



An
Bord
Pleanála

Inspector's Report RL29S.RL3803

Question

Whether the replacement of an existing natural grass rugby pitch with an artificial grass rugby pitch together with alterations to ground levels constitutes development and where it constitutes development, whether such development is or is not exempted development.

Location

The High School, Zion Road, Rathgar, Dublin 6.

Planning Authority

Dublin City Council.

Referrer

The High School, Rathgar, Dublin 6.

Owner/Occupier

The High School, Rathgar, Dublin 6.

Date of Site Inspection

9th January, 2018.

Inspector

Paul Caprani

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1.0 Introduction

A question has arisen pursuant to Section 5 of the Planning and Development Act 2000 (as amended), as to whether or to the replacement of a grass rugby pitch with an artificial grass pitch together with alterations to ground levels constitutes development, and if it constitutes development whether or not it constitutes exempted development. The rugby pitch is located at The High School, Rathgar, Dublin 6. A declaration was sought from Dublin City Council in the first instance. The City Council determined that the works to be undertaken constituted exempted development under Class 33(c) of Part 1 of Schedule 2 of the Planning and Development Act 2000, as amended. The owner/occupier is now requesting that the Board confirm the declaration as issued by the Planning Authority under the provisions of Section 5(3)(a) of the said Act.

2.0 Site Location and Description

The works involve the alteration of the existing rugby pitch within the grounds of High School, a secondary school located in Rathgar, Dublin 6 approximately 5 kilometres due south of Dublin City Centre. The rugby pitch is located centrally within the school campus to the immediate east of the main school buildings on site. The lands to the north of the rugby pitch accommodate a large hardstanding area which are occupied by a number of playing courts (tennis courts, basketball courts etc) and a parking area/set down area. The rear gardens of dwellings fronting onto Rostrevor Road are located to the immediate east of the pitch. A band of mature trees separate the pitch from the rear gardens of the dwellings in question. The River Dodder flows approximately 60 metres beyond the southern boundary of the site. The area contiguous to the River Dodder on its northern side is designated as a non-statutory conservation area and a zone of archaeological interest. (The River Dodder marks the southern boundary of the administrative area of Dublin City Council in the vicinity of the subject site). A dense band of deciduous woodland separates the rugby pitch from the River Dodder. The High School is accessed from Zion Road to the north of the school.

The said lands are governed by the zoning objective Z15 which is to protect and provide for institutional and community uses. All the lands surrounding the site to the north-east and west are zoned Z1 'residential' or in the case of lands contiguous to the Zion Road - Z2 'residential conservation area'. There are also a number of protected structures located along the eastern side of Zion Road.

2.1. **The Question**

The Referrer request that the Board confirm the determination made by the Planning Authority namely that:

- (a) The replacement of the existing natural grass rugby pitch with an artificial grass rugby pitch and
 - (b) The alteration of ground levels arising from the removal of 250 millimetres of topsoil and with the installation of a new artificial grass surface which will result in an overall alteration of ground levels of less than 200 millimetres
- is development which is exempted development.

2.2. **Planning Authority's Determination**

A Section 5 application on behalf of the High School was lodged with Dublin City Council on 24th July, 2017. It was accompanied by site location maps, a covering letter setting out the planning context relating to the site, the legislative context relating to the exempted development status of the works and the planning history associated with the school. Details of surface water calculations for the all-weather pitch are also included in the information submitted to Dublin City Council.

In assessing the declaration Dublin City Council concluded that the works to be undertaken as set out are exempt under the provisions of Class 33(c) of Part 1, Schedule 2 of the Planning and Development Act, 2000 (as amended).

2.3. **Review of Declaration Issued by the Planning Authority under the Provisions of Section 5(3)(a)**

Notwithstanding the fact that the Planning Authority determined that the works to be undertaken are exempted development, the owner/occupier referred the declaration made by Dublin City Council to An Bord Pleanála for review under the provisions of

Section 5(3) of the Act. The submission contends that the proposed works are exempted development under Class 33(c) of Part 1, Schedule 2 of the Planning and Development Act. It is noted that there are no relevant limitations or conditions attached to the said Class 33(c).

The referral also sets out the planning history associated with the High School. It notes that a total of 14 applications have been made to date between 1965 and 2012. Thirteen of these applications were granted (1 was refused which relates to an aerial mast to be erected on site). It is stated that none of the conditions attached to any of the grants of planning permission would de-exempt the works proposed to be undertaken in respect of the rugby pitch. Details of the planning applications are set out in Appendix A of the submission.

The submission also states that surface water management arrangements will be similar to that currently operated with small drains below the pitch percolating to groundwater. Furthermore, there will be no material intensification of use as the use will remain associated with school activities only. No fencing or floodlighting will be erected as part of the works undertaken and no trees will be removed as a result of the works.

3.0 Legislative Provisions

3.1. Planning and Development Act, 2000, (as amended).

“Works” includes any act, operation, 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 and from surfaces of the interior or exterior of the structure.

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

3.2. Planning and Development Regulations, 2001, as amended.

Article 6.1 states that *“subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes*

of the Act provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of the Class in the said Column 1”.

Article 9 sets out restrictions on exemption to which Article 6 relates. There are no specific relevant restrictions on exemption which would relate to the proposal which is the subject of a referral before the Board.

Schedule 2, Part 1 – Exempted Development – General.

Class 33(c) “development consisting of the laying out and use of land for athletic 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 conditions and limitations specifically opposite this class of development in Column 2.

4.0 Assessment

- 4.1. The initial question to be determined is whether or not the works undertaken constitute “works” under the Act. As the proposed development will clearly involve the removal and excavation of the existing grass pitch, the activity of excavating the existing pitch would constitute “works” under the definition set out in Section 2 of the Act. As such the removal of the football pitch would be classed as “development” under S.3 of the Act.
- 4.2. The question now arises as whether or not the works to be undertaken which constitutes development is or is not exempted development. The proposal would fall within the definition of works which are exempt under the provisions of Class 33(c) in that the construction of an artificial pitch to replace an existing pitch would constitute development consisting of “the laying out and the use of land for athletics or sports”, in this particular instance a rugby pitch. The use of the pitch would not involve the playing of any other sport which would detract de-exempted status such as golf, pitch and putt, motor sports etc. The use of the pitch is ancillary to the school and there are no grounds to suggest that any charge will be made for the public being admitted to watch games on the pitch. Therefore, in my view the works to be undertaken fully comply with the exempted provisions set out in Class 33(c).

Furthermore, the submission on behalf of the owner/occupier states that the proposal will not involve the erection of any public fencing or lighting nor would it involve the removal of any trees.

- 4.3. The works to be undertaken will also involve the removal of approximately 250 millimetres of the top layer of the existing pitch and when the artificial pitch is laid on top the overall ground level will be altered by less than 200 millimetres. Class 33(c) does not specify any conditions or limitations regarding alterations of grounds levels. I would refer the Board to Class 6 of the Exempted Development Regulations which relate to alterations of ground levels for landscaping associated with a domestic dwelling. Under this class any alterations of ground levels of less than 1 metre would constitute exempted development. While the provisions of Class 6 are not strictly relevant to the current declaration before the Board as the current declaration does not relate to a domestic dwelling, it would suggest in my view that the alteration of ground levels of less than 200 millimetres would not be “material” in terms of planning. Therefore, the alterations of ground levels as part of the works proposed would not be significant or material in nature and would not result in any alteration of ground levels which would render it significant or incongruous in terms of surrounding ground levels. It would therefore would be exempted development.
- 4.4. Finally, in terms of Article 9, which sets out restrictions on exemptions, as already stated in the previous section of my report, none of the restrictions set out in this Article of the Regulations would be applicable to the proposed works to be undertaken. Specifically, in relation to Article 9(viib) which relates to appropriate assessment, no appropriate assessment issues arise in this instance as the nearest Natura 2000 sites are c.5 kilometres to the east in Dublin Bay and there are no hydrological or ecological connection between the subject site and the Natura 2000 sites in question.

5.0 Conclusions and Recommendation

- 5.1. Arising from my assessment above therefore, based on the legislation and specifically the Exempted Development Regulations set out under Article 6, I would agree with the Planning Authority’s determination that the replacement of an existing natural grass rugby pitch with an artificial grass rugby pitch which would include the

reduction of ground levels of less than 200 millimetres, constitutes development which is exempted development.

5.2. I therefore recommend issuing an order as follows:

WHEREAS a question has arisen as to whether or not the replacement of an existing natural grass rugby pitch with an artificial grass rugby pitch together with the alteration of ground levels of less than 200 millimetres arising from the removal of the grass rugby pitch is or is not development and it is development, is or is not exempted development.

AND WHEREAS the High School, Zion Road, Rathgar, Dublin 6 care of Tom Phillips and Associates Town Planning Consultants requested a declaration in relation to same in accordance with Section 5(3) of the Planning and Development Act, 2000 (as amended)

AND WHEREAS the Board in considering this referral had particular regard to

- (a) Sections 2 and 3 of the Planning and Development Act, as amended, and
- (b) Articles 6 and 9 and Class 33(c) of Schedule 2 of Part 1 of the Exempted Development – General Regulations set out under Article 6 in the Planning and Development Regulations, 2001 (as amended)

AND WHEREAS An Bord Pleanála concluded that the works to be undertaken constituted development that was exempted development by reason of the provisions of Class 33(c) of Schedule 2, Part 1 of Article 6 of the said Regulations.

NOW THEREFORE An Bord Pleanála in exercise of its powers conferred on it by Section 5(3)(a) of the 2000 Act (as amended) hereby decides that the replacement of an existing natural grass rugby pitch with an artificial grass rugby pitch which includes alterations of ground levels of less than 200 millimetres constitutes development that is exempted development.

Paul Caprani,
Senior Planning Inspector.

22nd January, 2018.