



An
Bord
Pleanála

Inspector's Report ABP-305026-19

Question	Replacement of existing netting and reinstatement of internal access roadway Garrykennedy, Portroe, Nenagh, County Tipperary.
Location	Portroe GAA club, Portroe, Nenagh County Tipperary.
Declaration	
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	S51954
Applicant for Declaration	Portroe GAA Club
Planning Authority Decision	Is exempted development
Referral	
Referred by	Jacqueline Kennedy
Owner/ Occupier	Portroe GAA.
Observer(s)	None
Date of Site Inspection	05/11/2019
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The site is located in Portroe village, in north-west Tipperary. It is an existing GAA complex, with playing pitches, a stand, club house and some parking.
- 1.2. The GAA grounds is to the rear of dwellings, a small cluster 31No. of detached and semi-detached cottages. There are 5No. cottages backing onto the grounds along its southern site boundary.
- 1.3. The north, eastern and western site boundaries of the GAA grounds are adjoining fields.
- 1.4. The netting the subject of this Referral is located alongside the southern and northern site boundaries to the rear of the goal posts.

2.0 The Question

- 2.1 Does the replacement of existing netting and the reinstatement of internal road access from club house to the stand for emergency vehicles at Portroe GAA grounds, constitute development, and if so is it exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Tipperary Co. Co. concluded that the replacement of the existing netting and reinstatement of internal road access from the clubhouse to stand for emergency vehicles is exempted development under the exempted development provisions as set out under Section 4 of the Planning and Development Act 2000, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Class 33 of Part 1 of Schedule 2 provides for :

Class 33

Development consisting of the laying out and use of land –

(a) As a park, private open space or ornamental garden

(b) As a roadside shrine, or

(c) For athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms) where no charges for admission of the public to the land.

Precedent case is cited :

RF1061 The Board considered the laying out a public tennis court, and associated perimeter fencing where no charge is made for admission to be exempted development.

The subject works come within Class 33 and come within same Class exemption.

4.0 **Planning History**

Planning Reference 0711890

Planning permission for a 30m x5m ball alley with score board and storage and ancillary site works on 15/09/2008.

Planning Reference PLC/24483

Planning permission granted for an extension to existing dressing rooms to form two new dressing rooms, meeting room and storage areas on 6th of December 2001.

Planning Reference PLC/19400

Planning permission granted for an open stand on 17th of April 1998.

5.0 **Policy Context**

5.1. **Development Plan**

North County Tipperary Development Plan 2010 as varied

5.2. **Natural Heritage Designations**

The site is neither within nor immediately abutting any nature conservation area. The closest such is the Lough Derg (Shannon) SPA (Site code 004058) – located some 3km to the north-northwest, as the crow flies

6.0 The Referral

6.1. Referrer's Case

The erection of the large posts and netting in such close proximity to their homes in Ardarra, is a serious concern. It is not correct to state the netting was replaced. The new poles and netting were erected without planning permission. The playing field was re-configured, and an internal road was constructed.

6.2 The Response to the Referral from the landowner/ occupier

- The works constitute replacement of existing works
- The works are envisaged in Section 4 of the Planning and Development Act 2000.
- The works are not development but rather maintenance and making good of existing development.
- The works do not constitute a change of use
- The works are incidental to the current land use.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or form the surfaces of the interior or exterior of a structure.

Section 3 '*Development*'

(1) 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

(2) For the purposes of *subsection (1)* and without prejudice to the generality of that subsection

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

Section 4 Exempted Development

Section 4 (2) provides for the making of the Regulations, Planning and Development Regulations, 2001.

7.2. Planning and Development Regulations, 2001

Article 6(1), 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 certain conditions and limitations.

Article 9 (1) of the regulations sets out various restrictions on works that would otherwise be exempted development under Article 6.

Schedule 2 Part 1 Class 33

Development consisting of the laying out and use of land for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.

8.0 Assessment

8.1. Is or is not development

8.1.1. There are two components to this referral:

(a) The reinstatement of an internal road

(b) The replacement of poles and netting.

(a) There was an emergency internal road 'constructed' on the lands, and there is no evidence submitted with the Referral that there was an internal road at this location previously;

(b) the poles and netting were removed/ demolished and new poles and netting were constructed on the lands.

At Portroe GAA therefore, both are considered to be *works* under terms of the Planning Act and hence *development* in the context of the Act.

Therefore, both components constitute 'development' in the context of the Planning and Development Act.

8.2. Is or is not exempted development

8.2.1. In order to answer the question if the development is exempted development, one has to look at Section 4 (2) of the Planning and Development Act 2000 and the Planning and Development Regulations 2001. I will examine each development separately.

(a) The provision of an internal road

The landowner/ occupier states the road is a reinstatement of an existing road from the clubhouse to the stand for emergency vehicles. The Referrer claims the internal road is a new addition and not a replacement.

The subject road is a gravel path/ road circa 3metres in width which runs from the entrance to the GAA grounds along the southern site boundary and partially along the western site boundary to the stand. It is not a proper surfaced road, and the documentation states it is to provide an emergency access to the stand. The road is not visible from the neighbouring lands, it is only visible from inside the Portroe GAA

grounds. The internal road is screened from adjoining properties to the south. It is not properly surfaced, therefore is unlikely to be frequently used by vehicles. It is stated it is for emergency access only. It does not involve a new access onto the public road and is less than 3metres in width.

Given it's layout, specification and use, I consider the internal road for emergency purposes forms part of the laying out and use of the land for recreational purposes where there is no charge for admission of the public to the land. Hence, this element of the development falls within Class 33 of the Schedule 2 Part 1 of the Planning and Development Regulations, and is therefore considered to be exempted development under the meaning of the legislation.

(b) The provision of poles and netting

The landowner/ occupier states the poles and netting are replacement of previously existing poles and netting, yet no details of the original netting and poles are provided apart from photographs. Having regard to the layout of the main pitch on the grounds and proximity of the goal posts to existing dwellings to the south, it is reasonable to assume the poles and netting are replacement structures. The Landowner/ Occupier has included photographs of the poles and netting on site in 2007. The photographs also state 1997, however it is the same images, therefore there is an anomaly in terms of the information submitted regarding the previous poles and netting on the site.

It is clear the previous netting and poles are similar to the new development in terms of location and relationship to the existing dwellings along the southern site boundary.

The Referrer states the new poles and netting are extremely high and in close proximity to their houses. There is concern expressed regarding the safety of such large poles in close proximity to their dwellings.

The netting is 45.8metres long and is 18metres in height. There are 4No. poles which are treated with black paint and netting is a black mesh. Having regard to the description of works submitted by the applicant and from the information supplied by the applicant, the works carried out resulted in the complete replacement of the structure in question. I therefore consider, that based on the extent of works carried out, the development would be more properly described as the demolition of a previously existing netting and poles and construction of a new netting and poles at

the same location. The provision of such a structure does not come within the meaning of Class 33 Schedule 2 Part 1 of the Planning and Development Regulations, which consists of the *laying out of and use of land* for recreational purposes for sports where no charge for admission. The demolition of poles and netting and replacement with new poles and netting with dimensions 18m in height by 45.8metres in length does not come within the scope and meaning of any exemption under the Planning Regulations 2001. Furthermore, the planning history reveals that Portroe GAA have applied for planning permission in the past for ancillary facilities on the grounds such as a stand, a balling wall, extension to dressing rooms. Therefore, there is no reason why the poles and netting should be considered an exception given its visual impact and proximity to dwellings to the south. In the context of the planning Act and Regulations, the development does not come within the scope of exempted development, and is therefore not exempted development.

9.0 Recommendation

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

(a) **WHEREAS** a question has arisen as to whether (a) the reinstatement of an internal road, and

(b) The replacement of poles and netting.

is or is not development or is or is not exempted development:

AND WHEREAS Jacqueline Kennedy requested a declaration on this question from Tipperary Council and the Council issued a declaration on the 2nd day of July, 2019 stating that the matter was development and was exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 25 the day of July, 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,
- (c) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the reinstatement of an internal road, and the replacement of poles and netting constitutes works;
- (b) the works constitute development pursuant to section 3 of the Planning and Development Act, 2000;
- (c) the reinstatement of the road comes within the scope of Class 33 of Part 1 of Schedule 2 to the Planning and Development Regulations 2000 as the laying out of and use of land for recreational purposes where no charge is made for admission of the public to the land.
- (d) The replacement of poles and netting does not come within the scope of the exempted development in the Planning and Development Regulations 2000

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that the

(a) Instatement of the internal road is development and is exempted development.

(b) the replacement of poles and netting is development and is not exempted development.

Caryn Coogan
Planning Inspector

26th of November 2019