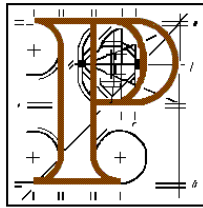


An Bord Pleanála



Inspector's Report

Referral Reference No.:	RL3417
Question:	Whether the erection of playground climbing frame structure and the erection of a perspex roof over existing play area is or is not development or is or is not exempted development.
Location:	Ballycurren, Frankfield, Cork.
Referrer:	Cork County Council
Owner / Occupier:	Mark & Tina Sherlock
Respondent:	Irene Newman
Date of Site Inspection:	10 th December 2015
Inspector:	Kenneth Moloney

1.1. SITE DESCRIPTION

The referral site is located off the Ballycurreen Road which is located a few hundred metres south of the Southern Ring Road in Cork. The environs of the referral site is generally suburban in character as there are several housing estates close by.

The referral site comprises of a single storey crèche building with a car parking area to the front of the building. The site has two vehicular entrances off the Ballycurreen Road.

There is a children's outdoor play area situated to the east of the site and this adjoins the rear gardens of two-storey semi-detached houses in the housing estate Curraghwoods.

The children's outdoor play area comprises of a climbing frame, play house, slide and swings. The climbing structure is elevated above the 2 metre high common boundary wall. The ground cover for the play area is grass with soft mats. The gradient of the entire site slopes gently downwards west to east.

1.2. BACKGROUND

The Planning Authority on the 7th October 2015, in accordance with Section 5(4) of the Planning and Development Acts, 2000 (as amended), referred to the Board a referral for determination.

The referral submission makes the following points: -

- In relation to the climbing frame there is some uncertainty whether it constitutes development in itself as per the definitions of development and a structure.
- Both development and structure are defined in the Planning Act.
- From a review of An Bord Pleanála referrals (ref. 29N RL3333) it is noted that interpretation was taken that the erection of a play item on a temporary basis that could be dismantled with relative ease in a short time-frame was not considered a structure or development.
- Although the play structure could be dismantled within a short time-frame it relates to a more permanent type use in connection with the business.
- The Planning Authority is unaware of other similar play type structures connected with existing crèches.
- Clarification is also sought whether the covering of the existing play area with a perspex roof constitutes development in itself.
- The questions before the Board for clarification include;
 - a. whether the erection of a playground climbing frame structure, and
 - b. whether the erection of a perspex roof over an existing play area in connection with crèche premises is or is not development or is or is not exempted development.

1.3. THE QUESTIONS

There are currently two questions before the Board: -

1. "Whether the erection of a playground climbing frame is or is not development and whether it is or is not exempted development".
2. "Whether the erection of a perspex roof over the children's outdoor play area is or is not development and whether it is or is not exempted development".

2.0 THE RESPONDANT'S CASE

Mark Sherlock, owner of the crèche, has submitted a submission and the following is a summary of the submission; -

- The reasons are unknown why a child's climbing frame and a little shelter over it may need planning permission.
- The purpose of the proposed play area is to allow the children play outside in all weather rather than been indoor all winter.
- The purpose of the play area is not for financial reasons but to serve the needs of the children.
- It is considered that these items are exempted development as they can be moved and are completely separate from the house.

3.0 THE RESPONDENT'S CASE

Irene Newman, owner of no. 3 Curragh Woods, Frankfield, Douglas has submitted a submission and the following is a summary of her submission; -

- It is considered that the structures should be removed for the following reasons;
 - undue overlooking or property, i.e. garden and rear windows
 - impact on natural light to garden and kitchen
 - would be a serious eye sore
 - adverse impact on resale value of the property
 - pitch of roof will allow rainfall run off onto the respondent's property which could affect retaining wall
- the proposed structure would have an overbearing impact
- the privacy is compromised by playing children directly in line with the first floor bedroom
- As the property sits to the east it impacts on natural light of the respondent's property throughout the day.
- Photographs are submitted to support the arguments above.

4.0 EVALUATION

4.1 The Facts Of The Case

The facts of this matter include the following:

- Cork County Council received Enforcement complaints in relation to a children's climbing frame and the potential perspex roof over the outdoor children's play area within a crèche facility.
- On the **7th October 2015**, Cork County Council, in accordance with Section 5(4) of the Planning and Development Acts, 2000 – 2009, referred to the Board for determination as to whether the children's outdoor climbing frame and whether a perspex roof over the children's outdoor play area adjacent to an established crèche is or is not development and/or is or is not exempted development.

4.2 Statutory Provisions

I consider the following statutory provisions relevant to this referral case:

Planning and Development Act, 2000

Section 2 (1) states: -

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.”

“works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....”

Section 3 (1) states:-

“In this Act, “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 of use of any structures or other land.”

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

Planning and Development Regulations, 2001

Article 6(1) of the Regulations states as follows:- *“(a) Subject to article 9, development consisting 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) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

4.3 Related Cases

Case Ref. 29N.RL.3333

This referral related to a question as to whether the erection of a trampoline structure and a garden shed in the back garden of a private residential property is or is not development and is or is not exempted development. In relation to the trampoline (which is relevant to the current referral) the Board concluded that the *'trampoline is a piece of movable play equipment, and is not a structure as defined in Section 2 of the Planning and Development Act, 2000, as amended'*.

The Board also concluded that the provision of the trampoline did not involve any operation of construction or excavation and did not involve works and therefore does not constitute development.

Case Ref. 06D.RL.2581

This referral asked the question whether the timber structure constructed in a fruit tree to the rear of a private residential property is or is not exempted development. The Board concluded that the timber structure is development. The Board also concluded that the timber structure;

- Comes within the scope of section 4(1)(j) of the Planning Act
- Complies with Class 2, Part 1, Schedule 2 of the Planning Regulations
- Does not materially affect the character of the protected structure.

In summary the Board determined that the subject timber structure is development which is exempted development.

4.4 Assessment

Is the proposal development

In relation to whether the children's climbing frame is development I would note that the climbing frame is reasonably large and is constructed in timber and consists of two climbing ramps and a slide. There is also a bridge connecting the two climbing ramps and providing access to the slide. There are two timber canopy pitch roofs above each of the climbing frames.

The climbing frame, based on my visual observation of the site, appears to be supported by wooden beam panels and these panels are placed into the ground. There is also a concrete casing behind the slide which supports several wooden beam panels. The wooden beam panels are essentially the structural support for the children's climbing frame. I would consider that children's climbing frame involved the act of excavation and construction in its erection and would not be easily movable, and hence involved "works" within the meaning of Section 3 of the Planning and Development Act, 2000 (as amended). Such works constitute "development" within the meaning of the Planning Act. In support of this conclusion I would refer the Board to other

precedent cases, i.e. RL2581 and RL2779, in which case the Board determined that children's tree house structures are development.

This referral before the Board also relates to a perspex roof. The children's climbing frame is enclosed by a wooden frame and I noted from my site inspection that this wooden frame is supported by beams that sit into the ground. In some of the beams I noted dry concrete enclosing the beam into the ground and this, in my view, would support the structural integrity of the wooden frame. Although there is no perspex roof on the site I would consider that this wooden frame structure could be used to support a perspex roof. I would consider the wooden frame which would potentially support the perspex roof involved the act of excavation and construction, and hence involved "works" within the meaning of Section 3 of the Planning and Development Act, 2000 (as amended). Such works constitute "development" within the meaning of the Act in accordance with Section 3 (1) of the Planning and Development Act., 2000 (as amended).

The Board will note that a material change of use would also constitute development. On the referral site the current location of the playground area was designated 'grassed play area' in the approved site layout plan as permitted in accordance with L.A. Ref. 12/43/63. Although the approved site layout plan did not indicate play equipment I would not consider that the provision of children's play equipment is a material change of use from the approved site plan.

Is the proposal exempted development

The children's climbing frame and perspex roof is part of a small outdoor playground area that is an ancillary use to the established crèche facility on the referral site. I would consider that this type of equipment is generally common for crèche facilities.

In terms of the planning history on the referral site I would note that permission was obtained from Cork County Council under L.A. Ref. 10/08789 for a change of use of existing dwelling to crèche / playschool including alterations to existing window and door openings. I have reviewed the permitted site layout plan and I note that the location of the current playground area was identified as incidental landscaping and a turning circle with access to three staff car parking spaces. However this permitted site plan was not completed in accordance with the approved plans and the unauthorised development was regularised under subsequent planning permission L.A. Ref. 12/4363. The permitted site layout, i.e. L.A. Ref. 12/4363, designates a children's play area in the same location as the current playground area. Although the size of the children's play area accords with that in the approved site plans (L.A. Ref. 12/4363) I would note that there is no reference to play equipment in the approved site plans.

I would note that most of the other equipment in the playground area such as swings and a children's play house are movable equipment. There is also children's slide which is supported by a wooden frame that includes wooden

panels attached to the ground however unlike to the children's climbing frame and the perspex roof support frame I did not note any cement element binding the slide or its support structure into the ground. I would consider, based on a visual observation of the area, that the children's swing, playhouse and slide can easily be dismantled with relative ease, within a short space of time and the area whereon it is erected would resume and be integrated as a grassed play area serving the crèche in a reasonably short time period. I would therefore not consider that these other play equipment items are development.

In considering whether the children's climbing frame is exempted development I would note that in the other referral cases in relation to children's play equipment or structures such as tree houses which the Board previously determined, i.e. RL3333 and RL2581, these cases related to private houses. Whereas the current case before the Board relates to a commercial property, i.e. a crèche facility, and therefore the exemptions applied under RL2581, i.e. Class 3, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, would not apply in this instance.

I have reviewed Part 2 'Exempted Development' and Schedule 2 'Exempted Development' of the Planning and Development Regulations, 2001 (as amended), and I would note that there are no exemptions for a children's climbing frame within a commercial property nor is there any exemption for a perspex roof over play equipment. I reviewed Section 4 'Exempted Development' of the Planning and Development Act, 2000, as amended, I would note that there are no exemptions for a children's climbing frame within a commercial property nor is there any exemption for a perspex roof over play equipment.

In conclusion I would consider that the children's climbing frame within a commercial property is development for which there is no available exemption within the Planning and Development Act, 2000 (as amended), or the Planning and Development Regulations, 2001, and therefore is not exempted development.

In addition I would consider that the potential perspex roof over the play equipment situated within a commercial property is development for which there is no available exemption within the Planning and Development Act, 2000 (as amended), or the Planning and Development Regulations, 2001, and therefore is not exempted development.

5.0 Conclusions and Recommendations

WHEREAS a question has arisen as to whether a children's climbing frame and a perspex roof over children's play equipment within a commercial property is or is not development and is or is not exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Cork County Council

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) The definitions of a 'structure' and of 'works' set out in Schedule 2 of the Planning and Development Act, 2000, as amended, and,
- (c) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Schedule 2 of those Regulations, and the conditions and limitations applicable:

AND WHEREAS the Board has concluded that;

- (a) Children's climbing frame would constitute the carrying out of works which comes within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended),
- (b) The perspex roof over the children's play equipment would constitute the carrying out of works which comes within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended),
- (c) There are no provisions of exempted development that would apply to the development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the provision of a children's climbing frame and a perspex roof over children's play equipment within the grounds of a crèche facility at Ballycurren, Frankfield, Cork is not exempted development.

Kenneth Moloney
Planning Inspector
22nd January 2016