

Planning Registry
T: 414 9000

An Coimisiún Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902

09th July 2025

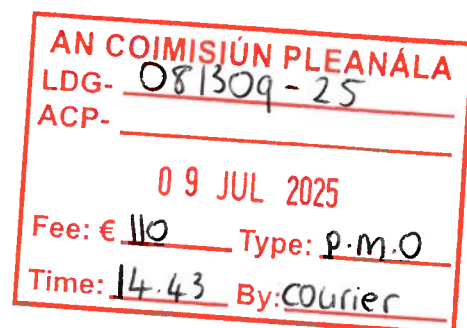
Re: Section 5 Application – ED25/0047.

Dear Sir/Madam,

Please find attached Section 5 Application for your consideration. Also enclosed is Postal Order in the sum of €110 dated 09th July, 2025.

Yours sincerely,

p. Hughes
pp. Senior Staff Officer,
Planning Registry.



Section 5 Declaration Request - Supporting Documentation & Maps

Under Section 5 of the Planning and Development Act 2000 (as amended)

Determination sought:

Whether the removal of recreational, community and biodiversity amenities at Pearse Brothers Park — including a boules court, insect bars (kickabout posts), pollinator flower beds, tree plantation (including a fruit orchard), and bulb plantation — constitutes “development” within the meaning of Section 3 of the Planning and Development Act 2000 (as amended), and if so, whether such development is exempted or requires planning permission.

We are seeking a formal declaration under **Section 5 of the Planning and Development Act 2000 (as amended)** in relation to works recently undertaken at **Pearse Brothers Park**, specifically the **removal of established community amenities**. The features removed include:

- A constructed **boules court** with a formal layout.
- Fixed **insect bars (kickabout posts)**.
- **Pollinator-friendly flower beds**.
- **Tree planting**, including a **dedicated fruit orchard** area.
- **Bulb planting** in defined landscaped zones.

These amenities were installed, with public and community engagement and formed part of the park’s functional design. Their removal appears to have been conducted by or on behalf of South Dublin County Council without public consultation and without reference in the approved Part 8 documentation (Ref: SD218/0008).

We believe that these actions constitute “**development**” as defined in **Section 3(1)** of the Act — specifically, works involving **demolition, excavation, and alteration of land and features** that materially affect the use and character of a public open space.

We further contend that the removal of these features does **not fall within any of the exemptions** set out under the Planning and Development Regulations 2001 (as amended) and therefore requires **planning permission** or explicit consent.

Given that the works in question are ongoing or imminent, and that this declaration concerns the legal status of those works, we respectfully request that:

- **All related works cease immediately**, and
- **No further alteration, removal, or construction be undertaken** on the subject features or within the affected area, **pending a determination on this declaration**.

We further request that the Planning Authority confirm, in writing, that no works will proceed which could undermine the validity or effectiveness of the Section 5 process, or which may render the question moot.

Should works continue during the course of this application, we reserve the right to refer the matter to An Bord Pleanála under Section 5(4), and to pursue further action under Part VIII of the Act or through other relevant oversight channels. We would appreciate your prompt attention and look forward to your confirmation that this request has been received and acknowledged.

This Section 5 application, which requests a determination on whether the **removal** of recreational, community and biodiversity installed amenities at Pearse Brothers Park — including a boules court, 2 large pollinator beds, 4 insect bars/ timber kickabout posts, tree plantation including a fruit orchard and bulb plantation — constitutes exempted development.

These features and structures were designed, funded, and installed through a collaborative partnership involving SDCC, Ballyboden Tidy Towns clg, the local residents association and residents of Pearse Brothers Park.

Written consent and letters of support were obtained from the local residents association, and from households (Nos. 25–34 Pearse Brothers Park) who front onto the subject site of this application as requested by SDCC.

- The installation of the boules court and of the 4 insect bars (wooden bollards/kickabout posts) was carried out by CPCL — a contractor directed and specified by SDCC — in line with previous similar projects in the local authority area
- The 2 large pollinator beds, tree plantation and bulb plantation were installed by residents under the supervision and approval of SDCC

We draw your attention to the following background:

- A previous Section 5 application (Ref; ED25/0044) was submitted 18th June 2025 to SDCC concerning the removal of a public path, grass verge and 9 car parking spaces

- A previous Section 5 application (Ref: ED25/0038) was submitted on 14 May 2025 to SDCC concerning the installation of these amenities.

- An Addendum was sent to SDCC on the 19th of May 2025 to support further the Section 5 application ED25/0038 (submitted on the 14th of May 2025) and to provide further context and clarify the nature of SDCC's involvement.

- This Addendum was rejected without consideration by SDCC Planning on 19th of May 2025, and again on the 26th of May 2025 with no declaration issued on two separate occasions. The purpose of the Addendum was to give full particulars to the Planning Authority before they made a decision regarding the Section 5 application.

-SDCC decided to refer this Section 5 Application (ref:ED25/0038) to An Bord Pleanala on the 26th of May 2025 as per the CEO's Report.

-SDCC advised Ballyboden Tidy Towns clg on the 29th of May 2025 that SDCC had referred the Section 5 application ED25/0038 to ABP

- We note that the Section 5 Referral documentation (ref:ED25/0038) sent by SDCC to ABP was incomplete as it did not contain the original email dated the 14th of May 2025 that accompanied the original application and that SDCC carried out deletions/edits of our application so much that we believe that SDCC have sought to curate their own version of our application for the purposes of this referral to ABP . We note that this document that was sent to ABP is not online on the SDCC Planning Registry.

We also note that the documents online have been edited, and pages/documentation have been deleted from the online public record by SDCC and from the hard copy at the planning counter.

-The Referral by SDCC to ABP did not contain the additional information we submitted via our Addendum dated 19th May 2025. It did not contain subsequent correspondence dated the 19th of May 2025 and the 21st of May 2025 from us requesting the Addendum be included in our Section 5 application albeit SDCC had receipt of this as part of this planning file before it made its decision to refer the application to An Bord Pleanala on the 26th of May 2025.

-We also wish to reference in this Section 5 application that correspondence asking for a suspension of works pending the determination of the Section 5 process. was exchanged with:

- Eoin Burke, Head of Planning (5th and 6th June) whose Department and Planning Authority referred the Section 5 to An Bord Pleanala,
- Cian Harte, County Architect, under whose stewardship the works to remove any evidence of the features and structures before a Determination could be made by An Bord Pleanala were carried out and
- John Doyle, a Director of Cleary Doyle, the contractor, employed and instructed by SDCC

Despite the live statutory application ED25/0038, the community, recreational and biodiversity amenities were subsequently removed , starting one day after we submitted ED25/0038 — without any formal determination from the SDCC Planning Authority as to their exempt status of such works.

We are concerned this was an act to frustrate and obstruct our access and participation in a statutory procedure and undermine the remit of An Bord Pleanala to decide on the referral of a Section 5 application.

To date SDCC have turned a blind eye to non-planning SDCC officials, including Public Realm and Housing officials who have no statutory planning function, to make ‘determinations’ regarding the ‘exempt status’ of these features/structures the subject of ED25/0038 and to base and initiate legal actions on such maladministration with injurious consequences to third parties.

The action by SDCC officials on the 15th of May 2025 to begin to damage and destroy the evidence of the existence of recreational, community and biodiversity structures/ features the subject matter of the Ref: ED25/0038 before the decision by the SDCC Planning Authority to

make this referral to An Bord Pleanála on the 26th May 2025 is alarming, contrary to natural justice, sound and fair administration and due process.

Then for SDCC officials to continue to ensure that no evidence of these structures and features remained before the subject site could be inspected by ABP and before the Board of ABP could make their own determination based on that inspection, noting it was SDCC's CEO who made the referral on the 26th of May 2025, is again alarming and contrary to natural justice, sound and fair administration and due process.

SDCC have refused to date to provide the full planning file, including compliance, of the Part 8 Pearse Brothers Park planning file. We believe the removal of these features and structures is unauthorised and such a proposal and decision to remove them was not subjected to a public consultation and yet their installation required public participation by those who lived in the receiving environment.

The removal of such valued recreational, community and biodiversity from a zoned open space saw the removal also of the zoning designation of a zoned open space and the transfer of this subject site into a zoned residential space and again without any notification and/or public participation for the residents within the receiving environment.

We have serious concerns that the full planning file has not been made available to us to inspect and that only a portion of it is available on the public portal. We have sought to request and inspect this file at the Planning Counter and by email to the Planning Department. We note numerous residents have requested the full planning file for the Part 8 Pearse Brothers Park

Given the above, we now seek a formal determination on the removal of these recreational, community and biodiversity structures and features, which in our view materially alters the character of this Open Space/ Neighbourhood Park, the use of the subject site and does not fall under any exempted category.

As part of this Section 5 application we enclose the following documentation:

1. Section 5 Application Form dated 6th June 2025 including a receipt of payment
2. Supporting Documentation: including photographic record and maps
3. Resident Support Agreement (Nos. 25–34 Pearse Brothers Park)
4. Resident Association Agreement & Support
6. Section 5 Addendum and correspondence – ED25/0038
7. SDCC correspondence rejecting Addendum (19 May 2025 and 26th May 2025) and BBTT's replies
10. Email Correspondence with Head of Planning, Eoin Burke
11. Notice of decision by SDCC to refer Ref: ED25/0038 to ABP with a hyperlink to the documents submitted to ABP <https://planning.agileapplications.ie/southdublin/application-details/68245>
12. SDCC omitted the email dated 14th May 2025 that accompanied the Section 5 Application ED25/0038 to SDCC when it forwarded the Section 5 application Ref: ED25/0038 to ABP
13. Part 8 Pearse Brothers Park including CE Report, CE Report page 18/19 and Sheet 2 <https://consult.sdublincoco.ie/en/consultation/south-dublin-county-council-proposed-development-social-housing-project-independent-living-older>

Statement of Position

1. Context and Concern

We submit this Statement of Position in relation to the ongoing development at Pearse Brothers Park, Tallaght, undertaken by South Dublin County Council (SDCC) under Part 8 approval Ref: SD218/0008.

We are gravely concerned that the development being conducted diverges materially from what was advertised, assessed, and approved through the Part 8 process. In our view, the implementation of this project has resulted in unauthorised development, with inadequate public oversight and a pattern of actions that contravene both the spirit and the letter of the Planning and Development Act 2000 (as amended).

We further note that key works have been carried out **during the course of a live statutory referral to An Bord Pleanála (ED25/0038)**, including the **removal of amenities such as the boules court, insect bars, pollinator beds, bulb planting, and a dedicated fruit orchard**.

These actions directly undermined the referral process and risk rendering it moot.

Subsequently, SDCC lodged a further Section 5 application (**ED25/0044**) relating to the **removal of a public path, a grass verge, and nine car parking spaces** — again actions that materially alter the public realm and were not referenced in the original Part 8 approval.

2. Flawed Part 8 Process

We contend that the original Part 8 process was flawed on the following grounds — this is not an exhaustive list:

- **Lack of transparency:** Significant elements of the current works — including the removal of a public footpath, destruction of car parking, and removal of mature landscaping and recreational amenities (including pollinator planting, bulb beds, and a fruit orchard) — were **not described** in the Part 8 documentation or drawings available for public consultation.
 - **Material alterations not reassessed:** There is no evidence that post-approval changes — including the removal of amenities during the ED25/0038 process and the alterations now subject to ED25/0044 — were reassessed as required under **Section 179(6)(b)**, which obliges a local authority to reconsult where material alterations arise.
 - **Contradictions with zoning at time of approval:** The development was approved when the land was zoned "Open Space," which only allowed residential development under strict conditions (e.g., retention of sufficient open space). These conditions were neither met nor addressed.
 - **Failure to safeguard public and residential amenities:** The development has resulted in the loss of publicly accessible infrastructure and open space, contrary to both the Development Plan and community expectations, and in the absence of any transparent justification or compensatory measures.
-

3. Failure to Accurately Present Public Submissions and Undertaking Unspecified Works:

We further note with critical concern that the Chief Executive's Report presented to elected members under the Part 8 process did not accurately reflect the full scope and substance of

public submissions. Either certain sections of submissions were not included, or key objections — including those concerning zoning compliance, amenity loss, ecological impact, and procedural irregularities — were **summarised in a way that diminished or excluded their significance**. This constitutes a breach of SDCC's obligations under **Section 179(3) of the Planning and Development Act 2000**, which requires that elected members receive a full and accurate summary of public input before deciding to approve, amend, or reject a proposed development.

Compounding this concern, we observe that **several works were conducted that were not described, assessed, or authorised under the approved Part 8 documentation**. These include the **removal of the boules court, insect bars, pollinator flower beds, bulb planting, and a fruit orchard** — all of which constituted established public amenities and landscape features. Their removal was neither publicly advertised nor presented for consultation, and no post-approval reassessment or material alteration procedure appears to have been initiated as required under **Section 179(6)(b)**. These actions materially alter the character, function, and public accessibility of the park and may therefore constitute **unauthorised development**, conducted in the absence of proper planning consent and in breach of public trust.

4. Use of Section 5 Referrals as a Lawful Mechanism

Given the above, we are pursuing a series of Section 5 referrals to SDCC and, where necessary, to An Bord Pleanála. These referrals are necessary because:

- We have received no assurance from SDCC that the development is proceeding in compliance with planning law.
- SDCC have failed to provide the full planning and compliance file for inspection despite repeated requests.
- Key aspects of the works appear to constitute **development not covered by the Part 8**, nor by any other planning consent.
- Several of these actions — including the removal of the boules court and associated amenities — were undertaken **while a live referral (ED25/0038) was under statutory consideration by An Bord Pleanála**, in direct conflict with fair administrative process.
- The referrals allow for specific, binding determinations on individual acts or categories of development (e.g., removal of a footpath, destruction of car parking, or removal of ecological and community assets).
- They are the only statutory recourse available short of formal enforcement proceedings or judicial review.

This approach is not intended to obstruct legitimate development but to ensure **lawful implementation, compliance, transparency, and accountability**. We are particularly mindful that the **Office of the Planning Regulator (OPR)** is now investigating aspects of this project, which supports the view that these concerns are well-founded and not speculative.

5. Request for Responsible Action

In light of this position, we respectfully request that:

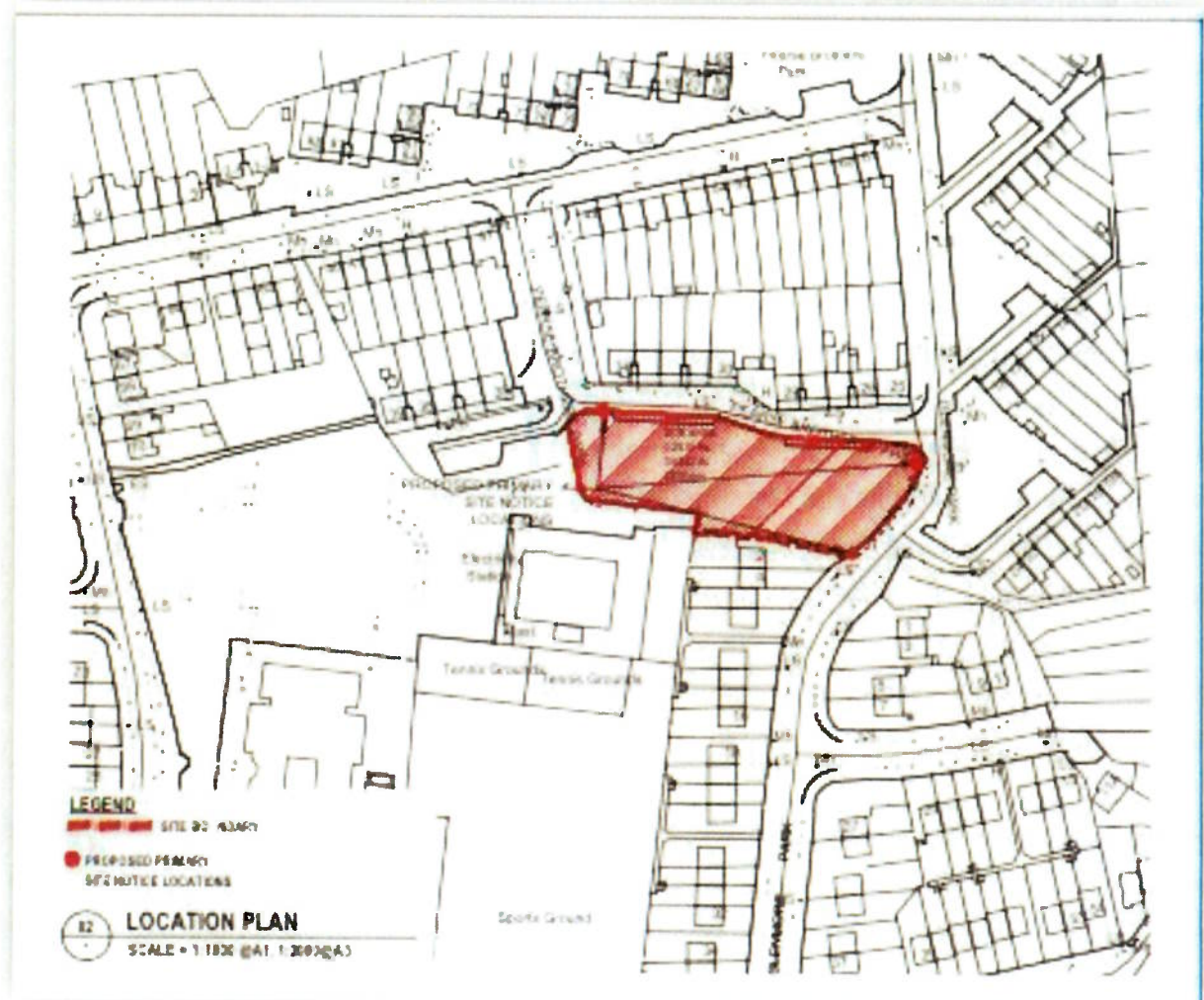
- SDCC **pause all ongoing or planned works** related to the elements now subject to Section 5 review.
- SDCC **refrain from taking any irreversible actions** pending the outcome of these determinations.

- An Bord Pleanála and the Office of the Planning Regulator **take note of the broader governance concerns** raised here and examine the cumulative pattern of unauthorised or procedurally questionable actions by SDCC in this case.
- We also reserve our right to take further legal or regulatory action should these concerns continue to be disregarded.

**Site area of open space/ Green Space/
Neighbourhood Park
outlined in red**



Location Map – site area of open space/green space/neighbourhood park shaded in red



Context Note on Removed Amenities

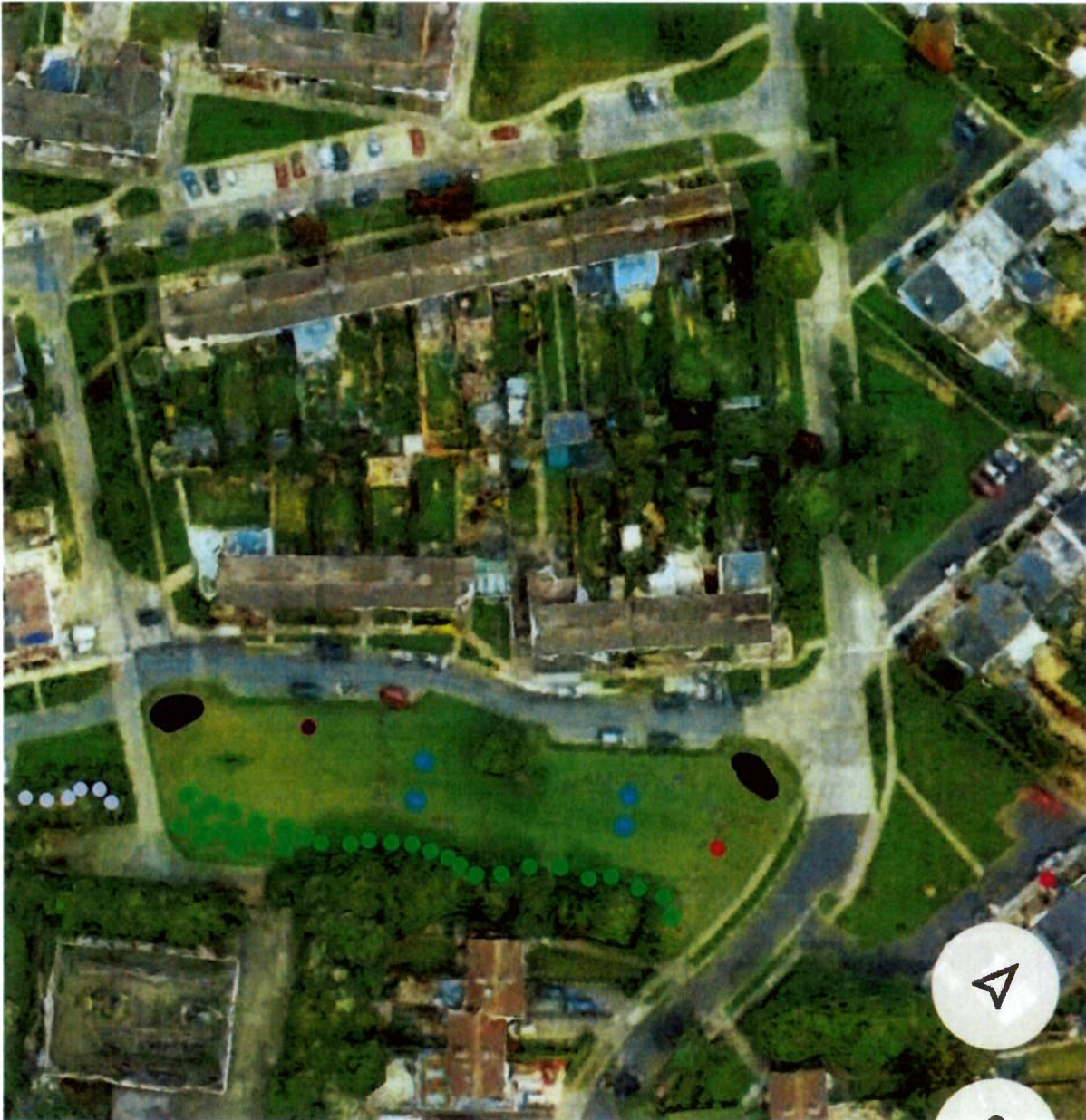
This submission refers to amenities that were previously installed through an agreed collaborative effort between SDCC, Ballyboden Tidy Towns clg, Local Residents Association and the local community, including:

- A boules court
- Four insect bars (kickabout posts)
- Two pollinator beds
- Tree plantation including a fruit orchard
- Bulb plantation

All of the structures and features as per (ED25/0038) have been demolished and removed by SDCC without planning permission or public consultation, and/or public consent. Even though SDCC requested such consent of the public/ residents as a pre-installation requirement. SDCC requested written agreement from residents at Pearse Brothers Park and a letter of support/agreement from the local Residents Association due to a historical agreement with the Local Authority regarding the green space was submitted to SDCC. The destruction of these structures and features were done during a live Section 5 application ED25/0038 which undermines the statutory remit of ABP.

The maps and legends that follow reflect the historical locations of these amenities prior to their removal.

A photographic record is included of the BEFORE and AFTER documents the actions by SDCC to remove all evidence of these recreational, community and biodiversity features and structures and indicates the significance of these amenities to residents and the expectation by them that such residential amenities would be protected and/or improved in line with the zonings for the area.



Legend of landscaping features & recreational features as agreed and mapped with SDCC:

- The blue dots identify the location of the insect bars/posts made and installed by CPCL
- The black dots indicate the pollinator flower beds installed to promote pollination, social engagement and biodiversity
- The row of green dots indicates trees/tree whips to increase the tree canopy on the site and to extend the existing woodland.
- The row of lavender dots indicates an old hedgerow which is retained
- The red dot on the right is the location of the boules court installed under the direction of SDCC. This location was chosen and agreed with Stephen Dowling SDCC, directed by Brendan Redmond to ensure it does not interfere with the grass cutters.
- The purple dot indicates a miniature botanical chess area (thyme and sand) for squares, but this has not been installed because SDCC Official refused permission, but we included this for full transparency

Photographic Record:

Before and After Removal of Amenities

BEFORE:



Children playing on green space with pollinator bed in foreground - Summer 2021



Children playing football using kickabout posts - Autumn 2021



Community gathering at boules court beside wildflower beds - Summer 2023



Inclusive community use of boules court - Summer 2023



Pollinator plan ting in front of boules court - Summer 2023



Boules court and green area overview - Winter 2023



Pollinator beds in full bloom - Summer 2023

Community Events on the Neighbourhood Park



Removal - commenced 15th May 2025



Boules court partially excavated - start of removal works



Excavator digging through pollinator bed under direction of Cleary Doyle



Workers marking and removing planting features



Kickabout posts being uprooted by mini-excavator



Full excavation of pollinator area underway



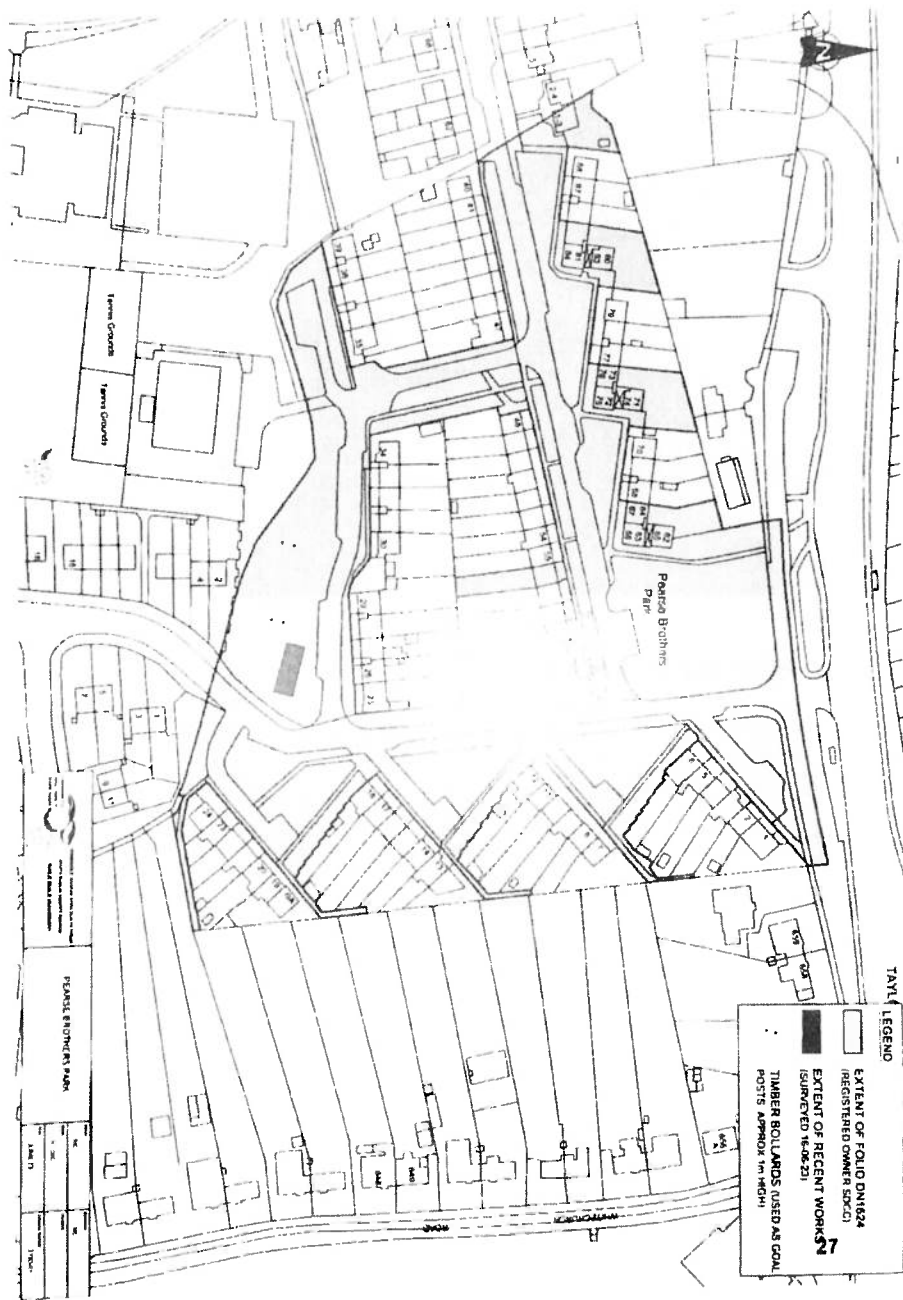
Excavator removing large mounds from the community green



Gravel stockpiled on site following amenity removal



Final state after excavation and tree removal



Map: indicates location of insect bars (timber bollards used also as kickabout posts) and boules court installed by CPCL as directed and co-mapped and co-designed by SDCC

From: Leo Magee <lmagee@SDUBLINCOCO.ie>

Sent: Friday 9 June 2023 11:44

To: Rinske Wassenaar <sales@thechildrensplayground.com>

Subject: Unauthorised development on Council lands at Pearse Brothers Park, Rathfarnham

FAO : Ms Rinske Wassenaar.

Dear Ms Wassenaar,

Please find attached letter regarding the unauthorised development on Council lands at Pearse Brothers Park, Rathfarnham.

Leo Magee,
Senior Engineer,
Environment, Water and Climate Change Directorate,
South Dublin County Council.



The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. If you have received this electronic message in error, please notify the sender or info@sdblincoco.ie. This message has been swept by Anti-Virus software.

Is eolas faoi rún an t-eolas atá sa ríomhphost seo agus d'fhéadfadh go mbeadh sé faoi phribhléid ó thaobh an dlí de. Is don té ar seoladh chuige/chuici agus dósan/dise amháin an t-eolas. Ní ceadmhach do dhuine ar bith eile rochtain a bheith aige/aici ar an ríomhphost seo. Murar duit an ríomhphost seo tá nochtadh, cóipeáil, dáileadh ná aon ghníomh eile a dhéanamh nó aon ghníomh eile a fhágáil gan déanamh ar iontaoibh an ríomhphoist seo toirmiscithe ort agus d'fhéadfadh siad sin a bheith neamhdhleathach. Má fuair tú an teachtaireacht leictreonach seo trí earráid téigh i dteagmháil, le do thoil, leis an té a sheol í nó le info@sdblincoco.ie. Glanadh an teachtaireacht seo le bogearraí Frithvíreas.

SDCC has never made a planning determination on the boules court, insect bars, pollinator beds, tree plantation including fruit trees and bulb plantation, the subject of this current Section 5 Application and our submission for such a determination ED25/0038 application.

Environment, Water and Climate Change Dept.

9 June '23

FAO : Ms Rinske Wassenaar

**Re : Unauthorised development on Council lands in Pearse Brothers Park,
Rathfarnham**

Dear Ms Wassenaar,

Further to our telephone conversation yesterday regarding the above matter I wish to acknowledge your confirmation of the fact that your company *The Children's Playground Company* has carried out the unauthorised development on Council lands in Pearse Brothers Park. This Council has not given permission for this development, in addition no planning permission has been obtained for this unlawful development on Council lands.

I call on you to immediately remove the development and reinstate the lands failing which this Council will undertake such work and apply to court for the reimbursement of costs associated with the undertaking of such work.

If however you have been engaged to carry out the works on behalf of a third party who misrepresented their authority to permit this trespass on Council lands, please furnish evidence of this engagement identifying the third party.

If you wish to discuss the above, please contact me.



Leo Magee,
Senior Engineer.

Comhairle Chontae Atha Cliath Theas

PR/0811/25

Record of Executive Business and Chief Executive's Order

Register Reference:	ED25/0047
Correspondence Name & Address:	Ballyboden Tidy Towns Clg. C/O 17 Glendoher Close, Rathfarnham, Dublin 16
Proposals:	Landscaping Features including a Boules Court, four insect bars (timber kickabout posts) two pollinator flower beds, bulb planting and tree planting, including a fruit orchard. These features were carried out with the knowledge, involvement and agreement of South Dublin County Council in partnership with the local Resident's Association and local residents. In particular SDCC required that written agreement be secured from houses 25-34 Pearse Brothers Park before works proceeded. These letters were collected and submitted to SDCC in advance of installation. The works formed part of a co-mapped, co-designed community amenity enhancement project led by Ballyboden Tidy Towns and SDCC's Public Realm section a letter of permission/support was requested by SDCC of the local residents association as there was a historical agreement that no development works would take place on the subject site. The planning status of their original installation is the subject of a section 5 which is not yet determined. This application concerns solely the removal of the amenities and whether such action constitutes development requiring planning permission.
Location:	The open space/greenspace/neighbourhood Park opposite houses 25-34 Pearse Brothers Park, Ballyboden, Dublin 16
Applicant:	Ballyboden Tidy Towns Clg

Recommendation

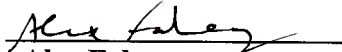
Pursuant to Section 5(4) of the Planning and Development Act 2000 (as amended), SDCC pay €110 (prescribed fee) to An Coimisiún Pleanála and refer ED25/0047 to An Coimisiún Pleanála for decision. Advise person(s) seeking Section 5 Declaration accordingly.

Comhairle Chontae Atha Cliath Theas

PR/0811/25

Record of Executive Business and Chief Executive's Order

Reg. Ref. ED25/0047


Alex Fahey,
Senior Executive Planner

ORDER: Pursuant to Section 5(4) of the Planning and Development Act 2000 (as amended), SDCC pay €110 (prescribed fee) to An Coimisiún Pleanála and refer ED25/0047 to An Coimisiún Pleanála for decision. Advise person(s) seeking Section 5 Declaration accordingly.

Date: 08/07/2025


Hazel Craigie, Senior Planner

To whom the appropriate powers have been delegated by the order number DELG (3024) of the Chief Executive of South Dublin County Council*

ED 25/0047

SOUTH DUBLIN COUNTY COUNCIL



SECTION 5 APPLICATION FORM

Declaration on development and exempted development

Section 5 of Planning and Development Act, 2000 (as amended)

Land Use, Economic and Transport Planning Department, County Hall, Town Centre,
Tallaght, Dublin 24.

Tel: 01 4149000 Fax: 01 4149104 Email: planning.dept@sdublincoco.ie

STANDARD APPLICATION FORM & ACCOMPANYING DOCUMENTATION:

Please read directions & documentation requirements at back of form
before completion.

**All questions relevant to the proposal being applied for must be
answered.**

Non-relevant questions: Please mark n/a

***Please ensure all necessary documentation is attached to your
application form.***

DATA PROTECTION

***The publication of applications by planning authorities may lead to
applicants being targeted by persons engaged in direct marketing. In
response to a request from the Data Protection Commissioner, you are
given an opportunity to indicate a preference with regard to the receipt
of direct marketing arising from the lodging of this application.***

If you are satisfied to receive direct marketing please tick this box.

☐

***It is the responsibility of those wishing to use the personal data on
applications for direct marketing purposes to be satisfied that they may
do so legitimately under the requirements of the Data Protection Acts
1988 & 2003 taking account of the preference outlined above***

Land Use Planning & Transportation

19 JUN 2025

South Dublin County Council

1. Name of Applicant:

Ballyboden Tidy Towns clg

Address To be supplied at end of this application form - Question 9

2. Name of Person/Agent acting on behalf of applicant (if any):

Address To be supplied at end of this application form - Question 10

3. Location:

Postal Address or Townland or Location (as may best identify the land or structure in question)

The open space/ greenspace/neighbourhood Park opposite houses 25 - 34 Pearse Brothers Park

Ballyboden, Dublin 16

Ordnance Survey Map Ref No (and the Grid Reference where available):

4. Description of Proposed Development:

Landscaping Features including a Boules Court, four insect bars (timber kickabout posts) two pollinator flower beds, bulb planting and tree planting, including a fruit orchard

These features were carried out with the knowledge, involvement and agreement of South Dublin County Council in partnership with the local Resident's Association and local residents

In particular SDCC required that written agreement be secured from houses 25-34 Pearse Brothers Park before works proceeded. These letters were collected and submitted to SDCC in advance of installation. The works formed part of a co-mapped, co-designed community amenity enhancement project led by Ballyboden Tidy Towns and SDCC's Public Realm section

a letter of permission/support was requested by SDCC of the local residents association as there was a historical agreement that no development works would take place on the subject site. The planning status of their original installation is the subject of a section 5 which is not yet determined.

~~This application concerns solely the removal of the amenities and whether such action constitutes development requiring planning permission~~

2(a): Section of Exempted Development Regulations under which exemption is claimed (if known):

5: Protected Structure:

Does the proposed development consist of work to a protected structure and/or its curtilage or proposed protected structure and/or its curtilage?

YES

NO

Please tick as appropriate:

6. Applicants Interest in site:

Ballyboden Tidy Towns clg (BBTT) is a community organisation engaged in environmental and public amenity enhancement projects/ recognised as an eNGO with a track record in promoting sustainable development, protecting our environment, proper planning and compliance, public participation and community engagement. BBTT's role regarding the above works was limited to assisting with public engagement, co-ordinating community feedback and liaising with relevant stakeholders including South Dublin County Council (SDCC) the local Resident's Association & individual residents including residents from houses 25-34 Pearse Brothers Park.

7. List of plans, drawings etc. submitted with this application:

Please see attached documents which include maps, drawings and images

8. Development within the curtilage of a house:

(a) area of site: N/A sq.m.
(b) floor area of existing extension(s) (if any): N/A sq.m.
(c) floor area of proposed development: N/A sq.m.
(d) area of rear garden remaining: N/A sq.m.

Signed (Applicant or Agent as appropriate)	Emer O' Dwyer, Director Ballyboden Tidy Towns clg
Date:	6th June 2025

OFFICE USE ONLY

Ref. No. _____ Date Received: _____

Fee Received: € _____ Receipt No. _____

NOTES:

- (a) Application must be accompanied by fee of €80.00
- (b) application must be accompanied by:
 - (1) site location map with site clearly outlined in red,
 - (2) site layout plan including all existing structures on site (this is required as conditions and limitations of exempted development include location of development and distances from site boundaries),
 - (3) scaled floor plans and elevations (this is required as conditions and limitations of exempted development include height of structure and distances of windows from boundaries).

If application is incomplete and all required documentation is not submitted, the application will be returned.

Receipt No. : T4/0/822686

Ballyboden Tidy Towns CLG
Pearse Brothers Park
Ballyboden,
Dublin 16

PLANNING APPLICATION FEE 80.00
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR
 63.01 IEP

Tendered :
Credit Card/Laser 80.00
Visa
*****7105

Change : 0.00

Issued By : Adrian Heffernan
From : Tallaght Lodgement Area 4.
Vat reg No.9509808P

Kind Regards,

Adrian Heffernan
Finance Department
Cash Office
South Dublin County Council
County Hall
Tallaght
Dublin 24 | D24 YNN5
Tel: +353 1 4149000 | e-mail: aheffernan@sdblincoco.ie | web: www.sdcc.ie

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EO25/0047

**ADDITIONAL CONTACT INFORMATION
IMPORTANT**

**THIS PAGE MUST BE SUBMITTED ON A COMPLETELY SEPARATE
PAGE AS IT WILL NOT FORM PART OF THE PUBLIC FILE**

OFFICE USE ONLY – REG REF:

Please note:

- The applicant's address **must** be submitted on this page.

9. Applicant (person seeking declaration and not an agent on their behalf):

Address (Required)	C/O 17 Glendoher Close, Rathfarnham, Dublin 16
Telephone No.	083.800.6251
Fax No	
Email Address	ballybodentgroup@gmail.com

10. Person/Agent acting on behalf of the Applicant (if any):

Address (Required)	
Telephone No.	
Email Address (if any)	
Fax No. (if any)	

Should all correspondence be sent to the above address stated in No. 8? (please tick appropriate box)

(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address stated in Question 7.)

Yes ☐ No ☐

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: Monday 19 May 2025 09:39

To: planning.department@sdublincoco.ie; Planning Department
<planning.dept@sdublincoco.ie>

Cc: Molly Dingle <mdingle@sdublincoco.ie>

Subject: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

Dear Sir or Madam,

This addendum is submitted to support the Section 5 Application lodged on the 14th May 2025 by Emer O'Dwyer, Director of Ballyboden Tidy Towns clg and to provide additional clarifying information and context to the Section 5 application acknowledged by the Planning Authority on 14th May 2025, which seeks a declaration regarding the planning status of works at Pearse Brothers Park, including a boules court, insect bars (kickabout bollards), and associated landscaping.

This Section 5 application and its addendum is submitted, in good faith, to facilitate clarity and transparency regarding works developed through a community co-create partnership with SDCC. This community project to enhance a zoned open space began in 2020.

We wish to outline, our understanding of the background that led to the boules court, insect bars and other landscaping works at this location. These amenities originated through sustained community engagement and were discussed, in direct communication with SDCC Public Realm officials. The locations of both the boules court and the insect bars (kickabout bollards) were co-mapped and co-identified in consultation with Stephen Dowling, acting on the direction of Brendan Redmond of SDCC, and chosen specifically to avoid disruption to grass-cutting machinery and maintenance schedules.

In the early stages of this collaboration, there was an understanding that funding might be available through SDCC's Playspace programme. However, in the absence of a dedicated budget SDCC was aware that the community was seeking to continue to fundraise for such amenities and these activities were supported by SDCC, TDs, Councillors, local businesses, and residents.

SDCC advised that a letter of support and agreement from the residents' association and individual letters from 'fronting households' would be required, before proceeding. These letters of support and consent were duly collected from residents and submitted to SDCC. We understood that such approval was required because of a pre-existing agreement between the local authority and the Residents Association concerning the use and care of the green space.

It was made clear by SDCC officials that both the boules court and the insect bars were to be delivered using SDCC's preferred contractor, CPCL. While the Section 5 application refers to the boules court being "installed by SDCC," this wording reflects that the appointed contractor was one regularly used by SDCC, rather than an in-house installation by SDCC's direct labour force. This is emblematic of the community-led, SDCC-supported nature of the project. In particular, SDCC directed that CPCL — and not a contractor previously used and suggested, by the community — would be responsible for the installation of the insect bars. These

arrangements were made to align with SDCC's safety protocols, public liability requirements, and existing design standards.

The role of the community throughout was guided by SDCC's instructions and framed by a shared objective: to enhance public amenity in a manner consistent with proper planning and sustainable development.

Community engagement was extensive, and the project proceeded in clear cooperation with SDCC representatives. SDCC also contributed funding (e.g. for the insect bars) and logistical support, consistent with how other community-enhancement works have been delivered in the area.

CPCL, who had previously installed similar boules courts elsewhere for SDCC (including at Avonbeg/Killinarden), and insect bars in Glendoher Park, was specified to ensure continuity of quality, safety, and compliance with SDCC's internal standards.

This context is provided to support the Planning Authority in its assessment of whether the works fall within the scope of exempted development. It is our respectful submission that the boules court, insect bars, and associated landscaping are minor in scale, non-intrusive, and do not result in any material change of use. The installations are surface-based, do not involve foundations or service connections, and are consistent in design and materials with features previously installed under SDCC's direction elsewhere in the local authority area.

For transparency, we are enclosing copies of correspondence sent to Cleary Doyle and to the County Architect, which relate to the Section 5 application. We respectfully request that we be notified of any further submissions, departmental referrals, or correspondence considered by the Planning Authority in connection with this application, so that we may respond if necessary.

Ballyboden Tidy Towns CLG has submitted this application to seek clarity on the planning compliance status of the features outlined, in accordance with the Planning and Development Act 2000 (as amended). As an eNGO with a longstanding interest in planning, compliance, environmental protection, and public engagement, BBTT has previously contacted the Planning Authority to request access to the full planning file for the Part 8 development at Pearse Brothers Park. At the time of writing, that file — including relevant compliance documentation — has not been made available for public inspection. While we acknowledge that the Section 5 process is a distinct statutory mechanism, we respectfully submit that access to relevant planning records would support transparency and ensure the Planning Authority has full contextual information when making its determination.

In addition, we note that historical agreement between the local authority and residents' association concerning the use and care of this green space — believed to date back to the 1980s — has not been released, despite repeated requests for this record. While this agreement may not necessarily be determinative of planning status, it may be contextually relevant to how this space has been managed and improved through community partnership over several decades.

We respectfully submit that the features fall within the scope of works described in Article 6 and Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), in particular as regards minor landscaping and outdoor recreational amenities, and that they do not materially affect the external appearance or use of the land.

The Section 5 application and this addendum is made in the spirit of constructive civic and community engagement, and in line with public participation principles recognised in the Planning and Development Act and relevant environmental law. We note that only the Planning Authority can make such a determination under the legislation regarding a Section 5 application. Our intention is to assist the Planning Authority in reaching a clear, informed, and transparent determination.

Ballyboden Tidy Towns CLG is a community-based eNGO with a longstanding role in environmental protection, planning participation, and the enhancement of public spaces in partnership with local authorities and residents. BBTT acts in accordance with its obligations and rights under national and EU law, including principles reflected in the Aarhus Convention.

We confirm that all correspondence to SDCC concerning this Section 5 application has been submitted by Ballyboden Tidy Towns CLG in its capacity as a registered environmental non-governmental organisation.

Should further information be required, please contact us on the email address

Yours sincerely,

Ballyboden Tidy Towns CLG

Authorised Representative

ballybodenttgroup@gmail.com

Ballyboden Tidy Town clg
17, Glendoher Close,
Rathfarnham,
Dublin 16

19/May/2025

Register Reference: ED25/0038

Development: landscaping & recreational improvements consisting of the installation of the boules court and 4 insect bars (kickabout posts) by CPCL, 2 large pollinator flower beds, bulb planting and tree planting, as co - mapped, co - located and co - designed with Public Realm Officials and the installation and specification of the Boules Court and 4 insect bars by CPCL as instructed/ directed by SDCC Officials.

Location: Pearse Brothers Park, Ballyboden, Dublin 16

Applicant: Ballyboden Tidy Town clg

App. Type: Declaration of Exemption Section 5

Dear Sir/Madam,

I refer to your unsolicited information submission of 19/05/2025 regarding the above mentioned application.

This submission is being returned to you and cannot be accepted as part of the application at this stage. that the submission cannot be added to particulars received to date. Section 5 provisions include for an AI request, if required.

This unsolicited information submission is hereby returned to you.

Yours faithfully,

Molly Dingle

For Senior Planner.

Rejection of Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

From ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Date Wed 21/05/2025 07:40

To mdingle@sdublincoco.ie <mdingle@sdublincoco.ie>; planning.dept@sdublincoco.ie <planning.dept@sdublincoco.ie>

Cc planning.dept@sdublincoco.ie <planning.dept@sdublincoco.ie>; planning.department@sdublincoco.ie <planning.department@sdublincoco.ie>

 4 attachments (229 KB)

ED25 0038 UNSOL info.pdf; Cian Harte Emails - Section 5.pdf; Cleary Doyle Emails - Section 5.pdf; Addendum Email .pdf;

Dear Ms. Dingle / Senior Planner,

We refer to your letter dated 19 May 2025, in which you replied to the submission of our addendum in relation to ED25/0038 (Section 5 Declaration application) as follows:

"I refer to your unsolicited information submission of 19/05/2025 regarding the above mentioned application.

This submission is being returned to you and cannot be accepted as part of the application at this stage. that the submission cannot be added to particulars received to date. Section 5 provisions include for an AI request, if required.

This unsolicited information submission is hereby returned to you."

We write to formally place the Planning Authority on notice of the following:

1. Planning Authority's Statutory Duty

Under Section 5 of the Planning and Development Act 2000 (as amended), it is the duty of the planning authority to issue a declaration as to whether the proposed development is exempt or not based on all material facts.

There is no provision in the Act or Regulations that prohibits the Planning Authority from accepting further clarifications or contextual information voluntarily submitted by the applicant, prior to a decision being made. In fact, failure to consider relevant and clarifying information may result in a flawed or incomplete assessment.

We respectfully assert that refusing to accept further clarification, especially where it may aid the Planning Authority in properly evaluating the planning status of the development, is contrary to the principles of sound public administration, incompatible with natural justice and fair procedures, and potentially irrational where no prejudice or procedural breach is caused by accepting it.

2. Right to Submit Supplementary Material

While we acknowledge that Section 5(2) provides for a request for Additional Information (AI) if required, this does not equate to a prohibition on voluntary clarification by an applicant. Rather, it exists to empower the Planning Authority to actively seek clarification. It follows that an applicant must retain the right to provide such clarification proactively.

We are of the view that your letter contains no specific legal or statutory basis for rejecting our submission — nor have you identified which provision of planning law prohibits its consideration.

3. Record and Fairness

We therefore wish to place on record that:

- The returned addendum including all attachments shall be retained by Ballyboden Tidy Towns clg as a matter of public record,
- Ballyboden Tidy Towns clg reserves the right to submit the same material to An Bord Pleanála etc.,
- The contents of your letter and our reply may also be included in any appeal etc.,

4. Request for Reconsideration

We request that you reconsider the rejection of our addendum and accept it into the record in the interests of clarity, transparency, and proper planning.

If you continue to refuse to do so, we would appreciate a written explanation with specific reference to the statutory basis for that refusal.

We wish to draw your attention to the varying practices among planning authorities across the State in the handling of unsolicited supplementary information under Section 5 of the Planning and Development Act 2000 (as amended).

Notably:

- Leitrim County Council has accepted supplementary submissions in similar cases, where they contributed to a more accurate and fair determination.
- Dublin City Council and Cork City Council encourage comprehensive initial submissions but do not expressly prohibit additional voluntary clarifications before a determination.
- Even An Bord Pleanála, while cautious, allows minor clarifications in certain circumstances.

These examples indicate that no uniform national policy prohibits supplementary clarification, and that planning authorities retain discretion to accept further material in the interest of proper planning and fairness. We respectfully submit that it would be inappropriate and administratively inconsistent for SDCC to reject our addendum outright—particularly when:

- The information is relevant,
- It clarifies context,
- No prejudice or delay is caused, and
- No statutory provision forbids its acceptance.

We urge SDCC to act consistently with the broader approach of local authorities and reconsider its refusal to accept our submission in the interest of proper planning and fair procedures.

5. Request for Access to Relevant Documentation and Right of Response

In the interests of transparency and procedural fairness, we hereby request access to all submissions, correspondence, memoranda, reports, and other documentation — whether internal or external — that relate to this application (ED25/0038), including:

- Any internal planning or legal advice considered by SDCC officials or planners,
- Any communications from other council departments
- Any third-party submissions or representations (if any),
- Any material assessments or notes compiled in relation to the development or its exempted status.

This request is made in accordance with our right to fair procedures and the principles of natural justice, to ensure that Ballyboden Tidy Towns CLG has the opportunity to review and respond to any information which may be relied upon in making a determination.

Should this information not be readily provided, we will consider submitting a formal Freedom of Information (FOI) request or access to information on the environment (AIE) application.

We respectfully request confirmation that our right to respond will be upheld, to any third party documentation received - sourced internally and externally of the Planning Authority before any final decision is made in this matter.

6. Procedural Fairness and Defective Application Form

Furthermore, we wish to place on record that the Section 5 application form provided on SDCC's official platform contains material errors, including an incorrect contact email and misnumbered sections. These administrative defects make it more difficult for applicants to submit clear and complete applications. In this context, it is particularly unreasonable to reject unsolicited clarifications intended to compensate for the ambiguity of the template. We respectfully request that SDCC review and update its official application form in the interest of good governance and procedural fairness.

We look forward to your prompt response and again request that no determination be made until the Planning Authority has fully considered all relevant material and afforded us the opportunity to engage meaningfully with the process.

Yours sincerely,

For and on behalf of Ballyboden Tidy Town clg
Authorised Representative

From: Molly Dingle <mdingle@sdblincoco.ie>
Sent: 19 May 2025 13:52
To: ballybodenttgroup@gmail.com
Cc: Aine Ryan <aineryan@sdblincoco.ie>
Subject: RE: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

Hello,

Please see attached

Kind Regards
Molly Dingle



From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>
Sent: Monday 19 May 2025 09:39
To: planning.department@sdblincoco.ie; Planning Department <planning.dept@sdblincoco.ie>
Cc: Molly Dingle <mdingle@sdblincoco.ie>
Subject: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

CAUTION: [EXTERNAL EMAIL] Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir or Madam,

This addendum is submitted to support the Section 5 Application lodged on the 14th May 2025 by Emer O'Dwyer, Director of Ballyboden Tidy Towns clg and to provide additional clarifying information and context to the Section 5 application acknowledged by the Planning Authority on 14th May 2025, which seeks a declaration regarding the planning status of works at Pearse Brothers Park, including a boules court, insect bars (kickabout bollards), and associated landscaping.

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We wish to outline, our understanding of the background that led to the boules court, insect bars and other landscaping works at this location. These amenities originated through sustained community engagement and were discussed, in direct communication with SDCC Public Realm officials. The locations of both the boules court and the insect bars (kickabout bollards) were co-mapped and co-identified in consultation with Stephen Dowling, acting on the direction of Brendan

Redmond of SDCC, and chosen specifically to avoid disruption to grass-cutting machinery and maintenance schedules.

In the early stages of this collaboration, there was an understanding that funding might be available through SDCC's Playspace programme. However, in the absence of a dedicated budget SDCC was aware that the community was seeking to continue to fundraise for such amenities and these activities were supported by SDCC, TDs, Councillors, local businesses, and residents.

SDCC advised that a letter of support and agreement from the residents' association and individual letters from 'fronting households' would be required, before proceeding. These letters of support and consent were duly collected from residents and submitted to SDCC. We understood that such approval was required because of a pre-existing agreement between the local authority and the Residents Association concerning the use and care of the green space.

It was made clear by SDCC officials that both the boules court and the insect bars were to be delivered using SDCC's preferred contractor, CPCL. While the Section 5 application refers to the boules court being "installed by SDCC," this wording reflects that the appointed contractor was one regularly used by SDCC, rather than an in-house installation by SDCC's direct labour force. This is emblematic of the community-led, SDCC-supported nature of the project. In particular, SDCC directed that CPCL — and not a contractor previously used and suggested, by the community — would be responsible for the installation of the insect bars. These arrangements were made to align with SDCC's safety protocols, public liability requirements, and existing design standards.

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Community engagement was extensive, and the project proceeded in clear cooperation with SDCC representatives. SDCC also contributed funding (e.g. for the insect bars) and logistical support, consistent with how other community-enhancement works have been delivered in the area.

CPCL, who had previously installed similar boules courts elsewhere for SDCC (including at Avonbeg/Killinarden), and insect bars in Glendoher Park, was specified to ensure continuity of quality, safety, and compliance with SDCC's internal standards.

This context is provided to support the Planning Authority in its assessment of whether the works fall within the scope of exempted development. It is our respectful submission that the boules court, insect bars, and associated landscaping are minor in scale, non-intrusive, and do not result in any material change of use. The installations are surface-based, do not involve foundations or service connections, and are consistent in design and materials with features previously installed under SDCC's direction elsewhere in the local authority area.

For transparency, we are enclosing copies of correspondence sent to Cleary Doyle and to the County Architect, which relate to the Section 5 application. We respectfully request that we be notified of any further submissions, departmental referrals, or correspondence considered by the Planning Authority in connection with this application, so that we may respond if necessary.

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acknowledge that the Section 5 process is a distinct statutory mechanism, we respectfully submit that access to relevant planning records would support transparency and ensure the Planning Authority has full contextual information when making its determination.

In addition, we note that historical agreement between the local authority and residents' association concerning the use and care of this green space — believed to date back to the 1980s — has not been released, despite repeated requests for this record. While this agreement may not necessarily be determinative of planning status, it may be contextually relevant to how this space has been managed and improved through community partnership over several decades.

We respectfully submit that the features fall within the scope of works described in Article 6 and Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), in particular as regards minor landscaping and outdoor recreational amenities, and that they do not materially affect the external appearance or use of the land.

The Section 5 application and this addendum is made in the spirit of constructive civic and community engagement, and in line with public participation principles recognised in the Planning and Development Act and relevant environmental law. We note that only the Planning Authority can make such a determination under the legislation regarding a Section 5 application. Our intention is to assist the Planning Authority in reaching a clear, informed, and transparent determination.

Ballyboden Tidy Towns CLG is a community-based eNGO with a longstanding role in environmental protection, planning participation, and the enhancement of public spaces in partnership with local authorities and residents. BBTT acts in accordance with its obligations and rights under national and EU law, including principles reflected in the Aarhus Convention.

We confirm that all correspondence to SDCC concerning this Section 5 application has been submitted by Ballyboden Tidy Towns CLG in its capacity as a registered environmental non-governmental organisation.

Should further information be required, please contact us on the email address

Yours sincerely,

Ballyboden Tidy Towns CLG

Authorised Representative

ballybodenttgroup@gmail.com



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Is eolas faoi rún an t-eolas atá sa ríomhphost seo agus d'fhéadfadh go mbeadh sé faoi phribhléid ó thaobh an dlí de. Is don té ar seoladh chuige/chuici agus dósan/dise amháin an

t-eolas. Ní ceadmhach do dhuine ar bith eile rochtain a bheith aige/aici ar an ríomhphost seo. Murar duit an ríomhphost seo tá nochtadh, cóipeáil, dáileadh ná aon ghníomh eile a dhéanamh nó aon ghníomh eile a fhágáil gan déanamh ar iontaoibh an ríomhphoist seo toirmisce the ort agus d'fhéadfadh siad sin a bheith neamhdhleathach. Má fuair tú an teachtaireacht leictreonach seo trí earráid téigh i dteagmháil, le do thoil, leis an té a sheol í nó le info@sdublincoco.ie. Glanadh an teachtaireacht seo le bogearraí Frithvíreas.

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: 16 May 2025 03:59

To: cianharte@sdblincoco.ie

Subject: Urgent Request to Suspend Works at Pearse Brothers Park Pending Planning Determination

Dear Mr. Harte,

We write regarding ongoing and proposed site activity at Pearse Brothers Park Open Space, under your supervision as part of the Part 8 housing development programme.

As you are aware, a formal application under Section 5 of the Planning and Development Act 2000 (as amended) was submitted by Ballyboden Tidy Towns CLG on 14th of May 2025 – see attached acknowledgement. This application seeks a declaration from the Planning Authority on whether the boules court, insect bars (bollards), and associated landscaping constitute exempted development. To date, no determination has been issued.

We are increasingly concerned that works are continuing — or may be imminently initiated — on the site in a way that prejudices the outcome of this statutory process. Damage has already been reported to the boules court, and there has been no public confirmation that the features under review will be protected while their planning status remains undetermined.

We must respectfully emphasise that only the Planning Authority has the legal authority to determine whether these features constitute development and, if so, whether they are exempt. Assertions made in civil proceedings, departmental correspondence, or internal SDCC assessments cannot substitute for a formal Section 5 declaration.

Furthermore, we note that SDCC has, to date, not used the appropriate statutory mechanisms available under the Planning and Development Act to address this issue. No enforcement action has been taken under Section 154, and no referral under Section 5 was made by SDCC itself prior to the current application.

We also note that SDCC initiated separate civil proceedings against CPCL — the contractor directed by SDCC officials to be used in carrying out the works now in dispute. In those proceedings, the Council alleged that the works constituted “unauthorised development” yet chose not to pursue planning enforcement. This raises significant concerns about procedural fairness and reinforces the need to allow the Planning Authority to complete its independent function without interference or pre-judgement.

Additionally, we draw your attention to the County Architect’s Report submitted as part of the Part 8 statutory process, which clearly stated that the insect bars (referred to as “wooden insect posts”) were “a non-planning related issue” and would not impact the planning proposal. The report further claimed that the Public Realm Department was “liaising with Ballyboden Tidy Towns Committee” about their removal. We must state for the record that no such engagement ever occurred, and the ‘Ballyboden Tidy Towns Committee’ was never

consulted in this regard. This misrepresentation—now part of the statutory planning record—reinforces our concern that the process is being managed in a fragmented, non-compliant, and ultimately misleading manner, with serious implications for both public transparency and statutory accountability.

We also wish to place on record that the planning file for the Pearse Brothers Park development, including all relevant compliance documentation, has not been made available for public inspection despite repeated and reasonable requests. This lack of access undermines transparency and further supports the need for a clear and independent Section 5 determination to establish the lawful planning status of the works in question.

Accordingly, we request in good faith that:

1. All SDCC-directed or contracted works on or near the boules court and related features be suspended pending the outcome of the Section 5 determination;
2. You confirm whether your office has issued instructions to Cleary Doyle or any other contractor regarding the green space or its installations since the date of the Section 5 application;
3. You clarify how the integrity of the Planning Authority's function will be maintained considering actions taken elsewhere within the Council.

We trust that SDCC will take all steps necessary to preserve public trust and to safeguard the credibility of its planning processes.

Yours sincerely,
Angela O'Donoghue
Director
Ballyboden Tidy Towns clg

From: Cian Harte <cianharte@sdblincoco.ie>

Sent: 16 May 2025 18:11

To: ballybodenttgroup@gmail.com

Subject: RE: Urgent Request to Suspend Works at Pearse Brothers Park Pending Planning Determination

Dear Ms O'Donoghue,

I write to confirm that I am in receipt of your correspondence below.

I note your confirmation that a formal application has been made under Section 5 of the Planning & Development act 2000 to the Planning Department. Please refer any correspondence regarding that submission directly to the Planning Department for their attention and/or action.

Yours sincerely

Cian Harte

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: 14 May 2025 14:28

To: jpdoyle@clearydoyle.com

Subject: Acknowledgement of Live Statutory Planning Process under Section 5 - Pearse Brothers Park

Dear Mr. Doyle,

We refer to previous correspondence and wish to provide you with confirmation that a statutory planning application under Section 5 of the Planning and Development Act 2000 (as amended) has been formally received and acknowledged by South Dublin County Council. The application seeks a declaration regarding the planning status of the boules court, insect bars, and related landscaping works at Pearse Brothers Park Open Space.

As this is now an active statutory process, we respectfully request that no further action be taken on the subject site that might interfere with or pre-empt the Planning Authority's determination.

In particular, we now request that your company arrange for the removal of any temporary fencing and associated equipment currently installed at Pearse Brothers Park pending the outcome of the Section 5 process. The installation of this fencing occurred before any formal planning clarification, and its continued presence may be viewed as prejudicial to the proper consideration of the matter under planning law.

Removal of these materials at this time would help return the site to a neutral and accessible condition and would demonstrate appropriate regard for the ongoing statutory planning process. We hope that this request can be met in a spirit of cooperation and procedural fairness.

As the Section 5 application has been submitted directly to South Dublin County Council and is now a matter of public record, we believe it would be most appropriate for your company to liaise directly with the Planning Department of SDCC for any queries or documentation. This ensures full procedural transparency and confirmation from the statutory authority now handling the matter.

We would appreciate your acknowledgment of this request and look forward to your response.

Yours sincerely,

Ballyboden Tidy Towns clg

From: John P Doyle <jpdoyle@clearydoyle.com>

Sent: 14 May 2025 12:08

To: ballybodentgroup@gmail.com; Lorna Morris <lmorris@clearydoyle.com>

Cc: Michael Martin <mmartin@clearydoyle.com>; Brian Byrne <bbyrne@clearydoyle.com>

Subject: RE: Subject: Notification of Live Statutory Planning Process under Section 5 - Pearse Brothers Park

Please forward a copy of the Section 5 Application for our records.

Regards,

John P Doyle MBS, BSc
Joint Managing Director
ClearyDoyle

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>
Sent: 14 May 2025 09:42
To: lmorris@clearydoyle.com
Cc: mmartin@clearydoyle.com; bbyrne@clearydoyle.com; jpdoyle@clearydoyle.com
Subject: Subject: Notification of Live Statutory Planning Process under Section 5 -
Pearse Brothers Park

Dear Sirs,

I am writing on behalf of Ballyboden Tidy Towns CLG to formally notify you that a statutory application has been submitted to South Dublin County Council under Section 5 of the Planning and Development Act 2000 (as amended).

This application seeks an official declaration from the Planning Authority as to whether the installation of a boules court, insect bars (timber bollards), and associated landscaping features at Pearse Brothers Park Open Space constitutes exempted development under Irish planning law.

Section 5 is a legal mechanism set out in statute and intended to provide authoritative clarification on the planning status of development works. Once submitted, the application must be considered and determined by the Planning Authority, and it would be inappropriate for any party — including contractors acting under instruction — to take action that might prejudice or interfere with the determination of the planning authority.

We understand that any actions you take on site are undertaken under the direction of your client. However, in light of this live and active statutory process, we respectfully request that you pause any planned works on the subject site until the Section 5 process has concluded and a formal determination has issued.

This notification is provided in good faith and in the interest of avoiding any conflict with a live planning procedure. Should you require a copy of the application or further information, we would be happy to furnish it.

We would be grateful if you could acknowledge receipt of this notice and confirm whether any site works are currently planned in the area subject to the Section 5 application.

Yours sincerely,

Ballyboden Tidy Towns CLG

In support of the proposed landscaping and amenity improvements on the Pearse
Brothers Park South Green

We are fully supportive of the landscaping, insect bars marking a kickabout space and any other improvements that might be made. We have the full support of the Residents Association in this endeavour, and are very grateful for your assistance with realising these improvements, especially with the increasing numbers of young families moving into our estate in the past years.

Yours faithfully,

Brenda Doyle
11 *Brenda & Manuel Doyle*

28 Pearse Brothers Park, Ballyboden, Dublin 16

تاریخ: ۱۳۰۲/۰۵/۰۵

Dev. L. L. L.

25

**In support of the proposed landscaping and amenity improvements on the Pearse
Brothers Park South Green**

We are fully supportive of the landscaping, insect bars marking a kickabout space and any other improvements that might be made. We have the full support of the Residents Association in this endeavour, and are very grateful for your assistance with realising these improvements, especially with the increasing numbers of young families moving into our estate in the past years.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'Alan Coyne', written over a horizontal line.

34 Pearse Brothers Park, Ballyboden, Dublin 16

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Brothers Park South Green**

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Yours faithfully,

Pat Worth

33 Pearse Brothers Park, Ballyboden, Dublin 16

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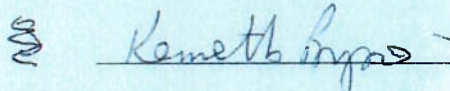
Yours faithfully,

Michael Hegan

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Yours faithfully,

 _____

3/ Pearse Brothers Park, Ballyboden, Dublin 16

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Yours faithfully,

Gerardine Hollowed

30 Pearse Brothers Park, Ballyboden, Dublin 16

**In support of the proposed landscaping and amenity improvements on the Pearse
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Yours faithfully,

Carol Morgan

29

Pearse Brothers Park, Ballyboden, Dublin 16

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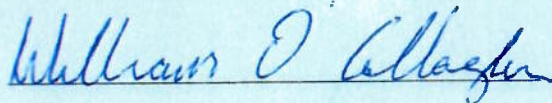
Cornae + Pamela Murray.

27 Pearse Brothers Park, Ballyboden, Dublin 16

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Yours faithfully,

A handwritten signature in blue ink, which appears to read "William O'Callaghan". The signature is written in a cursive style with a horizontal line underneath.

Pearse Brothers Park, Ballyboden, Dublin 16

26

From: Marie McEvoy <memeatolan@gmail.com>
Sent: 26 March 2021 11:47
To: bali.bodenttgroup@gmail.com
Subject: Pearse Brothers Park & Palmer Park Residents Association

F.A.O. Mr Brendan Redmond, SDCC

My name is Marie McEvoy and I am the treasurer of the Pearse Brothers Park & Palmer Park Residents Association. I just wanted to get in contact with you to voice our support for the landscaping proposals for our green space, and in particular for the insect bars on the green. There are a lot of children living in the estate and as a teacher I know how interested young children are in nature and biodiversity. It's wonderful to promote this interest at a young age, and the children have recently been involved in litter picking, weeding and planting projects on our green spaces. We are delighted to be making progress with our plans and it's lovely to see our residents getting involved and improving our estate. We really appreciate the support that SDCC give and the work that they do to look after and improve our local area.

We look forward to making more progress over the coming months.

Kindest regards,

Marie McEvoy.

Get Outlook for Android

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>
Sent: 14 May 2025 05:29
To: planning.dept@sdblincoco.ie
Cc: planning.department@sdblincoco.ie
Subject: FW: Application under Section 5 of the Planning and Development Act 2000 (as amended)

Dear Sir or Madam,

This is our second attempt to send this application to SDCC. On the form it states the email address to be planning.department@sdblincoco.ie but we received the response below.

So we hope to be successful in this second attempt by using an additional email address for the Planning Department. Our original email and attachments are included.

Regards

Ballyboden Tidy Towns clg

From: postmaster@sdblincoco.ie <postmaster@sdblincoco.ie>
Sent: 14 May 2025 03:05
To: ballybodenttgroup@gmail.com
Subject: Undeliverable: Application under Section 5 of the Planning and Development Act 2000 (as amended)

SDCC-EX2016-S2.SDCCW2K.ie rejected your message to the following email addresses:

planning.department@sdblincoco.ie

Something went wrong and your message couldn't be delivered. This could be a temporary issue. Try resending the message in a few minutes. If that doesn't work, forward this message to your email admin.

For Email Admins

The message couldn't be delivered because a mail routing loop was encountered. This may be due to a routing misconfiguration in the mail flow settings for either your organization or the recipient organization. If mail flow settings were recently updated, this error may be temporary.

Check the message headers in the section below to determine where the loop may be occurring and if it's something you or the email admin for the recipient organization can fix.

For more information, see [Error code 5.4.12 in Exchange Online and Office 365](#).

SDCC-EX2016-S2.SDCCW2K.ie gave this error:

SMTP; Hop count exceeded - possible mail loop detected on message id
<02aa01dbc472\$30f46340\$92dd29c0\$@gmail.com>

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: 14 May 2025 02:48

To: planning.department@sdublincoco.ie

Subject: Application under Section 5 of the Planning and Development Act 2000 (as amended)

To:

Planning Department
South Dublin County Council
County Hall, Tallaght
Dublin 24.

13.05.2025

Dear Sir or Madam,

Please find enclosed an application, fee receipt, and supporting documentation submitted under Section 5 of the Planning and Development Act 2000 (as amended) by Ballyboden Tidy Towns CLG, a registered community-based not-for-profit organisation. The application seeks a declaration that the installation of a boules court, insect bars (bollards), and related minor landscaping works carried out at Pearse Brothers Park Open Space constitute exempted development.

We respectfully note that these works were undertaken in a community context, with significant engagement from South Dublin County Council officials, and with the support and written agreement of the Residents Association and residents from Houses 25–34 Pearse Brothers Park.

We note from documentation included in this application that Mr. Leo Magee, a Senior Engineer with South Dublin County Council, has previously described the community-led works at Pearse Brothers Park as both “unauthorised development” and “unlawful development.” Ballyboden Tidy Towns CLG respectfully contests both characterisations. However, in the interest of procedural fairness, legal clarity, and proper planning administration, we are now seeking a formal determination under Section 5 of the Planning and Development Act 2000 (as amended) to establish whether the works constitute exempted development.

Ballyboden Tidy Towns CLG has submitted this application in the interest of procedural clarity and lawful planning compliance, and to ensure that valuable community efforts to enhance public spaces are properly supported, protected, and acknowledged.

The fee for this application is €80 which we paid for over the phone and received a Receipt No.: T4/0/819865. We understand that a copy of the receipt was sent to the Planning Department.

We would be grateful if you could process this application and provide a timely determination. Should you require further information or documentation, we are happy to assist.

For ease of convenience please address all correspondence to the above email address.

Yours Faithfully,

Emer O'Dwyer

Director

Ballyboden Tidy Towns CLG

From: Molly Dingle <mdingle@sdblincoco.ie>

Sent: 19 May 2025 13:52

To: ballybodentgroup@gmail.com

Cc: Aine Ryan <aineryan@sdblincoco.ie>

Subject: RE: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

Hello,

Please see attached

Kind Regards

Molly Dingle



An Rannóg Talamhúsaíde, Pleanála agus Iompair
Land Use, Planning & Transportation Department

Telephone: 01 4149000

Fax: 01 4149104

Email: planningdept@sdublincoco.ie



Ballyboden Tidy Town clg
17, Glendoher Close,
Rathfarnham,
Dublin 16

19/May/2025

Register Reference: ED25/0038

Development: landscaping & recreational improvements consisting of the installation of the boules court and 4 insect bars (kickabout posts) by CPCL, 2 large pollinator flower beds, bulb planting and tree planting, as co - mapped, co - located and co - designed with Public Realm Officials and the installation and specification of the Boules Court and 4 insect bars by CPCL as instructed/ directed by SDCC Officials.

Location: Pearse Brothers Park, Ballyboden, Dublin 16

Applicant: Ballyboden Tidy Town clg

App. Type: Declaration of Exemption Section 5

Dear Sir/Madam,

I refer to your unsolicited information submission of 19/05/2025 regarding the above mentioned application.

This submission is being returned to you and cannot be accepted as part of the application at this stage. that the submission cannot be added to particulars received to date. Section 5 provisions include for an AI request, if required.

This unsolicited information submission is hereby returned to you.

Yours faithfully,

Molly Dingle

For Senior Planner.

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: Monday 19 May 2025 09:39

To: planning.department@sdublincoco.ie; Planning Department
<planning.dept@sdublincoco.ie>

Cc: Molly Dingle <mdingle@sdublincoco.ie>

Subject: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

CAUTION: [EXTERNAL EMAIL] Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir or Madam,

This addendum is submitted to support the Section 5 Application lodged on the 14th May 2025 by Emer O'Dwyer, Director of Ballyboden Tidy Towns clg and to provide additional clarifying information and context to the Section 5 application acknowledged by the Planning Authority on 14th May 2025, which seeks a declaration regarding the planning status of works at Pearse Brothers Park, including a boules court, insect bars (kickabout bollards), and associated landscaping.

This Section 5 application and its addendum is submitted, in good faith, to facilitate clarity and transparency regarding works developed through a community co-create partnership with SDCC. This community project to enhance a zoned open space began in 2020.

We wish to outline, our understanding of the background that led to the boules court, insect bars and other landscaping works at this location. These amenities originated through sustained community engagement and were discussed, in direct communication with SDCC Public Realm officials. The locations of both the boules court and the insect bars (kickabout bollards) were co-mapped and co-identified in consultation with Stephen Dowling, acting on the direction of Brendan Redmond of SDCC, and chosen specifically to avoid disruption to grass-cutting machinery and maintenance schedules.

In the early stages of this collaboration, there was an understanding that funding might be available through SDCC's Playspace programme. However, in the absence of a dedicated budget SDCC was aware that the community was seeking to continue to fundraise for such amenities and these activities were supported by SDCC, TDs, Councillors, local businesses, and residents.

SDCC advised that a letter of support and agreement from the residents' association and individual letters from 'fronting households' would be required, before proceeding. These letters of support and consent were duly collected from residents and submitted to SDCC. We understood that such approval was required because of a pre-existing agreement between the local authority and the Residents Association concerning the use and care of the green space.

It was made clear by SDCC officials that both the boules court and the insect bars were to be delivered using SDCC's preferred contractor, CPCL. While the Section 5 application refers to the boules court being "installed by SDCC," this wording reflects that the appointed contractor was one regularly used by SDCC, rather than an in-house installation by SDCC's direct labour force. This is emblematic of the community-led, SDCC-supported nature of the project. In

particular, SDCC directed that CPCL — and not a contractor previously used and suggested, by the community — would be responsible for the installation of the insect bars. These arrangements were made to align with SDCC's safety protocols, public liability requirements, and existing design standards.

The role of the community throughout was guided by SDCC's instructions and framed by a shared objective: to enhance public amenity in a manner consistent with proper planning and sustainable development.

Community engagement was extensive, and the project proceeded in clear cooperation with SDCC representatives. SDCC also contributed funding (e.g. for the insect bars) and logistical support, consistent with how other community-enhancement works have been delivered in the area.

CPCL, who had previously installed similar boules courts elsewhere for SDCC (including at Avonbeg/Killinarden), and insect bars in Glendoher Park, was specified to ensure continuity of quality, safety, and compliance with SDCC's internal standards.

This context is provided to support the Planning Authority in its assessment of whether the works fall within the scope of exempted development. It is our respectful submission that the boules court, insect bars, and associated landscaping are minor in scale, non-intrusive, and do not result in any material change of use. The installations are surface-based, do not involve foundations or service connections, and are consistent in design and materials with features previously installed under SDCC's direction elsewhere in the local authority area.

For transparency, we are enclosing copies of correspondence sent to Cleary Doyle and to the County Architect, which relate to the Section 5 application. We respectfully request that we be notified of any further submissions, departmental referrals, or correspondence considered by the Planning Authority in connection with this application, so that we may respond if necessary.

Ballyboden Tidy Towns CLG has submitted this application to seek clarity on the planning compliance status of the features outlined, in accordance with the Planning and Development Act 2000 (as amended). As an eNGO with a longstanding interest in planning, compliance, environmental protection, and public engagement, BBT has previously contacted the Planning Authority to request access to the full planning file for the Part 8 development at Pearse Brothers Park. At the time of writing, that file — including relevant compliance documentation — has not been made available for public inspection. While we acknowledge that the Section 5 process is a distinct statutory mechanism, we respectfully submit that access to relevant planning records would support transparency and ensure the Planning Authority has full contextual information when making its determination.

In addition, we note that historical agreement between the local authority and residents' association concerning the use and care of this green space — believed to date back to the 1980s — has not been released, despite repeated requests for this record. While this agreement may not necessarily be determinative of planning status, it may be contextually relevant to how this space has been managed and improved through community partnership over several decades.

We respectfully submit that the features fall within the scope of works described in Article 6 and Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), in

particular as regards minor landscaping and outdoor recreational amenities, and that they do not materially affect the external appearance or use of the land.

The Section 5 application and this addendum is made in the spirit of constructive civic and community engagement, and in line with public participation principles recognised in the Planning and Development Act and relevant environmental law. We note that only the Planning Authority can make such a determination under the legislation regarding a Section 5 application. Our intention is to assist the Planning Authority in reaching a clear, informed, and transparent determination.

Ballyboden Tidy Towns CLG is a community-based eNGO with a longstanding role in environmental protection, planning participation, and the enhancement of public spaces in partnership with local authorities and residents. BBTT acts in accordance with its obligations and rights under national and EU law, including principles reflected in the Aarhus Convention.

We confirm that all correspondence to SDCC concerning this Section 5 application has been submitted by Ballyboden Tidy Towns CLG in its capacity as a registered environmental non-governmental organisation.

Should further information be required, please contact us on the email address

Yours sincerely,

Ballyboden Tidy Towns CLG

Authorised Representative

ballybodenttgroup@gmail.com



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Is eolas faoi rún an t-eolas atá sa ríomhphost seo agus d'fhéadfadh go mbeadh sé faoi phribhléid ó thaobh an dlí de. Is don té ar seoladh chuige/chuici agus dósan/dise amháin an t-eolas. Ní ceadmhach do dhuine ar bith eile rochtain a bheith aige/aici ar an ríomhphost seo. Murar duit an ríomhphost seo tá nochtadh, cóipeáil, dáileadh ná aon ghníomh eile a dhéanamh nó aon ghníomh eile a fhágáil gan déanamh ar iontaoibh an ríomhphoist seo toirmisce the ort agus d'fhéadfadh siad sin a bheith neamhdhleathach. Má fuair tú an teachtaireacht leictreonach seo trí earráid téigh i dteagmháil, le do thoil, leis an té a sheol í nó le info@sdublincoco.ie. Glanadh an teachtaireacht seo le bogearraí Frithvíreas.

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>
Sent: 21 May 2025 07:39
To: mdingle@sdblincoco.ie; planning.dept@sdblincoco.ie
Cc: planning.dept@sdblincoco.ie; planning.department@sdblincoco.ie
Subject: Rejection of Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

Dear Ms. Dingle / Senior Planner,

We refer to your letter dated 19 May 2025, in which you replied to the submission of our addendum in relation to ED25/0038 (Section 5 Declaration application) as follows:

"I refer to your unsolicited information submission of 19/05/2025 regarding the above mentioned application.

This submission is being returned to you and cannot be accepted as part of the application at this stage. that the submission cannot be added to particulars received to date. Section 5 provisions include for an AI request, if required.

This unsolicited information submission is hereby returned to you."

We write to formally place the Planning Authority on notice of the following:

1. Planning Authority's Statutory Duty

Under Section 5 of the Planning and Development Act 2000 (as amended), it is the duty of the planning authority to issue a declaration as to whether the proposed development is exempt or not based on all material facts.

There is no provision in the Act or Regulations that prohibits the Planning Authority from accepting further clarifications or contextual information voluntarily submitted by the applicant, prior to a decision being made. In fact, failure to consider relevant and clarifying information may result in a flawed or incomplete assessment.

We respectfully assert that refusing to accept further clarification, especially where it may aid the Planning Authority in properly evaluating the planning status of the development, is contrary to the principles of sound public administration, incompatible with natural justice and fair procedures, and potentially irrational where no prejudice or procedural breach is caused by accepting it.

2. Right to Submit Supplementary Material

While we acknowledge that Section 5(2) provides for a request for Additional Information (AI) if required, this does not equate to a prohibition on voluntary clarification by an applicant. Rather, it exists to empower the Planning Authority to actively seek clarification. It follows that an applicant must retain the right to provide such clarification proactively.

We are of the view that your letter contains no specific legal or statutory basis for rejecting our submission — nor have you identified which provision of planning law prohibits its consideration.

3. Record and Fairness

We therefore wish to place on record that:

- The returned addendum including all attachments shall be retained by Ballyboden Tidy Towns clg as a matter of public record,
- Ballyboden Tidy Towns clg reserves the right to submit the same material to An Bord Pleanála etc.,
- The contents of your letter and our reply may also be included in any appeal etc.,

4. Request for Reconsideration

We request that you reconsider the rejection of our addendum and accept it into the record in the interests of clarity, transparency, and proper planning.

If you continue to refuse to do so, we would appreciate a written explanation with specific reference to the statutory basis for that refusal.

We wish to draw your attention to the varying practices among planning authorities across the State in the handling of unsolicited supplementary information under Section 5 of the Planning and Development Act 2000 (as amended).

Notably:

- Leitrim County Council has accepted supplementary submissions in similar cases, where they contributed to a more accurate and fair determination.
- Dublin City Council and Cork City Council encourage comprehensive initial submissions but do not expressly prohibit additional voluntary clarifications before a determination.
- Even An Bord Pleanála, while cautious, allows minor clarifications in certain circumstances.

These examples indicate that no uniform national policy prohibits supplementary clarification, and that planning authorities retain discretion to accept further material in the interest of proper planning and fairness. We respectfully submit that it would be inappropriate and administratively inconsistent for SDCC to reject our addendum outright—particularly when:

- The information is relevant,
- It clarifies context,
- No prejudice or delay is caused, and
- No statutory provision forbids its acceptance.

We urge SDCC to act consistently with the broader approach of local authorities and reconsider its refusal to accept our submission in the interest of proper planning and fair procedures.

5. Request for Access to Relevant Documentation and Right of Response

In the interests of transparency and procedural fairness, we hereby request access to all submissions, correspondence, memoranda, reports, and other documentation — whether internal or external — that relate to this application (ED25/0038), including:

- Any internal planning or legal advice considered by SDCC officials or planners,
- Any communications from other council departments
- Any third-party submissions or representations (if any),
- Any material assessments or notes compiled in relation to the development or its exempted status.

This request is made in accordance with our right to fair procedures and the principles of natural justice, to ensure that Ballyboden Tidy Towns CLG has the opportunity to review and respond to any information which may be relied upon in making a determination.

Should this information not be readily provided, we will consider submitting a formal Freedom of Information (FOI) request or access to information on the environment (AIE) application.

We respectfully request confirmation that our right to respond will be upheld, to any third party documentation received - sourced internally and externally of the Planning Authority before any final decision is made in this matter.

6. Procedural Fairness and Defective Application Form

Furthermore, we wish to place on record that the Section 5 application form provided on SDCC's official platform contains material errors, including an incorrect contact email and misnumbered sections. These administrative defects make it more difficult for applicants to submit clear and complete applications. In this context, it is particularly unreasonable to reject unsolicited clarifications intended to compensate for the ambiguity of the template. We respectfully request that SDCC review and update its official application form in the interest of good governance and procedural fairness.

We look forward to your prompt response and again request that no determination be made until the Planning Authority has fully considered all relevant material and afforded us the opportunity to engage meaningfully with the process.

Yours sincerely,

For and on behalf of Ballyboden Tidy Town clg
Authorised Representative

From: Molly Dingle <mdingle@sdblincoco.ie>

Sent: 19 May 2025 13:52

To: ballybodenttgroup@gmail.com

Cc: Aine Ryan <aineryan@sdblincoco.ie>

Subject: RE: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

Hello,

Please see attached

Kind Regards

Molly Dingle

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: Monday 19 May 2025 09:39

To: planning.department@sdublincoco.ie; Planning Department
<planning.dept@sdublincoco.ie>

Cc: Molly Dingle <mdingle@sdublincoco.ie>

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We wish to outline, our understanding of the background that led to the boules court, insect bars and other landscaping works at this location. These amenities originated through sustained community engagement and were discussed, in direct communication with SDCC Public Realm officials. The locations of both the boules court and the insect bars (kickabout bollards) were co-mapped and co-identified in consultation with Stephen Dowling, acting on the direction of Brendan Redmond of SDCC, and chosen specifically to avoid disruption to grass-cutting machinery and maintenance schedules.

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Authority to request access to the full planning file for the Part 8 development at Pearse Brothers Park. At the time of writing, that file — including relevant compliance documentation — has not been made available for public inspection. While we acknowledge that the Section 5 process is a distinct statutory mechanism, we respectfully submit that access to relevant planning records would support transparency and ensure the Planning Authority has full contextual information when making its determination.

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We respectfully submit that the features fall within the scope of works described in Article 6 and Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), in particular as regards minor landscaping and outdoor recreational amenities, and that they do not materially affect the external appearance or use of the land.

The Section 5 application and this addendum is made in the spirit of constructive civic and community engagement, and in line with public participation principles recognised in the Planning and Development Act and relevant environmental law. We note that only the Planning Authority can make such a determination under the legislation regarding a Section 5 application. Our intention is to assist the Planning Authority in reaching a clear, informed, and transparent determination.

Ballyboden Tidy Towns CLG is a community-based eNGO with a longstanding role in environmental protection, planning participation, and the enhancement of public spaces in partnership with local authorities and residents. BBTT acts in accordance with its obligations and rights under national and EU law, including principles reflected in the Aarhus Convention.

We confirm that all correspondence to SDCC concerning this Section 5 application has been submitted by Ballyboden Tidy Towns CLG in its capacity as a registered environmental non-governmental organisation.

Should further information be required, please contact us on the email address

Yours sincerely,

Ballyboden Tidy Towns CLG

Authorised Representative

ballybodenttgroup@gmail.com

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From: Planning - Registry <pregistry@SDUBLINCOCO.ie>
Sent: 26 May 2025 12:44
To: ballybodenttgroup@gmail.com
Subject: FW: Rejection of Addendum to Section 5 Planning Application: Ref ED25/0038 -
Pearse Brothers Park

Dear Sir/Madam,

I refer to your unsolicited information submission of 19/05/2025 and email below dated 21/05/25 regarding the above mentioned application.

I would like to reiterate that this submission is being returned to you and cannot be accepted as part of the application at this stage. That the submission cannot be added to particulars received to date. Section 5 provisions include for an AI request, if required.

This unsolicited information submission is hereby returned to you.

Yours faithfully,

Planning Registry.

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>
Sent: Wednesday 21 May 2025 07:39
To: Molly Dingle <mdingle@sdblincoco.ie>; Planning Department
<planning.dept@sdblincoco.ie>
Cc: Planning Department <planning.dept@sdblincoco.ie>;
planning.department@sdblincoco.ie
Subject: Rejection of Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse
Brothers Park

CAUTION: [EXTERNAL EMAIL] Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Ms. Dingle / Senior Planner,

We refer to your letter dated 19 May 2025, in which you replied to the submission of our addendum in relation to ED25/0038 (Section 5 Declaration application) as follows:

"I refer to your unsolicited information submission of 19/05/2025 regarding the above mentioned application.

This submission is being returned to you and cannot be accepted as part of the application at this stage. that the submission cannot be added to particulars received to date. Section 5 provisions include for an AI request, if required.

This unsolicited information submission is hereby returned to you."

We write to formally place the Planning Authority on notice of the following:

1. Planning Authority's Statutory Duty

Under Section 5 of the Planning and Development Act 2000 (as amended), it is the duty of the planning authority to issue a declaration as to whether the proposed development is exempt or not based on all material facts.

There is no provision in the Act or Regulations that prohibits the Planning Authority from accepting further clarifications or contextual information voluntarily submitted by the applicant, prior to a decision being made. In fact, failure to consider relevant and clarifying information may result in a flawed or incomplete assessment.

We respectfully assert that refusing to accept further clarification, especially where it may aid the Planning Authority in properly evaluating the planning status of the development, is contrary to the principles of sound public administration, incompatible with natural justice and fair procedures, and potentially irrational where no prejudice or procedural breach is caused by accepting it.

2. Right to Submit Supplementary Material

While we acknowledge that Section 5(2) provides for a request for Additional Information (AI) if required, this does not equate to a prohibition on voluntary clarification by an applicant. Rather, it exists to empower the Planning Authority to actively seek clarification. It follows that an applicant must retain the right to provide such clarification proactively.

We are of the view that your letter contains no specific legal or statutory basis for rejecting our submission — nor have you identified which provision of planning law prohibits its consideration.

3. Record and Fairness

We therefore wish to place on record that:

- The returned addendum including all attachments shall be retained by Ballyboden Tidy Towns clg as a matter of public record,
- Ballyboden Tidy Towns clg reserves the right to submit the same material to An Bord Pleanála

etc.,

- The contents of your letter and our reply may also be included in any appeal etc.,

4. Request for Reconsideration

We request that you reconsider the rejection of our addendum and accept it into the record in the interests of clarity, transparency, and proper planning.

If you continue to refuse to do so, we would appreciate a written explanation with specific reference to the statutory basis for that refusal.

We wish to draw your attention to the varying practices among planning authorities across the State in the handling of unsolicited supplementary information under Section 5 of the Planning and Development Act 2000 (as amended).

Notably:

- Leitrim County Council has accepted supplementary submissions in similar cases, where they contributed to a more accurate and fair determination.
- Dublin City Council and Cork City Council encourage comprehensive initial submissions but do not expressly prohibit additional voluntary clarifications before a determination.
- Even An Bord Pleanála, while cautious, allows minor clarifications in certain circumstances.

These examples indicate that no uniform national policy prohibits supplementary clarification, and that planning authorities retain discretion to accept further material in the interest of proper planning and fairness. We respectfully submit that it would be inappropriate and administratively inconsistent for SDCC to reject our addendum outright—particularly when:

- The information is relevant,
- It clarifies context,
- No prejudice or delay is caused, and
- No statutory provision forbids its acceptance.

We urge SDCC to act consistently with the broader approach of local authorities and reconsider its refusal to accept our submission in the interest of proper planning and fair procedures.

5. Request for Access to Relevant Documentation and Right of Response

In the interests of transparency and procedural fairness, we hereby request access to all submissions, correspondence, memoranda, reports, and other documentation — whether internal or external — that relate to this application (ED25/0038), including:

- Any internal planning or legal advice considered by SDCC officials or planners,
- Any communications from other council departments
- Any third-party submissions or representations (if any),
- Any material assessments or notes compiled in relation to the development or its exempted status.

This request is made in accordance with our right to fair procedures and the principles of natural justice, to ensure that Ballyboden Tidy Towns CLG has the opportunity to review and respond to any information which may be relied upon in making a determination.

Should this information not be readily provided, we will consider submitting a formal Freedom of Information (FOI) request or access to information on the environment (AIE) application.

We respectfully request confirmation that our right to respond will be upheld, to any third party documentation received - sourced internally and externally of the Planning Authority before any final decision is made in this matter.

6. Procedural Fairness and Defective Application Form

Furthermore, we wish to place on record that the Section 5 application form provided on SDCC's official platform contains material errors, including an incorrect contact email and misnumbered sections. These administrative defects make it more difficult for applicants to submit clear and complete applications. In this context, it is particularly unreasonable to reject unsolicited clarifications intended to compensate for the ambiguity of the template. We respectfully request that SDCC review and update its official application form in the interest of good governance and procedural fairness.

We look forward to your prompt response and again request that no determination be made until the Planning Authority has fully considered all relevant material and afforded us the opportunity to engage meaningfully with the process.

Yours sincerely,

For and on behalf of Ballyboden Tidy Town clg
Authorised Representative

From: Molly Dingle <mdingle@sdublincoco.ie>

Sent: 19 May 2025 13:52

To: ballybodenttgroup@gmail.com

Cc: Aine Ryan <aineryan@sdublincoco.ie>

Subject: RE: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

Hello,

Please see attached

Kind Regards

Molly Dingle

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: Monday 19 May 2025 09:39

To: planning.department@sdublincoco.ie; Planning Department
<planning.dept@sdublincoco.ie>

Cc: Molly Dingle <mdingle@sdublincoco.ie>

Subject: Addendum to Section 5 Planning Application: Ref ED25/0038 - Pearse Brothers Park

CAUTION: [EXTERNAL EMAIL] Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir or Madam,

This addendum is submitted to support the Section 5 Application lodged on the 14th May 2025 by Emer O'Dwyer, Director of Ballyboden Tidy Towns clg and to provide additional clarifying information and context to the Section 5 application acknowledged by the Planning Authority on 14th May 2025, which seeks a declaration regarding the planning status of works at Pearse Brothers Park, including a boules court, insect bars (kickabout bollards), and associated landscaping.

This Section 5 application and its addendum is submitted, in good faith, to facilitate clarity and transparency regarding works developed through a community co-create partnership with SDCC. This community project to enhance a zoned open space began in 2020.

We wish to outline, our understanding of the background that led to the boules court, insect bars and other landscaping works at this location. These amenities originated through sustained community engagement and were discussed, in direct communication with SDCC Public Realm officials. The locations of both the boules court and the insect bars (kickabout bollards) were co-mapped and co-identified in consultation with Stephen Dowling, acting on the direction of Brendan Redmond of SDCC, and chosen specifically to avoid disruption to grass-cutting machinery and maintenance schedules.

In the early stages of this collaboration, there was an understanding that funding might be available through SDCC's Playspace programme. However, in the absence of a dedicated budget SDCC was aware that the community was seeking to continue to fundraise for such amenities and these activities were supported by SDCC, TDs, Councillors, local businesses, and residents.

SDCC advised that a letter of support and agreement from the residents' association and individual letters from 'fronting households' would be required, before proceeding. These letters of support and consent were duly collected from residents and submitted to SDCC. We

understood that such approval was required because of a pre-existing agreement between the local authority and the Residents Association concerning the use and care of the green space.

It was made clear by SDCC officials that both the boules court and the insect bars were to be delivered using SDCC's preferred contractor, CPCL. While the Section 5 application refers to the boules court being "installed by SDCC," this wording reflects that the appointed contractor was one regularly used by SDCC, rather than an in-house installation by SDCC's direct labour force. This is emblematic of the community-led, SDCC-supported nature of the project. In particular, SDCC directed that CPCL — and not a contractor previously used and suggested, by the community — would be responsible for the installation of the insect bars. These arrangements were made to align with SDCC's safety protocols, public liability requirements, and existing design standards.

The role of the community throughout was guided by SDCC's instructions and framed by a shared objective: to enhance public amenity in a manner consistent with proper planning and sustainable development.

Community engagement was extensive, and the project proceeded in clear cooperation with SDCC representatives. SDCC also contributed funding (e.g. for the insect bars) and logistical support, consistent with how other community-enhancement works have been delivered in the area.

CPCL, who had previously installed similar boules courts elsewhere for SDCC (including at Avonbeg/Killinarden), and insect bars in Glendoher Park, was specified to ensure continuity of quality, safety, and compliance with SDCC's internal standards.

This context is provided to support the Planning Authority in its assessment of whether the works fall within the scope of exempted development. It is our respectful submission that the boules court, insect bars, and associated landscaping are minor in scale, non-intrusive, and do not result in any material change of use. The installations are surface-based, do not involve foundations or service connections, and are consistent in design and materials with features previously installed under SDCC's direction elsewhere in the local authority area.

For transparency, we are enclosing copies of correspondence sent to Cleary Doyle and to the County Architect, which relate to the Section 5 application. We respectfully request that we be notified of any further submissions, departmental referrals, or correspondence considered by the Planning Authority in connection with this application, so that we may respond if necessary.

Ballyboden Tidy Towns CLG has submitted this application to seek clarity on the planning compliance status of the features outlined, in accordance with the Planning and Development Act 2000 (as amended). As an eNGO with a longstanding interest in planning, compliance, environmental protection, and public engagement, BBT has previously contacted the Planning Authority to request access to the full planning file for the Part 8 development at Pearse Brothers Park. At the time of writing, that file — including relevant compliance documentation — has not been made available for public inspection. While we acknowledge that the Section 5 process is a distinct statutory mechanism, we respectfully submit that access to relevant planning records would support transparency and ensure the Planning Authority has full contextual information when making its determination.

In addition, we note that historical agreement between the local authority and residents' association concerning the use and care of this green space — believed to date back to the

1980s — has not been released, despite repeated requests for this record. While this agreement may not necessarily determinative of planning status, it may be contextually relevant to how this space has been managed and improved through community partnership over several decades.

We respectfully submit that the features fall within the scope of works described in Article 6 and Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), in particular as regards minor landscaping and outdoor recreational amenities, and that they do not materially affect the external appearance or use of the land.

The Section 5 application and this addendum is made in the spirit of constructive civic and community engagement, and in line with public participation principles recognised in the Planning and Development Act and relevant environmental law. We note that only the Planning Authority can make such a determination under the legislation regarding a Section 5 application. Our intention is to assist the Planning Authority in reaching a clear, informed, and transparent determination.

Ballyboden Tidy Towns CLG is a community-based eNGO with a longstanding role in environmental protection, planning participation, and the enhancement of public spaces in partnership with local authorities and residents. BBTT acts in accordance with its obligations and rights under national and EU law, including principles reflected in the Aarhus Convention.

We confirm that all correspondence to SDCC concerning this Section 5 application has been submitted by Ballyboden Tidy Towns CLG in its capacity as a registered environmental non-governmental organisation.

Should further information be required, please contact us on the email address

Yours sincerely,

Ballyboden Tidy Towns CLG

Authorised Representative

ballybodenttgroup@gmail.com

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From: Eoin Burke <eburke@SDUBLINCOCO.ie>

Sent: 06 June 2025 10:16

To: 'Angela O'Donoghue' <ballybodenttgroup@gmail.com>

Cc: Planning Department <planningdept@SDUBLINCOCO.ie>; Planning - Enforcement <Planenforcement@SDUBLINCOCO.ie>; Cian Harte <cianharte@SDUBLINCOCO.ie>; Councillors <Councillors@SDUBLINCOCO.ie>

Subject: Re: Urgent Concern Regarding Ongoing Works - Section 5 Referral to An Bord Pleanála: ED 25/0038 and ABP 322650-25 - Pearse Brothers Park by a SDCC Contractor

Dear Ballyboden Tidy Towns,

Thank you for your email concerning the ongoing works under the approved Part 8 at Pearse Brothers Park. I understand the urgency of your concerns and would like to clarify the distinction between a Part 8 planning permission and Section 5 planning exemption under the Planning and Development Act.

Part 8 planning permission is a procedure provided under Articles 81–85 of the Planning and Development Regulations 2001 (as amended). It allows local authorities to initiate certain classes of development under Section 179 of the Planning and Development Act 2000. This process is generally used for developments undertaken by the local authority itself and involves public consultation and approval by the elected members of the local authority. The subject development of Independent Living for Older Persons was proposed by SDCC Housing and permitted in October 2021 under Planning Reference SD218/0008.

A Section 5 planning exemption pertains to the determination of whether a particular activity constitutes development or exempted development. Under Section 5 of the Planning and Development Act 2000 (as amended), if there is any question about whether an activity requires planning permission, it can be referred to An Bord Pleanála (ABP) for determination. ED25/0038 is an ongoing application under consideration by ABP for a declaration of exemption under Section 5 for landscaping & recreational improvements consisting of the installation of the boules court and 4 insect bars (kickabout posts), 2 large pollinator flower beds, bulb planting and tree planting and the installation and specification of the Boules Court and 4 insect bars. The location of the ED application overlaps with the Part 8.

I note that you outline advice by An Bord Pleanála that no works should take place pending their determination of the Section 5 application/referral. I would be happy to review any such correspondence, however, in my view, that advice would likely be advice to not build the development that is subject to the ED prior to the decision of ABP.

A Section 5 determination for one development proposal does not impact the development of a separate approved planning permission (Part 8 in this instance) on the site. There are numerous scenarios and examples of different planning permissions granted for the same site and it is the decision of the land owner to progress a permitted development. Please note that the Planning and Development Act 2000 under Section 34 (13) states that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

Given these distinctions, we are aware of the statutory obligations placed upon the Council under the Planning and Development Act and are committed to ensuring compliance with planning legislation and upholding the integrity of the process. The subject development of Independent Living for Older Persons is permitted and can proceed.

Kind Regards,

Eoin

Eoin Burke

Director of Land Use Planning and Transportation

South Dublin County Council, County Hall, Tallaght, Dublin 24.

| T +353 1 414 9000 M 086 8226300 |

Designated Public Official under Regulation of Lobbying Act, 2015. See www.lobbying.ie

From: ballybodenttgroup@gmail.com <ballybodenttgroup@gmail.com>

Sent: Thursday, June 05, 2025 11:26

To: Eoin Burke <eburke@sdublincoco.ie>

Cc: appeals@pleanala.ie <appeals@pleanala.ie>; bord@pleanala.ie <bord@pleanala.ie>; Cian Harte <cianharte@sdublincoco.ie>; Councillors <councillors@sdublincoco.ie>; Planning - Enforcement <Planenforcement@SDUBLINCOCO.ie>; Planning Department <planning.dept@sdublincoco.ie>

Subject: Urgent Concern Regarding Ongoing Works - Section 5 Referral to An Bord Pleanála: ED 25/0038 and ABP 322650-25 - Pearse Brothers Park by a SDCC Contractor

CAUTION: [EXTERNAL EMAIL] Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr. Burke,

We are writing in relation to the above matter, which we understand has been formally referred by the SDCC Planning Authority to An Bord Pleanála (ABP) for determination under Section 5 of the Planning and Development Act 2000 (as amended).

We refer to previous correspondence regarding the above matter and specifically to correspondence to Mr. Cian Harte, County Architect dated 16th May 2025 where he replied that *'Please refer any correspondence regarding that submission directly to the Planning Department for their attention and/or action.'*

We have been advised by An Bord Pleanála that no works should take place pending their determination of the Section 5 application/referral. Despite this, SDCC has continued to remove structures and features (including community recreational infrastructure etc) that are the subject of the Section 5 application, and this morning, mature trees—including some specifically referenced in the application—have been felled.

We wish to remind you of the statutory obligations placed upon the Council under the Planning and Development Act, as well as the principles of proper governance, standards in public office, and fair and sound administration. Proceeding with works while a Section 5 referral is under active consideration by ABP is inappropriate, risks prejudicing the outcome, and **may be deemed ultra vires**.

We are particularly concerned by reports from residents that the Cleary Doyle Site Manager James Harpur has been quoting Mr. Derek Gahan, (SDCC) to residents that a Part 8 supersedes a Section 5. We are seeking urgent clarification on what statutory or legal authority would permit a SDCC Clerk of Works, acting under instructions from Mr. Cian Harte, County Architect, to override or disregard a statutory referral to An Bord Pleanála and for the Cleary Doyle Site Manager under contract to SDCC to make such statements and determinations.

We wish to point out the following relevant legal principles and case law:

- In *McCoy v Shillelagh Quarries Ltd* [2004] IEHC 427, the High Court affirmed that questions of whether development is exempted are solely within the remit of ABP under Section 5 and cannot be pre-empted by a planning authority.

- In *Lough Swilly Shellfish Growers Co-Op Society Ltd v Donegal County Council* [2008] IEHC 67, the court held that determinations made by ABP are final and binding on local authorities.

Section 5(4) of the Planning and Development Act explicitly states that once a matter is referred, only ABP has the authority to determine whether something constitutes development or exempted development.

- In *Hegarty v An Bord Pleanála* [1990] ILRM 531, the importance of procedural fairness was underscored, and it was noted that undermining a pending determination may violate that principle.

Furthermore, the assertion that a Part 8 procedure “supersedes” a Section 5 referral is legally flawed. Part 8 is a procedural mechanism provided under Articles 81–85 of the Planning and Development Regulations 2001 (as amended), enabling local authorities to initiate certain classes of development under Section 179 of the Planning and Development Act 2000. It is not a form of planning permission, nor does it override or supersede the statutory powers of ABP. When a legitimate question arises as to whether a particular activity constitutes development or exempted development, that question is exclusively within ABP’s jurisdiction. Continuing works before such a determination, risks violating procedural fairness and statutory process.

We therefore respectfully request that all works be halted immediately pending ABP’s determination, and that SDCC issue a formal clarification on:

- The legal basis on which the ongoing works are being justified;
- The authority under which statements regarding the invalidation of a Section 5 referral have been made; and
- The measures SDCC will now take to ensure compliance with planning legislation and to uphold the integrity of the process.

Such is our concern over these works and to the information being circulated by SDCC and its agents/contractor that we are copying An Bord Pleanála on this matter and await their response also.

We look forward to your urgent response on this matter.

Yours sincerely,

An Authorised Representative of
Ballyboden Tidy Towns clg



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Ballyboden Tidy Towns
C/O 17 Glendoher Close
Rathfarnham
Dublin 16

Date: 20-Jun-2025

**PLANNING & DEVELOPMENT ACT, 2000 (as amended) AND PLANNING
REGULATIONS THEREUNDER**

Register Reference: ED25/0047

Development: Landscaping Features including a Boules Court, Four insect bars (timber kickabout post) two pollinators flower beds, bulb planting and tree planting, including a fruit orchard. these features were carried out with the knowledge, involvement and agreement of South Dublin County Council in partnership with the local Resident's Association and local residents. In particular SDCC required that written agreement be secured from houses 25-34 Pearse Brothers Par before works proceeded. These letters were collected and submitted to SDCC in advance of installation. The works formed part of a co-mapped , co-designed community amenity enhancement project led by Ballyboden Tidy Towns and SDCC's Public Realm section a letter of permission/support was requested by SDCC of the local residents association as there was a historical agreement that no development works would take place on the subject site. The planning status of their original installation is the subject of a section 5 which is not yet determined. This application concerns solely the removal of the amenities and whether such action constitutes development requiring planning permission.

Location: The open space/greenspace/neighbourhood Park opposite houses 25-34 Pearse Brother, Ballyboden, Dublin 16

Applicant: Ballyboden Tidy Towns

App. Type: Declaration of Exemption Section 5

Dear Sir/Madam,

With reference to the above, I acknowledge receipt of your application received on 19-Jun-2025.

This acknowledgement is issued pursuant to the Planning & Development Regulations 2001(as amended).

Yours faithfully,

M Dingle
for **Senior Planner**