



An  
Bord  
Pleanála

## Inspector's Report ABP-315713-23

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<b>Question</b>	Whether the berms erected adjacent to the N67 at Spanish Point Golf Club is or is not development or is or is not exempted development
<b>Location</b>	Spanish Point Golf Club, Dough, Spanish Point, Co. Clare
<b>Declaration</b>	
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	R22-85
Applicant for Declaration	Spanish Point Golf Club
Planning Authority Decision	Is not exempted development
<b>Referral</b>	
<b>Referred by</b>	Spanish Point Golf Club
<b>Owner/ Occupier</b>	Spanish Point Golf Club
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> December 2023
<b>Inspector</b>	Ciara McGuinness

## 1.0 Site Location and Description

- 1.1. The referral site is located at Spanish Point Golf Club, in Spanish Point, Co. Clare. The Golf Course is a 9-hole links golf course with a stated area of 15.77ha. The development the subject of this referral comprises of existing berms that are located along the eastern boundary of the golf course.
- 1.2. The berms run parallel with the N67 which is a designated Scenic Route. Berm 1 has a stated length of 14m, while Berm 2 has a stated length of 14.8m. The stated height of Berm 1 varies from 2.8m down to 2.2metres, while berm 2 has a stated average height of around 2.2m. The berms are made up of sand with sod tops. The material for the berms has been taken from within the golf club. The applicant notes that the berms will drop by approx. 1 to 1.5m as the material settles over the next year, based on experience of other berms in the golf club.
- 1.3. The referrer notes that golf balls have been overshooting the course boundary and travelling onto the adjacent N67 and into the property fronting onto this route. The erection of the berms has been carried out to address these safety concerns.

## 2.0 The Question

- 2.1. The refer has sought a determination as to “Whether the berms erected adjacent to the N67 at Spanish Point Golf Club is or is not development or is or is not exempt development.”
- 2.2. The purpose of this referral is not to determine the acceptability or otherwise of the erection of the berms in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The Planning Authority made the following declaration on the 18<sup>th</sup> January 2023.

Having regard to;

- (a) Section 2, and 3 of the Planning and development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The works as indicated in submitted documents from the referrer as received by the Planning Authority on the 16<sup>th</sup> December 2022.

The Planning Authority concluded that;

- (a) The construction of berms erected adjacent to the N67 at Spanish Point Golf club constitutes “works” which come within the scope of Section (2)1 of the Planning and Development Act, 2000, as amended.
- (b) The said works constitute “development” which comes within the scope of Section 3(1) of the Planning and Development Act 2000, as amended
- (c) The said development consisting of the erection of two berms, and being works for the maintenance and management of a golf course would fall within the exemptions of development as set out under Class 34 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, however having regard to the restrictions on exempted development as set out under Article 9 (1)(a)(vi), and having regard to the nature and extent of the works as carried out together with the proximity of same to the N67 which is a designated Scenic Route in the Clare Development Plan 2017-2023, as varied, it is considered that the works would interfere with the character of the landscape at this location and would not therefore constitute exempted development.

## 4.0 Planning History

### Referral Site

P.A. Reg Ref 94/917 – Application granted in November 1994 to build a new machinery shed.

P.A. Reg Ref 02/1318 – Permission granted in February 2003 to demolish section of existing clubhouse and to construct new extension consisting of ladies and gents changing rooms, office and disabled toilets.

P.A Reg Ref 05/490 – Permission granted in May 2005 to renovate and construct extension to existing club house.

P.A. Reg Ref 20/985 – Permission granted in February 2023 to construct an extension to rear of existing club house.

P.A. Reg Ref 21/610 – Permission granted in August 2021 to construct (a) A golf training room with compressor room and store room at basement level (b) A covered area between the existing clubhouse and the proposed training room (c) A small extension off the lounge to front of building (d) A refuse area with low walls on either side parallel to clubhouse (e) Enlarge window to front of building.

#### Relevant Decisions

RL03.RL3483 – The Board in this case decided that the raising of the height of an existing driving range berm at the Trump International Golf Links and Hotel, Doonbeg, County Clare is development and is exempted development.

RL06D.317248 – Case not yet determined at Milltown Golf Club on whether the maintenance and management of part of the golf course boundary to lower Churchtown Road comprising the removal of old wooden and paladin fence, etc. above the old stone wall and the erection of c. 56 linear metres of a replacement timber fence affixed to and above the old stone boundary wall is/or is not development and is/or is not exempted development.

#### **4.1. Planning Authority Reports**

- 4.1.1. The Planning Reports (18/01/2023) assessed the restrictions on exempted development as set out under Article 9(1)(a)(vi). In this regard, the question before the Planning Authority is whether the works would interfere with the character of the landscape at this location based on the designation of the N67 as a Scenic Route. The Planning Authority accept that there are some intermittent views of the site from the road however given the extent of the works as carried out, the open nature of the landscape, the proximity of the berm to the road and the properties across from

same, and the designation of the N67 at this location as a Scenic Route it is considered that the works as carried out interfere with the character of the landscape.

4.1.2. The Planning Authority carried out an Appropriate Assessment and determination. It was considered that the proposal could be screened out and Appropriate Assessment not required.

4.1.3. Other Technical Reports - None

## 5.0 Policy Context

### 5.1. Clare County Development Plan 2023-2029

5.1.1. The site is located within the settlement boundary of Spanish Point. The site is zoned for 'Recreation'. This type of zoning provides for the use of land for the provision of sports grounds/playing pitches, golf courses, tennis courts and other active indoor and outdoor recreational facilities that contribute to meeting the leisure, recreation and amenity needs of the immediate community and/or the wider area.

5.1.2. The N67 is designated as a Scenic Route as per Map H6 of Volume 2 of the CDP 2023-2029. The following objective is of relevance.

#### **Development Plan Objective: Scenic Routes CDP14.7**

It is an objective of Clare County Council:

- (a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- (b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact; and
- (c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

## 5.2. Natural Heritage Designations

Carrowmore Point to Spanish Point and Islands SAC (001021) – c.200m to the west and south of the subject development.

Mid-Clare Coast SPA (004182) – c.300m to the west and south of the subject development.

## 6.0 The Referral

### 6.1. Referrer's Case

The main points of the referrer's case are summarised below;

- The erection of the berms is considered to be 'works' and therefore development within the meaning of the statutory provisions. The works are considered to be 'exempt development' by reason of Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- The Planning Authority carried out an AA Screening and determined that the development would not require an appropriate assessment as it would not be likely to have a significant effect on the integrity of a European site.
- Having regard to the Planning Authority's decision, based on the restrictions on exempted development as set out under Article 9 (1)(a)(vi), the refer notes the following;
  - The character of the landscape at this location is determined by the existence of the golf course. Berms are necessary for the management and operation of the course.
  - The scenic route runs along the eastern side of the golf course. The route also runs through the designated settlement boundary of Spanish Point where there is built up structures (tourist, accommodation, caravan parks) to the west. It is therefore not a pristine open landscape but in fact runs through zoned land. The golf course is zoned for recreation and the lands across the road are zoned for tourism. This zoning pre-empts changes and not a static case scenario,

- With regards to Objective CDP13.7 Scenic Routes (CDP 2017-2023), the development involved is not inappropriate as it forms part of the existing club development.
- The development does not interfere with the character of the landscape within the context of what is set out under CDP13.7. There is an existing golf club use on the land with greens, fairways, hillocks, berms etc.
- The development benefits the rural community in the area as the golf club is part of the wider rural community and its continued survival and development is part of the needs to sustain the rural community in this area.
- The views and features from the scenic route to the west at this location are into the golf course and the berms form part of the course.
- The berms are of standard construction and their siting, length and height are related to the need to stop balls going onto the national road or nearby houses. In this regard the location, siting, design and finishes comply with appropriate standards.

## 6.2. Planning Authority Response

None

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

- 7.1.1. **Section 2 (1)** of the Act states: - In this Act, except where the context otherwise requires -

“development” has the meaning assigned to it by Section 3,

"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.

7.1.2. **Section 3(1)** of the Act states -

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.

7.1.3. **Section (4)(4)** of the Act states –

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**

7.2.1. **Article 6 (1)** of the Regulations 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.

7.2.2. **Part 1 of Schedule 2** sets out exempted development to which Art 6(1) refers:

Development for amenity or recreational purposes

CLASS 34

Works incidental to the maintenance and management of any golf course or pitch and putt course, including alterations to the layout thereof, excluding any extension to the area of a golf course or pitch and putt course.

7.2.3. **Article 9(1)** states that:

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:



(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of the development plan.

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

## **8.0 Assessment**

### **8.1. Is or is not development**

8.1.1. Firstly, it is necessary to establish if the erection of the berms constitutes development. As outlined in Section 7.1 above, development means the 'carrying out of any works on, in, over or under land' as defined in Section 3(1) of the Act. In the case of the erection of berms that are the subject of this referral, it is evident that they involve the carrying out of works, as defined in Section 2 (1) of the Planning and Development Act, and hence constitute development within the meaning of the Act.

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

- 8.2.1. Schedule 2 Class 34 sets out exempt development as "Works incidental to the maintenance and management of any golf course or pitch and putt course, including alterations to the layout thereof, excluding any extension to the area of a golf course or pitch and putt course." The Referrer submits that the erection of the existing berm forms part of the general management of the golf course. The berms have been erected in order to mitigate against balls overshooting the course boundary and travelling onto the adjacent N67 comprise. I consider that these are works which are incidental to the management of the golf course. Therefore, I consider that the development constitutes exempt development with regard to Class 34 of Part of Schedule 2 of the Regulations.
- 8.2.2. The Planning Authority considers that erection of the berms would come within the scope of Class 34. This is also consistent with the previous Board decision in respect

of works in relation to golf course berms (RL03.RL3483), as set out in Section 4.0 above.

### 8.3. Restrictions on exempted development

With respect to the restrictions on exempted development set down in the Act and in Article 9 and based on the submissions on file and my site inspection, in my judgement, the following can be reasonably concluded:

#### Article 9(1)(a)(iv)

- 8.3.1. The Planning Authority in their decision concluded that while the erection of the berms came under the provisions of Class 34 of Schedule 2 Part 1 of the Planning and Development Regulations 2001, as amended, and constituted exempted development that the provisions of Article 9(1)(a)(iv) applied as a restriction on the exemption. The declaration by the Planning Authority noted that *“having regard to the nature and extent of the works as carried out together with the proximity of same to the N67 which is a designated Scenic Route in the Clare Development Plan 2017-2023, as varied, it is considered that the works would interfere with the character of the landscape at this location and would not therefore constitute exempted development.”*
- 8.3.2. The entire Coast Road from the county boundary (along the Kinvarra Road) to Quilty including the R479 spur to Doolin is designated as a Scenic Route. This includes a section of the N67 c.18km long, stretching from Lahinch to Quilty. The N67 bounds the eastern side of Spanish Point Golf Course for c.450m. I do not concur with the assessment of the Planning Authority that the erection of the berms would interfere with the character of the landscape at this location in any material way. The works relate to the management of the existing golf course at this location. The works are not out of character with the existing landscape of the golf course as viewed from the designated Scenic Route. The berms are located along a c.30m stretch of road at the southern end of the golf course boundary. I consider that the views are somewhat limited along this stretch of road. A significant number of residential properties line the eastern side of the road, while the topography of the golf course limits views on the west side of the road. The road is narrow, with a slight bend and with some existing vegetation also obstructing views. The erection of the berms

continues to allow for intermittent views into the golf course. I note that views become more expansive and open as the N67 runs along the northern part of the Golf Course boundary. I do not consider the berms to be excessive in height and I further note that the berms will decrease in height as the material settles over the next year.

- 8.3.3. Accordingly, I consider that the erection of the berms does not interfere with the character of the designated Scenic Route. I consider that provisions of Article 9(1)(a)(iv) do not apply as a restriction on the exemption.

#### Appropriate Assessment

- 8.3.4. The restriction of exemption due to the requirement for Appropriate Assessment arises in Section (4)(4) of the Act and Article 9(1)(a)(viiB) of the Regulations. The development the subject of this referral is located in close proximity to the Carrowmore Point to Spanish Point and Islands SAC (c.0.2km) and Mid Clare Coast SPA (c.0.3km). There are a number of other European sites within a 15km search zone of the development but in view of the nature and scale of the development and the locational context of the site, I am satisfied that there is no real likelihood of significant effects arising for European sites other than those in close proximity to the site.

- 8.3.5. The Carrowmore Point to Spanish Point and Islands SAC is designated for the following Qualifying Interest;

- Coastal lagoons [1150]
- Reefs [1170]
- Perennial vegetation of stony banks [1220]
- Petrifying springs with tufa formation (Cratoneurion) [7220]

- 8.3.6. Mid Clare Coast SPA is designated for the following Qualifying Interest;

- Cormorant (*Phalacrocorax carbo*) [A017]
- Barnacle Goose (*Branta leucopsis*) [A045]
- Ringed Plover (*Charadrius hiaticula*) [A137]
- Sanderling (*Calidris alba*) [A144]

- Purple Sandpiper (*Calidris maritima*) [A148]
- Dunlin (*Calidris alpina*) [A149]
- Turnstone (*Arenaria interpres*) [A169]
- Wetland and Waterbirds [A999]

8.3.7. The Conservation Objectives for each of these European sites seeks to maintain or restore favourable conservation condition, which is defined by a list of site-specific attributes and targets for each of the habitats and species.

8.3.8. The Planning Authority carried out an Appropriate Assessment and Screening Determination and concluded that no significant effects are envisaged on European site(s) in view of its conservation objectives. Therefore, it was considered that the proposal can be screened out and Appropriate Assessment not required.

8.3.9. Having regard to the above, the limited extent of the works, the lack of a pathway between the development and the European sites, the separation distance, and the qualifying interests of the European sites, it is considered that the works which are the subject of this referral, individually, or in combination with other plans and or projects would not be likely to have had a significant effect on any designated European sites in the vicinity in view of the site's conservation objectives. The provisions of Section (4)(4) of the Act do not apply.

## 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 the berms erected adjacent to the N7 at Spanish Point Golf Club is or is not development or is or is not exempted development:

**AND WHEREAS** Spanish Point Golf Club requested a declaration on this question from Clare County Council and the Council issued a declaration

on the 18<sup>th</sup> day of January, 2023 stating that the matter was development and was not exempted development:

**AND WHEREAS** Spanish Point Golf Club referred this declaration for review to An Bord Pleanála on the 7<sup>th</sup> day of February, 2023:

**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) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 34, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the erecting of a berm adjacent the N67 at Spanish Point Golf Club within the golf course in order to mitigate against balls overshooting the course boundary and travelling onto the adjacent N67 comprise works incidental to the management of a golf course, and therefore, comes within the scope of Class 34, Part 2 of Schedule 2 of the Planning and Development Regulations, 2001,
- (b) based on the nature and extent of the Berms in question, the Board was satisfied that the development has only localised impact and

due to its scale and setting would not interfere with the character of the Scenic Route as designated under the Clare County Development Plan 2023-2029. Accordingly, the de-exemption provision of Article 9(1)(a)(vi) of the Planning and Development Regulations 2001, as amended, does not apply.

- (c) based on the documentation on file, the development would not be likely to have significant effects on any designated European Sites - the Carrowmore Point to Spanish Point and Islands Special Area of Conservation (Site Code 001021) and the Mid-Clare Coast Special Protection Area (Site Code 004182), in the vicinity, in view of the sites' conservations objectives. In coming to this conclusion, the Board took account of the limited extent of the works, the lack of a pathway between the development and the European sites, the distance to any qualifying interests and to the nature of those qualifying interests, and accordingly, considers that an appropriate assessment is not required in relation to the development the subject of this referral. Accordingly, the de-exemption provisions of section 4(4) of the Planning and Development Act, 2000, as amended, do not apply:

**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 berms erected adjacent to the N67 at Spanish Point Golf Club is development and is exempted development.

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.

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Ciara McGuinness  
Planning Inspector

19<sup>th</sup> February 2023

**Appendix 1 - Form 1**  
**EIA Pre-Screening**  
**[EIAR not submitted]**

<b>An Bord Pleanála</b>							
<b>Case Reference</b>							
<b>Proposed Development Summary</b>		Erection of Berms					
<b>Development Address</b>		Spanish Point Golf Club, Dough, Spanish Point, Co. Clare					
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			<table border="1"> <tr> <td><b>Yes</b></td> <td>✓</td> </tr> <tr> <td><b>No</b></td> <td>No further action required</td> </tr> </table>	<b>Yes</b>	✓	<b>No</b>	No further action required
<b>Yes</b>	✓						
<b>No</b>	No further action required						
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>							
<b>Yes</b>		Class.....	EIA Mandatory EIAR required				
<b>No</b>	✓		Proceed to Q.3				
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>							
		<b>Threshold</b>	<b>Comment (if relevant)</b>				
<b>Yes</b>			<b>Conclusion</b>				
<b>No</b>	✓	N/A	No EIAR or Preliminary Examination required				
<b>Yes</b>			Proceed to Q.4				



**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_