

Dan Wigglesworth

From: Fred Logue <fred.logue@fplogue.com>
Sent: Friday 6 December 2024 12:56
To: Bord
Cc: Appeals2
Subject: Observation on case 320887
Attachments: Observations on Section 5 Referral FINAL.pdf; 241206 LT to ABP.pdf

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A Chara

Please find attached my client's observations on case 320887 in response to your letter of 18 November 2024

Please confirm receipt
Fred

PLEASE NOTE OUR NEW ADDRESS

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FPLOGUE SOLICITORS

Our Reference: FPL/184/
Your Reference: ABP-320887-24

6 December 2024

By email only

An Bord Pleanála
bord@pleanala.ie

Our client: Colin Blake, 19 Seaview, Mornington, Co Meath

RE: Whether the laying of a football pitch is or is not development or is or is not exempted development, Tower Road, Mornington, Co Meath.

A Chara

We refer to your letter dated 18 November 2024.

We now enclose Mr Blake's observations on the referral and note that no fee is due.

Yours faithfully



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Encl

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Observations on Section 5 Referral – Colin Blake

ABP-320887-24

1. On 23 September 2024 the Board received a referral from “Eastern Gaels GAC” under Section 5 of the Planning and Development Act 2000 against a negative declaration by Meath County Council (Ref LBS52454).
2. The Board wrote to me on 18 November 2024 inviting an observation by 9 December 2024. A copy of this letter is appended to these observations.
3. The Board is asked to consider the following question in relation to a location at Tower Road, Mornington, Co Meath:

“Whether the laying out of a football pitch is or is not development and is or is not exempted development”

4. The Planning Authority declared that the laying out of a football pitch at Tower Road Mornington was development and was not exempted development because it could not be satisfied that the works would not be likely to have significant a significant effect on the integrity of the Boyne Estuary SPA and the Boyne Coast and Estuary SAC.
5. The Planning Authority was concerned about a number of matters including that there were no wintering bird surveys, impacts of operational noise and details of drainage measures.
6. The applicant has now lodged and “appeal” against the Planning Authority’s declaration and has provided various grounds of appeal together with various documentation which includes the original AA Screening report lodged with the Planning Authority and an email containing comments on the Planning Authority’s declaration from the consultant which prepared the AA Screening Report.
7. As a preliminary matter it appears that the pitch has already been laid out and is in use. This is clear from Google Earth photos and from local knowledge. I am seriously concerned that an activity that requires appropriate assessment has been carried out and it continuing in breach of the Habitats Directive. It seems to me that the vehicle of a Section 5 declaration cannot be used to regularise development that has been and is being carried out in breach of the Habitats Directive. The only possibility of regularising this activity, in exceptional cases, is via substitute consent, although it is not clear whether substitute consent can be used to regularise development in breach of the Habitats Directive.
8. A second point I would like to raise is that the applicant has not provided a full description of the nature of the works or the intended use. The Planning Authority raised concerns about lack of drainage details. But there is also other information missing. For example “laying out” is not a well defined term. The question should have included full details of this. Also there are no particulars of the intended use, or of other details like sanitary facilities, lighting, or parking.
9. In the present circumstances a section 5 is in effect a permit to carry out development, but the developer has to provide all of the project details and not a part of the project. A section

5 cannot be used as a “foot in the door” to remove the need for planning permission on part of a project. This is all the more important when there is no possibility of conditions being imposed on development under a section 5.

10. The grounds of appeal incorrectly state that the Inis surveys for the refused Boyne Greenway did not identify significant QI species in the vicinity. In fact these surveys identified roosting and foraging Mallard, Redshank, Teal, Wigeon at high tide and numerous roosting and foraging species at low tide (see below for survey results¹).
11. While there is some recent data from the failed Greenway application, the Site Specific Conservation Objectives for the SPA are completely out of date. Whereas the SAC conservation objectives were updated in 2021, the SPA conservation objectives have not been reviewed since 2013. In the meantime, there will have been changes in the baseline environment, increased development in the area and changes in the state of scientific knowledge. Without current and reliable conservation objectives, it is impossible to conduct an appropriate assessment.
12. I would also add that it is not appropriate to refer to data that is not on the file. The appropriate exercise is a scientific one that requires certainty – making vague references to surveys on other planning files is not appropriate. On the other hand it is perfectly legitimate for the planning authority to rely on the results of earlier assessments. In this case the planning officer relied on the Board’s assessment in case 302948 on a neighbouring site which refused permission on the basis that there were no bird surveys, which is precisely the same reason as the Planning Authority in this case declared the development not to be exempt development.
13. The appeal says in essence that in its current state the site cannot support wintering birds because of the way it is managed but if the grass is used for sports pitches then it would be suitable.
14. This therefore confirms that the subject site supports and is ecologically part of at least the Boyne Estuary SPA. The fact that it has been allowed deteriorate, in breach of Article 6(2) of the Habitats Directive, is neither here nor there and is a matter for the appropriate authorities. This has wrongly been characterised as creating additional foraging habitat. Even if that were the case it is important that the use of the area is regulated via conditions which is not possible with a section 5 declaration or referral.
15. The fact that, even on the applicant’s own evaluation, the site provides ex situ habitat means that a full appropriate assessment should be undertaken and that this is not a matter suitable for a section 5 declaration since the Board cannot impose conditions. It seems that it is critical that the site be managed to support SPA species and to that end there ought to be conditions imposed on how the grass is maintained as well as other conditions to ensure that birds are not disturbed when using the site.

¹ Note there seem to be issues with the correct dates on some of the drawing which don’t correspond the dates mentioned in the file names

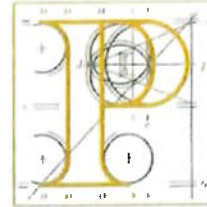
16. It also appears, on the applicant's own evaluation, that a programme of grass cutting is an important mitigation measure against deterioration of the site and therefore this shows clearly that a full appropriate assessment via an application for planning permission or substitute consent is the only lawful way in which the proposed development can be regulated.
17. I wish also to point out that the site is hydrologically connected to the Boyne because it is in the flood plain of this river. The Meath SFRA shows that most of the site is in flood zone A. The applicant has not identified this connection in its documents, which is another lacuna.

Annex 1 – Letter from ABP 18 November 2024

Our Case Number: ABP-320887-24

Planning Authority Reference Number: LBS52451

Your Reference: Colin Blake



An
Bord
Pleanála

FP Logue LLP
Lenin House
Rear 25 Strand Street Great
Dublin 1



Date: 18 November 2024

Re: Whether the laying of a football pitch is or is not development or is or is not exempted development.
Tower Road, Mornington, Co. Meath

Dear Sir,

I have been asked by An Bord Pleanála to refer to the above mentioned referral.

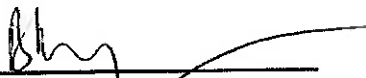
The Board is of the opinion that, in the particular circumstances of this referral, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed referral.

In accordance with section 131 (c) of the Planning and Development Act, 2000, (as amended), you are requested to make any submissions or observations that you may have in relation to the referral **on or before 9th December 2024**. The Board cannot consider comments that are outside the scope of the matter in question. Your submission in response to this notice must be received by the Board not later than **5:30pm on the date specified above**.

If no submission or observation is received before the end of the specified period, the Board will proceed to determine the referral without further notice to you, in accordance with section 133 of the 2000 Act.

Please quote the above referral reference number in any further correspondence.

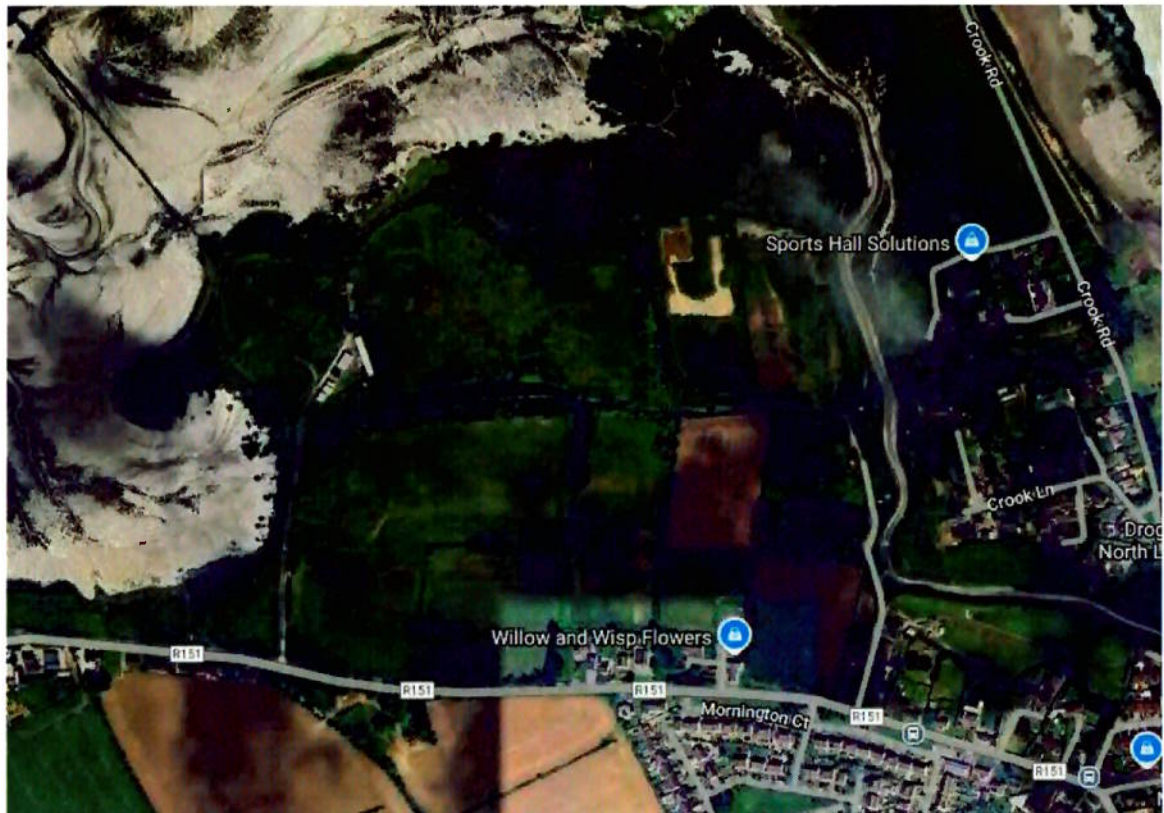
Yours faithfully,


Lisa Quinn
Executive Officer
Direct Line: 01-8737158

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The screenshot shows the ArcGIS Online interface. On the left, the 'Layer List' panel is open, displaying a list of layers. The layer 'Strategic Flood Risk Assessment - Flood Zone A' is selected and highlighted in blue. Other layers include 'Strategic Flood Risk Assessment - Flood Zone B', 'Strategic Flood Risk Assessment - Areas Benefiting from Defences', and 'Admin boundary - Gwaeltach Area lowlands'. The map area shows a large blue region representing the flood zone, with labels for 'Banktown', 'Gwaeltach', and 'Gwaeltach Area lowlands'. The map is viewed from a top-down perspective, showing the coastline and surrounding land.

Annex 4 – Results of INIS surveys

