

<b>AN BORD PLEANÁLA</b>	
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ABP- _____	
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The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

Wednesday 30<sup>th</sup> June 2021  
[By Hand]

Dear Sir/Madam

**RE: RESPONSE TO SUBMISSION OF REFERRAL TO AN BORD PLEANALA RELATING TO THE DEVELOPMENT OF A GAA PLAYING PITCH AT ST. MARY'S PARK ROAD, MONEYATTA COMMONS, SAGGART, CO. DUBLIN**

**An Bord Pleanála Ref. ABP-310385-21**  
**South Dublin County Council Reg. Ref. ED21/0031**

## **1.0 INTRODUCTION**

Tom Phillips + Associates<sup>1</sup> have been retained by the landowner Cape Wrath Hotel Unlimited Company<sup>2</sup> to respond to the referral made to An Bord Pleanála (ABP) by Burnella Cottages Limited (Burnella) under ABP-310385-21 relating to the consideration of whether the provision of a grass pitch for St. Mary's GAA on lands which were formerly used as a golf course is or is not development or is or is not exempted development.

This response is made within 4 weeks of the date letter issued by ABP to our Client on 4<sup>th</sup> June 2021.

At the outset, it is not intended to respond to the content of the referral made to ABP in any great detail, however, the provision of a playing pitch as exempted development has already been established by South Dublin County Council (SDCC) under two earlier referrals and the facts of these referrals have not changed – it is not open to the Board to now revisit these decisions which have already been determined and it is clear that this referral is an attempt by Burnella to override these earlier declarations.

## **2.0 RESPONSE TO REFERRAL**

### **2.1 Established Section 5 Declarations for Playing Pitches on this Site and Judgement on Similar Section 5 Referrals**

SDCC have already declared the works to provide for the development of a playing pitch at the subject lands at Citywest is exempted development and does not require planning permission on two separate occasions, under ED18/0036 and ED21/0004 (the location of the

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<sup>2</sup> Heritage House, 23 St. Stephens Green, Dublin 2





playing pitch under ED21/0004 was slightly further north than the pitch proposed under ED18/0036 and the subject referral). None of the circumstances outlined in the referral before the Board alter the proposals already declared exempt by SDCC and it is therefore considered that the Board cannot deal with subsequent referrals based on the exact same details.

We refer the Board to the case *Narconon Trust v An Bord Pleanála* [2020] IEHC 25 (dated 24 January 2020) which dealt with a referral made by ABP in relation to declaration that the change of use of a nursing home to residential drug rehabilitation facility required planning permission after Meath County Council had two years earlier confirmed that it was exempted development.

Burnella is clearly aware of the previous Section 5 referrals (ED21/0004 referenced in their documentation) and nothing has changed to the facts of the referral in the intervening period since the first declaration by SDCC. It is clear in fact that the Burnella referral is reliant upon the details previously submitted under ED21/0004 as no new information or drawings have been submitted to support this referral.

In the *Narconon Trust v ABP* case the Judge ruled that the Board did not have the power to make decisions in respect of what was in reality an attempt by the Community Group to question the validity of the Council's earlier decision regarding the same circumstances. The Judge stated that it would:

*"wholly undermine the concept of legal certainty and result in a patent unfairness if, despite having the benefit of a decision which was neither reviewed nor challenged in accordance with the mandatory route, including time limits, laid down by statute, a party could question the validity of the original decision, which they regarded as wrong, by asking the self-same question at some later point, ignoring the mandated route for a challenge to that decision, and in the context of unchanged facts, have that question answered differently."*

Having regard to the judgment in the abovementioned case and the fact that the circumstances are exactly the same as when SDCC declared the earlier Section 5 referrals as exempted development, we consider that the Board cannot make a different declaration than that which has been previously made under ED18/0036 and ED21/0004 and works for the playing pitch are exempted as has already been determined by SDCC on two occasions.

## **2.2 Other Items Mentioned in Referral**

The details submitted as part of the referral under ED18/0036 included drawings which illustrated a cross section through the playing pitch detailing that the existing ground profile would be altered to provide for a flatter area to facilitate the playing pitch. Clearly therefore SDCC were provided with information on this element and it was considered as part of their earlier determination that the works were exempt. Similarly, Burnella has provided no detail of same in their application and is relying on previous details provided. As this has been considered as part of the earlier referrals the Board cannot consider this element again and come to a different conclusion other than the works are exempt. We would also observe that as the Applicant has provided no details on this matter the Board could not actually assess the position here in any event.





Brunella also refers to a fence which has been constructed in the vicinity of the works being undertaken for the provision of the playing pitch. This fence has been installed in connection with the carrying out of the works to implement the playing pitch and is exempted development under Class 16 of the *Planning and Development Regulations 2001, as amended*. The fence will be removed when the works have been completed.

The playing pitches as deemed exempt by SDCC under ED18/0036 and ED21/0004 expressly did not provide for any new works associated with vehicular access or the provision of car parking. There is an existing gated access to the site and associated tarmac access road from the Boherboy Road in our Client's ownership but, as stated in the previous applications, pedestrian access only will be facilitated to the playing pitch and the changing rooms and car parking associated with St. Marys GAA at their existing clubhouse will be used.

There is no loss of trees and very limited loss of vegetation associated with the playing pitch. Indeed, all trees on the location of the playing pitch were relocated rather than felled and these works were completed some time ago. Again, Burnella does not provide information on this but relies on the earlier application details. Similarly, Burnella makes spurious claims on impacts on Natura 2000 sites without providing any information. These matters have all been addressed under the previous declarations of the works being exempted development. Specifically, SDCC stated that *'Having regard to the nature and scale of the development and proximity to Natura 2000 sites, it is not considered that an Appropriate Assessment is required'*.

We consider that the entire referral should be disregarded by the Board due to the lack of any new information provided by Burnella since the earlier determinations that the playing pitch was exempted development by SDCC under ED18/0036, ED21/0004 and now under ED21/0031. Having regard to the judgment outlined above (*Narconon Trust v ABP*), the assessment of the Board of this referral, which has now been determined on three separate occasions by the Planning Authority, would totally undermine the clear and consistent decisions made by SDCC and undermine the legal certainty they provided. It is not a matter for Burnella to try and revisit these decisions by way of making a new Section 5 Referral and obtaining a different outcome and the Board must further reinforce the decisions made by SDCC and dismiss the referral entirely as there are no grounds to be considered.

Yours sincerely

**Stephen Barrett**  
Director  
Tom Phillips + Associates



