



An
Bord
Pleanála

Inspector's Report ABP-318264-23

Question

Whether the stripping of top soil, filling and stoning of lands and or the overlaying of soil to provide a grassed finish is or is not development and is or is not exempted development.

Location

Atlantic Caravan Park, Bartragh,
Enniscrone, Co. Sligo, F26 XV58

Declaration

Planning Authority

Sligo County Council

Planning Authority Reg. Ref.

ED 489

Applicant for Declaration

Atlantic Caravan Park

Planning Authority Decision

No declaration

Referral

Referred by

Sligo County Council

Owner/ Occupier

Atlantic Caravan Park

Observer(s)

None

Date of Site Inspection

4th of September 2024

Inspector

Darragh Ryan

1.0 Site Location and Description

- 1.1. The site is part of an existing Caravan Park located in Bartragh Enniscrone Co. Sligo. There is a significant number of mobile homes on the site which is immediately adjacent to Enniscrone Beach. The overall site area extends to 14.4 hectares with the area for of “works” extending to 900sqm or 0.6% of the overall area of the Caravan Park.
- 1.2. The area in question is located on the western most side of the caravan park in a cul de sac area.
- 1.3. Enniscrone Golf Club is located to the west of the site, there are sand dunes between the Golf Club and the Caravan Park, the area to the south is characterised by residential development of various forms and Enniscrone Beach is immediately north of the site.

2.0 The Question

- 2.1. Whether (a) the “stripping of topsoil, filling and stoning of lands” already carried out; and, (b) the overlaying with soil to provide a grassed finish (not carried out to date) is exempted development

3.0 Planning Authority Declaration

3.1. Declaration

- None

3.2. Planning Authority Reports

3.2.1. Planning Reports

- None

3.2.2. Other Technical Reports

- None

4.0 Planning History

- PA reg ref: 98/321 – the construction of 20 timber holiday chalets, connect to existing services and carry out all ancillary site works
- PA reg ref 02/90 – (1) retention of offices, reception area and shop to the front of the caravan park, (2) retention of chalet to the rear of the existing caravan park (3) retention of existing connection to services for same & (4) construction of new chalet to the rear
- PA reg ref 04/477 – (1) to retain fill on site of circ .27 hectares (2) to retain 5 no chalets (3) to retain 70 mobile homes on 70 no hardstanding areas (4) to retain connection to services
- PA reg ref 10/492 – (1) retention of 8 no chalets (total floor area 670.6sqm) (2) retention of existing shed (floor area 137sqm) and surrounding enclosure, (3) removal of 12 no existing mobile home bases, (4) construction of 10 mobile home bases (9) retention of 9 mobile home bases, (6) construction of playground area and (7) carrying out of all ancillary site works

5.0 Policy Context

5.1. Sligo County Development Plan 2017 - 2023

P-CZT-1

Ensure that future caravan, camping and parking facilities in coastal areas will not be visually intrusive or impact on sensitive coastal environments (e.g. sand dune systems), by requiring, inter alia, appropriate siting, layout, design and natural screening, and compliance with the requirements of the Habitats Directive. On beaches, within dunes and in other vulnerable areas, manage and control car parking, vehicular and pedestrian movements in compliance with the requirements of the Habitats Directive where relevant

5.2. Natural Heritage Designations

Killala Bay Moy Estuary SAC (Site Code: 000458) – 300m to the North

Killala Bay/ Moy Estuary SPA (Site Code: 004036) - 300m to the North

6.0 The Referral

6.1. Referrer's Case

It appears from the information contained on file that the agent for the owner/occupier of Atlantic Caravan Park Ltd originally submitted the referral to Sligo County Council who in turn submitted it directly to An Bord Pleanála for determination. It appears that Sligo County Council did not issue a determination in respect of the question put before it. The case was referred directly from Sligo County Council to An Bord Pleanála. The agent for the applicant sets out the following:

- The stripping of topsoil, filling and stoning of lands (already carried out) and the overlaying with soil to provide a grassed finish (not carried out to date) is exempted development.
- The applicant seeks that the Board consider the above works exempted Development under Section 4(1) (h) of the Planning and Development Acts. The planning effect of the works would be inconsequential and immaterial.
- The applicant seeks that the Bord determine each element of the proposed works and reconfiguration individually as well as cumulatively. Item 2 is highlighted as a potential resolution should item 1 be determined not to be exempted development
- The works do not materially affect the external appearance of the structure as the appearance of this overall area is effectively unchanged, notwithstanding a redistribution of the proportion of each of the differing surfaces vis a vis grassland vs hardstanding
- The works do not render the appearance inconsistent with the character of the structure or of neighbouring structures. The character of the collection of

structures is also unchanged as, there is no change to the broad types of materials rather a limited redistribution of the proportion of each of the differing surfaces.

- A precedent case has been provided by way of an example where it is set out similar issues arose. The case reference is ABP 02.301484 which related to the question:

“Whether the laying of crushed stone to a depth of 100 millimetres and the overlaying of gravel at a depth of 50 millimeters to accommodate a storage area for ongoing works at a windfarm is or is not development or is or is not exempted development”

The board concluded that

“the excavation and layout of crushed stone and gravel constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h) of the said Act and having regard to the nature, scale, extent and location of the said works these works do not materially affect the external appearance of the existing windfarm so as to render the appearance inconsistent with the character of the windfarm and that of neighbouring structures.”

6.2. Planning Authority Response

- No determination from the Board

6.3. Further Responses

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 sets out definitions and the following definitions are relevant.

“Alterations” - alterations include

(a) the plastering or painting or the removal of plaster or stucco or the replacement of a door, window or roof that materially alters the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structure. “Structure” means any building, structure, excavation or other thing constructed or made on in or under any land or any part of a structure so defined and

(a) where the context so admits includes the land on, in or under which the structure is situate.

“Use” in relation to land does not include the use of the land for the carrying out of any works thereon.

“Works” include any act, operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 “Development” 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.

Section 4(1) “exempted development” – The following shall be exempted development for the purposes of the Act.

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works that affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

7.2. Planning and Development Regulations, 2001

Article 6(1) subject to Article 9, the 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.

Class 16 – the erection, construction or placing on any land in, over, or under which or on land adjoining which development consisting of works (other than mining) is being or is about to be carried out pursuant of a permission under the Act or exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

The conditions and limitations applying to Class 16 are that such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

7.3. Relevant Referrals

- 301484 -18 - Whether the laying of crushed stone to a depth of 100 millimetres and the overlaying of gravel at a depth of 50 millimetres to accommodate a storage area for on-going works at a windfarm is or is not development or is or is not exempted development.

Decision – Is Development and is exempted Development

8.0 Assessment

8.1. Background

8.2. Is or is not development

- 8.2.1. Under the Planning and Development Act, 'development' is defined as the carrying out of any works on, in, over, or under land, or making any material change in the use of any structures or other land, except where the context otherwise requires. The

key issue for the Board to determine is whether the activities proposed for the site qualify as “works.”

8.2.2. The Act defines "works" as any activity involving construction, excavation, or similar operations. In this case, the proposed works involve excavation and modifications to the land to establish an infill hardstanding area intended for ancillary storage related to a caravan park. During the site inspection, it was observed that old caravans were located on the area; however, they were evidently not being utilised for habitation purposes. Based on the information provided, the excavation of the land and the creation of this hardstanding area constitute “works” and, as such, meet the definition of “development” under the Planning and Development Acts. It is noted that this aspect is not contested by the landowners or occupiers.

8.2.3. Referring to Section 2(1) and Section 3(1) of the Planning and Development Act 2000 (as amended), the following activities are considered "works" and "development" under the Act:

(a) The stripping of topsoil, filling, and stoning of lands.

(b) The overlaying with soil to provide a grassed finish (though this has not yet been completed) is classified as exempted development.

8.2.4. Having established that the proposed works constitute “development,” the next consideration is whether the development is exempt from requiring planning permission. A development may be exempt from planning permission under Section 4 of the Planning and Development Act 2000 (as amended), or Article 6 of the Planning and Development Regulations 2001 (as amended).

8.3. Is or is not exempted development

8.3.1. The owner/occupier of the land contends that the works carried out are exempt under Section 4(1)(h) of the Planning and Development Act. This section states that "development consisting of works for the maintenance, improvement, or alteration of any structure is exempt, provided the works only affect the interior or do not materially alter the external appearance of the structure in a way that would make it inconsistent with the character of the structure or neighbouring structures."

- 8.3.2. The term "structure" in the Act includes any building, **excavation** (emphasised), or anything constructed or made on, in, or under the land, and where relevant, includes the land on, in, or under which the structure is located.
- 8.3.3. In my view, the definition of "structure," which includes the act of excavation, applies here. Additionally, the proposed infill of gravel on the site could reasonably be interpreted as falling under the phrase or other thing constructed or made on, in, or under any land" as set out in the definition of a "structure." Therefore, the works proposed could be classified as a structure under the Act.
- 8.3.4. In the context of Section 4(1)(h), it could be reasonably argued that creating a small hardstanding area of stone and fill for ancillary use associated with the caravan park would not materially affect the external appearance of the lands or the overlaying of this hardstanding area to provide a grassed finish would not materially affect the external appearance of the lands. Specifically, the works would not alter the character of the site or make it inconsistent with the existing structures (such as mobile homes) or neighbouring structures. The storage of caravans is considered ancillary to the use of caravan park. This conclusion takes into account the overall size of the site and the variety of surfaces present (grassland, access tracks, roadways, and hardstanding areas).
- 8.3.5. In my opinion, the owner/occupier's claim that (a) the stripping of topsoil and filling/stoning of the land constitutes a "structure," and (b) that the works would qualify as exempted development under Section 4(1)(h), is valid, as the criteria for exemption are met.

8.4. **Restrictions on exempted development**

- 8.4.1. The development works carried out on site were carried out under Section 4(1) of the Planning and Development Act and one which provides a broad exemption and one which is not restricted by Articles 6, 9, or 10 of the Planning and Development Regulations.

8.5. **AA Screening**

- 8.5.1. I have considered the proposed development at Bartragh, Enniscrone, Co. Sligo in light of the requirements S177U of the Planning and Development Act, 2000, as amended.

The subject site is located c. 300m South of Killala Bay Moy Estuary SAC (Site Code: 000458) and Killala Bay/ Moy Estuary SPA (Site Code: 004036). There are no drainage ditches or watercourses in the vicinity of the development site that provide direct connectivity to European sites.

The development comprises (a) stripping of topsoil and replacing/filling of lands with inert stone fill & (b) overlying of stoned area with a grassed finish.

8.5.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows;

- The nature and small scale of the development works,
- The inert nature of the works proposed
- The location and scale of the existing caravan park and intervening land use between the site and European Sites.

8.5.3. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

8.5.4. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act, 2000) is not required.

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 stripping of topsoil, filling and stoning of lands and the overlying with soil to provide a grassed finish is or is not development or is or is not exempted development:

AND WHEREAS Atlantic Caravan Park Ltd requested a declaration on this question from Sligo County Council and the Council did not issue a declaration.

AND WHEREAS Sligo County Council referred this declaration for review to An Bord Pleanála on the 17th day of October, 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)(h) of the Planning and Development Act, 2000, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The stripping of topsoil, filling and stoning of lands and overlaying with soil to form a grassed finish constitutes works under the definition of the Act.
- (b) the act of laying of stone and gravel fell within the definition of structure as set out in the Act
- (c) the stripping of topsoil and layout of stone and gravel and overlaying with soil to form a grassed area constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h) of the said Act and having regard to the nature, scale, extent and location of the said works these works do not materially affect the external appearance of the existing caravan park so as to render the appearance inconsistent with the character of the caravan park and that of neighbouring structures,

- (d) having regard to the nature, scale and extent of the works in the context of the existing caravan park for use ancillary to the use of the caravan park are not considered to be material in the context of the existing use,
- (e) the proposed works would not be likely to have a significant effect, either individually or in combination with other plans and projects on any Natura 2000 sites and therefore do not require an appropriate assessment.
- (f) Furthermore, having regard to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, the works undertaken do not require the submission of an environmental impact statement.

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 is/ is not development and is/ 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.

Darragh Ryan
Planning Inspector

16th of September 2024