

An Bord Pleanála



Inspector's Report

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| Reference No.: | 91.RL3452 |
| Details of Reference: | Whether the use of land for community allotments, is or is not exempted development. |
| Referred By: | Eugene Harrington |
| Other Parties to the Reference: | Michael O'Hea, Stephanie Forde, Jerry Flynn |
| Planning Authority: | Limerick City & County Council |
| Planning Authority Ref: | EC/15/76 |
| Location: | Newtown, Monaleen Road, Castletroy, Limerick. |
| Date of Site Inspection: | 20 th April 2016 |
| Inspector: | Michael Dillon. |

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located within the grounds of the Monaleen pitch & putt facility (3.67ha) on the southwest side of Monaleen Road, on the southeastern edge of the city of Limerick. The 50kph speed restriction applies in this area. There are public footpaths on either side of the road, and public lighting is in place. Access to the allotments is via the entrance to the pitch & putt club, which is served by a car-park.
- 1.2 The area of the allotments is irregular in shape (in or about 1,000sq.m) is located in the northern corner of the wider pitch & putt site. Immediately to the northeast, the allotments abut the rear garden of a dormer bungalow ('Coolmeen') on Monaleen Road – the boundary with which is a concrete block wall which is capped but not plastered (1.5m high). Two rows of willow sticks have recently been planted hard against the wall – approximately 0.3m high. Immediately to the southeast of the allotments is a two-storey house. To the northwest there is agricultural land – the boundary with which is an old hedgerow. The allotments are separated from the pitch & putt grounds to the southeast by a timber post and green plastic mesh fence. There are no buildings on the allotments site and individual allotments have timber planking borders. There does not appear to be a water supply.

2.0 DEVELOPMENT PLAN

The relevant document is the Limerick County Development Plan 2010-2016. The site is not zoned for any particular use.

3.0 BACKGROUND TO REFERRAL

- 3.1 On 20th May 2015, Limerick City & County Council issued a Warning Letter to Eugene Harrington, under section 152(1) of the Planning & Development Acts 2000-2014, relating to unauthorised subdivision of amenity lands for use as allotments at this site.
- 3.2 The referrer responded to the Council on 15th June 2015, enquiring under what category allotments fell for planning permission.
- 3.3 The Council responded on 7th July 2015, stating that permission was required as permission had been granted for change of use from agriculture to amenity lands at this pitch & putt. The use of allotments is not exempted development under Schedule 2, Part 1 of the Planning and Development Regulations 2001-2013.
- 3.4 On 22nd October 2015, Limerick City & County Council issued an Enforcement Notice under section 154 of the Planning & Development Acts 2000-2015. The Notice related to change of use from amenity lands to allotments.

4.0 REFERRAL

4.1 Referral to Limerick City & County Council

On 19th November 2015, Eugene Harrington sought a declaration under section 5 of the Planning and Development Acts 2000-2014, in relation to the community allotments.

4.2 Decision of Planning Authority

4.2.1 The Planner's Report of Limerick City & County Council (dated 30th November 2015) sets out the reasoning of the Council, and can be summarised in bullet point format as follows-

- Permission ref. 11/6 was granted to Eugene Harrington on 6th May 2011, subject to 9 no. conditions, for change of use existing agricultural land to pitch & putt course, new entrance and associated site works. The permission was carried out.
- Allotments were laid out in the corner of the pitch & putt course early in 2015 – measuring approximately 54m x 22m.
- The Board has previously decided, on at least two occasions, that subdivision of agricultural land for use as allotments was not development.
- The lands are no longer agricultural land, but rather amenity land.
- Development of allotments is a material change of use.
- Section 2(1) of the Act defines "Allotments" as- "an area of land comprising not more than 1,000sq.m let or available for letting to and cultivation by one or more than one person who is a member of the local community and lives adjacent or near to the allotment for the purpose of the production of vegetables or fruit mainly for consumption by the person or a member of his or her family". The area of the allotments is in excess of 1,000sq.m.
- The allotments area was indicated as being for screen planting as part of the pitch & putt course application. Condition 7 of the permission required that the "proposed tree planting as indicated on the site layout drawings submitted on 7th January 2011 shall be carried out on site".
- Article 9(1)(a)(i) of the 2001 Regulations stipulates that development to which article 6 relates shall not be exempted development for the purpose of the Act – "if the carrying out of such development would (i) contravene a condition attached to a permission under the act or be inconsistent with any use specified in a permission under the act".

The Report is accompanied by 6 no. A4 colour photographs.

4.2.2 On 14th December 2015, Limerick City & County Council issued a Section 5 Declaration to the effect that change of use of amenity lands

to community allotment use was development and was not exempted development.

4.3 Appeal Against Decision of Planning Authority

4.3.1 The declaration of Limerick City & County Council was referred to the Board for review under Section 5(3)(a) of the Planning and Development Act 2000 on 19th January 2016. The review, submitted by Eugene Harrington of 'Clogher', Monaleen Road, can be summarised in bullet point format as follows-

- The referrer was approached by local residents looking for allotments sites.
- The allotments fall under the 1,000sq.m threshold. There are 12 no. allotments at 36sq.m each and 3 no. allotments at 33sq.m each.
- When installing the allotments, the referrer understood that they would fall under the category of leisure and recreation – for which the land is zoned.
- Trees were not planted (as required by condition 7 of planning permission), as neighbours asked that that trees not be planted. The referrer should have applied to Limerick City & County Council to omit condition no. 7.
- The referrer is currently in the process of planting three rows of trees along the boundary.

4.3.2 The referral is accompanied by the following-

- Names of three people on the allotment committee.
- Section 5 Declaration from Limerick City & County Council.
- E-mail from Morgan McDonagh, Architectural & Planning Consultant on behalf of Eugene Harrington, to Planning Enforcement Section (dated 17th November 2015).

5.0 RESPONSE TO REFERRAL

The response of Limerick City & County Council, received by the Board on 28th January 2016, contains the relevant documentation, planning history and drawings relating to the case. There is no further comment made in relation to the submission of the referrer to the Board.

6.0 RELEVANT LEGISLATION

In order to assess whether or not the works to be carried out constitute development or exempted development, regard must be had to the following items of legislation:

6.1 Planning and Development Act, 2000 (as amended)

Section 2(1) provides the following interpretation for "agriculture":

includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly.

Section 2(1) is amended by Section 4 of the Planning and Development (Amendment) Act, 2010 to include the following definition of “allotment”.
means an area of land comprising not more than 1,000 square metres let or available for letting to and cultivation by one or more than one person who is a member of the local community and lives adjacent or near to the allotment, for the purpose of the production of vegetables or fruit mainly for consumption by the person or a member of his or her family.

Section 3(1) states as follows:

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)(a)–(l) sets out what is exempted development for the purposes of this Act and includes (a) ‘*development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used.*’

The First Schedule of the Principal Act sets out purposes for which objectives may be indicated in a Development Plan and has been amended by the 2010 Act to include “*reserving land for use and cultivation as allotments and regulating, promoting, facilitating or controlling the provision of land for that use.*”

6.2 Planning and Development Regulations, 2001

Article 6(1) 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.

Article 9(1) states

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-

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

6.3 Schedule 2, Parts 1 & 3

Allotments are not referred to in the Schedule.

7.0 ASSESSMENT

7.1 In my opinion, the points at issue before the Board are as follows:

Whether the change of use of part of a permitted pitch & putt course to use as community allotments is or is not development, and if it is development, whether such development is or is not exempted development.

Whether the failure to comply with a condition attached to the planning permission for the pitch & putt course removes the exemption of any development by reference to article 9(1)(a)(i).

7.2 Within the current Development Plan, the subject lands are not zoned. Planning permission has been granted to change the use of agricultural land to pitch & putt, and the course has been developed. The corollary of this is that to change the use back to agriculture, planning permission would be required.

7.3 Section 4 of the Planning and Development (Amendment) Act, 2010 amends Section 2 of the Principal Act, and includes a definition of allotments- *“means an area of land comprising not more than 1,000 square metres let or available for letting to and cultivation by one or more than one person who is a member of the local community and lives adjacent or near to the allotment, for the purpose of the production of vegetables or fruit mainly for consumption by the person or a member of his or her family.”* I note that the area of the allotments is approximately 1,000 sq.m. (0.1 hectare) referred to in Section 2. The referrer contends that the allotments themselves are actually only 630sq.m in area – not taking into account grass space around them and access. This is a moot point, and I would consider that the fenceline boundary is the one that should be taken as the definition for the purposes of section 2.

7.4 Having regard to the fact that the area roughly accords to what is set down in section 2. However, if the area is greater than 1,000sq.m, then this would bring the allotments under consideration out of the definition of “allotments” and into something other than allotments – most likely under the definition of 'agriculture' which, under Section 2(1) of the Act- *“includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the*

production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly.’ Therefore, if the area of the allotments is greater than 1,000sq.m, it might have to be viewed as agriculture. This might then constitute a change of use from the pitch & putt use.

- 7.5 It would appear that there is a certain paradox in that the use is clearly as allotments, but that this use might not meet the definition of 'allotments' as set out within the 2010 Act, owing to the size (more than 1,000sq.m). It would appear that the definition of allotments within section 2(1) of the Act has no consequences in legislative terms – insofar as the definition is not constrained anywhere else by reference to exempted development (such as at section 4 of the 2000 Act, or Schedule 2 to the 2001 Regulations). So, for this reason, I would not consider that the area of the allotments is of relevance in the current referral – it is on or about 1,000sq.m in any event.
- 7.6 It is noted by the Planning Authority that the Board was requested to consider, under referral, cases RL2674 and RL2863 [files attached to this Inspector’s Report], whether or not the use of lands as allotments constituted development. The Board concluded that the use of agricultural lands as allotments is not development. However, in those two instances the Board clearly stated that the established use of the land was for agriculture and that the use of land for allotments came within the meaning of “agriculture” as set out at section 2(1). These two cases are distinguished by virtue of the lands being used for agriculture, whereas in the current referral the lands are used for pitch & putt, following a grant of planning permission.
- 7.7 I would note that it is not unusual to see allotments or community gardens within public amenity space such as parks, canal banks, and on parcels of waste ground. The question must be asked is use as allotments incompatible with use as a pitch & putt club. Both are green uses, insofar as they involve plants and growing. Neither has a requirement for internal floorspace *per se* (although there is a clubhouse of sorts attached to the pitch & putt course). Members of the public are already visiting the site – albeit on a paying basis. There is on-site parking: the allotment use does not have any impact on traffic safety.
- 7.8 Articles 6 & 9 of the Regulations serve to constrain exempted development. Article 9(1) clearly states- “Development to which article 6 relates shall not be exempted development for the purposes of the Act-“. The article refers back to article 6. Article 6(1) 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...” There is no mention in Schedule 2 of “allotment”. Therefore, I would be of the opinion that Article 9 cannot apply in this instance,

notwithstanding that the referrer may not have complied with a condition of a permission.

7.9 I would consider that the current referral can be distinguished from the previous decisions of the Board in relation to allotments on agricultural land. These allotments are located on amenity/open space land. The question that needs to be asked is whether the use as allotments is incompatible with use as a pitch & putt club or could be considered to be a material change in the use of the lands. I would consider that “materiality” is the core issue. Obviously, there has been a change of use – the area of land now in use as allotments cannot be used for pitch & putt or ancillary uses. Having regard to the nature and scale of the allotments, I would not consider that the implications on the amenities or traffic in the area would be in any way significant or out of scale with the situation which already obtains, whereby members of the public area using this land for outdoor amenity purposes. The change of use is not, therefore, a material one.

7.10 Having regard to the nature and scale of the allotments, location within a pitch & putt course, and to the absence of any watercourses in the area, no Appropriate Assessment issues arise, and it is not considered that the allotments would be likely to have a significant effect individually or in combination with other plans and projects on a European site.

8.0 RECOMMENDATION

Having regard to the above, I would consider that the subdivision of land for use as 18 no. allotments does not constitute development. Accordingly, I recommend an Order in the following terms:

WHEREAS a question has arisen as to whether works involving the creation of community allotments within a pitch & putt course at Newtown, Monaleen Road, Castletroy, Limerick, is or is not development, and is or is not exempted development:

AND WHEREAS Eugene Harrington requested a declaration on the question from Limerick City & County Council; and the Council issued a declaration on the 14th day of December 2015, stating that the development was not exempted development:

AND WHEREAS Eugene Harrington referred the declaration for review to An Bord Pleanála on the 19th day of January 2016:

AND WHEREAS An Bord Pleanála, in considering this reference, 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); and
- (c) Section 4(1)(a) of the Planning and Development Act, 2000 (as amended).

AND WHEREAS An Bord Pleanála has concluded that-

- (a) the established use of the lands is for pitch & putt;
- (b) the use of the lands for allotments comes within the meaning of either allotments or agriculture, as set out at section 2(1) of the Planning and Development Act, 2000;
- (c) the proposed change of use from pitch & putt would not constitute development by reference to section 3(1) of the Planning & Development Act, 2000, and in particular by reference to the material change to the use of any land;
- (d) the change of use is not development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(a) of the Planning and Development Act, 2000, hereby decides that the change of use, involving creation of community allotments within a pitch & putt course, is not material, and is not, therefore, development by reference to section 3(1) of the Planning and Development Act 2000, (as amended).

Michael Dillon,
Inspectorate.

22nd April 2015.