



An  
Bord  
Pleanála

## Inspector's Report ABP-316438-23

### Question

Whether the erection of tented structures within Thomond Park Stadium Grounds at Old Cratloe Road, Limerick for the sale of alcohol in association with match events, is or is not development and is or is not exempted development.

### Location

Thomond Park, Old Cratloe Road, Limerick

### Declaration

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

EC16/23

Applicant for Declaration

Pat Downes

Planning Authority Decision

Split decision

### Referral

Referred by

Pat Downes

Owner/ Occupier

Munster Rugby

Shannon Rugby Football Club

**Observer(s)**

None

**Date of Site Inspection**

15 July 2024

**Inspector**

Cáit Ryan

## **1.0 Introduction**

- 1.1. This is a referral case under the provisions of Section 5 of the Planning and Development Act 2000 (as amended). ABP-318222-23 has been submitted in relation to a concurrent referral case on a separate question at Shannon Rugby Clubhouse at Thomond Park, Old Cratloe Road, Limerick.

## **2.0 Site Location and Description**

- 2.1. The site subject of this referral is located at Thomond Park Stadium grounds, Cratloe Road, Limerick. It is north west of Limerick city centre. To the north, west and south of the site lie predominantly residential areas. Mayorstone residential area, which comprises housing estates accessed from Cratloe Road, is to the south. Technological University of the Shannon (TUS) and its associated grounds are located to the west. Shannon RFC clubhouse is accessed from within the main stadium grounds, and there is gated pedestrian access to the curtilage of this clubhouse from Cratloe Road. Mayorstone Garda Station bounds the Shannon RFC part of the site to the west, and is at a higher level to the rugby clubhouse. The stadium is bound to the east by Knockalisheen Road, which accesses an established residential area north of the Stadium. Some vacant lands and Limerick Youth Services are on the eastern side of Knockalisheen Road.
- 2.2. On date of site inspection, works were noted to be underway relating to decommissioning temporary structures, following an event. Works were taking place on dismantling/removing a temporary tent-like metal frame within the stadium grounds near the Old Cratloe Road frontage, next to the site entrance. An unenclosed tented structure was visible adjacent to Shannon RFC clubhouse.
- 2.3. A large tented structure within the stadium grounds was visible from outside the site, located approximately east of the west stand, at the southern end of the grounds.
- 2.4. Along Knockalisheen Road, temporary structures noted on site included a tented structure near the museum entrance, a separate structure of more durable appearance in front of the Dugout bar and a small prefab. Parts of this area were noted to be cordoned off by event crowd-management type fencing and other temporary fencing.

2.5. The three specific areas of Thomond Park Stadium grounds, to which this referral regarding the erection of tented structures relates, are:

- The eastern end of the grounds, next to the Dugout bar
- South west of Shannon Rugby Football Club (Shannon RFC) clubhouse
- At the southern end of the stadium, west of the south terrace

Save for temporary fencing directly east of Shannon RFC pavilion, no demarcation between the front (east) of the clubhouse and Thomond Park grounds was apparent.

### 3.0 The Question

3.1. The question referred to by the planning authority pursuant to Section 5(1) of the Planning and Development Act 2000, as amended (hereafter referred to as 'the Act'), is as follows:

'Whether tented structures erected within Thomond Park Stadium Grounds at Old Cratloe Road, Limerick for the sale of alcohol in association with match events is or is not development and is or is not exempted development'.

3.2. The referrer's cover letter lodged with the Section 5 states structures erected for use for sale of alcohol in association with match events are:

- No.1 on map: behind the Dug Out bar at eastern end of the stadium
- No. 2 on map: generally adjacent to Shannon RFC pavilion
- No. 3 on map: at the southern end of the grounds.

3.3. A map showing Location 1, 2 and 3 was lodged with the referral. The letter states tented structure (1) has been there almost permanently for the last number of years. Two images indicated as 'Google View' referenced as Location 1 were lodged with the Section 5. On site inspection, I noted that the large, tented structure shown on the 2no. 'Google View' images was not in place.

3.4. The letter outlines that tented structures (2) and (3) go up when there are matches.

3.5. The planning authority revised the question subject of the referral, as outlined in the decision, to 'whether the erection of 3 tented structures shown on the attached map and marked location 1, 2 and 3 at Thomond Park, Old Cratloe Road, Limerick is or is

not Development or is or is not Exempted Development. The works as described on the plans submitted with the application on the 7<sup>th</sup> March 2023’.

- 3.6. The planning authority’s report on file states that the tented structure at Location (1) has been in place for a number of years, and that enforcement notice dated 15 March 2023 was served to remove the unauthorised structure within 1 month.
- 3.7. The referrer’s cover letter on the appeal, dated 19 April 2023, states tented structure 1 is outside the main stadium close to public road and adjacent to the Dug Out bar.
- 3.8. Given that tented structure (1) was not evident on site inspection, the matter of whether such a structure is development and if so, if it is exempt development, may be a moot point. In addition, I note that this structure is described by the planning authority as ‘an unauthorised structure’ subject of an enforcement case.
- 3.9. However, given that the question subject of this referral relates to 3no. locations (as shown on submitted map), in the particular circumstances of this case, I propose to assess all three.
- 3.10. Noting this content and in the interest of clarity, it is suggested that the question to be assessed be reworded as follows:

‘Whether the erection of 3no. tented structures within Thomond Park Stadium grounds, Old Cratloe Road, Limerick, as shown on the attached map and marked location 1, 2 and 3, for the sale of alcohol in association with match events, is or is not development, or is or is not exempted development.’

## **4.0 Planning Authority Declaration**

### **4.1. Declaration**

Pursuant to Section 5 of the Act, on 29 March 2023, the planning authority declared

- The erection of 1 tented structure shown on attached map and marked Location 1 at Thomond Park does not come within the scope of exempted development as defined by Class 37 of the Part 1 of Schedule 2 of the Planning and Development Regulations (20)01 as amended and is development and is not exempt development.
- The erection of 2 tented structures shown on the attached map and marked

location 2 and 3 at Thomond Park comes within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations (20)01 as amended and is development and is exempt development.

## **4.2. Planning Authority Reports**

Basis for planning authority decision:

### **4.2.1. Planning Reports**

The Development Inspector's report reflects the declaration issued by the planning authority. The main issues raised can be summarised as follows:

- Stadium was redeveloped under P.A. Ref. P06770279 granted in 2007.
- Location 1 is outside and east of stadium grounds. This tented structure has been in place for a number of years. Enforcement notice (DC-457-22 dated 15 March 2023) requires removal of unauthorised structure within 1 month.
- Location 2 is inside the stadium wall near Shannon RFC clubhouse. A previous enforcement case concluded when the marquee was removed.
- Exemption certificate Ref. EC-017-22 issued on 1 July 2022 for marquee to be erected on certain dates for fund-raising discos and special match dates, as exempt development under Class 37 of Planning and Development Regulations 2001. Satisfied that Shannon RFC has not breached planning laws since exemption certificate issued.
- Location 3 is behind the South Terrace within stadium grounds. This structure approx. 25sqm and approx. 5m height has been seen for match days.
- The tented structures are exempt under Class 37, as they are used in conjunction with a local event and are of a social, recreational and sporting character, and the 2no. conditions do not exclude selling of alcohol or goods.
- As the tented structure at Location 1 has been in place for more than 30 days in a year, it cannot be deemed exempt development.

#### 4.2.2. Other Technical Reports

None.

### 5.0 Planning History

There is an extensive planning history relating to the Thomond Park stadium site, as viewed on the planning authority's online planning search.

- Internal report on file cites P.A. Ref. 06/770279, EC-017-22 (EC17/22) and DC-457-22.
- Planning authority's declaration on EC17/22 (decision only) is on file.
- I have noted P.A. Ref. 13/770170 and ABP RL91.318222 (P.A. Ref. EC46/23) on the planning authority and Board websites respectively.

**ABP PL 30.221805 and P.A. Ref. 06/770279:** Redevelopment of Thomond Park Stadium was granted by the planning authority in 2007. An appeal was withdrawn.

**P.A. Ref. 13/770170:** Permission was granted in 2014 for removal of the grass embankment adjacent to the junction of Cratloe Road/Knockalisheen Road for the extension of the existing plaza fronting the Dug Out Bar with all associated site works, including lighting, stretched canvas roof structure, 2no. bus drop off points, ticket booth, flags banners/signage and 'Munster Deer' sculpture.

On site inspection I noted that this planning permission has not been implemented. An extensive hardsurfaced area in the vicinity of the Dug Out bar was noted.

**P.A. Ref. EC17/22:** Referral sought as to 'whether the erection of a 70ft x 30ft marquee for social events within the grounds of Thomond Park, Old Cratloe Road, Limerick is or is not Development or is or is not Exempted Development. The works as described on the plans submitted within the application on the 2<sup>nd</sup> April and 27<sup>th</sup> April 2022'. The planning authority's declaration states

- this comes within scope of exempted development under Class 37 of Part 1 of Schedule 2 of Planning and Development Regulations (20)01 as amended
- it is development and is exempt development.

**DC-457-22:** Enforcement case whereby enforcement notice dated 15 March 2023

requires removal of unauthorised structure (at Location 1) within one month.

Current Case:

**ABP RL91.318222 and P.A. Ref. EC46/23:** This current referral case is described as whether the extension of Shannon Rugby Clubhouse by the erection of an adjoining and linked marquee measuring 30ft x 70ft for the purposes of discos and other events and consequent intensification of use of the clubhouse premises at Thomond Park, Old Cratloe Road, Limerick is or is not development or is or is not exempted development.

## 6.0 Policy Context

### 6.1. Limerick Development Plan 2022-2028

The site is zoned Sports Arena in the Limerick Development Plan 2022-2028, whereby it is an objective to protect, provide for and improve sports arenas and stadiums and associated ancillary facilities.

The purpose of the zoning is to provide for recreation, leisure and tourism facilities and associated ancillary amenities at a regional and national scale. Fast Food Outlet/Take Away, Offices, Public House, Restaurant/Café and Retail Convenience </150sqm nfa. are uses which are 'Generally Permitted' ancillary to the Primary Use Only.

### 6.2. Natural Heritage Designations

The site is not located in or adjacent to any European site.

- Lower River Shannon SAC is approx. 0.5km to north east
- River Shannon and River Fergus Estuaries SPA is approx. 1.3km to south
- Knockalisheen Marsh pNHA is approx. 0.55km to north.
- Fergus Estuary and Inner Shannon, North Shore pNHA is approx. 1.1km to south east.

## 7.0 The Referral

## 7.1. Referrer's Case

The referrer's grounds of appeal may be summarised as follows:

- The area is adversely affected by 3 tented structures erected inside and outside the grounds of Thomond Park for Heineken Cup matches. This causes serious injury to property from noise/general disturbance and visual impact on landscape and should be subject of a planning application process.
- The Council's report stated it had already issued a declaration with respect to the structure (at location 2) and found it came within class 37. It has mixed up this tented structure with a marquee structure close to Shannon RFC which was erected by the Club for fund raising events, discos, etc., and was the subject of declaration reference EC-017-22. This previous declaration for Shannon RFC does not apply to the structure used for the sale of alcohol at location number 2 which is the subject of the current declaration request.
- All three tented structures are for sale of alcohol, and
  - 1 is outside the main stadium close to public road and adjacent to Dug Out bar
  - 2 is a larger structure decorated in Heineken colours and logos and erected by Shannon Rugby Club adjacent to their club house
  - 3 is a large white structure directly facing referrer's home and that of other Mayorstone residents and is erected by Thomond Park Stadium
- Contends that Shannon RFC and Thomond Park are using these structures to provide/intensify floor space for the sale of alcohol in order to increase profits.
- Contends that Class 37 was never intended to be used for this purpose and the Council has erred in interpreting the regulations.
- The question whether this was 'development' was not addressed in the report. 'Development' includes the use of land for the 'placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of .....sale of goods'. The act states that the use of land in such a case can be taken as having 'materially changed'.
- The Council appeared to accept this is 'development'. Referrer is not aware of any grant of permission for these structures.

- Cites Inspector's report on PL 09F.RL.2684 relating to a marquee in Ballinderry, Nenagh, which states Class 37 was not designed to facilitate commercial functions and relates to 'local events', and the erection of a marquee and the proposed change of use of land for social and recreational purposes is not provided for as exempt development under Section 4(1) of the Planning and Development Act 2000, as amended.
- Class 37 was designed to facilitate local events of a limited nature – community type events for people living in the area, and not to facilitate a European match attended by 26,000 people. Such developments are not intended to be used mainly for profit or gain.

## **7.2. Planning Authority Response**

None received.

## **7.3. Owner/occupier's response**

None received.

## **8.0 Statutory Provisions**

### **8.1. Planning and Development Act, 2000 (as amended)**

#### **8.1.1. Section 2(1) of the Act states the following:**

- 'use', in relation to land, does not include the use of the land by the carrying out of any works thereon;
- 'development' has the meaning assigned to it by Section 3;
- 'structure' means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ....'

#### **8.1.2. Section 3(1) of the Act states that:**

- ‘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 over land’.

- 8.1.3. Section 4(1) of the Act sets out various forms of development that are exempted development.
- 8.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.
- 8.1.5. Section 4(4) of the Act states that notwithstanding paragraphs (a), (i), (ia) and (l) of subsection 4(1) and any regulations under subsection 4(2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.
- 8.1.6. Section 5(1) of the Act states if any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.
- 8.1.7. Section 5(3)(a) states where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- 8.1.8. Section 138 (1) states the Board shall have an absolute discretion to dismiss an appeal or referral (b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—
  - (i) the nature of the appeal (including any question which in the Board’s opinion is raised by the appeal or referral), or
  - (ii) any previous permission which in its opinion is relevant.
- 8.1.9. I include the above on the basis that the Planning Authority has previously determined a similar question at Thomond Park, Old Cratloe Road, Limerick; P.A.

Ref. EC17/22 refers.

## **8.2. Planning and Development Regulations, 2001 (as amended)**

- 8.2.1. Article 6(1) of the Planning and Development Regulations, 2001 as amended, hereafter referred to as 'the Regulations' states that subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development, 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 of Schedule 2 specifies Class 37 as exempted development under the category 'development for amenity or recreational purposes':

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.

The 2no. conditions/limitations relating to Class 37 are as follows:

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.

- 8.2.2. Article 9 sets out restrictions on these exemptions in stating that development to which Article 6 relates shall not be exempted development:

(a) if the carrying out of such development would, *inter alia*:

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

(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.

## **8.3. Precedent Referral Cases**

- 8.3.1. I have searched the Board's database and consider the following precedents to be relevant.
- 8.3.2. In RL2684 the Board decided that erection of a marquee on the lands at Coolbawn Quay, Lough Derg, Brookfield, Ballinderry, Nenagh, Co. Tipperary, is development and is not exempted development. The Board concluded
- the construction of a marquee on land constitutes works under section 2 of the Planning and Development Act 2000 and the carrying out of said works constitutes development within the meaning of section 3(1) of the Act,
  - use of the land for social and recreational purposes is material change of use and constitutes development within the meaning of section 3(1) of the Act,
  - the Board was not satisfied that the development comes within the scope of class 37 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended, which is limited to local events.
- 8.3.3. In 307857 the Board decided the change of use for occasional events at Newpark House, Ballymote, Co. Sligo, is development and is not exempted development. In this case the Board was not satisfied that the development came within the scope of Class 37 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 as amended, which is limited to local events. The Board decision outlines (at Matters Considered) that the Board did not agree that the hosting of weddings, as described by the referral, is development which comes within the scope of Class 37, which is limited to local events.

## **9.0 Assessment**

### **9.1. Preliminary**

- 9.1.1. In terms of detail, I note that the planning authority's internal report on file outlines that exemption certificate P.A. Ref. EC-017-22 issued in July 2022 for a marquee near Shannon RFC clubhouse to be erected on certain dates for fund-raising discos and special match dates was on the basis that it was exempt development under Class 37 of the Regulations.

- 9.1.2. As outlined at Section 5.0 of this report, the planning authority's declaration set out the question subject of that referral (P.A Ref. EC17/22) was 'whether the erection of a 70ft x 30ft marquee for **social events** within the grounds of Thomond Park, .....is or is or is not Exempted Development. The works as described on plans submitted with the application on the 2<sup>nd</sup> April and 27<sup>th</sup> April 2022'. (emphasis added)
- 9.1.3. I note that the planning authority's decision on P.A Ref. EC17/22 refers to 'works as described on plans submitted', but does not include any reference to the marquee being erected for *inter alia* special match dates, i.e., the decision refers to 'social events' only. I consider that there is a distinction between 'social events' and 'special match dates'. Based on all information on file, including the information on the planning authority's decision on P.A. Ref. EC17/22, I consider that it has not been demonstrated 'special match dates' form part of the decision on P.A. Ref. EC17/22.

## 9.2. The Question

- 9.2.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised 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 within the meaning of the relevant legislation.
- 9.2.2. The question of this referral, as requested by the referrer, is whether tented structures erected within Thomond Park Stadium grounds at Old Cratloe Road, Limerick, for the sale of alcohol in association with match events is or is not development and is or is not exempted development.
- 9.2.3. As outlined at Section 3.0, I have suggested the following revised wording -  
'Whether the erection of 3no. tented structures within Thomond Park Stadium grounds, Old Cratloe Road, Limerick, as shown on the attached map and marked location 1, 2 and 3, for the sale of alcohol in association with match events, is or is not development, and if so, is or is not exempted development.'
- 9.2.4. The referrer's cover letter outlines that there are 3no. temporary structures subject of this referral. (1) is stated as behind the Dug Out bar at the eastern end of the stadium and has been there almost permanently for the last number of years. (2) is generally adjacent to Shannon RFC and (3) is at the southern end of the grounds,

both of which are erected when there are matches.

- 9.2.5. On site inspection I noted that (1), which is also shown on the lodged 'Google View' images was not in place. Notwithstanding this, and while a decision on this question may be a moot point, having regard to the question subject of this referral, the assessment of whether this structure constitutes development and if so, whether it constitute exempt development, is outlined below.
- 9.2.6. With regard to (2), the referrer's grounds of appeal include that this tented structure is erected by Shannon Rugby Club adjacent to their club house for sale of alcohol. A small, unenclosed tented structure south of the clubhouse and temporary fencing to east of this clubhouse was noted on site inspection.
- 9.2.7. With regard to (3), the referrer states that this is at the southern end of grounds. The grounds of appeal state it is a large white structure directly facing the referrer's home and those of other Mayorstone residents. On site inspection a large white tented structure was visible from Old Cratloe Road, approximately east of the west stand.
- 9.2.8. For clarity, the referrer indicates no legal interest in the site on the Section 5 application form. No responses on this appeal have been received from Munster Rugby or from Shannon RFC. No delineation of site boundaries between Shannon RFC clubhouse and its curtilage and Thomond Park Stadium grounds are outlined in the plans and particulars on file.

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

- 9.3.1. With regard to the question firstly as to whether the tented structures erected within Thomond Park Stadium grounds for the sale of alcohol in association with match events is or is not development, I note that no drawings detailing the scale and dimensions of such structures have been provided. 2no. 'Google View' images of location (1) bounding Knockalisheen Road lodged with the Section 5 application show a single, large marquee type structure east of the Dug Out bar area. As outlined previously, I observed on site inspection that this structure (1) was not in place, and that other were temporary structures noted in this general.
- 9.3.2. However, and notwithstanding the absence of detailed drawings relating to the 3no. structures subject of this referral, with regard to whether the erection of the tented structure at this location (1), and at the other two locations (2) and (3) is or is not

development, I consider that the erection of a tented structure comes within the meaning of 'works', which includes any act or operation of construction, as defined under section 2 of the Act, and the carrying out of said 'works' constitutes 'development' as defined under section 3(1) of the Act. No evidence has been submitted to demonstrate that any works have been authorised on the subject lands to facilitate the erection of tented structures at the 3no. locations indicated for the sale of alcohol in association with match events.

9.3.3. As the 3no. locations are (1) a hardsurfaced area to east of and external to Thomond Park stadium, (2) area south west of Shannon RFC clubhouse and (3) area west of south terrace of Thomond Park stadium, I consider that the use of such areas would be a material change of use and would therefore constitute 'development' as defined under section 3(1) of the Act.

9.3.4. The matter of compliance with *inter alia* Class 37 of the Regulations in the subject case is discussed in the following section.

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

9.4.1. The erection of a tented structure and change of use of land for sale of alcohol in association with match events is not provided for as exempted development under section 4(1) of the Act.

9.4.2. The planning authority considers the tented structures to be exempted development under Class 37 of Schedule 2 of Part 1 – Exempted Development General of the Regulations as the structures are used in conjunction with a local event and are of a social, recreational and sporting character.

9.4.3. I note that Class 37 is one of the classes listed in Schedule 2, Part 1 – Exempted Development - *Development for Amenity or Recreational purposes*. I consider that Class 37 is the relevant class of exempted development under which to assess the subject case. I have found no other relevant exemptions under the Act or the Regulations.

9.4.4. Class 37 relates to development consisting of the use of land for *inter alia* any local event of a 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, subject to 2no. conditions/limitations.

- 9.4.5. I consider that the key issue in relation to the subject case is the reference in Class 37 to 'any local event'. The question subject of the referral includes 'in association with match events'. The referrer's grounds of appeal contend that Class 37 was designed to facilitate local events of a limited nature, and not for a European match attended by 26,000 people as is the case here. The planning authority's report states the capacity of the stadium is approx. 26,000.
- 9.4.6. I note that 'local' (adjective and noun) is defined in the Oxford English Dictionary (accessed online on 2 December 2024) as '*Of, relating to, inhabiting, or existing in a particular place or region*'. While this definition includes the term 'region', I do not consider that the term 'local' in the context of Class 37 may be construed as an event of 26,000 person capacity.
- 9.4.7. Having regard to the size and capacity of this stadium, I do not consider that match events at this stadium would come within the meaning of 'local event'.  
Notwithstanding therefore that the match events may be considered to be of 'sporting character', given that such events are not 'local', I do not consider that the tented structures and the use thereof would fall within the scope of Class 37. Accordingly, I consider that the 3no. tented structures subject of this referral constitute development and do not constitute exempt development.
- 9.4.8. Given that the subject structures do not come within the scope of this class, I do not consider that the 2no. associated conditions/limitations are required to be addressed. However, for clarity, I note that these relate to (1) the land not being used for such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year and (2) the reinstatement of lands on discontinuance of such use.
- 9.4.9. With regard to Condition/Limitation 1, it does not appear to be set out in the information on file as to how frequently the tented structures are in place, save for Location (1) along Knockalisheen Road frontage, which is stated by the referrer to have been there almost permanently for the last number of years. I have previously noted that this tented structure was not evident on site inspection.
- 9.4.10. With regard to structures (2) and (3), no information has been provided as to the frequency or duration that these structures are in place, save for the referrer's reference to these being erected for Heineken Cup matches. While I consider that

Class 37 does not apply to the subject case, in the event the Board was minded to consider that the subject development comes within the scope of Class 37, it may wish to consider that clarity is required as to the frequency and duration that these structures are in place. However, given that it is recommended that Class 37 does not apply in this instance, it may not be necessary to pursue this matter.

#### Recent Planning History

- 9.4.11. I have noted in this assessment that the planning authority's report on the subject case refers to Location (2) as being inside the stadium wall near Shannon RFC clubhouse. While it states the marquee was removed, it outlines that it issued exemption certificate P.A. Ref. EC17/22 for this marquee to be erected on certain dates for fund-raising discos and special match dates, as exempt development under Class 37 of the Regulations.
- 9.4.12. The planning authority's declaration (decision only) on P.A. Ref. EC17/22 is on file, on which there is no reference to 'special match dates'. I note that 'the works as described' are not further outlined in the decision.
- 9.4.13. The planning authority's declaration was not appealed. I note it relates to 1no. marquee for social events within the grounds of Thomond Park, and as such I consider there is some similarity in the question subject of the current case.
- 9.4.14. However, the current case relates to 3no. tented structures within Thomond Park Stadium grounds for sale of alcohol in association with match events. In contrast, as P.A. Ref. EC17/22 relates to 1no. marquee for social events, I do not consider that this is the same, or substantially the same question in respect of the same land.
- 9.4.15. I note the decision in Narconon Trust vs An Bord Pleanála (2021) IECA 307, whereby the Board was precluded from deciding a section 5 referral where a planning authority has previously determined the same, or substantially the same question in respect of the same land where there has been no change in the planning facts and circumstances since the same question.
- 9.4.16. On the basis of the information on file, I do not consider it has been demonstrated that the decision on P.A. Ref. EC17/22 relates to the same question subject of the current case. Accordingly, it is recommended that the Board should decide this referral in accordance with the draft Order set out at Section 10 of this report.

## 9.5. Restrictions on exempted development

- 9.5.1. With regard to restrictions on exemptions outlined under Article 9(1) (a) of the Regulations, I consider that given that the subject development does not come within the scope of Class 37, matters outlined under this Article do not arise in this instance.
- 9.5.2. However, for completeness, Article 9 sets out restrictions on exemptions shall not be exempted development where (a)(i) it would contravene a condition attached to a permission or be inconsistent with any use specified in a permission under the Act. The planning history outlined in the internal report on file does not set out any specific conditions relating to planning permissions granted on the subject site.
- 9.5.3. I refer the Board to Section 4(4) of the Act which states that 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.
- 9.5.4. Having regard to the nature and scale of development subject of this section 5 referral, located in a built-up, serviced urban area, I do not consider that the subject development would result in significant effects on the environment, and environmental impact assessment (EIA) is not required.
- 9.5.5. Having regard also to the distance to the nearest European site, no Appropriate Assessment (AA) issues arise, and AA is not required.

## 10.0 Recommendation

- 10.1. 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 erection of 3no. tented structures within Thomond Park Stadium grounds, Old Cratloe Road, Limerick, as shown on the attached map and marked location 1, 2 and 3, for the sale of alcohol in association with match events, is or is not development or is or is not exempted development

**AND WHEREAS** Pat Downes requested a declaration on this question from Limerick City and County Council and the Council issued a declaration on the 29 day of March, 2023 stating that the tented structure at Location (1) does not come within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations (20)01 as amended and is development and is not exempt development, and that the tented structures at Locations (2) and (3) come within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations (20)01 as amended and is development and is exempt development,

**AND WHEREAS** Pat Downes referred this declaration for review to An Bord Pleanála on the 24 day of April, 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,
- (c) Section 4(1)(a) 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 37 of Part 1, Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the report of the Inspector,

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

- (a) The erection of 3no. tented structures within Thomond Park Stadium grounds, Old Cratloe Road, Limerick, as shown on the attached map and marked location 1, 2 and 3, for the sale of alcohol in association with match events, is works, and therefore constitutes development
- (b) Such works do not fall within the scope of the exemption set out at Class 37 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, as the match events are not considered to be 'local'

**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 erection of 3no. tented structures within Thomond Park Stadium grounds, Old Cratloe Road, Limerick, as shown on the attached map and marked location 1, 2 and 3, for the sale of alcohol in association with match events is development and is not 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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Cáit Ryan  
Senior Planning Inspector

13 January 2025