal of an existing pedestrian public footpath within Pearse Brothers Park. The removal, reallocation, or reduction of 9 existing public car parking spaces in connection with the development approved under Part 8 (Ref: SD218/0008) resulting in the net loss of car parking provision in the estate.*

- 2.1.2. The Commission will note that the submitted question refers to the Part 8 application on the referral site, however the Part 8 process is entirely separate to the questions of 'development' and 'exempted development' as outlined in section 5 of the Act of 2000, as amended. I therefore propose that the question for the Commission to consider, for the purpose of this referral is, as follows.

*Whether the removal of an existing pedestrian footpath and the removal, reallocation, or reduction of public car parking spaces at Pearse Brothers Park, Ballyboden, Dublin 16 is or is not development or is or is not exempted development.*

### **3.0 Planning Authority Declaration**

3.1. No declaration made by the Planning Authority. The Planning Authority on the 9<sup>th</sup> of July 2025, in accordance with Section 5(4) of the Planning and Development Act, 2000 (as amended), referred a referral to the Commission for determination.

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

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

- None

#### **3.2.2. Other Technical Reports**

- None

### **4.0 Planning History**

4.1. The following relates to the referral site.

- SD218/0008 – Part 8 planning application approved on the 11<sup>th</sup> of October 2021 for Social Housing Project for Independent Living for Older Persons comprising of 10 no. housing units.

Concurrent cases on the referral site;

- ABP.322999-25 (PA Ref. ED25/0047) – referral application received by ACP asking whether the removal of landscaping and recreational improvements consisting of a boules court, 4 no. insect bars, 2 no. large pollinator flower beds, bulb planting is or is not development or is or is not exempted development. Application undecided.
- ABP.322650-25 (PA Ref. ED25/0038) – referral application received by ACP asking whether the landscaping and recreational improvements consisting of the installation of the boules court, 4 no. insect bars, 2 no. large pollinator flower beds, bulb planting is or is not development or is or is not exempted development. Application undecided.

## 5.0 Policy Context

### 5.1. South Dublin County Development Plan, 2022 – 2028

5.1.1. The referral site is zoned ‘RES’ whereby the land use zoning objective is ‘*to protect and/or improve residential amenity*’.

### 5.2. Natural Heritage Designations

- South Dublin Bay SAC (site code 000210) – 7.6 km east
- South Dublin Bay and River Tolka Estuary SPA (site code 004024) – 7.6 km east.
- Fitzsimon's Wood pNHA (site code 001753) – 3 km northwest
- Dodder Valley pNHA (site code 000991) – 3.6 km southeast.

## 6.0 The Referral

### 6.1. Referrer’s Case

6.1.1. The following is a summary of the applicant’s case, submitted to the Planning Authority.

#### Introduction

- Section 3(1)(a) of the 2000 Act states that any works that materially alter the character or use of land are considered development.
- The removal of public car parking meets this test, as it results in a change of use from public use to private use.
- Class 50, Part 1, Schedule 2, allows a local authority to construct a car park. The exemption does not extend to the removal or reduction of existing parking facilities.
- The Part 8 approval did not seek consent for the removal or reallocation of existing parking.

- As the loss of parking spaces for existing residents was not assessed in the Part 8 process, this amounts to a material deviation.
- In the absence of any exemption, this action constitutes unauthorised development.
- The PA were requested to issue a declaration confirming that the removal of public car parking spaces in connection with Part 8 development, constitutes development, and this is not exempted development that requires planning permission.

### Section 5 application

- The removal of an existing pedestrian footpath and grass verge and the removal, reallocation, or reduction of public car parking spaces in connection with Part 8 development (SD218/0008) are unauthorised development due to the absence of planning permission and lack of coverage under the Part 8 process.
- The removed footpath linked key areas of the neighbourhood park and provided safe, accessible circulation for a broad range of users.
- The Part 8 documentation did not indicate any net loss of car parking provision.
- The removal of a public footpath is works and therefore development in accordance with section 2 and section 3 of the Act.
- There is no available exemption under Class 31 of the Regulations to allowing for the material alteration to a pedestrian access and the character of an open space.
- The footpath removal was not publicly advertised or approved under SD218/0008.
- The removal of car parking spaces qualifies as development.
- Class 50 is not applicable to the removal of car parking spaces.
- Part 8 development did not consent for the reduction in car parking spaces.

- It is requested that all ongoing works are paused until the outcome of the Section 5 applications.
- The Part 8 development is currently under investigation by the OPR.

6.1.2. The applicant's submission also includes a 'Statement of Position' which outlines the process into the Part 8 application.

- The development being constructed on site differs materially from the approved Part 8 process.
- The original Part 8 process was flawed on a number of grounds.
  - Lack of transparency – removal of public footpath, car parking and recreational amenity features were not described in the Part 8 documentation available for public consultation.
  - There is no evidence that the post changes were reassessed under Section 179(6)(b), which requires public consultation.
  - Permission was granted over land zoned 'open space', which only allows residential development under strict conditions.
  - Development has resulted in the loss of public and the residential amenities contrary to the development plan objectives.
- The use of a series of Section 5 applications is required as,
  - There is no assurance from SDCC that the development is proceeding in compliance with planning law.
  - SDCC have failed to provide the full planning and compliance file for inspection.
  - Key aspects of the works appear to constitute development not covered by the Part 8, nor any other consent.
  - The referrals allow for specific, binding determinations on individual acts or categories of development (e.g. removal of a footpath or car parking spaces).
  - The referral application offers the only alternative short of initiating enforcement or JR proceedings.

- The OPR are investigating aspects of this project, which supports the view that the applicant's concerns are well founded.
- It is requested that works on the site pause until such time as ACP and the OPR review the development.

## 6.2. **Planning Authority Response**

- None

## 6.3. **Further Responses**

- None

# 7.0 **Statutory Provisions**

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

### 7.1.1. Section 2(1) of the Act states the following:

- 'development' has the meaning assigned to it by Section 3;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ....'

### 7.1.2. Section 3(1) states that:

- 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land'.

### 7.1.3. Section 4(1) The following shall be exempted development for the purposes of this Act:-

#### 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(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.

7.1.5. Section 4(4) provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

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

7.2.1. Article 6(1) of the Planning and Development Regulations 2001, as amended, (hereinafter referred to as ‘the Regulations’) provide that ‘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 of Part 1 to the Regulations set out the classes of exempted development, including ‘Class 33’, which is a relevant consideration.

**Exempted Development – Classes of Use**

**Development for amenity or recreational purposes**

<b>Column 1</b> <b>Description of Development</b>	<b>Column 2</b> <b>Conditions and Limitations</b>
<b>Class 36</b>  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	1. The floor area of any building constructed or erected shall not exceed 40 sq. metres.  2. The height of any building or other structure constructed or

<p>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.</p> <p>b. Development consisting of the carrying out by or on behalf of a State authority or other public body on a nature reserve established in accordance with section 15 of the Wildlife Act, 1976, as amended by sections 26 and 27 of the Wildlife (Amendment) Act, 2000, of works (including the provision, construction, erection of structures) in connection with or for the purposes of the enjoyment of the reserve or which are required in connection with the management or operation of the reserve.</p>	<p>erected shall not exceed 10 metres.</p> <p>3. Any car park provided or constructed shall incorporate parking space for not more than 40 cars.</p>
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7.2.3. As provided for in Article 9(1)(a), the development to which article 6 relates, shall not be exempted development, under certain circumstances and the restrictions and limitations are outlined in this Article.

## 8.0 Relevant Referrals

8.1.1. ABP-311797-21: The Board determined on the 25<sup>th</sup> of April 2023 that works consisting of the provision of public toilets in conjunction with retail unit/café unit, c. 12.19m long x 2.44m wide x 2.59m high with associated site works including foul drainage connection, water connection, ESB connection or generator provision, hard standing area, bin provision, outdoor seating/tables, removal of trees, alterations to landscaping and all associated works above and below ground, at Griffith Park, Drumcondra, Dublin, is development and is exempted development. The Board accepted the Inspector's recommendation. The Inspectors Report concludes that the proposal would involve the carrying out of 'works' and would constitute 'development' in accordance with section 3(1) of the Act, and that the development would be exempted development having regard to the provisions of section 4(1)(f) of the Act.

## 9.0 Assessment

### 9.1. Introduction

9.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

9.1.2. In this regard, I note the applicant's submission, summarised in section 6.0 above, addresses several issues in respect of the Part 8 application pertaining to the referral site, which is the green open space opposite houses 25-34 Pearse Brothers Park.

9.1.3. The applicant's submission refers to the land use zoning objective of the referral site and the Part 8 application process including public consultation. The applicant also refers to deviations to the approved Part 8 development. Having regard to the foregoing, I consider that the Part 8 application on the referral site, and any subsequent deviations and alterations to the approved scheme, is entirely separate to the questions of 'development' and 'exempted development' as outlined in section 5 of the Act of 2000, as amended.

9.1.4. As I have noted above the referral site is currently an active construction site, implementing the Part 8 approved application (LA Ref. SD218/0008), and the site is enclosed by construction hoarding. The question, the subject of the referral before the Commission, relates to the referral site prior to the commencement of construction activities on the site.

9.1.5. Prior to the current construction activities, the referral site was a green open space used as a recreational and amenity area by residents. The green open space included a footpath along its western edge, and approximately 9 no. on-street car parking spaces adjoining the northern side of the amenity area.

9.1.6. The footpath and the car parking spaces are now removed from the referral site and the question before the Commission is whether their removal constitutes development, and if so falls within the scope of exempted development.

9.1.7. Given that the public footpath and the car parking spaces no longer exist and the referral site has gone through a Part 8 planning process and is currently under construction implementing the approved Part 8, I acknowledge that it is difficult to define the full details of the footpath and the car parking spaces, which are now removed. However, having regard to the information available on file, I am satisfied that the question currently posed to the Commission generally reflects the previous condition of the green open space opposite houses 25-34 Pearse Brothers Park prior to construction. Accordingly, I have no objection to determining the referral on this basis.

## **9.2. Is or is not development**

9.2.1. Section 3(1)(a) of the Act defines development as 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 and in effect relates to both works and the material change in the use of land or structures.

9.2.2. Section 2(1) of the Planning and Development Act 2000, as amended, defines “works” as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....

9.2.3. In considering whether the removal of the public footpath and the car parking spaces constitutes development, and/or whether a material change of use has occurred, I will examine each item in turn.

9.2.4. Removal of an existing pedestrian footpath

I note from the applicant's submitted photographs that the former pedestrian footpath provided access along the western edge of the green open space, which is the referral site. The footpath was standard in terms of construction, comprising of a concrete finish. I noted from Google Earth (2025) that the approximate length of the footpath was 30 metres.

9.2.5. The removal of the existing pedestrian footpath would have required excavation to remove the concrete, and as such comes within the scope of 'works' as defined in Section 2(1) of the Act and therefore constitutes development within the meaning of the Act.

9.2.6. Removal, reallocation, or reduction of public car parking spaces

The applicant's documentation also includes photographs of on-street car parking along the northern side of the green open space, however the application documentation does not include any drawing indicating details of the car parking.

9.2.7. Photographs included with the applicant's submission shows the car parking surface consists of a concrete finish. I note that the said car parking is on-street and the area of car parking accommodates 9 no. spaces. The removal of the car parking spaces therefore would have required excavation which comes within the scope of 'works' as defined in Section 2(1) of the Act and therefore constitutes development within the meaning of the Act.

9.2.8. Conclusion

In conclusion therefore, and having regard to the above considerations, I am of the opinion that the removal of the footpath along the western side of the amenity space and car parking spaces adjoining the northern edge of the open space is development.

### **9.3. Is or is not exempted development**

- 9.3.1. 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 (hereafter referred to as the Regulations). Section 4(1) of the Act has primacy over the exempted development provisions of the Regulations.
- 9.3.2. The applicant's submission to the Planning Authority argues that both exempted development provisions Class 31 and Class 50 of Schedule 2, Part 1 of the Regulations, would not apply to the development matters raised. I have reviewed both the respective provisions in Class 31 and Class 50 of Schedule 2, Part 1 of the Regulations and I would concur with the applicant's assertion, that these exempted development provisions are not relevant to the development the subject of this referral.
- 9.3.3. Section 4(1) of the Act defines certain types of development as being exempted development, including under Section 4(1)(aa), which states as follows.

*'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).'*
- 9.3.4. The development involves the removal of a public footpath along the western side of the green open space and the removal of car parking spaces adjoining the amenity area within the local authority's functional area. Furthermore, South Dublin County Council is not a coastal county.
- 9.3.5. I would therefore conclude that the development comprising of the removal of the public footpath and the car parking spaces within this green open space is exempted development having regard to Section 4(1)(aa) of the Act.

### **9.4. Restrictions on exempted development**

- 9.4.1. I note that Article 9 is not relevant to development exempted under section 4(1) of the Planning and Development Act, 2000, as amended.
- 9.4.2. I consider a restriction which applies to section 4(1)(aa) of the Act is outlined in section 4(4) of the Act, which states that development shall not be exempted development if an environmental impact assessment or an appropriate assessment

of the development is required. These matters are discussed in the following sections.

## **10.0 EIA Screening**

10.1. The proposed development 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 (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

## **11.0 Appropriate Assessment**

11.1. I have considered case ABP-323007-25 in light of the requirements S177U of the Planning and Development Act, 2000, as amended.

11.2. The closest European Sites, part of the Natura 2000 Network, are the South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA, both located approximately 7.6km east of the referral site.

11.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

11.4. The reason for this conclusion is as follows:

- Location-distance from nearest European site.
- The nature and scale of development.
- The absence of any ecological pathway from the development site to the nearest European Site.

11.5. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

11.6. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## 12.0 Water Framework Directive

12.1.1. I have individually assessed the subject development use and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface and ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the subject development, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

12.1.2. The reason for this conclusion is as follows.

- The nature and scale of development.
- The location of the site in a developed urban area.
- The absence of any hydrological connections.

12.1.3. I conclude that on the basis of objective information, that the subject development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

## 13.0 Recommendation

13.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the removal of an existing pedestrian footpath and the removal, reallocation, or reduction of public car parking spaces in connection with development approved under Part 8 (Ref: SD218/0008) at Pearse Brothers Park, Ballyboden, Dublin 16 is or is not development or is or is not exempted development:

**AND WHEREAS** Ballyboden Tidy Towns clg requested a declaration on this question from South Dublin County Council and the Council did not make a declaration in this instance:

**AND WHEREAS** South Dublin County Council referred this referral for review to An Coimisiún Pleanála on the 9<sup>th</sup> day of July 2025:

**AND WHEREAS** An Coimisiún 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, as amended,
- (c) Section 4(1)(aa) 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) Previous referrals to the Commission, including ABP-311797-21,
- (g) The provisions of the South Dublin County Development Plan, 2022 – 2028,
- (h) the planning history of the site,
- (i) The documentation on the file, including submissions on behalf of the requestor Ballyboden Tidy Towns clg,
- (j) the pattern of development in the area,
- (k) the report and recommendation of the Inspector:

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

- (a) the removal of public footpath and car parking spaces constitutes works that come within the scope of section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) the said works constitute development that comes within the scope of section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) the said works is exempted development as it falls 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 (4) of the 2000 Act, hereby decides that the removal of public footpath and car parking spaces is development and is 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.

---

. Kenneth Moloney  
Senior Planning Inspector

13<sup>th</sup> January 2026

#### **Form 1 - EIA Pre-Screening**

<b>Case Reference</b>	ACP-323007-25
<b>Proposed Development Summary</b>	Whether the removal of an existing pedestrian footpath and the removal, reallocation, or reduction of public car parking spaces at Pearse Brothers Park, Ballyboden, Dublin 16 is or is not development or is or is not exempted development.
<b>Development Address</b>	The open space/greenspace/neighbourhood Park opposite houses 25-34 Pearse Brothers Park, Ballyboden, Dublin 16.
<b>In all cases check box /or leave blank</b>	
<p><b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b></p> <p>(For the purposes of the Directive, "Project" means:</p> <ul style="list-style-type: none"> <li>- The execution of construction works or of other installations or schemes,</li> <li>- Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)</li> </ul>	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<p><b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b></p>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.	
<b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<p><b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b></p>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	No Screening required.

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	

<p><b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b></p>	
<p><b>Yes</b> <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b></p>
<p><b>No</b> <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

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