



An
Bord
Pleanála

Inspector's Report RP04.RP2153.

Question	Point of detail regarding condition no. 7 and condition no. 11 of Planning Authority Register Reference 14/6510, An Bord Pleanala Reference PL04.245331
Location	Ballinora GAA Club, Ballymah, Waterfall, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	Enforcement Ref EF16057
Applicant	Ballinora GAA Club
Planning Authority Decision	No Declaration.
Referred by	Cork County Council
Observer(s)	None.
Date of Site Inspection	9 th November, 2017
Inspector	A. Considine

1.0 Introduction

- 1.1. This referral was lodged with the Board on 29th June 2017 under Section 34(5) of the Planning and Development Act 2000, as amended. This provision provides for matters to be referred to the Board where a point of detail is in dispute between the applicant and planning authority. The case relates specifically to Conditions 7 and 11 of PL04.245331.

2.0 Site Location and Description

- 2.1. The subject site is located in the village of Ballinora, approximately 1km to the south of the National Primary road, the N22 on Waterfall Road. The site is located to the rear of a number of residential properties which front onto Waterfall Road and approximately 500m to the north of Ballymah. Access to the site lies between two residential properties and the site is currently occupied by the GAA pitch and associated features.

3.0 Planning History

- 3.1. The following is the planning history associated with the subject site:

Immediately prior to the lodging of the permitted planning application, PL04.245331, three previous applications were deemed to be incomplete. These include 14/6347, 14/6246 and 14/5657.

ABP Ref 4/5/87156 (PA ref. 91/2287): Cork County Council refused planning permission for the construction of 10 no. dwellings. This decision was upheld on appeal.

PA ref. 93/3041: Planning permission was granted for the construction of dressing room facilities and playing field.

PA ref. 94/1327: Planning permission was granted for 3 residential dwellings along the road frontage section of the above permitted playing facilities.

- 3.2. Enforcement issues:

EF14185: Current enforcement file: Alleged unauthorised development including
(1) construction of public walk way around GAA pitch

- (2) erection of goal post in new juvenile pitch
- (3) 1.8m high fence erected at the north boundary
- (4) erection of 2 access gates to adjoining lands,
- (5) holes dug out and posts put in ground
- (6) kerbing laid to the area south of the main pitch

EF12245: Closed enforcement file: Alleged unauthorised construction of dressing rooms, goal posts, flood lights, ball breakers behind the goal posts and no proper drainage.

3.3. Exempted Development Declaration:

D22812: Declaration of Exempted Development application pertaining to works on site which specified that the following elements were exempt and not exempt:

Exempt:

- The laying out of the proposed training pitch,
- The 1.1m high pvc perimeter fence along the western side of the pitch,
- A 1.5m wide gravel path along the perimeter of the pitch,
- A 4m wide x 1.1m high galvanised ambulance gate and
- The 2 proposed dugouts.

Not Exempt:

- The erection of 20m long x 10m high netting behind both goals of the proposed training pitch,
- The erection of 15m long x 10m high netting behind both goals of the existing training pitch,
- The erection of netting 33m long x 10m high behind the southern goal of the existing pitch,
- A 1.8m high concrete retaining wall along the southern side of the pitch,
- A 1.8m high chain link fence along the northern site boundary,

- Creation of a new car park to the north of the access driveway represents works and represents a material change of use of the land,
- Changing of an existing hard surface area to a car park with proposed kerbing and lining represents a material change of use of land,
- The four existing poles/stanchions which contain lighting at the top cannot be considered exempted development.

3.4. Other Relevant Cases:

RL 11.RL2071: Which dealt with the construction of an all-weather pitch (including perimeter fencing) where no charge is made for the admission of the public to the land, and the erection of three lighting stanchions is development and is not exempted development.

4.0 Conditions Subject of the Referral

- 4.1. Permission was sought for the construction of a single storey machinery shed, the erection of 3 no. fixed ball catch netting systems (max 12m high), 2 no. maximum 12m high GAA goalposts, 1.1m high pitch fencing and 2 no. preformed portable dugouts, 29 no. 1.1m high lighting bollards along site pathway, 5 no. new training flood lights and relocation of 1no. existing flood light on the existing netting poles, and associated ancillary site works. Retention of an existing as constructed dressing room building and existing 4 no. 8m high timber poles and 6 no. flood lights to the South of the site, the existing 12m high fixed netting, 1no. existing floodlight on the existing netting poles and 1.8m high fencing to Northern end of the main pitch. Retention of a 1.8m high fence along the northern boundary area with 2 no. access gates to adjoining lands. 2 no. 6m high juvenile goalposts and retention of a kerbed and hardcored parking area to the south of the main pitch, all at the Ballinora GAA Club, Ballymah, Waterfall, Co. Cork.
- 4.2. Following an appeal, PL04.245331, the Board decided to grant permission for the development subject to 11 conditions including conditions 7 and 11 which state as follows:
7. The existing gravel footpath shall be relocated away from the adjoining property boundaries along the north-east and south-west of the site by

a minimum of five metres (rather than the two to three metres proposed), and the intervening areas (adjoining boundary types 1b, 2 and 3, as specified in the Landscape Boundary Report, submitted to the planning authority on the 26th day of June, 2015), shall be provided throughout with a soil mound at least one metre high, together with planting on this mound similar to that proposed for boundary type 1b (that is, Fuchsia and Willow), to details to be agreed in writing with the planning authority within three months of the date of this permission. The works proposed in this area of the site, including the relocation of the path and the construction of mounds and planting as specified by this condition, shall be undertaken within six months of the date of this permission. Apart from this modification, all of the other landscaping, boundary and planting detailed in this Report shall be implemented as proposed, not later than the first planting season following this permission.

Reason: To provide a visual and noise buffer along the eastern boundary of the site in the interests of protecting residential amenity.

11. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit or other security to secure the provision and satisfactory completion of the landscaping works and surface water provisions of this development in accordance with the requirements of conditions numbers 6 and 7 of this permission. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of these works.

5.0 Policy Context

- 5.1. The Cork County Development Plan, 2014 came into effect on 15th January 2015 and is the relevant policy document pertaining to this subject appeal site.

5.2. **Natural Heritage Designations**

The subject site is located within 15km of the Cork Harbour Special Protection Area (Site Code 004030) and the Douglas River Estuary pNHA (Site Code 001046) both of which lie to the east of the site at a distance of approximately 12km.

6.0 **The Referral**

6.1. **Grounds of Referral**

The Planning Authority has referred the two conditions to the Board as a dispute in relation to the interpretation of the conditions has arisen. The two points of detail to be clarified are

Re: Condition 7: whether the section of the path adjoining boundary 1a was intended to be relocated 5 metres from the adjoining property boundary.

Re: Condition 11: Ballinora GAA Club have indicated that they do not wish to pay a cash deposit or security. Condition 11 states that the form and amount of security shall be agreed between the Planning Authority and the developer or in default of agreement, shall be referred to An Bord Pleanala for determination. The Planning Authority believes that the monies are required given the fact that the developer has not completed the works in compliance / in conformity with PL04.245331.

6.2. **Owner/ occupier's response**

The owner / occupier submitted a response to the referral advising disappointment with the Councils decision to refer the points of detail to the Board as it is considered that all reasonable actions to agree the details with Cork County Council and to fulfil the terms of the planning determination have been taken. In response to the specific issues the following comments are made:

- Re; Condition 7: The sections of the path to be relocated were submitted as part of the planning application. It is suggested that –
 - The 120 metres of pathway already relocated address the issue of a buffer between the proposed development and residential properties.

- Moving the path at boundary 1a could interfere with access for grass cutting machinery to the underage playing pitches, thereby impacting on the safety of pedestrians using the path.

It is therefore requested that the Board clarify that the section along boundary 1a does not need to be relocated and that retaining the existing pathway would not result in a material alteration to the terms of the development.

- Re: Condition 11: The Club outlined the difficulty to agree a large sum to form part of a security to Cork County Council. It is submitted that -
 - The works in relation to landscaping and surface water provisions have been undertaken and confirmed to Cork County Council on behalf of the Club by their engineers.
 - The club is dependent on local fund raising initiatives and grant support and are working hard to make the best use of financial resources.

It is therefore requested that the Board clarify that a cash deposit is no longer required.

7.0 Assessment

7.1. Condition 7

7.1.1. The question arising is to whether the section of the path adjoining boundary 1a was intended to be relocated 5 metres from the adjoining property boundary. The dispute arises as the Planning Authority considers that there are two interpretations of the condition as follows:

- All of the path is required to be relocated five metres from the adjoining property boundaries along the north east and south west of the site, in other words, from boundary type 1a to boundary type 4, the full length of the path in this area of the site. In addition, the intervening areas which adjoin boundary types 1b, 2 and 3 shall be provided with a soil mound at least one metre high together with planting similar to that proposed for boundary type 1b. This

would mean that a mound was not intended / required by boundary 1a, but was required adjoining boundary types 1b, 2 and 3. OR

- Only the areas of the path adjoining boundary types 1b, 2 and 3 were intended to be relocated which would mean that the path adjoining boundary type 1a was not required to be relocated five metres.

7.1.2. The Board will note that there are no residential properties to the south west of the site and clarification of a clerical error was acknowledged on the 17th August, 2016. The condition was reworded to read 'property boundaries along the north-east and south-east of the site'. There is an adjoining residential property to the south east, adjacent to boundary type 1a. The landscaping plan submitted as part of the planning application provided for the relocation of part of the existing gravel path in the order of 2 to 3 metres in the north eastern area of the site. The Boards condition required this relocation to be 5 metres.

7.1.3. Further to the above, the Boards condition required that the boundary types 1b, 2 and 3 shall be provided with a soil mound at least 1 metre high, together with planting on this mound similar to that proposed for type 1b (that is, Fuchsia and Willow). These details were to be agreed with the Planning Authority.

7.1.4. Having undertaken a site visit, and having compared the photographs of my site visit in 2015, I am satisfied that the gravel path has been relocated 5 metres from the boundaries of the adjoining properties in the north eastern area of the site. Given that condition 7 specifically states 'rather than the 2 to 3 metres proposed', and that the section of path to be relocated was clearly identified in the landscaping plan submitted to the Planning Authority on the 26th day of June, 2015, I am satisfied that the area of relocated path to the north east satisfies this element of the condition and that the path adjoining the type 1a boundary is acceptable and was not required to be relocated. In addition, the Board will note that a mound has been constructed all along boundary types 1b, 2 and 3, as required by the condition. No mound was required along boundary type 1a.

7.1.5. That said, I would have concerns that the full landscaping plan has not been implemented fully. I do however, accept that my site visit was carried out in November, and there is little growing occurring. I note that the mounds as constructed do not appear to be as robust as the landscaping plan would have

suggested, particularly in terms of breath, and that the larger area to the east of the mound along boundary 1b does not appear to have been planted or landscaped as yet. In this regard, the Board will note that the condition required the agreement in writing of the planning authority for the planting of the mound.

- 7.1.6. In conclusion, and while I acknowledge the efforts to comply with condition 7, I would advise that the path has been relocated in accordance with the requirements of condition 7, but that the landscaping plan has not been implemented fully in accordance with the specifications submitted in support of the planning application, and permitted under ABP ref PL04.245331.

7.2. Condition 11

- 7.2.1. Condition 11 required the lodgement of a cash deposit or other security to secure the provision and satisfactory completion of the landscaping works and surface water provisions in accordance with conditions 6 and 7. Ballinora GAA Club have indicated that they do not wish to pay a cash deposit or security and advise that the club has a difficulty in agreeing a large sum to form part of a security to Cork County Council. It is submitted that the Club is dependent on local fundraising initiatives and grant support. In addition, it is submitted that landscaping and surface water provisions have been undertaken and confirmed to Cork County Council and therefore, it is requested that the Board clarify that a cash deposit is no longer required.
- 7.2.2. Condition 11 states that the form and amount of security shall be agreed between the Planning Authority and the developer or in default of agreement, shall be referred to An Bord Pleanala for determination. The Planning Authority believes that the monies are required given the fact that the developer has not completed the works in compliance / in conformity with PL04.245331.
- 7.2.3. The Board will note that the Planning Authority included a condition in its grant of planning permission, requiring the provision of a security of €1,000 to guarantee the satisfactory completion of the tree and shrub planting and all other landscaping proposal for the site, as required by condition, and provided for in the submitted landscape plan for the site. I note that the applicant did not pay a fee for the making of the planning application and in this regard, was exempt from paying development contributions. It is noted that the monies shall be refunded on the certified completion

of these landscaping works and that there was no objection from the applicant to the inclusion of the condition in the grant of planning permission PA ref 14/06510 / ABP ref PL04.245331.

- 7.2.4. While I acknowledge the difficulties for the Club to access monies, I consider that the full implementation of the landscaping plan, in accordance with the landscaping plan submitted in support of the development, is critical to ensure the protection of residential and visual amenity of properties adjacent to the site. As such, I consider that a deposit or security in the amount of €1,000 is both reasonable and necessary.

8.0 Recommendation

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

WHEREAS by order dated 17th day of December, 2015 An Bord Pleanála, under appeal reference number PL04.245331, granted subject to 11 conditions, a permission to Ballinora GAA Club care of Horganlynch Consulting Engineers of Tellengana, Blackrock Road, Cork, for development consisting of the construction of a single storey machinery shed, the erection of 3 no. fixed ball catch netting systems (max 12m high), 2 no. maximum 12m high GAA goalposts, 1.1m high pitch fencing and 2 no. preformed portable dugouts, 29 no. 1.1m high lighting bollards along site pathway, 5 no. new training flood lights and relocation of 1no. existing flood light on the existing netting poles, and associated ancillary site works. Retention of an existing as constructed dressing room building and existing 4 no. 8m high timber poles and 6 no. flood lights to the South of the site, the existing 12m high fixed netting, 1no. existing floodlight on the existing netting poles and 1.8m high fencing to Northern end of the main pitch. Retention of a 1.8m high fence along the northern boundary area with 2 no. access gates to adjoining lands. 2 no. 6m high juvenile goalposts and retention of a kerbed and hardcored parking area to the south of the main pitch, all at the Ballinora GAA Club, Ballymah, Waterfall, Co. Cork.

AND WHEREAS condition number 7 attached to said permission required that the existing gravel footpath be relocated away from the adjoining

property boundaries along the north-east and south-east of the site by a minimum of five metres (rather than the two to three metres proposed), and that the intervening areas (adjoining boundary types 1b, 2 and 3, as specified in the Landscape Boundary Report, submitted to the planning authority on the 26th day of June, 2015), be provided throughout with a soil mound at least one metre high, together with planting on this mound similar to that proposed for boundary type 1b (that is, Fuchsia and Willow), to details to be agreed in writing with the planning authority within three months of the date of this permission.

AND WHEREAS condition 11 of An Bord Pleanála appeal reference number PL04.245331 (planning authority register reference number 14/06510) required that prior to commencement of development, the developer shall lodge with the planning authority a cash deposit or other security to secure the provision and satisfactory completion of the landscaping works and surface water provisions of this development in accordance with the requirements of conditions numbers 6 and 7 of this permission. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

AND WHEREAS the developer and the planning authority failed to agree on the details illustrating compliance with the terms of said conditions 7 and 11:

AND WHEREAS the matter was referred by the Planning Authority to An Bord Pleanála on the 29th day of June, 2017 for determination:

AND WHEREAS the Board is satisfied that the matters at issue are:

(a) the relocation of the gravel path and the construction of mounds and planting as specified in condition 7 of the grant of planning permission;

AND

(b) the lodgement of a cash deposit or other security to secure the provision and satisfactory completion of the landscaping works;

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, determines that the path has been relocated and the mounds constructed in accordance with the

requirements of condition 7 of the grant of planning permission, An Bord Pleanála reference PL04.245331, and that the landscaping plan has not been fully implemented.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, hereby determines that the developer shall lodge a cash deposit or other security to secure the provision and satisfactory completion of the landscaping works and surface water provisions of the development in accordance with the requirements of conditions numbers 6 and 7 of this permission. The amount of the security shall be €1,000 (one thousand euro).

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

A. Considine
Planning Inspector

10th November, 2017