



An
Bord
Pleanála

Inspector's Report ABP-304918-19.

Question

Whether the proposed concert event at the Mondello Park Racing Track, with amplified music and related entertainment is an established use, and is or is not development, and is or is not exempted development.

Location

Mondello Park, Donore, Naas, Co. Kildare.

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED00735.

Applicant for Declaration

Padraig McEvoy.

Planning Authority Decision

None.

Referral

Referred by

Padraig McEvoy.

Owner/ Occupier

Mondello Park Ltd.

Observer(s)

None.

Date of Site Inspection

19th of September, 2019.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. Mondello Park, an international motorsports venue, is located in Caragh, Co. Kildare, and approximately 30km to the west of Dublin, and 5km to the west of Sallins. The site occupies an area of approximately 39ha and includes an extensive car park area. The existing race circuit extends to 3.5km. Mondello Park also includes a grandstand, hospitality suites, spectator facilities including a bar and catering facilities and corporate suites which can be set up for conferences, training rooms and banqueting.
- 1.2. The area surrounding the site is quite rural in nature with evidence of one off housing as well as large agricultural / grazing lands. The site is accessed off the R409 regional Road. There are 5 entrance points to the site, including a main entrance, spectator entrances and a trade entrance. The front boundary comprises fencing and substantial hedgerows.

2.0 The Question

- 2.1. The question raised in this referral is Whether staging of a one-day music festival in Mondello Park, Donore, Naas County Kildare is or is not Development; and/or is or is not Exempted Development all at Mondello Park, Donore, Naas County Kildare.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority did not make a declaration in relation to this referral.

3.2. Planning Authority Reports

3.2.1. Planning Reports

None

3.2.2. Other Technical Reports

None

4.0 Planning History

There is extensive planning history relating to the subject site in relation to the wider development of the site. There are a number of relevant decisions as follows:

ABP ref PL09.093709 (PA ref 190/92): Permission granted, subject to conditions, permission for the retention and erection of structures. Condition no. 3 of the PAs decision to grant permission stated that 'the overall development shall be used solely for the operation of motor vehicle racing. Any alternative uses, including concerts and any retail sales or markets of any kind shall be the subject of prior planning application in each case.' The Board directed that this condition be removed.

There is a legal decision in relation to the above, MCD Management Services Ltd. vs Kildare County Council [1995] 2ILRM532, where MCD claimed that the holding of 'Feile 1995' at the race track was authorised under the above planning permission following the deletion of Condition no. 3. Ms. Justice Laffoy in the High Court held that the staging of the "Feile" was not permitted by the permission granted for PA ref 190/92. She also stated that she was satisfied on the basis of the evidence that its staging at Mondello would constitute development which would not be exempted development.

ABP ref PL09.098287 (PA ref: 1520/94): Permission granted for an extension to and upgrading of the existing track at Mondello Park in 1994. This permission included the following condition:

4. The P.A. system shall be used only for communication required in the running of an event and shall not be used for amplified music or for commercial purposes.

Reason: In the interest of amenity.

ABP ref PL09.099078 (PA ref 1390/95): Permission refused on appeal for the holding of not more than four one-day shows or concerts at Mondello Park. In making its decision, the Board noted serious problems with the proposed holding of concerts and refused permission on the basis of noise, levels of nuisance and general disturbance within and outside the site, and on roads and traffic issues.

I note that the nature of the shows / concerts advised for the potential for up to 25,000 people. This decision issued following the High Court decision referred to above under ABP ref PL09.093709 (PA ref 190/92).

Referral PL 09.RF0843: Whether the holding of one-day musical events (such as pop concerts or other concerts) at Mondello Park, Donore, Naas, Co. Kildare is or is not development or exempted development.

This referral was decided on the 26/05/1998 and the Board decided that the use of Mondello Park for the holding of the said one-day musical events involves a material change of use and does not come within the scope of Class 33 of Part 1 of the Second Schedule to the 1994 Regulations, having particular regard to the fact that it is considered that these musical events are not local events. The Board concluded that the proposed use is development and is not exempted development.

5.0 Policy Context

5.1. Development Plan

The Kildare County Development Plan, 2017-2023 is the relevant policy document relating to the subject site. The site is located in the open countryside and outside any zoned land area.

Section 5.21 of the Plan deals with Event and Festivals Tourism and Policy ECD 39 states that it is the policy of the Council to 'Support and promote existing festivals and sporting events to increase the cultural, heritage and lifestyle profile of the county, and where appropriate to promote and facilitate the development of new events and venues to host these events.'

5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Ballynafagh Lake SAC (& pNHA) Site Code 001387 which is located approximately 2.6km to the north west of the site while Ballynafagh Bog SAC (& pNHA), Site Code 000391 is located approximately 3.5km to the north of the site.

Mouds Bog SAC, Site Code 002331 (pNHA Site Code 000395) is located approximately 4.8km to the south west of the site, while Pollardstown Fen SAC (& pNHA), Site Code 000396 lies 9.1km to the south west of the site

6.0 The Referral

6.1. Referrer's Case

The referrer raised the question relating to a proposed music concert event, incorporating amplified sounds for music and not limited to communications and related entertainment with a capacity of no more than 4,999 patrons at Mondello Park. It is submitted that the event was advertised on a global website and is therefore, not a local event. Given that the event referred to, Mass 19, had been held in Tipperary, it is unclear if it is to be the first of several at Mondello.

It is submitted that there are existing noise impacts from Mondello Park in the immediate vicinity, with some events generating impacts in Clane, Prosperous and Sallins which are less than 6km from the site. Concern is raised that the proposed events will establish a precedent pattern which have an unassessed impact on neighbouring areas.

The referral to the Board requests that the 'event' should be determined in respect of Schedule 2, Part 1 Exempted Development – General Class 37. The submission also notes that the Board has already declared that one-day musical events – such as pop concerts or other concerts – at Mondello is development and is not exempted development. DRF0843 refers. The parent permission for Mondello also specifies that the public address system could only be used for communication purposes in running an event and not for amplified music. The use of the site for the Mass 19 event would materially contravene this condition.

6.2. Planning Authority Response

Made no response other than to provide details of the planning history, land ownership details and a copy of the Section 5 application form submitted to Kildare County Council on the 23rd day of May, 2019.

6.3. **Owner/ occupier's response**

The Managing Director of Mondello Park submitted a response to the referral and provided the following background to the event:

- An application was received from the promoter to hold a music event at the venue with a capacity which was under 4,999.
- The application, event management plan and the relevant provisions of the Planning and Development Act, 2000 as amended, and Part 16 of the Planning and Development Regulations 2001 were assessed, and the Gardai consulted.
- It is noted that as per condition 4 of PL09.98287, that the public address system could only be used for communication purposes in running an event and not for amplified music.
- It was noted that the above cited Board decision issued before the Planning and Development Act of 2000 as amended and the 2000 Act was the code to be used in order to assess whether the event was a development or exempted development. It was assessed to be exempted development.
- The public address system was not used to broadcast music around the venue. The music at the event was sent through smaller individual PA systems which were localised to small areas of the venue. The output was monitored and adjusted as deemed necessary.
- Pre-event meetings were held with residents and the same group advised that there was no disruption, traffic issues or unacceptable noise levels during or after the event.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

7.1.2. Section 3 (1) of the 2000 Planning and Development Act states as follows:-

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

7.1.3. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

7.1.4. Part XVI of the Planning and Development Act relates to Events and Funfairs and Section 229 deals with interpretation as follows:

“event” means—

- (a) a public performance which takes place wholly or mainly in the open air or in a structure with no roof or a partial, temporary or retractable roof, a tent or similar temporary structure and which is comprised of music, dancing, displays of public entertainment or any activity of a like kind, and
- (b) any other event as prescribed by the Minister under section 241;

7.1.5. Section 230(1) of the Act provides that a licence shall be required in respect of the holding of an event or class of event prescribed for the purposes of this section. Section 231 deals with the obligation to obtain a licence for holding of an event.

7.1.6. Section 240 – Exclusion of events and funfairs from planning control and states as follows:

240 (1) Subject to subsection (2), the holding of an event to which this Part applies and works directly or solely relating to the holding of such an event shall not be construed as “development” within the meaning of this Act.

(2)(a) Notwithstanding section 230 or 239, the provisions of this Part shall not affect the validity of any planning permission granted under Part IV of the Act of 1963 for the holding of an event or events or for a funfair.

(b) Where a planning permission referred to in paragraph (a) has been granted for the holding of an event or events in respect of land, a licence under this Part shall be required for the holding of any additional event on the land concerned.

7.1.7. Section 241 - Regulations for event and states as follows:

241 The Minister may make regulations providing that any activity or class of activity to which the public have access and which takes place wholly or mainly in the open air or in a structure with no roof or a partial, temporary or retractable roof, a tent or other similar temporary structure to be an event for the purposes of this Part.

7.2. **Planning and Development Regulations, 2001**

7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

“Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”

7.2.2. Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act. In particular, I consider the following to be relevant:

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

7.2.3. Article 10(1) of the Regulations deals with Changes of Use stating as follows:

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
 - (b) contravene a condition attached to a permission under the Act,
 - (c) be inconsistent with any use specified or included in such a permission,
- or

7.2.4. Part 16 of the Regulations deals with Licencing of Outdoor Events, and Article 183 states ‘An event at which the audience comprises 5,000 or more people shall be an event prescribed for the purposes of section 230 of the Act.’

7.2.5. Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General and in terms of the subject referral, Class 37 is relevant, and state as follows:

Column 1	Column 2
Description of Development	Conditions and Limitations
<p>CLASS 37</p> <p>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 movable structures or objects on the land in connection with such use.</p>	<p>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.</p> <p>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.</p>

7.3. Other

ABP ref PL09.099078 (PA ref 1390/95): Permission refused on appeal for the holding of not more than four one-day shows or concerts at Mondello Park. In making its decision, the Board noted serious problems with the proposed holding of concerts and refused permission on the basis of noise, levels of nuisance and general disturbance within and outside the site, and on roads and traffic issues.

In terms of referrals relating to similar questions, the Board is advised of referral PL 09.RF0843, where a similar question to that currently posed was asked of the Board in 1998. The Board decided that the use of Mondello Park for the holding of one-day musical events is development and is not exempted development.

Other similar Referrals include:

PL17.RF0950: Where the Board determined that the use of lands at Fairyhouse Racecourse, Rathoath, Co. Meath for the holding of a two day music festival on the 5th and 6th of August, 2000 is development and is not exempted development.

PL15.RL2998: Where the Board determined that a proposed weekend music and camper van festival at Bellurgan Park, Bellurgan, Dundalk, Co Louth, is not development

8.0 Assessment

This referral relates to the holding of a music event at Mondello Park on the 6th day of July 2019. The Board will note that the referral to the County Council was lodged on the 23rd day of May and referred to the Board for determination on the 12th day of July, and after the event occurred.

A description of the Mass 2019 event, from the 'eventbrite.com' website indicated that the event – 70 DJs / 5 stages / 1 day - was to take place on the 6th of July from 2pm to midnight. MASS is described as:

'a congregation of electronic music lovers and hedonists from across Ireland in the beautiful scenic location of Mondello Park, Kildare. A racing arena that will host 5 stages hosted by some of Irelands finest DJ talents and international headliners.'

I also refer the Board to the planning history of this site, with particular regard to the holding of one-day music events, Referral PL 09.RF0843 where it was decided, in 1998, that the use of Mondello Park for the holding of the said one-day musical events is development and is not exempted development.

There was no site layout plan submitted as part of this referral but it is submitted that the music is amplified through independent PA systems and not the Mondello PA system.

8.1. Is or is not development

8.1.1. The primary question to be answered in this case is whether or not the concert event constitutes development. In this case Section 229 of the Planning and Development Act, 2000, as amended, defines an 'event' as follows:

- (a) a public performance which takes place wholly or mainly in the open air or in a structure with no roof or a partial, temporary or retractable roof, a tent or similar temporary structure and which is comprised of music, dancing, displays of public entertainment or any activity of a like kind, and
- (b) any other event as prescribed by the Minister under section 241;

In the context of the information provided by both the referrer and owner, I am satisfied that the one-day music festival as described comes within this definition of 'event' as set out above. It is also noted that the event mainly takes place in the open air and any structures brought onto the site are temporary in their nature. I am further satisfied that the 'event' comprises music and displays of public entertainment which are consistent with the Section 229 definition.

8.1.2. This determined, Section 240 of the Planning and Development Act, 2000, as amended is relevant - Exclusion of events and funfairs from planning control - states as follows:

(1) Subject to subsection (2), the holding of an event to which this Part applies and works directly or solely relating to the holding of such an event shall not be construed as "development" within the meaning of this Act.

In light of my determination that the works come within the definition of 'event', it follows that the works do not constitute development as defined by Section 3 of the Planning and Development Act, 2000, as amended.

8.1.3. Further to the above, Section 240 (2) of the Act seeks to deal with extant permissions for the holding of an event or events or for a funfair and states as follows:

(2)(a) Notwithstanding section 230 or 239, the provisions of this Part shall not affect the validity of any planning permission granted under Part IV of the Act of 1963 for the holding of an event or events or for a funfair.

(b) Where a planning permission referred to in paragraph (a) has been granted for the holding of an event or events in respect of land, a licence under this Part shall be required for the holding of any additional event on the land concerned.

8.1.4. I refer the Board to the planning history associated with the subject site, and specifically, to ABP ref PL09.093709 (PA ref 190/92) where permission granted, subject to conditions, permission for the retention and erection of structures. No condition of this permission specifically includes or excludes the holding of an 'event' such as that proposed. However, planning permission was refused for the holding of not more than four one-day shows or concerts at Mondello Park, ABP ref PL09.099078 (PA ref 1390/95). In addition, Referral PL 09.RF0843 determined that

the holding of one-day musical events (such as pop concerts or other concerts) at Mondello Park was development and was not exempted development. This decision concluded that the holding of the one-day musical events involves a material change of use and does not come within the scope of Class 33 of Part 1 of the Second Schedule to the 1994 Regulations, having particular regard to the fact that it is considered that these musical events are not local events.

- 8.1.5. The primary concerns arising in the above cases, both determined under the 1963 Act, related to residential amenity and traffic issues. However, the 1963 Act did not include a similar text as provided for in Section 240 of the 2000 Act and in particular did not provide that the holding of an 'event' was not to be considered as development. In addition, there is no requirement to consider whether the event is 'local' in nature or not, on the basis that the 'event' is not development in accordance with Section 240 of the 2000 Act. In the context of the above, I am satisfied that the holding of the event will not affect the validity of any planning permission granted under Part IV of the Act of 1963 for the holding of an event or events or for a funfair.

8.2. **Is or is not exempted development**

- 8.2.1. Should the Board disagree with my assessment above, I refer to Part 16 of the Planning and Development Regulations, 2001 as amended, which deals with Licencing of Outdoor Events, and in particular, Article 183 states 'An event at which the audience comprises 5,000 or more people shall be an event prescribed for the purposes of section 230 of the Act.' ie., a licence shall be required. Having regard to the information submitted, it is indicated that the event facilitated an audience of less than 5,000 people and therefore can be considered exempted development.
- 8.2.2. In addition, Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General and in terms of the subject referral, Class 37 is relevant, providing for '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 movable structures or objects on the land in connection with such use.'

8.3. Restrictions on exempted development

8.3.1. There are two conditions and limitations associated with Class 37 exempted development including,

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.

Having regard to the nature of the event proposed, I am satisfied that the limitations and conditions attached to Class 37 have been fully met. In this regard, I consider that the event, if deemed to be development, is exempted development.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether staging of a one-day music festival in Mondello Park, Donore, Naas County Kildare is or is not development or is or is not exempted development:

AND WHEREAS Mr. Pdraig McEvoy referred the question for decision to An Bord Pleanála on the 12th day of July, 2019:

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

- (a) Sections 2, 3, 229, 230, 231 and 240 of the Planning and Development Act, 2000, as amended,
- (b) the planning history of the site and relevant precedent referrals and

decisions,

WHEREAS An Bord Pleanála has concluded that:

- (a) the staging of a one-day music festival in Mondello Park, Donore, Naas County Kildare, constitutes an 'event' as defined by Section 229 of the Act
- (b) in accordance with S.240 (1) of the Act, the holding of an event to which Part XVI applies and works directly or solely relating to such an event shall not be construed as "development" within the meaning of the Act,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the 2000 Act, hereby decides that the one-day music festival is not development.

A. Considine
Planning Inspector

15th October, 2019