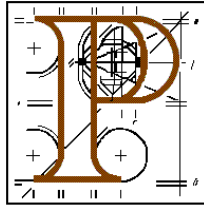


An Bord Pleanála



Inspector's Report

Reference Case: 06D.RL.3363

Question: Whether the erection of an unroofed fenced area for the exercising or training of horses/ponies and a drainage bed or soft surface is or is not development or exempted development at the former Kiltarnan Golf and Country club.

Location: Enniskerry Road, County Dublin.

Referrer/Landowner: Luke Comer

Planning Authority: Dun Laoghaire Rathdown County Council

Date of Site Inspection: 3rd February 2016.

Inspector: Hugh Mannion.

1. INTRODUCTION

This is a referral to the Board under Section 5 of the Planning and Development Acts 2000 - 2015 by Luke Comer in relation to whether the erection of an unroofed fenced area for the exercising or training of horses/ponies and a drainage bed or soft surface is or is not development or exempted development at the former Kiltiernan Golf and Country Club at Enniskerry Road, County Dublin

2. SITE AND SURROUNDINGS

The overall the landholding of which the area the subject of this referral forms part was previously known as the Kiltiernan Golf and Country Club. That use has ceased and the element of the site closest to the Enniskerry Road is now in use by a film location company. The access from the Enniskerry Road leads to a complex of buildings which includes the former hotel now in disrepair. Between these buildings and the public road is an area of landscaping, access roads and parking areas. Behind these buildings is a belt of trees and vegetation and the topography rises sharply toward the west and a ridge (max height about 240m OD). This area evidences a pattern of tree planting and land form which indicates that it was largely the area occupied by the former golf course.

The proposed exercise track will start in the most northerly corner of the site closest to Enniskerry Road and follow south through an area which appears to have been previously a golf course, curving northeast behind the former hotel buildings and terminating in a straight section running, generally, from southeast to north east.

The landholding extends both sides of the Dun Laoghaire/Rathdown County Council border with County Wicklow but the works the subject of this referral are wholly within the Dun Laoghaire/Rathdown County Council administrative area.

3. THE QUESTION

The question posed in this referral is whether the erection of an unroofed fenced area for the exercising or training of horses or ponies together with a drainage bed or soft surface material to provide an all-weather surface at the Kiltiernan Golf and Country Club is or is not exempted development.

4. REFERRER'S CASE

The referrer's case may be summarised as follows.

- The subject works are exempt from the requirement to seek permission under Class 10 of Schedule 2 of Part 3 of the Planning and Development Regulations 2001, as amended.
- The regulations impose no limitation in relation to size in that Class.

5. PLANNING AUTHORITY'S SUBMISSION

The planning authority stated that it had no further submissions to make.

6. FURTHER SUBMISSIONS

There are no further submissions.

7. LEGISLATIVE CONTEXT

The Planning and Development Act, 2000 (as amended) Section 3(1) of the Act states the following in respect of '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 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Article 6 (1) of Planning and Development Regulations 201, as amended sets out classes of development which shall be exempted development. Class 10 of Schedule 2 of Part 3 of the Planning and Development Regulations 2001, as amended, provides that "the erection of an unroofed fenced area for the exercising or training of horses or ponies together with a drainage bed or soft surface material to provide an all-weather surface". This exemption is subject to 4 conditions.

Article 9 (1) of Planning and Development Regulations 2001, as amended, sets out various restrictions on works that would otherwise be exempted development under Article 6. These restrictions include, inter alia, if the carrying out of any development that would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

8. ASSESSMENT

8.01 The construction of the exercise track comprises carrying out of works on land and therefore constitutes development for the purposes of section 3 of the Planning and Development Acts.

8.02 Article 6 (3) of the Planning and Development Regulations 2001, as amended (the Regulations) makes provision for classes of development set out in Part 3 of the regulations to be exempted development subject to any provisions of Article 9. Class 10 of Schedule 2 of Part 3 of the Regulations provides that “the erection of an unroofed fenced area for the exercising or training of horses or ponies together with a drainage bed or soft surface material to provide an all—weather surface” shall be exempted development subject to the conditions set out in the adjoining column. These conditions are:

- 1) No such structure shall be used for any purpose other than exercising of horses or ponies.
- 2) No such area shall be used for the staging of public events.
- 3) No such structure shall be situated within 10m of any public road and no entrance to such area shall be directly off any public road.
- 4) The height of any such structure shall not exceed 2m.

8.03 The material submitted with the referral makes no mention of any other purpose other than exercising horses or ponies. If such a use were to occur it would be open to the planning authority to take enforcement action under Part 8 of the Planning and Development Acts. The material submitted with the referral makes no mention of the use of the track for the staging of public events. If such events were to occur it would be open to the planning authority to take enforcement action under Part 8 of the Planning and Development Acts. The structure is not situated within 10m of the public road nor is it accessed directly off the public road. The railings shown as bounding

the track on both sides on drawing number C2101 submitted with the referral are approximately 1.35m high. The track has a total length of about 1.65km long and at its closest is about 12m from the Enniskerry Road.

8.04 I conclude therefore that the track as described in the referral documents, subject to any other relevant considerations, is exempted development.

8.05 Article 9 of the Regulations sets out a number of restrictions on development which would, otherwise, be exempted development. These have been substantially amended since the original article 9 in the Regulations and I attach a copy of the most recent unofficial consolidation of this article.

8.06 Relying on the history of permissions set out in the attached file on the overall site of the former Kiltiernan Golf and Country Club of which this site forms part, and in relation to which there is no documented disagreement, I am satisfied that it does not contravene a condition of a previous permission (Article 9(1)(a)(i)). The referral does not relate to development which would comprise alterations to an entrance to public road (Article 9(1)(a)(ii)) or endanger public safety by reason of traffic hazard (Article 9(1)(a)(iii)). The referral does not relate to development comprising alterations to a building (Article 9(1)(a)(iv)) or works under a public road (Article 9(1)(a)(v)).

8.07 The proposed development is located in an area zoned objective G in the Dun Laoghaire Rathdown County Development Plan 2010–2016 with the objective “to protect and or improve high amenity areas” and the overall site of the former Kiltiernan Golf and Country Club adjoins the Enniskerry Road along a stretch where it is an objective of the County Development Plan to preserve views west towards the high ground to which policy LHB4 – “it is Council policy to protect and encourage the enjoyment of views and prospects of special amenity value or special interests” applies. Having regard to the form of development proposed, the very limited tree cover which will be lost in its construction, the distance from the public road and the topography within the overall the site in which the track will be located I conclude that the track will not interfere with the character of the landscape or any view or prospect of special amenity value or special interest designated for protection in the County Development Plan. I have consulted the draft Dun Laoghaire Rathdown County Development Plan 2016-2020 and in particular

map 13¹ and am satisfied the landuse zoning and views and prospects designations proposed are not materially changed from those of the current County Development Plan.

8.08 I conclude therefore that the track is not development to which article 9(1)(a)(vi) applies.

8.09 The exercise track will not impact on places, caves, sites or features of other objects of archaeological, geological, historical, scientific or ecological interest referred to in the County Development Plan or draft County Development Plan and therefore is not de-exempted by article 9(1)(a)(vii). The track does not impact on any national monument to which article 9(1)(a)(viiA) might apply. The track does not impact on a NHA to which article 9(1)(a)(viiC) would apply. The track does not comprise works to an unauthorised structure to which article 9(1)(a)(viii) would apply. The track does not comprise works to a building or structure to which article 9(1)(a)(ix) would apply. The track does not comprise fencing or enclosure of land habitually open to the public to which article 9(1)(a)(x) would apply. The track does obstruct a right of way to which article 9(1)(a)(xi) would apply. The track does not comprise works to a structure within an ACA to which article 9(1)(a)(xii) would apply.

8.10 The track is not within the area of a Special Amenity Area Order to which article 9(1)(b) would apply and the circumstances (electricity undertakings or Ministerial consents under the Habitats Directive) provided for in article 9(2) and 9(3) are not relevant here.

8.11 In relation to article 9(1)(a)(viiB) the Board must satisfy itself that the development does not require **appropriate assessment** (AA). The original referral submitted to the planning authority included a screening report which dealt that European sites and proposed natural heritage. Strictly speaking natural heritage areas are not European sites and should not be screened for AA. The referrer's screening report identifies four European sites within a 15km radius of the site; Knocksink Wood SAC (000725), Ballyman Glen SAC (000713) and the Wicklow Mountains SAC (0002122 and the Wicklow Mountains SPA (0004040). Having regard to the separation distance between the Wicklow Mountains SAC (0002122) and the Wicklow Mountains SPA (0004040) and the referral site, the qualifying interests for which these European sites have been designated and the form of development to which

¹ http://www.dlrco.ie/files/devplan2016_2022/media/pdf/MAP13_LAYOUT.pdf

this referral relates I agree with the referrer and the planning authority that no appropriate assessment issues arise.

8.12 In relation to the Knocksink Wood SAC (000725) and Ballyman Glen SAC (000713) sites these are somewhat closer to the referral site to the south. The conservation interests for Knocksink Wood SAC (000725) are petrifying springs with tufa formation (Cratoneurion- a priority habitat) and alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae - a priority habitat). For Ballyman Glen SAC (000713) the conservation interests are petrifying springs with tufa formation (Cratoneurion- a priority habitat) and alkaline fens.

8.13 I would identify equine waste as the only likely emission from the proposed development the liquid element of which would infiltrate into the topsoil underneath the track.

8.14 Having regard to the likely emissions from the track, the form and nature of the track, the conservation interests for which the two cSAC's identified above have been designated I conclude on the basis of the information on the file, the material published by the NPWS and my site inspection which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Knocksink Wood SAC (000725) or the Ballyman Glen SAC (000713) or any other European site and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. Therefore the track the subject of this referral does not lose its exemption by reference to 9(1)(a)(viiB) of the Regulations.

8.15 The planner's report on the planning authority file which gave rise to the planning authority's decision in this case, *inter alia*, states that;

“the planning authority considers that Class 10 of Schedule 2, Part 3 of the Planning and Development Regulations 2001(as amended) is intended for more confined development such as outdoor lunging arenas or exercise enclosures”.

8.16 In my view this is not a sustainable interpretation of the Regulations – the Oireachtas made the Regulations and imposed four conditions in this class of exempted development. It follows that persons seeking to understand what forms of exempted development are open to them must be

able to rely on the plain meaning of the regulation and it is not open to planning authorities to fill in perceived gaps in the regulations de-exempting otherwise exempted development. The appellant makes this point in his submission and I agree.

8.17 The Board has considered the central issue which arises in this case in a previous referral (RL13.RL2676) which I attach for the Board's information.

9. RECOMMENDATION

Having regard to the foregoing I recommend that the Board find that the development is exempted development in accordance with the draft order set out below.

WHEREAS a question has arisen as to whether the erection of an unroofed fenced area for the exercising or training of horses or ponies together with a drainage bed or soft surface material to provide an all-weather surface at the former Kiltiernan Golf and Country Club, Enniskerry Road, County Dublin is or is not development and is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Luke Comer of Palmerstown House Estate, Johnstown, County Kildare on the 23rd day of June, 2015:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- a) Sections 2, 3 and 4 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 10 of Part 2 of Schedule 2 to the said Regulations,
- d) the information submitted on behalf of the referrer regarding the scale, nature and layout of the exercise/training area,

AND WHEREAS An Bord Pleanála has concluded that –

- a) the works proposed comprise development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended,
- b) the development is one to which Class 10 of Part 2 of Schedule 2 to the said Regulations applies,

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that erection of an unroofed fenced area for the exercising or training of horses or ponies together with a drainage bed or soft surface material to provide an all-weather surface at the former Kiltiernan Golf and Country Club, Enniskerry Road, County Dublin is development and is exempted development.

Hugh Mannion
Planning Inspector

11th March 2016.