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My Ref:- PLA

Your Ref:-

27th May 2016

Kevin Halpenny
Senior Parks Superintendent
Parks & Green Infrastructure Division
Planning and Strategic Infrastructure Department

Re: Howth Malahide Area Committee (Services A)
Part 8 procedure A1025009 Proposed Forest Adventure Facility & Multi Use Reinforced Grassed
Area in Malahide Demesne

An issue was raised at the Area Committee meeting, as to the adequacy of Map Index no 5425 "Malahide Demesne Proposed Forest Adventure Area and Reinforced Grass Multi-Use are" in the context of a Part 8 procedure under the Planning and Development Acts 2001-2015

In that context I am instructed by means of e-mail of 17th April 2016 10:28 and furnished with a copy Notice dated 3rd December 2015 and Map Index No. 5425, comprising all the documents put on public display.

Local authority development in its own functional area is exempted development and as such does not require a grant of planning permission¹. Notwithstanding this, local authority development is not free from planning control which arises under

1. certain local authority development subject to environmental assessment
2. a prohibition on development in contravention of the development plan
3. section 179 PDA – specified development is required to undergo a form of public consultation

It was reported to the Meeting, that the proposal is not subject to environmental assessment and does not contravene the development plan and consequently the issue arises in the context of Section 179 PDA and relevant regulations.

Section 179 allows for the Ministerial regulation of local authority own development and where a planning authority proposes to carry out a development prescribed by the regulations, it shall in

¹ Section 4 PDA

relation to the proposed development comply with section 179 and any regulations made under this section. The Regulations also, inter alia, prescribe the manner and extent of the information made available to the public [section 179(2)(c)].

Article 80 of the Planning and Development Regulations 2001 – 2015 sets out the prescribed developments for the purposes of section 179. Reliance is placed by the Park Department that the proposal falls within Article 80(1)(b) having regard to the fact the proposal “involves car parking and some access road provision” and it is not contended that the proposed development falls within the exemptions provided for by section 179(6) and Article 80(2) of Part VIII of the Regulations.

Article 80 (1)(b) applies to:-

The construction of a new road or the widening or re-alignment of an existing road, where the length of the new road or of the widened road or realigned portion of the existing road, as the case may be, would be

- i. In the case of a road in an urban area, 200 meters of more or*
- ii. In the case of a road in any other area, 1 kilometer or more.*

Article 81 sets out the manner of notification of the proposed development which shall state that the plans and particulars are available for inspection and the details of those requirements are set out in Article 83 namely:-

- a. a document describing the nature and extent of the proposed development and the principal features thereof, [as specified]
- b. a location map, drawn on a scale of not less than 1:1000 in built up areas and 1:2500 in all other areas (which shall be identified thereon)
- c. except in the case of article 80(1)(b) or (c)
 - i a site layout plan drawn on a scale of not less than 1:500 showing the boundary of the site on which it is proposed to carry out the proposed development and the buildings or other features, and roads or other structures in the vicinity of the site and
 - ii such other plans and drawings drawn a scale of not less than 1:100 as are necessary to describe the proposed development

In the case of a development specified in article 80(1)(b) such plans and drawings drawn on a scale of not less than 1:2500 as are necessary to describe the proposed development².

Furthermore for the purposes of planning law, “road” has the meaning assigned by the Roads Act 1993 to 2015 and includes:-

- (a) any street, lane, footpath, square, court, alley or passage,*
- (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,*
- (c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency, telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by,*

² In the case of a development specified in article 80(1)(c) the scale is not less than 1:500 as are necessary to describe the proposed development

hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and

- (d) *any other structure or thing forming part of the road and—*
- (i) *necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or*
 - (ii) *prescribed by the Minister;*

Reliance is placed on Article 80(1)(b) as the proposal involves car parking and some access road provision yet the only reference in the Part 8 notice is to the potential use of the reinforced grass area for overflow carparking with its primary objective the use of the area is for "a wide range of activities". If it is contended that the proposed development comprises the construction of road as set out in Article 80(1)(b), then the notices etc. do not adequately describe the proposed development.

It cannot be said that as a matter of fact that the proposed development as described in the documents submitted, namely a forest adventure area and multi-use reinforced area comprises the construction of a road as envisaged by Article 80(1)(b). If the proposed development did comprise the construction of a road, then the map complies with article 83(1)(d). In that regard it is noted that the verbal report made to Councillor Healy at the Area Meeting on 4th May 2016 acknowledges that whilst "park development" is not a prescribed development for the purposes of Part 8, "the closest type of development" is that set out in Article 80(1)(b).

What is required in all instances is a document describing the nature and extent of the proposed development and the principal features³

Whilst the notice specifies that details are available on the Council's website under the Planning Department section, those documents are limited to the Part 8 advertisement, notice and map. When utilising the online planning search facility, under planning application reference PARTVIII/009/15, no documents at all including the submissions appear, notwithstanding the requirement to make those documents publically available.

The adequacy of the notice in comply with the requirement to set out the nature and extent of the development and its principal features cannot be assessed solely by reference to the notice and map and requires consideration of the overall proposal and its physical aspects. In that regard it would be anticipated that such a proposal be accompanied by plans and specifications setting out this detail, planners report, conservation report [see below], arborist report, traffic safety report etc. as appropriate to the overall development.


It should also be observed that whilst the Chief Executives Report to the Elected members confirm compliance with the Development Plan and zoning, it does not evaluate compliance with proper planning and sustainable development of the area, as required under section 179(3)(b)(ii). Further, there appears to be a conflict between the response to submissions that extensive environmental

³ [including the information set out in article 82(1) as appropriate which relates housing developments, protected structures and developments requiring an integrated pollution control licence or a waste licence.]

studies will be carried out to ensure there is no negative impact by the proposal and that statement in the report that no environmental impact statement is required.

It should also be observed that notification is required to prescribed bodies under Article 80(3) where the development involves the carrying out of works to a protected structure or which might detract from the appearance of a protected structure and it would be anticipated given that the Castle is on the Record of Protected Structures, that the proposal would be accompanied by a report from the Conservation Officer dealing with this aspect of the regulatory framework.

Whilst reliance is made upon no technical deficiency being identified in the submissions made following public consultation, an administrative body exercising decision-making functions is bound by the limits of the applicable legislative code which circumscribes its operation and non-observance of that code renders, it amenable to judicial review.



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