



An
Bord
Pleanála

Inspector's Report

ABP-314797-22

Development	Permission is sought for the temporary use of lands as a temporary ice rink utilising vehicular and pedestrian access and all associated site works.
Location	Leopardstown Racecourse, Leopardstown Road, Foxrock, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D22A/0535.
Applicant	Cool Running Events Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant	Cool Running Events Ltd.
Observers	None.
Date of Site Inspection	5 th July 2023.

Inspector

Terence McLellan.

1.0 Site Location and Description

- 1.1. The appeal site refers to the plot of land located in the southeast corner of an existing car park at Leopardstown Racecourse. The subject car park sits to the southeast of the main racecourse campus and is accessed from the road linking the racecourse to the Carrickmines Junction of the M50. The site is bounded to the north by the remainder of the existing car park and onwards to the dwellings of Brighton Square and Brighton Road. The eastern boundary of the site is flanked by an undeveloped field whilst the southern and western boundaries are marked by the racecourse access road and the M50 motorway. The wider car park boundaries are marked by hedgerows and shrubs (some self-seeded). There is a notable change in levels between the appeal site and the racecourse access road, with the appeal site sitting approximately 2.5 metres higher than the access road.
- 1.2. The nearest public transport to the site is located at Carrickmines Luas and Ballyogan Wood Luas which are located approximately 900m and 1km away respectively. Both stations are served by Go-Ahead Ireland bus services 63 and 63A. The Leopardstown Racecourse campus accommodates a range of uses including hotels, offices, gym/fitness centre and the Leopardstown Golf Centre (driving range). The area around Carrickmines Luas is largely residential in nature whilst the area to the south of the M50 at Ballyogan accommodates the Carrickmines Park retail/shopping area.

2.0 Proposed Development

- 2.1. Temporary Planning Permission is sought for the use of the site as an ice rink with associated pedestrian and vehicular access/car parking. The temporary ice rink would be housed in a marquee style structure measuring 45m by 60m and with a total height of 9.10m. Parking would be provided for up to 98 vehicles in addition to a drop-off facility. An onsite generator and a temporary septic tank would be installed on site to service the proposed development.
- 2.2. The ice rink would operate annually from approximately the 28th October until the 31st January for a period of three years, originally scheduled to commence in October 2022 and terminating in January 2025. The application includes an assembly/disassembly period of two weeks, before and after the operational phase outlined above.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Refuse Permission for the proposed development was issued by Dún Laoghaire-Rathdown County Council (DLRCC) on 14 September 2022.

The reason for refusal is as follows:

‘Having regard to the relatively isolated nature of the site and the quantum of car parking proposed, in an area devoid of facilities, which is not a Major Town Centre or a District Town Centre, and at a remove from public transport options, and where pedestrian routes to public transport is adjacent to busy roads, it is considered that the proposed development does not accord with the sequential test for commercial leisure facilities and therefore contravenes Policy Objective E14 of the Dun Laoghaire Rathdown County Development Plan 2022-2028 and would, therefore, be contrary to the proper planning and sustainable development of the area.’.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports: The planner’s report was issued on the 14th September 2022 and forms the basis of the Council’s assessment and decision. The report accepts the principle of the development in zoning terms and accepts the development as being acceptable regarding residential amenity, visual impact, temporary nature and use, hours of operation, drainage, and construction/operations. The report states the Council’s concerns that ‘haris fencing’ would not be an appropriate boundary treatment for the site.
- 3.2.2. The transport section of the report states that the site is relatively isolated and would be heavily car dependant. This section of the report also notes that the pedestrian routes to public transport would not be conducive to pedestrian movements due to being located alongside a motorway interchange.

3.3. Other Technical Reports

- 3.3.1. **Drainage (26.08.2022):** No objections but suggest seeking comments from the Environmental Health Officer due to the onsite wastewater treatment system.
- 3.3.2. **Environmental Enforcement (08.08.2022):** Notes the absence of any detailed consideration of environmental management and seeks clarification on construction/demolition waste management, noise planning, and operational waste management. The report states that should permission be granted on the basis of the documents submitted then conditions to address these issues are required. Additional recommended conditions relate to liaison with the public, pest control, and monitoring.
- 3.3.3. **Environmental Health Officer (24.08.2022):** No objection, subject to conditions relating to operational noise and sound insulation.
- 3.3.4. **Transportation Planning (02.09.2022):** No objection subject to conditions covering the orderly management of the public road (mud, dirt and debris) and the submission of a Construction Management Plan.
- 3.3.5. **Parks Department (01.09.2022):** The Parks Department requested further information regarding the submission of a Tree Survey Schedule of all trees and hedges on or adjacent to the site, Arboricultural Impact Assessment, Tree Constraints Plan, and a Tree Protection Plan in addition to a schedule of works for retained trees.

3.4. **Prescribed Bodies**

- 3.4.1. **Transport Infrastructure Ireland (10.08.2022):** No objections but advise that the development falls within the area for an adopted Section 49 Supplementary Development Contribution Scheme – ‘Extension of Luas Line B1 – Sandyford to Cherrywood’. Transport Infrastructure Ireland advises that a condition to apply the levy should be imposed on any consent issued if the development is not considered exempt.

3.5. **Third Party Observations**

- 3.5.1. One observation was received in relation to the planning application, from Blue Martini Group, operators of Dundrum on Ice. The following points were raised:

- The proposed use could be in place for four months (three operational) and so the fundamentals of the project need to be robust from a proper planning and sustainable development perspective.
- There can only be one ice rink in any given catchment and by allowing this use in this location the prospects of attracting such activities to designated town and district centres is eliminated.
- The location is inappropriate and would be car dependant. Facilities such as this should be in town and district centres where customers can use public transport.
- Leopardstown is heavily congested, and the proposed use would exacerbate congestion at peak periods.
- The provision of a septic tank is inappropriate and insufficient details are provided in relation to this.

4.0 Planning History

- 4.1.1. There is a long and detailed planning history for the site. The most relevant application to the proposed development is the parent 10 year consent for modifications and alterations to the racecourse, which included the formation of the car park that forms the appeal site. Other relevant applications include the subsequent consent granting an extension to the original 10 year period of the parent consent. There have also been several amendment applications to the parent consent over the years, the most relevant of which are included below.
- 4.1.2. **ABP Ref. PL06D.201575, Planning Authority Ref. D02A/0698:** A 10 year permission was granted in July 2003 for: Development comprising alterations and modifications to the racecourse consisting of the construction of (1). A 2,112sqm replacement stable complex. (2). A 1,532sqm track and gold course maintenance depot (workshop and storage areas). (3). A 1,942sqm replacement gold clubhouse including 65 bay driving range and 220 space car park (including spaces for 80 vehicles for the stable complex). (4). A new seven furlong sprint racetrack including an access tunnel for golfers, horses and ambulances. (5). A new slip lane vehicular access to the site from the Carrickmines Interchange of the South Eastern motorway and four lane link road

serving the main spectator area and access to the parking area to the south of the motorway. (6). A new vehicular access across the existing racing track to the Foxrock Gates and reinstatement of the track at the existing crossing. (7). A new car park located between the motorway and the new sprint track to provide approximately 2,400 spaces. (8). A new 11.6 million litre capacity onsite water reservoir and alterations to the existing (i) Internal circulation road network, (ii) gold course incorporating a zone for helicopter landing and parking, (iii) onsite water reservoir to form a capacity of 4.3 million litres, (iv) Foxrock vehicle entrance onto Westminster Road, (v) parking areas for racecourse use including surfacing, fencing, gates, landscaping and lighting.

4.1.3. **Planning Authority Ref. D02A/0698E:** Permission was granted in September 2013 to extend the duration of the parent consent outlined above, by five years.

4.1.4. **Planning Authority Ref. D05A/0497:** Permission was granted in July 2005 for variations to the parent consent (ABP Ref. PL06D.201575, Planning Authority Ref. D02A/0698), consisting of: alterations to the levels and profile of the approved 2,400 space car park located between the access road to the racecourse from the Carrickmines Junction on the South Eastern Motorway and the approved, but now excluded, sprint racetrack; and alterations to the capacity and construction of the approved onsite water reservoir.

5.0 Policy Context

5.1. Dún Laoghaire-Rathdown County Development Plan 2022-2028

5.1.1. The Dún Laoghaire-Rathdown County Development Plan 2022–2028 (CDP), categorises the site as zoning objective ‘A’, which seeks to provide residential development and improve residential amenity while protecting the existing residential amenity. Open space is considered a permissible use and this includes indoor and outdoor sports facilities.

5.1.2. Chapter 6 of the CDP: Enterprise and Employment, contains policy objective E14: Commercial Leisure. This policy objective seeks to ensure that all major commercial leisure developments are located in accordance with a sequential test approach, and states that the availability of a choice of sustainable transport modes will be essential.

5.1.3. Chapter 9 of the CDP: Open Space, Parks and Recreation, contains policy objective OSR3: Future Improvements. This policy aims to continue to improve, plant and develop more intensive recreational and leisure facilities within parks and public open spaces, ensuring that this does not detract from the overall amenity of the spaces.

5.1.4. **Other relevant policy designations:**

- Ballyogan and Environs Local Area Plan (BELAP).
- Catchment of S.49 Supplementary Contribution Scheme for Luas extension.
- Long Term Road Objective – Leopardstown to Carrickmines Interchange.
- Proposed education site.

5.2. **Natural Heritage Designations**

5.2.1. The proposed development is not located within or immediately adjacent to any European site. The nearest European sites are the Dalkey Island SPA (Site Code 004172), the Rockabill to Dalkey Island SAC (Site Code 003000), South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and the South Dublin Bay SAC (Site Code 000210).

5.3. **EIA Screening**

5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. An appeal has been lodged by Cool Running Events Ltd of Unit 8, Island Enterprise Centre, Little Island, Cork, against the decision of Dún Laoghaire-Rathdown County

Council to refuse permission for the temporary use of the site for an ice rink with associated parking, plant, and facilities. The grounds of appeal are as follows:

- The site is not isolated nor is the surrounding area devoid of facilities. There are a range of other sport and leisure facilities a short distance away and within the confines of the racecourse, within which the appeal site is located. The racecourse site is a hub of sporting, recreational and leisure uses, and the proposal would be complementary to this.
- The proposed development is temporary and it's appropriate to locate it within an existing recreational and leisure hub rather than in a Major or District Town Centre.
- There is no lack of public transport and there are Luas stations and bus stops nearby.
- There is no lack of pedestrian routes to public transport. Segregated footpaths are provided from the site to the Luas and bus stops in addition to nearby cycle lanes. Neither the Council's Transport Planning Division or Transport Infrastructure Ireland raised any concerns from a transport, traffic or pedestrian safety perspective.
- Policy Objective E14 does not apply in this instance as the proposal is not a major development, due to its form and temporary nature.
- The location of the proposed development within Leopardstown Racecourse is the sequentially preferred option and the proposed development would not make the best use of Major or District Town Centre lands.
- The site has been used for comparable temporary uses such as a 'Drive in Cinema' and a circus.
- The proposed development would not harm amenity.
- The requirement for a temporary permission is not based on any test of acceptability but on the fact that this is a temporary and periodic use. The temporary nature of the proposed development is a material consideration in this case, both in terms of impact and the application of Policy Objective E14.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority consider that the grounds of appeal do not raise any new issues and refer the Board to the Planner's Report.

6.3. Observations

- 6.3.1. None.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Location of Development.
- Transport, Traffic, and Pedestrian Access.
- Other Matters.
- Appropriate Assessment.

7.2. Location of Development

- 7.2.1. The primary issue raised in the appeal relates to the location of the proposed development, which the Council considers to be isolated in nature and devoid of facilities, due to it not being located in a Major or District Town Centre. In this regard, the Council considers that the proposed development does not accord with the sequential test for commercial leisure facilities and as such contravenes Policy Objective E14.
- 7.2.2. The grounds of appeal state that the site is neither isolated nor devoid of facilities and that Policy Objective E14 should not have been applied to the proposed development due its scale and temporary nature. The appellant considers that the development has been appropriately located within an existing recreational and leisure hub.
- 7.2.3. The planner's report confirms that the proposed development would accord with the zoning objective for the area, due to 'Open Space' being a permissible use. 'Open

Space' is defined in the CDP as a parcel of land that is suitable for indoor and outdoor sports facilities and cultural use, whilst the definition of 'Sports Facility' includes a gym, squash centre, tennis club, golf club, swimming pool, skate park, racecourse etc.

- 7.2.4. Policy objective E14 relates specifically to major commercial leisure facilities, which are defined in the CDP as including a theatre, cinema, bowling alley, skating rink, and bingo hall etc. In my opinion a skating rink can be considered both a leisure facility and a sporting facility, much in the same way as a swimming pool fulfils both definitions. In this respect, I consider that Policy Objective E14 should be applied.
- 7.2.5. The main thrust of Policy Objective E14 is the need to ensure that major commercial developments are located in accordance with a sequential test approach, giving preference to Major and District Town Centres. I accept that a sequential test is an important and effective means of securing retail and commercial development objectives to ensure the vitality and viability of town centres, however I would caution against its rigid application to a short term, temporary use.
- 7.2.6. The proposed ice rink would be operational for a period of approximately three months over the Christmas and New Year period (on a repeat basis for three years). Given the temporary nature of the proposal, I am satisfied that it would not demonstrably harm the viability or vitality of the Major/District Town Centres of the county. I consider the location of the proposed development to be appropriate in the context of the zoning objectives of the site and the existing recreational and leisure facilities within the wider Leopardstown Racecourse campus. I am mindful of the objection received to the planning application from the operator of Dundrum on Ice, particularly that there can only be one ice rink in any given catchment, however this threshold is not quantified in policy or any supplementary guidance and is a purely subjective assertion. In any event, matters relating to competition between commercial ventures are not a matter for comment by the Board.

7.3. Transport, Traffic and Pedestrian Access

- 7.3.1. Policy Objective E14 makes reference to the availability of a choice of sustainable transport modes as being essential in locating commercial leisure facilities. The Council considers that the proposed development would be heavily car dependant, evidenced by the number of car parking spaces being provided. Further concerns raised by the Council are that the site is located distant from public transport and that

the pedestrian route to the public transport would not be conducive to pedestrian movement due to its location beside a busy road.

- 7.3.2. The appellant argues that there are a range of public transport options and that the pedestrian routes to the site are suitable. The appeal site is located on an existing 2,400 space car park. The proposal would use 98 of these spaces for the duration of the temporary use, which is just slightly in excess of projected peak period demand and accommodates a 'worst case scenario'. I do not consider the provision of 98 parking spaces as an indication of car dependence, particularly given the location of the appeal site within an existing car park and the fact that there are existing public transport options.
- 7.3.3. Carrickmines Luas Station is located approximately 900 metres from the appeal site, which equates to a roughly 12 minute walk. Ballyogan Wood Luas Station is approximately 1km away. Both stations have interchange with Go-Ahead Ireland services 63/63A which provide connections from Kiltiernan Village to Dun Laoghaire Station on a half hourly basis with further connections via the DART. I am therefore satisfied that there is a choice of public transport options in proximity to the site and as such the development would not be car dependant. I have considered the trip generation figures presented in the appellant's Transport Statement. The overall increase in vehicle movements would be modest and any increase would be transient due to the temporary nature of the use. I am therefore satisfied that there would be no significant adverse impacts in terms of traffic and congestion as a result of the proposed development.
- 7.3.4. At the time of my site inspection, the racecourse access road was free from traffic, with only sporadic vehicular movements for the duration of my visit. Whilst the site is adjacent to the M50, the motorway is screened by a wall. Clear footpaths are provided from the site to both Luas Stations and there is a segregated cycle path starting at the Carrickmines roundabout. I do not consider the nature of the pedestrian routes from the appeal site to the public transport as being inhospitable. The pathways are clear, level, segregated and the motorway is screened.
- 7.3.5. I note that the Council's Transportation team were consulted on the proposed development and raised no objections subject to conditions covering the orderly management of the public road (mud, dirt and debris) and the submission of a

Construction Management Plan. I do not consider these conditions to be necessary given the temporary nature of the development and that fact that no construction works are required for the assembly/disassembly of the ice rink facility.

7.4. Other Matters

- 7.4.1. The planning application makes reference to the proposed development being operational between the end of October and the end of January, with an additional two-week period either side of this to set up the site and assemble/disassemble the ice rink. However, the appellant's appeal statement refers to the operational period as being both ten weeks and eight weeks. In the interests of clarity, I consider that the operational period should be 12 weeks and this would be in line with the details of the planning application and public consultation.
- 7.4.2. I note the Council's Parks Department requested further information regarding trees. From my site inspection it was clear that there are no trees on or immediately adjacent to the site. There is an existing hedgerow, however there would be a sufficient distance between the hedgerow and the temporary boundary fencing to ensure there would be no impact. As such, I do not consider that conditions need to be applied regarding trees.
- 7.4.3. Finally, the Council have raised a concern that haris fencing would not be an appropriate boundary treatment for the site. Haris style fencing is often used for temporary events and installations. A benefit of its use is that it can be installed without any intervention in the land. Given the location of the site and its immediate context, I do not consider that there would be any visual amenity impacts resulting from the use of haris style fencing, which I consider to be entirely appropriate for the temporary use.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any European site, it is concluded that no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 and the location, form and temporary nature of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the commercial amenity of any major or district town centre, nor would it adversely impact on the residential, visual, pedestrian or transport amenities of the area or of property in the vicinity and would comply with the provisions of the development plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The development hereby approved shall be undertaken on an annual basis for a period not exceeding 16 weeks, with an operational period not exceeding twelve weeks. The last day of operation shall be the 31st January each year until 2025, on which date this temporary permission shall expire.</p> <p>Reason: The Board considers it appropriate to specify a period of validity of this permission.</p>

3.	<p>The hours of operation shall be between 10:00 hours and 22:00 hours daily.</p> <p>Reason: In the interest of the residential amenities of property in the vicinity.</p>
4.	<p>The noise level shall not exceed 55 dB(A) rated sound level at the nearest noise sensitive location between 0800 and 2000 hours, Monday to Friday inclusive, and shall not exceed 45 dB(A) at any other time. All amplified music shall cease at 21:30 daily. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To protect the residential amenities of property in the vicinity of the site.</p>
5.	<p>Waste receptacles, including recycling, details of litter control and adequate storage for waste collection/disposal, shall be provided and available for use at all times on the premises in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of amenity and to provide for a satisfactory standard of development.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of the extension of Luas Line B1 – Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.</p>

	Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.
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I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Terence McLellan
Senior Planning Inspector

17 July 2023