



An
Bord
Pleanála

Inspector's Report RL92.RL3460.

Question

Whether works carried out on a footbridge is or is not development or is or is not exempted development.

Location

Ard Mhuire/Collins Park, Carrick on Suir, County Tipperary.

Declaration

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

RUO-15-045.

Applicant for Declaration

Iarnrod Eireann

Planning Authority Decision

Is development and is not exempt.

Referral

Referred by

Tipperary County Council

Owner/ Occupier

Iarnrod Eireann.

Observer(s)

None.

Date of Site Inspection

14th September 2018

Inspector

Philip Davis.

Contents

1.0 Site Location and Description	3
2.0 The Question	3
3.0 Planning Authority Declaration.....	3
3.1. Declaration.....	3
3.2. Planning Authority Reports	3
4.0 Planning History.....	4
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	5
6.0 The Referral.....	5
6.1. Irish Rail Case.....	5
6.2. Planning Authority Response	7
7.0 Statutory Provisions.....	7
7.1. Planning and Development Regulations, 2001	8
8.0 Assessment.....	8
8.1. Is or is not development.....	8
8.2. Is or is not exempted development	8
8.3. Restrictions on exempted development	10
9.0 Recommendation.....	10

1.0 Site Location and Description

The appeal site is located in a mature area of terraced houses north of the town centre of Carrick on Suir in County Tipperary. There are estates dating from the mid-20th Century on either side of the Clonmel to Waterford rail line, which crosses the northern side of the town through a cutting on an east-west alignment.

The site in question is a pedestrian footbridge (OBL 152) over the railway, linking two suburban link roads, the cul de sac Ard Mhuire to the south and the Ballyrichard Road to the north. The footbridge is indicated on the oldest OS maps for the area, but the current structure appears to be substantially upgraded, with two flights of steps on each side. The footbridge is a concrete slab structure with steel framework on concrete/stone support pillars with cut limestone finishing.

2.0 The Question

Whether the works carried out on the footbridge is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority did not make a declaration, they have referred the issue to the Board.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- A number of map images and photos are attached to show the location and appearance of the footbridge.
- Drawings supplied by Irish Rail are attached.
- It is stated that in March 2015 the stone steps and hand rail to the north and south of the footbridge were removed, along with a boundary wall, and new steel frame steps were erected.

- A Warning Letter had been sent 28th April 2015 indicating that the removal of the stone steps and hand rail and the boundary walls, and the installation of steel frame steps on both sides was considered unauthorised development.
- Irish Rail replied that the works were considered exempted development under Section 4(1)(h) of the 2000 Act, as amended.
- It was also argued by Irish Rail that the improvements to the bridge did not affect the external appearance of the structure as to represent it inconsistent with the character of the bridge.
- Case law with regard to Section 4(1)(h) was quoted, to with that works to a railway bridge are covered by the section once the extent of the works were not such as to amount to the total or substantial replacement or rebuilding of the original structure.
- It is stated that it is accepted that the works were required for safety works, and as such the first element of the exemption provided under Section 4(1)(hg) is satisfied (works for ‘the maintenance, improvement or other alteration of any structure’). However, it is not considered that the second element of S.4(1)(h), that the works only affect the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance *‘inconsistent with the character of the structure or of neighbouring structures’* is satisfied.
- The planning authority is therefore not satisfied that the development satisfies the second element of S.4(1)(h) or Class 23.

3.2.2. Other Technical Reports

None submitted

4.0 Planning History

None on file.

5.0 Policy Context

5.1. Development Plan

In the Carrick on Suir Town Development Plan 2013 the lands are indicated as railway, with residentially zoned land on either side.

5.2. Natural Heritage Designations

The nearest EU designated habitat is the River Suir SAC, approximately 1 km to the south on the other side of Carrick on Suir town centre.

6.0 The Referral

6.1. Irish Rail Case

- It is noted that the footbridge dates back to sometime between 1886 and 1911. The bridge is a flat concrete decked bridge with metal fencing resting on stone abutments.
- The Council's description of the works is questioned. It is stated that while the boundary wall north and south of the footbridge was removed, this was reconstructed using old cut limestone recovered from the existing bridge or similar sources. It is also stated that the new handrails for the new steps are of similar height to the old ones and painted to match the colour of the old handrails.
- The bridge deck remains intact and no works were carried out on the deck or railings across the footbridge. The abutments and support for the bridge remain unaltered (photographs attached).
- With regard to S.4(1)(h), it is argued that as 'the structure' is the footbridge, which principally comprises the bridge deck and abutments, no works were carried out to the principle elements.
- It is submitted that the Council erroneously state that the height and configuration of the bridge have been materially altered. With reference to the McCabe judgement, it is argued the Council misconstrued the decision in that

case. In this regard (the original judgement is quoted), it is submitted that the works were for '*the maintenance, improvement or other alteration...*' within the context of the judgement.

- Cronin Readymix Ltd. Vs An Bord Pleanála 2009 is also quoted. In this regard, Ryan J notes the distinction between the 'purpose' and 'act' of maintenance and improvement.
- It is submitted that the Council submission that the '*height, configuration and finishes of the bridge... are considered to be materially different..*' is considered unsustainable and misapplies the legal test under section 4(1)(h).
- It is submitted that the true test is to whether the works render the appearance '*inconsistent with the character of the structure or of neighbouring structures*'.
- It is argued that it is not relevant as to whether the works materially affect the external appearance of the structure – they will still be exempt provided they do not render the appearance inconsistent with the character of the structure.
- With regard to the 'character' of a structure, the case in Cairnduff v. O'Connell [1986] is quoted. In this case, the Supreme Court held that alterations to the rear of a Victorian house (including the insertion of a window and the replacement of a window by a door) was exempted as Finlay CJ stated that he was satisfied that the character of the structure had not been affected.
- The issue of 'character' was also raised in McCabe v CIE [2007]. This case involved a similar bridge. In this case the judge, Herbert J, observed that the dimensions of the bridge remained the same and the new concrete deck with new stonework (the works in question) were of similar proportions and designed to blend in. The judge stated that the overall character of the structure should be assessed as a whole. It was considered, that as the bridge was not of exceptional design or unusual, the relatively minor alterations meant that there was no effect on the character of that sort of bridge. He therefore concluded that it was exempted development under section 4(1)(h).
- It is submitted that the previous steps to the footbridge were unremarkable from an aesthetic, architectural or engineering perspective.

- It is also submitted that the works are comparatively more minor than the works at question in the McCabe case.
- It is requested therefore that the Board declare that the works are exempted development under section 4(1)(h) of the 2000 Act, as amended.

6.2. Planning Authority Response

The planning authority state that they have no further observations to make.

7.0 Statutory Provisions

Planning and Development Act, 2000

3.— (1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

(2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

4. (1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

7.1. **Planning and Development Regulations, 2001**

CLASS 23

The carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking, except—

- (a) the construction or erection of any railway station or bridge, or of any residential structure, office or structure to be used for manufacturing or repairing work, which is not situated wholly within the interior of a railway station, or
- (b) the reconstruction or alteration of any of the aforementioned structures so as materially to affect the design or external appearance thereof.

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. It is not disputed by any party that the works constituted 'development' under the meaning set out in Section 3 of the 2000 Act, as amended.

8.2. **Is or is not exempted development**

- 8.2.1. The works consisted of the replacement of a boundary wall with a similar limestone structure and the provision of new stairs and railings on a footbridge that is at least a century old. This footbridge is a typical such functional railway structure of the late 19th Century, with a concrete deck carried on cut limestone abutments, most probably with a rubble/concrete core. The bridge fulfils the function of allowing pedestrians access the public roads at either side. From the information available, all the works are within Irish Rail lands.

8.2.2. The core question in this reference case is the specific application of the exempted development provision in S.4(1)(h) of the Act and in this regard the court decisions quoted by Irish Rail are particularly relevant, most notably *McCabe v CIE* 2 IR 392; *Cronin Readymix Ltd v An Bord Pleanala* [2009] 4 I.R. 736 and *Cairnduff v. O'Connell* [1986] I.R. 73. These decisions focus on the latter part of 4(1)(h), i.e. '*... which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures*'.

8.2.3. Before addressing these issues, I would note the following with regard to the structure and the works carried out:

- The footbridge is a typical late 19th Century standard railway structure without any particular distinguishing engineering, architectural, aesthetic or historic features. The original limestone faced associated structures are attractive within their context and do contribute positively to the character of the immediate (mostly residential) area. The structure is not protected in the Development Plan and is not on the NIAH – I note that the wrought iron footbridge dating from 1853 in Carrick on Suir Station is listed as regionally important in the NIAH – this bridge is approximately 800 metres east of the footbridge in question, but is not visible from it.
- The stairwell elements are clearly visible from public areas on the roads on either side, although neither are busy thoroughfares. The bridge deck is not clearly visible from any public highway.
- The works significantly altered the visual impact of the structure, primarily the provision of metal safety elements. I am satisfied that they were carried out solely to improve the utility and safety of the bridges for the general public and were carried out in a reasonably sensitive manner having regard to the need for safety and security on the bridge.
- The works did not involve the unnecessary removal of significant amounts of original material.

8.2.4. I would consider that the works did not materially alter the bridge in a functional sense – it was obviously intended to ensure the bridge remains fit for purpose.

- 8.2.5. The key question in this regard is whether the works have materially affected the external appearance of the bridge in a manner which renders the appearance of the bridge inconsistent with the character of the structure or of neighbouring structures. The alterations are clearly 'material' in the sense that they are easily visible from public areas and obvious to a casual viewer. A more difficult question is whether the works are inconsistent with the character of the structure. As the bridge is a standardised functional structure without any obvious ornamentation or unusual structural features, I would consider that quite a bit of leeway would be appropriate in allowing alterations for functional purposes when determining if its 'character' has been altered.
- 8.2.6. While I would note that while the metal mesh barriers are very visible, especially from anyone walking north up Ard Mhuire Road and are somewhat functional in appearance, the original bridge has high palisade fencing (painted green) along the original limestone walls, so such modern additions are consistent with upgrading works over the years.
- 8.2.7. There is clearly a subjective element to assessing whether the works are 'in character' with its existing use. While in other circumstances such a physically significant alteration would undoubtedly be both material and 'out' of character, in this case, having particular regard to the use of the bridge and its mundane design and function, I would conclude that the works are indeed consistent with its character as a railway footbridge. I therefore conclude that the works are exempted development under Section 4(1)(h) of the 2000 Act, as amended.

8.3. **Restrictions on exempted development**

- 8.3.1. I do not consider that any restrictions on exempted development apply.

9.0 **Recommendation**

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether works carried out on a railway footbridge is or is not development or is or is not exempted

development:

AND WHEREAS Iarnrod Eireann referred this declaration for review to An Bord Pleanála on the 12th day of February, 2016:

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

- (a) Section 3(1) of the Planning and Development Act, 2000,
- (b) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (c) the planning and development history of the site, and the nature and character of the footbridge over the railway line.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The railway footbridge does not have any specific architectural, engineering or historic qualities,
- (b) The works carried out are required for safety and improvement and general maintenance of the structure,
- (c) The works are consistent with the character of the structure as a public footbridge crossing the railway.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the works carried out on the footbridge is development and is exempted development.

Philip Davis
Planning Inspector

15th October 2018