



Question

(i) Whether the laying out and use of the land for car drifting events is/is not development and is/is not exempted development,

(ii) Whether the use of the existing structure for offices/toilets related to car drifting events is/is not development and is/or is not exempted development, and

(iii) Whether the use of a hut in the "pit area" as a tyre business related to car drifting events is/or is not development and is/or is not exempted development.

Location

Weir Island, Barryscourt, Carrigtwohill, Co. Cork

Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

EF/17/278

Applicant for Declaration

Cork County Council

Planning Authority Decision

n/a

Referral

Referred by Cork County Council

Owner/ Occupier Louis O'Regan

Observer(s) None

Date of Site Inspection 21st March 2019

Inspector Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located 1.9 km to the south of Junction 3 on the N25. This junction connects the N25 to the R624, which is the regional road that serves Fota and Great Islands to the south. This site is accessed via the R624, the L3619, and a private road, which runs along the western shore of a peninsula, known as Weir Island, which projects into the Belvelly Channel.
- 1.2. The site comprises the central and eastern portions of the tip of the said peninsula. It is roughly triangular in shape and it extends over an area of 2.54 hectares. The submitted extract from the Property Registration Authority identifies this site as B9NMX. Adjoining sites to the east are identified as B9MWX and B9NJX.
- 1.3. This site is bound to the east by the shoreline and to the west by the two aforementioned adjoining sites, the former of which accommodates a dwelling house and the latter of which over its eastern half is continuous with the subject site. A 220-kV line on a north/south axis passes over the easternmost portion of the site and an associated pylon is sited within this portion.
- 1.4. The eastern and northern edges of the site are denoted by means of earth bunds and the site is hard surfaced by means of either tarmac, concrete, or loose chippings. The gated entrance is in the north western corner of the site and an access road swings eastward into the centre of the site. A formal area of compartmentalised hardstanding space is laid out in the north western portion of the site and this area is accompanied by two containers. It is also accompanied on the southern side of the end of the access road by two freestanding single storey buildings.

2.0 The Question

- 2.1. The Planning Authority is in this case the referrer. The questions for referral, under the Planning and Development Act, 2000 – 2019, are as follows:
 - (i) Whether the laying out and use of the land for car drifting events is/is not development and is/is not exempted development,

(ii) Whether the use of the existing structure for offices/toilets related to car drifting events is/is not development and is/or is not exempted development, and

(iii) Whether the use of a hut in the “pit area” as a tyre business related to car drifting events is/or is not development and is/or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority has expressed a view that contrary to the land owner’s contention the use in question of the subject site is not exempted development. In this respect, the Authority cites Section 4(4) of the Planning and Development Act, 2000 – 2019, which states that “development will not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.” It refers to Item 11(a) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, which states that “All permanent racing and test tracks for motorised vehicles” required to be the subject of mandatory EIA and, given the proximity of the Natura 2000 sites, Great Island Channel SAC and Cork Harbour SPA, to the subject site, Appropriate Assessment would be necessary. Accordingly, exempted development would not be available.

As the land owner and the Planning Authority disagree, the Authority has decided to refer the above cited questions concerning the use of the subject site to the Board for a declaration.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The use in question of the subject site appears to have commenced in 2017. The Planning Authority served a warning letter on the land owner on 3rd January 2018 and a subsequent site visit was made and aerial photographs were taken on 11th and 19th April 2018. Correspondence with the land owner ensued and he has expressed the view that the said use is exempted development under Class 37 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2019.

This Class lies under the heading of “Development for amenity or recreational purposes” and it addresses the temporary use of land for specific and certain categories of use over either no more than 15 consecutive days or 30 occasional days per annum.

3.2.2. Other Technical Reports

None

4.0 Planning History

- 93/2317: Construction of screening plant: Refused on the grounds of visual impact upon views and prospects from scenic routes and traffic hazard.
- E95/0081: Unauthorised development: land filling (c. 100 – 200,000 tonnes) of former sand and gravel quarry.¹
- 08/9734: Retention and continuation of use of a concrete batching plant: Refused on the grounds of other unauthorised development on the site², contravention of the CDP, visual and environmental impact, traffic impact, and impact on Natura 2000 site.
- EF 17-278: Car drifting use was the subject of a warning letter issued on 3rd January 2018.

5.0 Policy Context

5.1. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP), the site is shown as lying within the Metropolitan Cork Green Belt and in the landscape character type “City Harbour and Estuary”, which is deemed to be of very high landscape value and sensitivity and national importance.

¹ I understand that, while planning enforcement did not lead to prosecution, the EPA has taken out a prosecution, under the Waste Management Act, 1996.

² The unauthorised development was that which was the subject of the enforcement enquiry ref. no. E95/0081.

5.2. Natural Heritage Designations

- Great Island Channel SAC (site code 001990)
- Cork Harbour SPA (site code 004030)

6.0 The Referral

6.1. Referrer's Case

The land owner's reliance upon Class 37 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2018, is misplaced, as, under Section 4(4) of the Planning and Development Act, 2000 – 2019, exempted development does not pertain to what might otherwise be exempted development, where EIA and AA are required.

- The use in question of the subject site as a motor park comes within the category of "All permanent racing and test tracks for motorised vehicles", which is cited in Item 11(a) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019. The motor park comprises a tarmac track and so it is "permanent". It thus requires to be the subject of a mandatory EIA.
- Likewise, the site is surrounded on two of its three sides by the Natura 2000 sites, Great Island Channel SAC and Cork Harbour SPA. Given the noise generated by the use of the motor park and the risk that fuel spills might find their way into these sites, the need for Appropriate Assessment arises.

Thus, as both EIA and AA would be required the use in question is not exempted development.

6.2. Owner/occupier's response

The land owner considers that the use in question is exempted development, under Class 37 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2019, as it is not undertaken on more than 30 days per annum. He states that the tarmac cited has been in-situ since 2008. He also states that

he will refrain from undertaking the said use until the planning status of it has been formally established.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) states the following:

*In this Act, except where the context otherwise requires –
“planning authority” means a local authority,*

Section 5(1) states the following:

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Section 5(3)(a) states the following:

Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Section 127(1) states the following:

*An appeal or referral shall –
(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,*

Section 2(1) states the following:

“land” includes any structure and any land covered with water (whether inland or coastal);

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined, and –

(a) where the context so admits, includes the land on, in or under which the structure is situate...

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1st October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34 , 37G or 37N of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

“use”, in relation to land, does not include the use of land by the carrying out of any works thereon;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3(1) states the following:

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(4) of the Planning and Development Act, 2000 – 2019, states the following:

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

7.2. Planning and Development Regulations, 2001

Under Class 37 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2019, the following description of development is deemed to be exempted development subject to the accompanying conditions and limitations:

Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or moveable structures or objects on the land in connection with such use.

1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.

2. On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

Under the heading of “Other Projects”, Item 11(a) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, states:

All permanent racing and test tracks for motorised vehicles.

7.3. Other

None

8.0 Assessment

8.1. Is or is not development

8.1.1. The Planning Authority has posed the following three questions with respect to the subject site:

(i) Whether the laying out and use of the land for car drifting events is/is not development and is/is not exempted development,

(ii) Whether the use of the existing structure for offices/toilets related to car drifting events is/is not development and is/or is not exempted development, and

(iii) Whether the use of a hut in the “pit area” as a tyre business related to car drifting events is/or is not development and is/or is not exempted development.

The first of these questions contains two elements, i.e. the laying out of the land and the use of the land. The second and third questions relate to ancillary uses of the use cited in the first question. I will begin by discussing this use and the laying out of the land and then I will discuss the ancillary uses.

8.1.2. The use cited in the first question is that of car drifting events. Car drifting can be defined as “a driving technique where the driver intentionally oversteers, with loss of

traction in the rear wheels or all tires, while maintaining control and driving the car through the entirety of a corner.”³ Car drifting events are thus occasions during which this technique is undertaken, presumably for the purposes of instruction or display or competition. In these respects, such events would resemble the character of other motor sports events.

- 8.1.3. Section 3(1) of the Planning and Development Act, 2000 – 2019, (hereafter referred to as the Act) defines development to include “the making of any material change in the use of any structures or other land” and Section 2(1) of the Act distinguishes “use” from any works carried out on land.
- 8.1.4. The Planning Authority advises on the planning history of the subject site. Thus, it is clear that the site was the subject of unauthorised development in the 1990s, i.e. the extraction of sand and gravel and significant landfilling (c. 100 – 200,000 tonnes). The failure to regularise this development for planning purposes has been partially responsible for thwarting a more recent planning application 08/9734 for the retention and continuation of use of a concrete batching plant. Accordingly, none of these uses were authorised for planning purposes and so none of them constitute a baseline against which to assess the subject use of car drifting. Prior to these uses it is unclear what the site was used for, although historic Ordnance Survey maps suggest an agricultural use. In the absence of any evidence to the contrary, I will, therefore, assume that this use constitutes, in effect, the authorised baseline use.
- 8.1.5. Under Class 11(e) of Part 4 (Exempted development – Classes of Use) of Schedule 2 to Article 10 of the Planning and Development Regulations, 2001 – 2019, (hereafter referred to as the Regulations), motor vehicles are referred to but only insofar as to be excluded from indoor sports that are encompassed by this Class. Under the use in question, motor vehicles would be used in conjunction with the outdoor sport of car drifting and so this use would be *sui generis* with respect to the said Part 4.
- 8.1.6. The land has not previously been the subject of a motor sports use. Thus, for it to be so used would entail a change of use. The aforementioned definition, under Section 3(1) of the Act, states that development entails a material change of use. The test for materiality has been held to involve whether or not significantly different planning

³ Definition taken from Wikipedia accessed on 13/03/19.

considerations would arise in assessing the proposed use as against any authorised baseline use, were it to be the subject of a planning application. In the present case, insofar as car drifting events would entail the attraction of the public to the land, traffic generation, and provision for the needs of appreciable numbers of people on the land, the use would raise significantly different planning considerations from those that may have existed in the past, as would the range of environmental impacts, e.g. the character, volume, and frequency of noise, from the motor sport itself. Thus, I conclude that, as a permanent use, car drifting events would involve a material change of use and so they would constitute development.

8.1.7. The layout of the land cited in the first question is for the car drifting use. This layout entails the following:

- A “pit area” in the north western portion of the land, which comprises an area with a concrete surface that comprises 11 no. bays and 2 no. containers, and an adjacent bin storage area,
- Two single storey buildings, which are sited on either side of the on-site access road,
- The southern portion of the land, which is variously surfaced in tarmac, concrete, and gravel, and which is used as the track area. Large concrete blocks are arrayed in a semi-circle around the southern tip of this area,
- The north eastern portion of the land, which is surfaced in gravel, and which is used for informal parking, and
- The northern and eastern boundaries of the land, which have been enclosed by means of earth bunds.

8.1.8. Under Section 2(1) of the Act, the above items are “structures” and their provision entailed “works” and so, under Section 3(1) of the Act, they constitute “development”. Some of these structures pre-date the car drifting use and some have been provided specifically for this use. In the light of the planning history of the land, which is devoid of planning permissions, under Section 2(1) of the Act, all of the structures on the land are “unauthorised structures”.

- 8.1.9. I, therefore, conclude that, in relation to the first question, the car drifting use constitutes development and the laying out of the land to facilitate this use constitutes development.
- 8.1.10. Turning to the second and third questions, these pertain to the use of existing structures for offices/toilets and a hut in the “pit area” as a tyre business, both in relation to car drifting events. I consider that, as both these uses would be ancillary to the main use of car drifting, and since this main use constitutes development, these uses, too, constitute development, i.e. insofar as the main use entails a material change of use of the land, so do these ancillary uses, which are inextricably linked to the main use.
- 8.1.11. I, therefore, conclude that the uses identified under the second and third questions constitute development, too.

8.2. Is or is not exempted development

- 8.2.1. With respect to the first question, under Class 37 of Part 1 of Schedule 2 to Article 6 of the Regulations, the owner/occupier contends that the car drifting use is exempted development. This Class appears under the heading of “Development for amenity or recreational purposes” and it refers to the following description of development: “Development consisting of the use of land for...any local event of a...sporting character and the placing of tents, vans or other temporary or movable structures or objects on the land in connection with such use.” Such development is deemed to be exempted development provided the following conditions and limitations are adhered to:

1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.

2. On the discontinuation of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

- 8.2.2. In correspondence with the Planning Authority, the landowner cited the first of these conditions and limitations. He thereby implied that the use was being/would be undertaken in compliance with the same. The second was not addressed.

- 8.2.3. For the car drifting use to operate, reliance must be had upon the land as it is. As discussed above, the existing form of the land has resulted from unauthorised development and some of the existing structures on the land have resulted from a concrete batching plant, which, also was unauthorised. Other engineering works appear to have been undertaken to facilitate the said use, including the provision of or augmentation of an earth bund around the northern and eastern boundaries of the site, and the introduction of containers to the “pit stop” area.
- 8.2.4. The second limitation/condition, cited above, envisages a situation, wherein land can be reinstated to its authorised permanent use following the discontinuance of a temporary use.
- 8.2.5. As discussed above, the subject land is laid out to facilitate its use for car drifting events. Pre-existing structures, as defined under Section 2(1) of the Act, have been adapted for this use and new structures have been introduced. Thus, the structures that exist on the land are for the subject use and the majority of these are permanent fixtures rather than moveable ones.
- 8.2.6. As discussed above, too, the form of the subject land arises from sand and gravel excavation and subsequent land filling, both of which were unauthorised for planning purposes.
- 8.2.7. In the light of the foregoing two paragraphs, the subject land could conceivably be returned to agricultural use, only such restoration would entail the removal of the structures that are integral to the car drifting use and so the future pursuit of this use would be negated. Furthermore, any resumption of agricultural use would still face the legacy of the unauthorised development of the land, which would need to be addressed before such resumed usage could be regarded as authorised.
- 8.2.8. I, therefore, conclude that the owner/occupier is not, realistically, in a position to comply with the said second limitation/condition pertaining to Class 37 of Part 1 of Schedule 2 to Article 6 of the Regulations and so the car drifting use is not exempted development under this Class of the Regulations.
- 8.2.9. The Planning Authority contends that the layout of the land to facilitate its use for car drifting means that it is a motor park, which comes within the ambit of Item 11(a) of Part 2 of Schedule 5 to Article 93 of the Regulations, i.e. “All permanent racing and test tracks for motorised vehicles.” Under Section 4(4) of the Act, such development

is excluded from being exempted development. As discussed above, the car drifting use cannot be operated as a temporary use under the second limitations/condition of Class 37 of Part 1 of Schedule 2 to Article 6 of the Regulations and so the motor park that has been provided for this use is a permanent facility. I, therefore, concur with the Planning Authority's contention that, as development that needs to be the subject of an EIAR, it cannot be exempted development.

8.2.10. The Planning Authority further contends that, due to the proximity of the land to the Natura 2000 sites Great Island Channel SAC and Cork Harbour SPA, and, due, too, to the noise that is generated by the car drifting use and the risk that fuel spills might pollute these sites, the need for Appropriate Assessment (AA) arises. Again, under Section 4(4) of the Act, development that is subject to AA is excluded from being exempted development. I concur with the Planning Authority on this matter, too.

8.2.11. With respect to the second and third questions, these relate to uses that are ancillary to the main use of car drifting. As the main use is not exempted development, so, too, these uses that are inextricably linked to the main use are not exempted development.

9.0 Recommendation

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

WHEREAS the following questions have arisen:

Whether the laying out and use of the land for car drifting events is or is not development or is or is not exempted development?

Whether the use of the existing structure for offices/toilets related to car drifting events is or is not development or is or is not exempted development?

Whether the use of a hut in the "pit area" as a tyre business related to car drifting events is or is not development or is or is not exempted development?

AND WHEREAS Cork County Council requested a declaration on these questions from An Bord Pleanála and so it referred them to the Board on

23rd January 2019.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (f) The planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The car drifting use is a material change of use of the land from its former authorised agricultural use and so it constitutes development.
- (b) The works entailed in the layout of the land for the purpose of car drifting events constitutes development, too.
- (c) The car drifting use is dependent upon the layout of the land, which comprises permanent structures, which have not been authorised. Accordingly, it is not capable of being operate as a temporary use under the second limitation/condition attached to Class 37 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001, as amended. Accordingly, it is not exempted development.

- (d) The car drifting use is dependent upon the layout of the land as a motor park and so it requires to be the subject of an Environmental Impact Assessment Report. Under Section 4(4) of the Planning and Development Act, 2000, as amended, it is thereby not exempted development.
- (e) The car drifting use is dependent upon the layout of the land as a motor park, which lies beside the Natura 2000 sites Great Island Channel SAC and Cork Harbour SPA. The environmental impacts of the said use are such that it requires to be the subject of an Appropriate Assessment. Under Section 4(4) of the Planning and Development Act, 2000, as amended, it is thereby not exempted development.
- (f) The use of the existing structure for office/toilets relating to car drifting events is an ancillary use to the main use of the land for car drifting events. As the main use is development that is not exempted development, so this ancillary use is development that is not exempted development.
- (g) The use of a hut in the “pit area” as tyre business relating to car drifting events is an ancillary use to the main use of the land for car drifting events. As the main use is development that is not exempted development, so this ancillary use is development that is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, as amended, hereby decides the following:

That the laying out and use of the land for car drifting events is development and is not exempted development.

That the use of the existing structure for offices/toilets related to car drifting events is development and is not exempted development.

That the use of a hut in the “pit area” as a tyre business related to car

drifting events is development and is not exempted development.

Hugh D. Morrison
Planning Inspector

30th August 2019