

## Inspector's Report

**ACP-323659-25**

### Questions

1. Whether formation of a public garden / amenity park, including land grading, introduction of ornamental planting, and structured landscaping is or is not development and is or is not exempted development.
2. Whether installation of paved surfaces, hard landscaping, and fixed boundary treatments or kerbing is or is not development and is or is not exempted development.
3. Whether construction of an artificial pond and associated infrastructure is or is not development and is or is not exempted development.
4. Whether placement of street furniture, signage, and public amenities such as benches and bins is or is not development and is or is not exempted development.
5. Whether possible alterations to existing curtilage walls, access routes,

or gates is or is not development and is or is not exempted development.

<b>Location</b>	Seán Keating Garden / Park, Rathfarnham Castle Park, Rathfarnham Castle, Rathfarnham, Dublin 14.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	ED25/0063
<b>Type of Application</b>	Referral
<b>Referred by</b>	Ballyboden Tidy Towns Clg
<b>Planning Authority Decision</b>	Would constitute exempted development
<b>Date of Site Inspection</b>	7 <sup>th</sup> December 2025
<b>Inspector</b>	John Duffy

## Contents

1.0 Introduction.....	4
2.0 Site Location and Description.....	4
3.0 The Questions .....	4
4.0 Planning Authority Declaration.....	5
5.0 Planning History.....	6
6.0 Policy Context.....	6
7.0 The Referral.....	7
7.1.    Referrer's Case.....	7
7.2.    Planning Authority Response.....	12
8.0 Relevant Planning Legislation.....	12
9.0 Assessment .....	15
10.0 Recommendation .....	21

## **1.0 Introduction**

- 1.1. This referral is retrospective in nature and relates to the existing Seán Keating Garden / Park located within the grounds of Rathfarnham Castle which was provided by South Dublin County Council by way of direct labour following in-house design in 2013.
- 1.2. For the purposes of clarity, the recent Part 8 application (Ref. PT8SD240) relating to the lands at Rathfarnham Castle and including the subject lands and the Castle Stables and Courtyard (see 'Planning History' at Section 5.0 below) is not the subject of this referral and does not come within its scope.

## **2.0 Site Location and Description**

- 2.1. The subject site relates to Seán Keating Garden / Park located to the north of and within the grounds of Rathfarnham Castle (Protected Structure Ref. 221), at the junction of the Rathfarnham Road (R114) and Castleside Drive, Dublin 14.
- 2.2. The site is located east of Rathfarnham village, is bounded by the R114 to the west, commercial development and housing at Castleside Drive to the north-east and the Parklands residential development to the east and south-east.
- 2.3. The garden is of contemporary design and includes hard and soft landscaping, ornamental planting, a pond / water feature, art work / statue, seating, paving and low rise stone walls encompassing the pond.

## **3.0 The Questions**

- 3.1. A number of questions have arisen pursuant to Section 5 of the Planning and Development Act 2000, as amended, as follows:
  1. Whether formation of a public garden / amenity park, including land grading, introduction of ornamental planting, and structured landscaping is or is not development and is or is not exempted development.
  2. Whether installation of paved surfaces, hard landscaping, and fixed boundary treatments or kerbing is or is not development and is or is not exempted development.

3. Whether construction of an artificial pond and associated infrastructure is or is not development and is or is not exempted development.
4. Whether placement of street furniture, signage, and public amenities such as benches and bins is or is not development and is or is not exempted development.
5. Whether possible alterations to existing curtilage walls, access routes, or gates is or is not development and is or is not exempted development.

## 4.0 Planning Authority Declaration

4.1. The questions set out above were put to the planning authority by the current referrer. In determining the Declaration, the planning authority in its assessment noted the following:

- Consider that the subject works all fall within the scope of section 4(1)(aa) of the Planning and Development Act 2000, as amended.
- The site works were carried out in 2013 and completed in June of that year, using direct labour following in-house design at a cost of €123,000.
- Notes that development which is exempt under section 4 of the Planning and Development Act 2000, as amended, is not subject to restrictions on exemptions as set out under Article 9 of the Planning and Development Regulations 2001, as amended.

## 5.0 Planning History

### Site History

#### Part 8 Application

The planning authority's assessment of the Declaration refers to a recent application under Part 8 relating to the Castle Stables and Courtyard (Planning Reference PT8SD240 refers). This Part 8 application consists of the refurbishment and change of use of the former stable buildings and former Council depot yards to provide mixed-use cultural / arts / café / restaurant uses together with retail use, toilets, storage areas and a switch room. The planning authority's assessment details the various parts of the proposal including the proposed provision of a new car park on part of the Seán

Keating Garden, which I understand was amended prior to approval. The planning authority's assessment on this Declaration indicates the Part 8 application is approved.

ABP-316272-23 refers to an application under the Roads Act relating to the BusConnects Templeogue / Rathfarnham to City Centre Core Bus Corridor Scheme which was approved in December 2024 and currently the subject of judicial review proceedings. This application included provision for the setting-back of existing boundary wall to Rathfarnham Castle Park to facilitate a bus lane alongside traffic lanes and cycle tracks in both directions between Rathfarnham Wood and the Castleside Drive junction.

#### Previous References / Referrals

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

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. The operative Development Plan is the South Dublin County Development Plan 2022-2028.
- 6.1.2. The subject lands along with adjoining lands which accommodate Rathfarnham Castle are subject to the 'OS' Open Space zoning objective 'To preserve and provide for open space and recreational amenity' in the South Dublin County Development Plan 2022-2028.
- 6.1.3. The Development Plan interactive map indicates the following layers applicable to the subject site:
  - Aviation Safeguarding:
    - Bird Hazards – Casement
    - Outer Horizontal Surface – Dublin
    - Outer Horizontal Surface – Casement
- 6.1.4. Rathfarnham Castle is both a National Monument (RMP No. DU022-014) and a Protected Structure (RPS Ref. 221) described as a 'Four Storey Stone Castle With

Porch, Colonnades & Roof Ornamentation (RM).’ Another Protected Structure, Rathfarnham Castle Lodge (RPS Ref. 212) is located in the vicinity of the subject site.

- 6.1.5. The Rathfarnham Village including Willbrook Architectural Conservation Area (ACA) (Ref. ACA011) is located to the west and south and outside the subject lands.

## 6.2. **Natural Heritage Designations**

There are no European Sites in the immediate area. The nearest European Sites are South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA located c 5.8km to the north-east.

# 7.0 **The Referral**

## 7.1. **Referrer’s Case**

A referral was submitted to An Coimisiún Pleanála seeking a further determination in respect of the questions detailed in section 2 above by Angela O’Donoghue, Director of Ballyboden Tidy Towns clg. The grounds of referral are summarised below, and the referrer’s headings as set out in the appeal are used in this regard.

### Introduction

- The Council’s determination is disputed. Exemption is precluded under Article 9 if the Planning and Development Regulations, 2001, as amended, due to heritage, environmental, financial and procedural restrictions.

### Legal and Planning Grounds

- The works constitute development as defined in section 3 of the Act.
- The claimed exemption is invalidated by restrictions including (i) location within curtilage and setting of Rathfarnham Castle, a Protected Structure and National Monument, (ii) material effect on the character and setting of the Protected Structure, and (iii) environmental sensitivities necessitate screening for Appropriate Assessment (AA) and Environmental Impact Assessment (EIA).

- The exemption threshold under Article 80 was exceeded. In 2013 works involved expenditure of €123,000 (excluding cost of direct labour) and no evidence of that spend is provided by the Council.
- Article 80 expenditure threshold was substantially exceeded. €123,000 excludes direct labour costs. Applying standard local authority labour rates (c €30-€40 per hour in 2013), the true cost would have exceeded €160,000 in 2013 or approximately €300,000 in 2025 terms.
- The works are integral to the broader SDCC Part 8 plan for Rathfarnham Castle and Stables. A piecemeal assessment of 2013 works is contrary to EU case law which rejects project splitting and retrospective justification (reference made to O’Grianna v ABP and Balz v Germany).
- Works conflict with Section 10 of the Planning and Development Act requiring Development Plan objectives to protect built heritage, ACAs and the natural environment. Alteration of the Seán Keating Garden within Rathfarnham Castle grounds is inconsistent with objectives.

#### Procedural Unfairness

- Section 5 application was made to the planning authority in June-July. The Chief Executive’s report for the Part 8 process stated that no such application was on file. This denied Councillors access to legal information and undermined public consultation contrary to Article 81 of the Regulations.

#### Environmental and Heritage Impact

- The 2013 works warranted environmental screening and potentially ministerial consent under the National Monument Acts however no such assessments or consents were obtained (section 14 of the National Monument Act 1930 as amended refers). Absence of such consent renders the works unauthorised.
- Given ecological sensitivities of the surrounding landscape, AA screening was mandatory.
- Cumulative works at Rathfarnham raise potential obligations under the SEA Directive, insofar as the Part 8 operates as a ‘programme’ for the phased redevelopment of Rathfarnham Castle grounds. No SEA screening has been undertaken.

### Public Infrastructure Deficiency

- At the time of the works and at the time of the Part 8 application, no wastewater infrastructure agreement was in place with Irish Water.
- Proceeding in the absence of essential infrastructure breached section 34(2)(g) of the Planning and Development Act 2000 as amended and contravenes the principles of proper planning.

### Cumulative and Group Impact

- Further unauthorised works are alleged at Cromwell's Fort and its outbuildings. The Seán Keating Garden and Cromwell's Fort combined result in alteration of historic landscape character, disturbance of sub-surface heritage features, introduction of artificial surfaces, hydrological changes and erosion of the integrity of the designed landscape and architectural ensemble.
- Such cumulative effects are not addressed in the CE Part 8 report and the omission constitutes a defect under section 179 of the 2000 Act.

### Additional pattern of unauthorised works

- Further substantial works were undertaken within the curtilage of Rathfarnham Castle without planning permission or ministerial consent including development of playgrounds and a plaza. The wider context of unauthorised works is material.
- Playgrounds and plaza were not addressed as part of the Part 8 process, which undermines compliance with section 179 of the Act and Aarhus public participation requirements.
- This demonstrates that the Seán Keating Garden cannot be considered in isolation.

### Failure to disclose development history

- Planning authority failed to disclose in its Part 8 process the entire development history of the Rathfarnham Castle grounds. This deprived stakeholders of material information necessary to assess the implications of proposed works.
- Works omitted from disclosure include the Seán Keating Garden alterations (2012-2013) adjoining a hydrological spring connected to a Natura 2000 site, Cromwell's Fort buildings, playgrounds and plaza.

- The law requires that cumulative and group impacts be considered holistically and in this regard references are made by the referrer to case law.
- Under section 179 and Article 81, a Part 8 report must provide a description of development sufficient to enable informed consideration. By omitting past and on-going works, SDCC failed to meet this obligation.
- Section 14 of the National Monuments Act 1930, as amended, requires ministerial consent for any works to a national monument in State ownership. Failure to disclose all relevant works frustrates this statutory safeguard.
- Omission of development history breaches duty of candour and denies the public rights under the Aarhus Convention.
- Works at the Seán Keating Garden cannot be considered in isolation. The omissions above fatally undermine the validity of the Part 8 process and confirm that the exemption is disapplied.

Interaction with BusConnects CPO (Route 12 Corridor) / Defective baseline in related projects

- This Bus Connects route, approved by SDCC and now subject to Judicial Review proceedings, involves compulsory acquisition of part of Rathfarnham Castle grounds, including a portion of the Seán Keating Garden. EIA for BusConnects failed to acknowledge the unauthorised planning status of the Seán Keating Garden. This compounds the defect in the Council's determination.
- If the garden works constitute unauthorised development, then the Bus Connects assessment was conducted on a materially misleading baseline. An Bord Pleanála is invited to recognise that the Section 5 determination has implications beyond the Seán Keating Garden itself.

Improper use of Part 8

- Part 8 cannot be used to retrospectively regularise unauthorised development.
- Local Authorities are afforded significant deference under the Part 8 process and a heightened level of accountability, transparency and compliance is therefore expected. Where unauthorised development has occurred, a retention application is the appropriate procedure and this is supported by case law.

- Members of the public are entitled to expect that works carried out by a Local Authority on a national monument will comply fully with heritage and planning legislation.

#### Relevant Precedent

- I refer the Commission to point number 45 of the appeal which consists of a listing of legal cases which the referrer indicates supports their position.

#### If Appeal Fails

- If the appeal fails, unauthorised development in a National Monument will be retrospectively validated, weakening statutory safeguards, undermining the related judicial review pertaining to BusConnects Route 12 and CPO proceedings, and eroding public trust in planning law.

#### Relief sought

- Overturn the determination of SDCC.
- Declare the works constitute development and are not exempted development.

#### Procedural Burden on eNGOs

- The statutory appeal fee (€220) is a disproportionate burden on eNGOs (Environmental Non-Governmental Organisations).

The appeal submission includes the following:

- **Appendix 1:** A document titled 'Core Legal Grounds' summarised as follows:

1. Article 9 Restrictions – Protected Structure and National Monument: Article 9(1) of the Planning and Development Regulations 2001 as amended disappplies exemption where works materially affect the character of a Protected Structure or its setting.
2. Expenditure Threshold Exceeded (Article 80): The 2013 works cost approximately €123,000, equivalent to over €220,000 in 2025 terms (inflation adjusted), which exceeds the €126,000 limit under Article 80(1) for local authority works.
3. Failure to disclose and procedural defects: The CE Part 8 report stated incorrectly that no Section 5 application was lodged. This resulted in stakeholders not having access to material legal information, contrary to Article 81 and the Aarhus Convention.

- A copy of the planning authority's acknowledgement letter to the referrer relating to their application dated 21<sup>st</sup> July 2025.
- A copy of the planning authority's decision addressed to the referrer and dated 18<sup>th</sup> August 2025.
- A copy of the CE Order relating to the Declaration.
- A copy of the submission made by the referrer to the planning authority with the Declaration application. This reiterates a number of the appeal grounds and also notes that assessment may be required under the Water Framework Directive. The submission also contains location maps, 'before' and 'after' photographs, drawings and a copy of the referrer's online submission relating to the Part 8 Rathfarnham Castle Stable and Courtyard proposal, along with historical information relating to the site, the lands and buildings thereon.

## **7.2. Planning Authority Response**

A response was received from the planning authority on the 22<sup>nd</sup> September 2025. It confirms the decision made and states that the issues raised in the appeal have been covered in the Chief Executive Order.

## **8.0 Relevant Planning Legislation**

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

#### **8.1.1. Section 2(1) – Interpretation**

'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.'

#### **8.1.2. 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).

#### 8.1.3. Section 4(1)

The following shall be exempted developments 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*

(1B) Development referred to in paragraph *(a), (d), (e) or (g)* of subsection (1A) shall not be exempted development if an environmental impact assessment of the development is required.

(1C) Development referred to in *paragraph (a), (d), (e) or (g)* of subsection (1A) shall not be exempted development if an appropriate assessment of the development is required

#### 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'*

#### 8.1.4. Section 10 relates to the content of development plans.

#### 8.1.5. Section 57 relates to works affecting the character of protected structures or proposed protected structures.

8.1.6. Part XI – 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.’

8.1.7. Section 78(a) provides that a planning authority may use a protected structure acquired by it for any purpose connected with its functions.

8.1.8. Section 179 relates to Local Authority own development.

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

8.2.1. Article 6(1)

*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.*

Article 9(1)

*Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would— conflict with the restriction on exemptions as outlined between (i) and (xii) of the Regulations. This includes (viiA) relating to National Monuments.*

8.2.2. 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.

*80. (1) Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as “proposed*

*development”, are hereby prescribed for the purposes of section 179 of the Act — (k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.*

Article 81 relates to Notice of proposed development.

## 9.0 Assessment

9.1. It should be stated at the outset of this assessment that the purpose of the referral is not to determine the acceptability or otherwise of the public garden / amenity park including land grading, planting, landscaping, the paved surfaces, boundary treatments, kerbing, the artificial pond and associated infrastructure, the placement of street furniture, signage, benches, bins and possible alterations to curtilage walls, access routes or gates, 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.

9.1.1. A significant number of the grounds raised by the referrer relate to the acceptability or otherwise of the Seán Keating Garden, other works carried out / to be carried out in the area, procedural matters and purported non-compliance with particular parts of planning legislation. These include matters raised by the referrer relating to the following:

- Alleged procedural unfairness in the processing of the Declaration by the planning authority.
- Alleged non-compliance of works with section 10 of the Planning and Development Act 2000, as amended.
- Procedures undertaken by South Dublin County Council in connection with Part 8 application and process relating to Rathfarnham Castle Stables and Courtyard.
- Purported cumulative impacts from other works on the castle grounds, which, in the opinion of the referrer, are unauthorised.
- The Part 8 application and process relating to Rathfarnham Castle Stables and Courtyard (Ref. No. PT8SD240), and reference made to SEA in this regard.

- The Templeogue / Rathfarnham to City Centre Core Bus Corridor Scheme / CPO which does not come within the scope of this referral.

- 9.1.2. I reiterate that the purpose of the referral is to examine whether or not the matters set out in the five questions put forward by the referrer in their submission to An Coimisiún Pleanála constitute development, and if so, whether they fall within the scope of exempted development. It is not the purpose of this referral to address planning merits, matters relating to the proper planning and sustainable development of the area or alleged issues relating to purported irregularities or unfairness.
- 9.1.3. The matter raised in the fifth question submitted by the referrer relates to '*Possible alterations to existing curtilage walls, access routes or gates*' on the subject lands and seeks to determine whether this constitutes development and exempted development. In my view this question is vague and ambiguous. No specific and detailed information is provided in this regard and more comprehensive information would be required before I would be in a position to make an assessment on this matter. As such, the remainder of this report considers the matters raised in Questions 1 to 4 inclusive of the referral and also other issues / grounds raised by the referrer.

## 9.2. **Development**

- 9.2.1. In 2012 and 2013 South Dublin County Council undertook works on the subject lands to the north of Rathfarnham Castle and within its curtilage for the provision of a public garden, known as Seán Keating Garden / Park. This included several elements comprising hard and soft landscaping, land grading, planting, boundary treatments, kerbs, construction of an artificial pond, provision of street furniture including seating / benches, signage and bins.
- 9.2.2. The activities undertaken to construct the Seán Keating Garden, as detailed above and which form the subject of the first four questions posed by the referrer, would, in my opinion, fall within the definition of 'works,' as the activities involved 'construction,' 'excavation,' and 'alteration.' Further, in my view, erection of street furniture, signage and provision of bins, 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 at the Seán Keating Garden constitute development in

accordance with Section 3 of the Act. My conclusion in relation to the first four questions is that development has occurred.

9.2.3. The fifth question submitted by the referrer makes reference to '*Possible alterations to existing curtilage walls, access routes or gates*' on the subject lands. In my view this question is unclear, vague and ambiguous. No detail is given in terms of the extent, nature and locations of the alterations referred to. In my view, in order to make a full and proper assessment of this matter, more detailed and specific information would be required. In the absence of such information I am not in a position to make a determination on this particular matter.

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

9.3.1. 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 exempted 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.

9.3.2. Section 4(1) of the Planning and Development Act 2000, as amended, 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).' South Dublin County Council is not a coastal planning authority and therefore development which has taken place at Seán Keating Garden / Park, is not within the nearshore area of the planning authority.

9.3.3. Seán Keating Garden / Park is a public space proximate to Rathfarnham village and is situated within the grounds of Rathfarnham Castle. I consider that the development of this public garden / amenity park, including land grading, provision of ornamental planting, structured landscaping, installation of paved surfaces, hard landscaping, fixed boundary treatment or kerbing, construction of the artificial pond and associated infrastructure and provision of street furniture, signage and public amenities such as benches and bins all 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.

9.3.4. 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 5.1.2 of this report, the subject site and adjoining lands are zoned as Open Space in the South Dublin County Development Plan 2022-2028 and I do not consider the development of this public garden / amenity park, including land grading, provision of ornamental planting, structured landscaping, installation of paved surfaces, hard landscaping, fixed boundary treatment or kerbing, construction of the artificial pond and associated infrastructure and provision of street furniture, signage, benches and bins would contravene the County Development Plan.

#### 9.4. **Other matters**

##### 9.4.1. Article 9

9.4.2. 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.

##### 9.4.3. €126,000 threshold

9.4.4. Section 179 of the Act relates to Local Authority own development. Article 80 of the Planning and Development Regulations 2001, as amended, sets out development prescribed for purposes of section 179 of the Act.

9.4.5. Article 80(1)(k) of the Regulations states that any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000 and which development does not consist of the laying underground of sewers, mains, pipes or other apparatus, is deemed to be prescribed as proposed development for the purposes of section 179 of the Planning and Development Act 2000 (as amended)

which relates to local authority own development. Therefore, any development other than those specified in paragraphs (a) to (j), whose estimated cost is less than €126,000 is deemed not to fall within the requirements of section 179 and planning authorities do not have to undertake a Part 8 process.

- 9.4.6. This legislative provision is applicable to the development undertaken in respect of Seán Keating Garden / Park, and the planning authority has confirmed that the works, carried out and completed in 2013 by direct labour following in-house design were at a cost of €123,000.
- 9.4.7. While I note the referrer disputes this cost, contending that it was higher and would equate to approximately €300,000 in 2025 terms, South Dublin County Council which carried out the works in 2013 has confirmed the cost, which is below the threshold identified in Article 80(1)(k) of the Regulations, and I accept this figure as the cost of the works undertaken in respect of Seán Keating Garden / Park.

## **9.5. Appropriate Assessment Screening**

- 9.5.1. I have considered the development in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The nearest European Sites are South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA located approximately 5.8km to the north-east.
- 9.5.2. 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.
  - Given the distance from 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 be likely to have a significant effect, individually or in combination with other plans and projects on the Natura 2000 network.

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

## 9.6. Environmental Impact Assessment (EIA)

9.6.1. The development relates to the upgrading of part of an existing public park. In terms of EIA, I consider the 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. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening assessment.

## 9.7. Water Framework Directive - Screening

9.7.1. I have assessed the development 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 groundwater bodies 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 project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and groundwater bodies either qualitatively or quantitatively. The reasons for this are as follows:

- The nature of works comprising a modest scale of development in a public park zoned 'Open Space' within the settlement of Rathfarnham.
- Location-distance from nearest waterbodies and lack of direct hydrological connections from the site to any surface and transitional water bodies.

9.7.2. I conclude on the basis of objective information, that the proposed development would not result in a risk of deterioration on any water body (rivers, canals, 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.

## 10.0 Recommendation

10.1. Arising from my assessment above, I consider that (i) formation of a public garden / amenity park, including land grading, introduction of ornamental planting, and structured landscaping, (ii) installation of paved surfaces, hard landscaping, and fixed boundary treatments or kerbing, (iii) construction of an artificial pond and associated infrastructure, and (iv) placement of street furniture, signage, and public amenities such as benches and bins, at Seán Keating Garden / Park, Rathfarnham Castle Park, Rathfarnham Castle, Rathfarnham, Dublin is development and is exempted development.

10.2. In terms of the matter raised by the referrer in the fifth question which relates to '*Possible alterations to existing curtilage walls, access routes or gates*' on the subject lands is unclear and ambiguous and I consider there is an absence of specific and detailed information on file to allow a full and proper assessment of this matter.

10.3. I recommend that the Commission issue a determination as follows:

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

- (a) formation of a public garden / amenity park, including land grading, introduction of ornamental planting, and structured landscaping,
- (b) installation of paved surfaces, hard landscaping, and fixed boundary treatments or kerbing,
- (c) construction of an artificial pond and associated infrastructure,
- (d) placement of street furniture, signage, and public amenities such as benches and bins, and
- (e) the possible alterations to existing curtilage walls, access routes, or gates,

all at Seán Keating Garden / Park, Rathfarnham Castle, Rathfarnham Castle Park, Rathfarnham, Dublin, is or is not development and is or is not exempted development,

**AND WHEREAS** Angela O'Donoghue of Ballyboden Tidy Towns Clg, of 17 Glendoher Close, Rathfarnham, Dublin requested a declaration on the said questions from South Dublin County Council and the Council issued a declaration on the 18<sup>th</sup> day of August 2025 stating that:

- (a) the formation of a public garden / amenity park, including land grading, introduction of ornamental planting, and structured landscaping,
- (b) the installation of paved surfaces, hard landscaping, and fixed boundary treatments or kerbing,
- (c) the construction of an artificial pond and associated infrastructure,
- (d) the placement of street furniture, signage, and public amenities such as benches and bins, and
- (e) the possible alterations to existing curtilage walls, access routes, or gates, is development and is exempted development

**AND WHEREAS** Angela O'Donoghue of Ballyboden Tidy Towns Clg referred the declaration for review to An Coimisiún Pleanála on the 15<sup>th</sup> day of September 2025,

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

- (a) Sections 2(1), 3(1), 4(1) (aa), 57, 78, 178(1) and 179 of the Planning and Development Act 2000, as amended,
- (b) Article 80(1)(k) of the Planning and Development Regulations, as amended,
- (c) the provisions of the South Dublin County Development Plan 2022-2028, and
- (d) the pattern of development in the area,

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

- (a) the formation of a public garden / amenity park, including land grading, introduction of ornamental planting, and structured landscaping,
- (b) the installation of paved surfaces, hard landscaping, and fixed boundary treatments or kerbing,
- (c) the construction of an artificial pond and associated infrastructure, and
- (d) the placement of street furniture, signage, and public amenities such as benches and bins,

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.

An Coimisiún Pleanála has also concluded that the matter raised in the fifth question relating to '*Possible alterations to existing curtilage walls, access routes or gates*' is unclear and ambiguous and as such cannot be determined having regard to the absence of specific and detailed information on file.

**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 formation of a public garden / amenity park, including land grading, introduction of ornamental planting, and structured landscaping is development and is exempted development,
- (b) the installation of paved surfaces, hard landscaping, and fixed boundary treatments or kerbing is development and is exempted development,
- (c) the construction of an artificial pond and associated infrastructure is development and is exempted development, and
- (d) the placement of street furniture, signage, and public amenities such as benches and bins, 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

11<sup>th</sup> December 2025