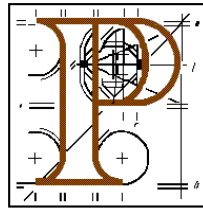


An Bord Pleanála Ref. No.:

PL 28.RL3423

An Bord Pleanála



Inspector's Report

Development: Whether the ongoing playing pitch relocation is or is not development or is or is not exempt development at Beaumont Park, Ballintemple, Cork.

Application:

Planning Authority:	Cork City Council
Planning Authority Reg. Ref.:	R401/15
Owner / Occupier:	Avondale United F.C. Cork
Referrer:	Mr. Brian Walsh
Type of Application:	Section 5 Referral
Planning Authority Decision:	Decided Exempted Development

Planning Referral:

Referrer(s):	Cork City Council
Observers:	None
Date of inspection:	02/02/2016
Inspector:	A. Considine

1.0 BACKGROUND

- 1.1 This is a referral by Mr. Brian Walsh, under Section 5(4) of the Planning & Development Act, of the question as to whether the playing pitch relocation is or is not development or is or is not exempt development at Beaumont Park, Ballintemple, Cork.

- 1.2 The referral was initially requested from Cork City Council who determined that the development of the playing pitches and associated works at Beaumont Park are development and are exempted development. The referrer, has now sought a determination from An Bord Pleanala on the matter.

2.0 THE SITE

- 2.1 The site the subject of this referral, is located to the south of Cork City, and lies within a public park, Beaumont Park. The surrounding area is primarily residential in nature to the north and east, with a pitch and putt course located to the west of Beaumont Park. To the south of the subject lands, is Beaumont Girls National School. There is open and direct access to Beaumont Park from the wider area, including the school and the park has a network of footpaths through and around the park.

- 2.2 The subject lands are located to the north eastern area of Beaumont Park and it is advised that Avondale United F.C. has had a presence at this site since the mid 1970s. The existing facility at this location is indicated as the schoolboy pitche used by Avondale United F.C, with the Senior players using Avondale Park in Carrigaline, 10 miles from the subject site.

- 2.3 Avondale United F.C. has advised that they have a 99 year Sporting Lease from Cork City Council, granted in 2009, and provide football for 350 children, both boys and girls, aged from 6 to 16. These children use the subject facility between August and May. In 2014, a grant was secured from the Department of Tourism, Transport & Sport to re-develop the existing pitch at Beaumont Park. The works undertaken to date have been carried out with the permission and support of Cork City Council.

3.0 SECTION 5 DECLARATION REQUEST:

3.1 The question arising in relation to this Section 5 Declaration request is presented as follows:

Whether the playing pitch relocation is or is not development or is or is not exempt development at Beaumont Park, Ballintemple, Cork.

3.2 The Referrer has not agreed with Cork City Councils determination of the above question and advises that it was difficult to find out what was proposed at the site and that a number of matters need to be evaluated regarding the works.

4.0 REPORTS ON PLANNING AUTHORITY FILE

4.1 The Board will note that the Planning Authority made a determination in relation to this question.

4.2 In terms of internal reports, the following is relevant:

Parks, Landscape & Cemeteries Division: Advises that the works are exempted development as follows:

- S4(1)(f): The Council is effectively in partnership with Avondale United FC by granting 99 year sporting lease and by awarding Multi Annual Sports Capital Grant in 2012, where €24,000 is awarded over 3 years.
- Class 33 of Schedule 2 of Regulations: the laying out and use of land for athletics and sport is exempt.
- The proposed low fence with self-closing gate does not constitute an enclosure – as defined in the LG 2000 Act – given that it is not restricting access to the pitch but merely protecting both club and casual users from a potential health risk.
- Cork City Development Plan 2015-2021, Sections 11.27 and 11.28 provides that Sports Grounds be maintained to a high standard and be upgraded and maintained to the highest standards to ensure quality of provision.

- Mapped objectives Map 6 – South Eastern Suburbs Objectives, clearly defines the area the subject of the works as being zoned Sports Ground.

The improvement works are merely enhancing existing zoned Sports Grounds and therefore, exempted development.

- 4.3 The Planning Report provides a description of the subject site, as well details of the works proposed. The report considers the planning history associated with the subject site and presents an environmental assessment with regard to screening for EIA and AA. The relevant legislative provisions are also presented. The assessment considers that the works constitute development within the meaning of the Act, but the Senior Planner is satisfied that the proposal comes within the scope of and accords with S4(1)(f) of the Act and that the restrictions on exemption set out under S4(4) of the Act do not apply. The Senior Planner concludes, recommending that the development of the playing pitches and associated works at Beaumont Park are development and are exempted development.

5.0 DECISION OF THE PLANNING AUTHORITY

The Planning Authority determined as follows:

“Having regard to:-

- Sections 3, 4 and 5 of the Planning and Development Act 2000-2010, including
- Section 4(1)(f), Development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by local authority concerned, whether in its capacity as a planning authority or in any other capacity;
- The location of the development on public land, and the fact that the works were undertaken (and effectively part funded) with the knowledge and consent of Cork City Council.

It is therefore considered that the development of the playing pitches and associated works at Beaumont Park are **development** and **exempted development.**”

6.0 RELEVANT PLANNING HISTORY

ABP ref PL28.201889 (PA ref 02/26380): Permission granted to demolish existing temporary dressing rooms and erect new dressing rooms, equipment store and meeting room. The decision was upheld on appeal to ABP. The following conditions were included in the Boards decision:

2. The use of the premises shall be limited to the use indicated in the public notices and any change of use shall require a prior grant of planning permission.

Reason: In the interest of clarity.

3. No signage or advertisement material shall be erected or displayed on the structure without the written agreement of the planning authority.

Reason: In the interests of visual amenity.

R390/15: Referral to City Council relating to the same question currently posed. The PA did not make a decision in this instance.

7.0 LEGISLATIVE CONTEXT:

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

Planning & Development Act, 2000 - 2012

- 7.1 Section 2(1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

In Section 2(1) of the Act “works” are interpreted as including “*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*”.

7.2 Section 3(1) of the 2000 Planning and Development Act states as follows:-

“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 in the use of any structures or other land.”

7.3 Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act and S4(1)(f) states ‘development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning 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.’

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

Planning & Development Regulations, 2001-2013

7.5 Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

“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.”

7.6 Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby *development to which article 6 relates shall not be exempted development for the purposes of the Act.*

7.7 Class 33 of Part 1 of Schedule 2 – Exempted Development – General (subject to the conditions and limitations imposed under Column 2) and relates to Development for amenity or recreational purposes:-

Development consisting of the laying out and use of land-

- (a) as a park, private open space or ornamental garden,*
- (b) as a roadside shrine, or*
- (c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.*

Conditions and Limitations cited in the Regulations relate only the part (b), roadside shrines and not to (c) which is the relevant section relating to this case.

Cork City Council Development Plan 2015-2021

7.8 The subject site is located within the South Eastern Suburbs of Cork City and is zoned Sports Ground in the Mapped Objectives, Map 6 in the plan. Chapter 11 of the Plan deals with Recreational Infrastructure and sections 110.27-11.30 are relevant in this instance.

7.9 Objectives 11.8 – 11.10 relate to active recreational facilities and sports grounds and facilities. It is the primary objective of the Plan to protect, retain and enhance the range and quality of sports facilities in the City and to promote the provision and management of high quality sporting facilities that are accessible. Part (b) of Objective 11.10 also indicates that the City Council will continue to encourage joint provision and dual use of sports facilities in appropriate locations.

8.0 REFERRAL

Grounds of Reference:

8.1 The Referrer is a third party, and the same person who sought a determination from Cork City Council on the matter. Mr. Walsh has not agreed with Cork City Councils determination of the stated question and advises that it was difficult to find out what was proposed at the site and that a number of matters need to be evaluated regarding the works. It is considered that the planning permission process is the best place to consider same. The issues raised in the referral relate to the following:

- Visual changes to the park:
It is considered that the works have dramatically changed the park visually. The small park is sloping, woody and natural and the new large flat area is completely unnaturally looking. The new embankments created have destroyed views across the park for walkers.
- Warm up area:
The area is too sloped to be used as a warm up area. Are further cut and fill embankments proposed?
- Footprint of the pitch has been widened significantly:
The works have rendered areas of the park unusable by others. The embankments created are too steep and are a danger.
- Fencing of the pitch:
A 4ft fence is proposed to surround the lands which have previously been unfenced. Advertising along the fence is also proposed. This will exclude the local schools from using the playing area and there was no consultation in this regard. The schools have been using the playing area for a long number of years and there is a strong history of shared use of the playing area.
- Traffic implications:
The site accommodates smaller matches, mostly U10/U12, and some training for this group. The location is not suitable for any increase to the current level of parking. Given that the development will result in a League of Ireland standard pitch, it is considered that the development will attract larger matches. The area is not able to accommodate additional traffic to the current numbers.
- Planning history:
Permission was sought for the construction of a building – dressing rooms/meeting rooms – in 2002 (Ref 02/26380 refers). This was appealed to ABP and not constructed. It is a concern that the current development is the first phase of another development, including floodlighting and buildings. It is submitted that the fact that this development proceeded without planning has made future developments more likely to be successful in a planning permission process.
- Concerns raised regarding the receipt of grant monies for the project and the assertion that it is a joint project with Cork City Council. It is submitted that exemptions should be for small issues, and this is not a small issue.

9.0 RESPONSES

Owner / Occupier Response to the Referral:

- 9.1 It is the submission of the owner / occupier, Avondale United FC that the works carried out at the site represent improvements to an existing and long standing facility which had issues in terms of the drainage of the pitch, gradient of the pitch, accessibility to the pitch for dogs and the problem of dog fouling and the associated health risks to the children who play on the pitch. The works to the pitch will result in a level playing surface, and permission was sought, and received, from Cork City Council to proceed with the pitch redesign. It is further indicated that the subject lands are zoned as sports and not as parkland.
- 9.2 Appendices included with the submission present photographs and information relating to the site and the works. It is submitted that given the slopes on the site, the area the subject of the pitch redesign was of no practical use in the amenity park and there are no footpaths.
- 9.3 Avondale United FC does not agree with the referrer, that the park has been changed dramatically. Problems with the rock face as referenced is acknowledged and a consulting engineer has been engaged to resolve the issue. The result is that plans to install a warm up area have been abandoned.
- 9.4 With regard to the proposed fencing, it is submitted that the fence is required to end the problem of dog fouling on the pitch while protecting the asset. No advertisements will be placed on the fencing and the adjacent primary schools will continue to enjoy the use of the pitch once it is completed for athletics, PE, soccer and Gaelic football. Hurling or Rugby will not be permitted as these activities will compromise the playing surface. Access to the public will be provided by a self-closing gate.
- 9.5 The pitch is used for players aged between 6-16 and this will continue to be the case. The pitch will be to FAI standards and there has been no issue with traffic, which will not change. Connections to public services were part-funded by Cork City Council and will be connected to the prefabricated dressing rooms. There are no plans to install floodlighting or permanent buildings and Avondale United FC is aware that planning permission would be required for

same. The developments permitted under 02/26380 did not proceed due to financial constraints.

- 9.6 It is concluded that the development will ultimately add to the amenity park and there has been constant communication with Cork City Council during the process.

10.0 OBSERVERS TO APPEAL

None. The Board will note that a submission from Beaumont Boys School was deemed invalid and returned.

11.0 ASSESSMENT

- 11.1 The question has been posed as to whether the playing pitch relocation is or is not development or is or is not exempt development at Beaumont Park, Ballintemple, Cork. In this regard, I consider it reasonable to address both issues separately.

Is or Is Not Development?

- 11.2 Section 2 (1) of the Act defines “works” as including “*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*”.

I am satisfied that, in accordance with the above definition, the works undertaken at the property being the playing pitch relocation at Beaumont Park, Ballintemple, Cork comprises ‘works’. In terms of Section 3(1) of the 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 in the use of any structures or other land.*” I am satisfied that the said ‘works’ comprise ‘development’. This determined, consideration is required as to whether the ‘works’ would constitute “*exempted development*”.

Is or Is Not Exempted Development?

Is the Development Exempt under the Act?

- 11.3 Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not. Section 4(1) of the Act defines certain types of development as being 'exempted development'. Of potential relevance is section 4(1)(f) which provides as follows;

(f) 'development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning 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;'

In terms of the above, the Board will note that the works relate to lands within a publically owned park. Cork City Council are the owners of the lands while Avondale United FC are the occupiers of this area of Beaumont Park. It is clear from the evidence submitted that Cork City Council are aware of the works, have given a lease to the occupier for the lands and are clear as to the historical use and intended use of the subject lands. It is also clear that Cork City Council have contributed financially towards the development of the playing pitch through the granting of a Multi Annual Sports Capital Grant.

In terms of the requirement of S4(1)(f) that a contract be entered into by the Local Authority, I consider that this matter is satisfied by reason of the above, together with the fact that approval was sought, and given, for the works on the site. In this regard, I am satisfied that Avondale United FC carried out the development on behalf of, or jointly or in partnership with the planning authority. In this regard, I consider that the development is exempted development under this section of the Act and that the restrictions on exemption, as indicated in Section 4(4) of the Act, do not apply in this instance.

Is the Development Exempt under the Regulations?

Articles 6 and 9 of the Regulations are relevant in terms of this referral.

- 11.4 Article 6 (1) of the Regulations states as follows:

"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 a 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."

11.5 The following class of development is considered relevant in relation to this referral:

Class 33 of Part 1 of Schedule 2 – Exempted Development – General (subject to the conditions and limitations imposed under Column 2):-

Development consisting of the laying out and use of land-

- (a) *as a park, private open space or ornamental garden,*
- (b) *as a roadside shrine, or*
- (c) *for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.*

Conditions and Limitations cited in the Regulations relate only the part (b), roadside shrines and not to (c) which is the relevant section relating to this case.

11.6 In light of the above, I am of the opinion, having due regard to the provisions of the Planning & Development Act, 2000-2013, and associated Regulations, the development works are not constrained by any restrictions on exempted development detailed in Article 9 of the Planning & Development Regulations, 2001, and therefore, the works constitute exempted development.

12.0 CONCLUSION & RECOMMENDATION

Conclusion:

12.1 Having regard to the above, I am satisfied that the general question raised in this referral can be determined as follows:

- The works, being a development described as the playing pitch relocation at Beaumont Park, Ballintemple, Cork, is development.
- Having regard to the nature of the development, being works carried out by Avondale United FC on publicly owned lands, in partnership with the Planning Authority and where the relevant permissions for the development, and grant assistance, was approved by Cork City Council, the development comes within the scope of Section 4(1)(f) of the Planning & Development Act 2000-2010, as amended.

- This determined, then it can be concluded that the development is exempted under Class 33 of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001, being 'Development consisting of the laying out and use of land-
 - (c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.
- There are no restrictions of exemption.

Recommendation:

12.2 I recommend therefore that the Board find as follows:

WHEREAS a question has arisen as to whether the ongoing playing pitch relocation is or is not development or is or is not exempt development at Beaumont Park, Ballintemple, Cork, is or is not development or is or is not exempted development;

AND WHEREAS the said question was referred to An Bord Pleanála by Cork County Council on the 22nd day of October, 2015;

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, 2000-2013,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, and
- (c) Class 33 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works, being a development described as the playing pitch relocation at Beaumont Park, Ballintemple, Cork, is development.
- (b) Having regard to the nature of the development, being works carried out by Avondale United FC on publicly owned lands, in partnership with the Planning Authority and where the relevant permissions for the development, and grant assistance, was approved by Cork City Council, the development comes

within the scope of Section 4(1)(f) of the Planning & Development Act 2000-2013.

- (c) This determined, then it can be concluded that the development is exempted under Class 33 of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001, being 'Development consisting of the laying out and use of land-
 - (c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.
- (d) There are no restrictions of exemption.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000-2013, hereby decides that the said development, being the ongoing playing pitch relocation at Beaumont Park, Ballintemple, Cork, is development and is exempted development.

A. Considine
Planning Inspector,
3rd February, 2016