



An
Bord
Pleanála

Inspector's Report ABP-312207-21

Question

Whether the removal of a large rectangular flowerbed complete with permanent surrounds and installation of a new circular granite water fountain and paving is or is not development or is or is not exempted development

Location

The Square, Clonaslee, Co. Laois

Declaration

Planning Authority

Laois County Council

Planning Authority Reg. Ref.

S5/2021/36

Applicant for Declaration

Sarah Sherlock

Planning Authority Decision

Is exempted development

Referral

Referred by

Sarah Sherlock

Owner/ Occupier

Clonaslee Community Tidy Towns

Observer(s)

None

Date of Site Inspection

16th of May 2022

Inspector

Caryn Coogan

1.0 Site Location and Description

- 1.1 The site is located in the village of Clonaslee, Co. Laois. Clonaslee is situated in the foothills of the Slieve Bloom Mountains on the R422 Mountmellick to Birr road. Clonaslee is approximately 100 km west of Dublin, and is close to the towns of Portlaoise and Tullamore. As of the 2016 census, the village had a recorded population of 566.¹
- 1.2 The site is known as The Square in the village. It is a paved area fronting a terrace. There is the Swan (former public house) to the west and houses and 'Nicky's public house to the north. The Main Street, thoroughfare, runs to the south of the site.
- 1.3 The stone fountain is located in the middle of the paved/ pedestrian area.

2.0 The Question

- 2.1. Is the removal of a large longstanding rectangular flower bed (seats and bin storage) complete with permanent surrounds, within the Clonaslee Architectural Conservation Area (ACA), to install a new circular (possibly Chinese granite water fountain complete with water storage section underneath and paving, is or is not development?

3.0 Planning Authority Declaration

3.1. Declaration

Laois County Council in exercise of powers under Section 5(2)(a) of the Planning and Development Act 2000, as amended, it is hereby decided that the proposed development consisting of 'the removal of a large rectangular flower bed complete with permanent surrounds, and the installation of a new circular granite water fountain and paving' is development and is exempted development provisions as set out under Class 33 (a) of the Planning and Development Regulations 2001, as amended.

3.2. Planning Authority Reports

3.2.1. *Planning Reports (Original Section 5 Application 2018)*

- The site is located in The Square and is primarily used for carparking.
- The proposal is a three-tier granite fountain with a height of 2metres and a 3metres diameter
- The proposal would comprise works within the meaning of Section 2 of the Planning and Development Act 2000, and such works constitute 'development' within the meaning of the Act
- It is noted Class 33 of the Planning and development Regulations 2001 provides for

Development consisting of the laying out of laying out and use of land-

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

(b) As a roadside shrine

A condition and limitation of this is that the area of such a shrine shall not exceed 2sq.m., the height shall not exceed 2metres above the centre of the road opposite the structure and it shall not be illuminated.

- The Square where the fountain is proposed is used primarily for carparking and cannot be defined as 'a park, private open space or an ornamental garden'. The proposal for a community fountain would not fall within a reasonable definition of a roadside shrine.
- Having considered the relevant sections governing excepted development contained in Schedule 2, Parts 1 – 4 and Article 9 'Restrictions on Exemption' in particular Class 33, it is concluded there is no exemption provision for the stand-alone feature.
- The Planner's Report recommendation was overruled by the Senior Planner stating that having regard to what was previously on the site – a planted area with seating – a 'garden area' the proposed development is a replacement and improvement to the area as an ornamental garden. Therefore the development is considered to be exempted development under Class 33(a) of the Planning and Development Regulations 2001 (as amended).

3.2.2 Planning Report (Second Report)

- The works already referred to in Report 2018

- The proposal comprises of works within the meaning of the Act, and such works constitute development. Class 33 of the Planning and Development Regulations 2001 (as Amended) provides for
Development consisting of the laying out and use of land – (a) As a park, private open space or ornamental garden.
- The development falls within the definition cited above, and is therefore considered exempted development.

4.0 Policy Context

4.1. Development Plan

Laois County Development Plan 2021-2027

Clonaslee is a village settlement, and Map 6.1 (B) is applicable. The site is located within a Designated Architectural Conservation Area (ACA)

5.0 The Referral

5.1. Referrer's Case

The referrer, Sarah Sherlock has submitted the following:

- The planning authority has made an error in its determinations it has failed to take into consideration the fact that the centre of Clonaslee is the subject of an Architectural Conservation Area. Reference to Map 2-14 of the Laois County Development Plan 2017-2023.
- The position of Architectural Conservation Officer remains vacant which is having a negative and avoidable impact on heritage in Clonalee and beyond. The historic village Square is within an historic vista, and the current development is not in harmony with nor complementary to the character and quality of the local area.
- The granite water fountain is entirely out of keeping with the natural sandstone undertones that are evident, well documented and distinctly present throughout the village. There is a 2002 Clonaslee Village Design Statement

has not been honoured with the inclusion of this water fountain. The Design Statement describes the Square is directly in front of Hickeys pub which is a hard landscaped with planting and picnic tables. Now the planting and public seating have been removed in favour of a partially granite water fountain.

- The Square is a place of longstanding trace of local pride and it embodies the character of the village and this new development now leaves the historic village square in a completely interfered state and highly compromised. The fountain and former flowerbed corner are entirely out of place and at kilter with the village square.
- The planning authority has failed to respect its own policy towards the ACA where there are restrictions on certain works to exterior of structures. Under planning laws, works that would affect materially affect the special character of the ACA will need planning permission.
- The Class 33 exception cited by the planning authority needs to be considered in light of the restrictions on excepted development provided by Article 9(1)(vii) of the Planning and Development Regulations. The ACA is a 'place' listed for preservation in the County Development Plan and the works compromise the alteration of the streetscape. Class 33 of the Regulations cannot be applied in such circumstances to exempt development coming within the meaning of Article 9(1)(vii) of the Regulations.
- The planning authority did not consider that new works may influence how traffic access, egress and park in and around the area. The village square abuts a very busy R402 and at a crossroads too. Traffic considerations should have been taken into account to avoid any potential road accidents.
- The member of the public had to pay out €300 out of their own pocket as a matter of public interest. If the planning authority had the competence, the granite water fountain would not have commenced in the beautiful village square. It is an affront to public interest, and our heritage at large and is now with An Bord Pleanala at considerable cost.

5.2. **Planning Authority Response**

There was none submitted.

6.0 **Statutory Provisions**

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

Section 2(1)

“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 from the surfaces of the interior or exterior of a structure.

Section 3 (1)

“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.

6.2. **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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Part 1 Class 33

Development for amenity or recreational purposes

CLASS 33

Development consisting of the laying out and use of land—

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

7.0 Assessment

7.1. Is or is not development

- 7.1.1. The site is a public square/ space in the village of Clonaslee, Co. Laois. The Square is a paved area fronting a terrace of buildings. Originally there was a raised bed with planting and a bench that has been replaced by a three tier granite water fountain and surround.

There were works carried out within the definition of Section 2 (i) of the *Planning and Development Act 2000*. These works fall within the definition of development under Section 3 (i) of the 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.

7.2. Is or is not exempted development

- 7.2.1. Article 6.(1) of the Planning and Development regulations 2001 (as amended) states:

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.

The planning authority considered the removal of a rectangular flower bed and seating and its replacement with a three-tier water fountain with granite surround to be an ornamental garden, and therefore having regard to the dimensions of the new structure, the development before and after is considered to be an ornamental garden as specified under Class 33 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

- 7.2.2 The Square where the water fountain is positioned is a paved public area front a terrace of houses. The area is between the front building line of the buildings and the edge of the Regional Road. The paved area or Square would appear to be used for carparking, and the water feature is located circa centrally in the paved area.

- The question arises can the Square be described as a 'park, private open space or an ornamental garden', which refers to Class 33 of The Planning and Development Regulations.
- The site is also within a designated Architectural Conservation Area, and works to the exterior of a structure will be exempted development (not requiring planning permission) only if that work does not materially affect the character of the area (Section 82 (1) of the Planning & Development Act, 2000)..

7.2.3 The site of the water feature was previously a raised planted bed with seating within a paved, or hard landscaped area. There appears to be no planning history associated with the former planted raised bed at the location. The three tiered foundation, which replaced the raised bed, is 7sq.m. and under 2metres in height within a circular granite surround. The use of the site can now be described as a water feature, and not an ornamental garden, therefore I do not consider Class 33 of the exempted development Planning and Development Regulations is applicable in this instance.

7.2.4 I considered the Referrer's submission regarding the Architectural Conservation Area. The Referrer states the planning authority erred in not taking the Architectural Conservation Area into consideration during the assessment of the case. I note from Map 6.1 (B) – Clonaslee, western portion of the village is designated as an Architectural Conservation Area. The Referrer claims that works which materially affect the special character of an ACA will require planning permission. Generally the aim of ACA designation is not to prevent development, rather to guide sensitive, good quality development, which will enhance both the historical character of the area and the amenity of those who enjoy it. The Referrer claims the new fountain leaves the historic village square in a completely inferred state and highly compromised because it is entirely out of place and at kilter with the village square. The issue of a material impact on the ACA is a subjective planning issue. The granite surround has a three metre diameter, and the fountain is 2metres in height. In my opinion, the three tiered fountain with granite surround does appear to be out of place in terms of context and specification. It is in visual conflict with the existing brick paving of The Square area and bears no relationship to the existing

built fabric or the current use of The Square, which would appear to be used for parking.

The replacement of the raised bed with permanent surrounds by the fountain and surround does materially impact on the overall area by virtue of the fact it does materially impact on the existing built environment which is a public area and it is not a residential curtilage. The development does not fall within any of the exempted development classes of the Planning and Development Regulations 2001 (as amended).

8.0 Recommendation

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

WHEREAS a question has arisen as to whether the removal of a rectangular flowerbed with permeant surround and its replacement with a granite water fountain and surround is or is not development or is or is not exempted development:

AND WHEREAS Sarah Sherlock requested a declaration on this question from Laois Council and the Council issued a declaration on the 15th day of November 2021 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 13th day of December 2021:

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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works carried out to install the fountain constituted 'development' within the meaning of the Act;
- (b) The development which consisted of the replacement of a raised flowerbed with a permanent surround with a granite three tired water fountain and surround within a public paved area materially constitutes an alteration of a public area of the Square, Clonaslee, and Class 33 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 does not apply in this instance

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 replacement of rectangular flowerbed with permanent surround with a three tired water fountain and surround, is development and is not exempted development.

Caryn Coogan
Planning Inspector

15th of September 2022