



An
Bord
Pleanála

Inspector's Report RL3471

Question

Whether a carpark at Carrowmurragh is or is not development, constitutes a material change of use, and is or is not exempted development?

Declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

PI 144/16

Applicant for Declaration

Liam O'Doherty

Planning Authority Decision

The carpark is development and is exempted development

Referral

Referred by

Liam O'Doherty

Owner/ Occupier

St Brigid's GAA Club

Other submissions

St Brigid's GAA Club

Date of Site Inspection

22nd June 2016

Inspector

Dolores McCague

1.0 Site Location and Description

The site is located Carrowmurragh townland, Kiltoom, Athlone, County Roscommon.

The subject referral relates to development in a rural area near the village of Kiltoom, east of the National Secondary road N61, c10km north of Athlone and c23km south of Roscommon town, where St Brigid's GAA Club is located. The question concerns a field which adjoins the clubhouse and sports grounds, recently acquired by club trustees and which has been developed and used as an occasional overspill car park for large matches.

The clubhouse, sportsgrounds and main car park are accessed from a local road to the west of the site (L7554).

The site adjoins a minor county road (L7553), which extends from the former local road and runs south of the grounds continuing eastwards to serve agricultural lands, Newpark (a period residence), one-off housing and a scheme of houses known as Newpark Village.

To the south of the sports grounds there is a line of five one-off houses facing west towards the local road, which runs roughly parallel to the N61, and accesses the national road a short distance away to the north and south. Along the county road to Newpark, south of the sportsground, there is a line of four one-off houses facing south. A field to the rear of these houses, has road frontage along its southern boundary south, east and west of the four houses and the entire field is the subject of the referral.

The field slopes southwards towards the local road. On the date of inspection the field was in pasture. Two vehicular entrances, which appear to be of recent origin or alteration, access the field; one either side of the group of four houses. That to the

west accesses a hardcore road which runs north towards the sports grounds. That to the east has a small area of hardcore in the immediate vicinity of the gate. There is also an older field gate to this field located west of the houses.

2.0 The Question

The Third Party has submitted the question to the Board for review under S.5(3)(a), in response to the planning authority's decision on his declaration request under section 5(1).

The request to the planning authority evolved over a period of time during which the third party sought to draw the attention of the planning authority to what the third party considered to be unauthorised development; and included dated photographs of car parking and the use of temporary lighting in the field, associated with the playing of important matches on the adjoining grounds. The documentation also includes a map key to the locations from which photographs were taken and notation to indicate the car park entrance and exit and the extent of the area used for parking.

The request refers to correspondence with the planning authority concerning alleged unauthorised development consisting of the use of land as a car park for St Brigid's GAA club at Carrowmurragh Townland, Kiltoom, Athlone, Co Roscommon, 'I request a declaration from Roscommon Co. Council on the status of this development under the Planning & Development Act 2000. Is the development authorised, unauthorised or is it exempted development under the Act?'

3.0 Planning Authority Declaration

Planning Authority Decision

On 29th February 2016 Roscommon County Council responded to a question as to whether a carpark at Carrowmurragh Townland, Kiltoom, Athlone, County

Roscommon is or is not development, constitutes a material change of use, and is or is not exempted development.

Roscommon County Council declared that use was development and was exempted development.

The Planning Authority's conclusions may be summarised as follows:

The Council had particular regard to Sections 2, 3 4 and 5 of the Planning and Development Acts 2000-2015

The record forwarded to Roscommon County Council in accordance with subsection (6) (c) of Section 6 of the Planning and Development Acts 2000-2015

Article 6 of the Planning and Development Regulations 2001-2015

Article 9 of the Planning and Development Regulations 2001-2015

Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001-2015

The current development constitutes development as defined in the Planning & Development Act 2000, as amended and associated Regulations.

The current development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and the need for an EIA or AA does not apply with respect to the current development.

The said car park does constitute development and is exempted development provided the land is not 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, as defined within the Planning and Development Acts 2000 as amended and associated Regulations.

Planning Report

Recent planning history – the eastern boundary of site as submitted has not been clearly defined. Reference to this boundary fluctuating has been noted on plans submitted. Enforcement History UDR 2126 complaint re. use of land as a car park.

The site is accessed off a local road L-7553. It comprises an existing field with an internal hardcore lane running from the southern portion through to the St Brigid's football grounds.

Sections 2(1) and 3(1) from the Planning Act 2000 as amended and articles 6 (1) and 9 (1) from the 2001 Regulations are cited.

Class 37 of Schedule 2, Par1 of the 2001 Regulations is cited

Description of Development	Conditions and Limitations
Class 37 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.	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.

The car park serves to provide a temporary additional parking facility for St Brigid's GAA club on occasions when this is required. From the UDR file associated with this site use as an occasional overspill car park, the planner notes that a response from the Secretary of St Brigid's, states in reference to inter-county senior or under 21 games 'it is unlikely that the number of such events would exceed 6 in any one calendar year. The planner also notes that the response makes reference to having an event controller, safety officer and up to 30 stewards for such events. The response confirms that the type of event where the additional parking is required is always a football match. It confirms that most club matches attract 500 or less and parking for these matches is accommodated in the car parks at the club house. Football matches may be regarded as long standing local cultural and sporting event as referred to in Class 37. The site is approx. 1.1km west of Lough Ree SAC. The nature of activities taking place at this location are not considered to give rise to any concerns regarding impacts on the conservation of this site.

4.0 **Planning History**

An unauthorised development file is referred to in the planning report, UDR 2126, but no enforcement action appears to have resulted. Planning histories have been submitted to the Board.

05/675 within this site - refusal of permission for a single house, the report on the file refers to S47 on foot of a condition attached to a previous permission (02/852) requiring the landowner to enter into an agreement to sterilise the remainder of his land.

PD14/48 - permission for provision of new playing pitch to include accommodating underage playing surfaces and training facilities, lighting and all associated site works. The site location indicates that the site includes the eastern end of the subject site, full details of the application have not been submitted.

PD09/723 Permission for upgrade of terrace and stand.

PD 08/1324 permission for toilet facilities.

07/1424 permission on land to north of the subject site, for an extension to existing pitches illumination to include 4 no. poles and associated lamps for illumination of second pitch and training area and 4 no. poles to training pitch.

PD 03/15 permission for retention of extension to existing complex along with revised entrance.

5.0 Policy Context

6.0 Roscommon County Development Plan 2014-2020

Sports, Recreation and Open Space are together referred to in Chapter 8 of the Plan. County Roscommon has a dedicated Sports Partnership unit to help co-ordinate and promote the development of sport and physical activity at local level. The Development Plan emphasises the importance of sport for the community. The Council will work with community groups, sporting organisations and clubs to ensure the widespread availability of facilities.

7.0 The Referral

The referral has been made by the third party, Liam O'Doherty, who made the request for the declaration.

The referral states the issues as:

2 The new permanent entrance off the public road: this entrance is permanent and allows, in bad weather, the flow of rainwater from the car park to flow onto the public road.

3 The new permanent roadway through the car park leading to the rear of the GAA grounds.

4 The new permanent entrance from the car park to the rear of the GAA grounds.

5 The use of, in hours of darkness, high powered lights which dazzle people in the houses.

6 The use of a second entrance/exit when the car park is operating at capacity or near capacity.

7 The change of use of this land from agricultural land to a car park.

7.1. Planning Authority's Response

The planning authority has not responded to the referral.

7.2. Owner's Response

St Brigid's GAA Club has responded to the referral.

Outlining the history of the Club and the area it covers. They are currently developing a fourth pitch (PD14/48) and have planning permission (15/197) to develop a gymnasium which they have yet to commence.

The attendance capacity of their main pitch is limited by Health and Safety concerns to 2,800 persons and they are designated by Roscommon County GAA Board as a County Pitch. There may be inter county senior or U 21 games. They hosted three such games in 2015 and two in 2016. It is unlikely that the number of such events would exceed 5 in any year. Such events are managed by an Event Controller, a Chief Steward, a Safety Officer and up to 30 stewards; and carried out in consultation with the GAA County Board or Connaught GAA Council.

They have regularly consulted with the Gardai. The issue of parking can be a particular problem, especially at night. For this reason, in full consultation with the

Gardai the Club have allowed the use of their recently acquired lands for the temporary purpose of safe parking to remove this from the N61. To increase pedestrian safety they hired generator operated temporary spotlights, to enhance the lighting from the overspill illumination from the floodlights. They were used twice in 2015 and once in 2016 for 4 hours on each occasion.

It is common practice for GAA clubs to provide temporary parking in neighbouring fields when the occasional need arises.

Responding to item 2 - the gateway replaces the disused access further east to avoid interference with residential amenity of adjoining houses. The purpose is to provide passage of farm and maintenance equipment for agricultural purposes and pitch upkeep etc., and the carrying out of the development of the new pitch (PD14/.48). the stoned entrance prevents machinery becoming stuck. Its use by cars is not its primary purpose. It is only in periods of sustained rainfall that water accumulates at the entrance. Runoff comes down the roadway from Newpark Lodge. Little is generated by the stoned roadway.

Responding to item 3 - the roadway is broken stone, laid over a wet low lying area, up to the rear of the stand. The Club understands that accommodation works pertaining to the permitted development of the new pitch is permitted under Class 16 of the P&D regulations. There have always been two access points to the land. These gates are essentially farm access points.

Responding to item 4 – this is the location of the pre-existing farm entrance. It has been widened to accommodate farm machinery and machinery working on the new pitch. On completion of the pitch, it will accommodate normal agricultural use.

Responding to item 5 – St Brigid's hired, at considerable expense, generator operated temporary spotlights, to increase pedestrian safety, and to enhance the lighting from the overspill illumination from the floodlights and so that pedestrians

can walk directly from their cars into the grounds without having to walk along the roads and coming into conflict with vehicular traffic. They were used twice in 2015 and once in 2016 for 4 hours on each occasion and returned to the plant hire the following day. During daylight hours they are not more visually intrusive than a piece of farm machinery.

Responding to item 6 – on the rare occasions when the fields are used for parking, no accommodation works were carried out and no reinstatement is required. Cars park on the grass, are stewarded into regular lines and later stewarded from the field.

Responding to item 7 – the field reverts to being a field, a local farmer harvests silage from the field and there is no change of use from agriculture. They list the matches where larger crowds attended

League match (Feb 1st 2015) Roscommon v Cavan - c1,300

U21 (March 19th 2015) Roscommon v Sligo - c1,300

National Football League Division 1 (Jan 31st 2016, afternoon), Roscommon v Monaghan capacity attendance (i.e. 2,800)

U21 Connaught Championship (March 9th 2016, evening) - Roscommon v Galway - c1,500.

Most club matches attract crowds of 500 or less and the parking can be accommodated at the clubhouse parking where there is parking for up to 400 cars.

It is their understanding that the occasional use of their lands for temporary parking is exempt under class 37 and accommodation works pertaining to the permitted development of the new pitch is exempt under class 16.

7.3. Third Party Response

The third party has responded to St Brigid's GAA Club's response to the referral, which includes: the third party does not accept that the use of the land is mainly agricultural, or that it was bought by the club for agricultural use. There has never been any consultation with residents adjoining the lands. The gateway serving the car park is new, designed to ease access for cars; and this is a permanent road of broken stone. Previously The Board determined a planning issue between the club and their neighbours, PL 20.1018221 (this refers to PL 20.101822 for the removal of hedgerow, erection of fence and formation of roadside car park, 443m x 6m at Moyvannion, Kiltoom, Athlone which was refused permission in 1997).

8.0 **Statutory Provisions**

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(1) of the Act states that the following shall be exempted developments for the purposes of this Act:

"(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;"

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Planning and Development Regulations 2001 – 2013

Article 6 (1) 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.

Restrictions on exemption - Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would:

consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, (Article 9 (1) a (ii)), or

endanger public safety by reason of traffic hazard or obstruction of road users, (Article 9 (1) a (iii))

Schedule 2

Part 1

Exempted Development – General

Description of Development	Conditions and Limitations
<i>Temporary structures and uses</i>	
CLASS 16	
The erection, construction or placing on land on, in, over or under which, or on land	Such structures, works, plant or machinery shall be removed at the

adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as 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. 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.

Development for amenity or recreational purposes

CLASS 37

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. 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.

9.0 Assessment

10.0 It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the occasional use of land as an overspill carpark, in respect of the proper planning and sustainable development of the area, but rather whether or it falls within the scope of exempted development.

10.1. In my opinion the questions to be addressed can be restated as: whether or not the occasional use of land at Carrowmurragh, Kiltoom, Athlone, as an overspill carpark and the use of temporary lighting in association with that use, is or is not development and is or is not exempted development; and whether or not the opening of an entrance, the widening of an entrance and the construction of a roadway is or is not development and is or is not exempted development.

10.2. **Is or is not the use and works development?**

- 10.3. Is or is not the occasional use of land as an overspill carpark and—the use of temporary lighting in association with that use development?
- 10.4. I consider the occasional use of land as a carpark constitutes 'development' within the meaning of the Act, being a change of use of the land. I note that this is not disputed by the parties.
- 10.5. Is or is not the opening of a gateway, the widening of an entrance and the construction of a roadway development?
- 10.6. I consider the opening of an entrance, the widening of an entrance and the construction of a roadway are each development being the carrying on of an act of construction on land. I note that this is not disputed by the parties.
- 10.7. **Is or is not the development exempted?**
- 10.8. Development can be exempted from the requirement for planning permission by either (a) section 4 of the Planning and Development Act, 2000 (The Act), or (b) article 6 of the Planning and Development Regulations 2001 (the Regulations).
- 10.9. Is or is not the occasional use of land as an overspill carpark and—the use of temporary lighting in association with that use exempted development?
- 10.10. The first party considers that Class 16, cited above, provides an exemption.
- 10.11. The playing of a match could be considered a cultural event. It could also be a temporary event which would fall under this class e.g. an annual match on land otherwise not so used.
- 10.12. Football matches are played on the adjoining ground throughout the year and do not come under class 37. Since the adjoining land, is permanently used for sports: as training pitches and for playing matches, the occasional match which exceeds the permanent car park's capacity is not in my opinion associated with a temporary event of a cultural, recreational or sporting character. Class 37 does not therefore

apply to the occasional use of the land as an overspill carpark. In my opinion the use is not exempted development. The use of temporary lighting is in association with the car-park use and cannot be considered separately from that use.

10.13. Is or is not the opening of a gateway, the widening of a gateway and the construction of a roadway exempted development?

10.14. The first party states that the western entrance gate replaces a disused gateway further east and that the primary purpose of the entrance and roadway is to provide for the safe passage of farm and maintenance equipment for agricultural purposes and for the upkeep of the playing pitches and other facilities; and further that at present it facilitates the plant and equipment carrying out the development of the new pitch and the first party considers that Class 37, cited above, provides an exemption. The first party further states that the entrance gate to the east is at the location of a pre-existing farm entrance which has been widened to accommodate farm machinery and machinery working on the new pitch, and will, on completion of the new pitch, only accommodate normal agricultural use.

10.15. The first party states that the works are on land adjoining which development is about to be carried out on foot of a permission, Reg Ref PD14/48, and that the road is a temporary road.

10.16. It is worth noting that the adjoining roadway is c 2.75m wide and therefore the restriction on exemption in Article 9(1)a(ii) '*consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width*', does not apply.

10.17. The restriction on exemption in Article 9(1)a (iii) is also worth noting in relation to this work: '*endanger public safety by reason of traffic hazard or obstruction of road users*'. The planning authority has no concerns in relation to road safety, traffic hazard or obstruction of road users and in my opinion this restriction does not apply.

- 10.18. From the information available, the first party acquired the land on 22nd July 2013 and the works were carried out prior to the first letter from the third party to the planning authority, which is dated 24th September 2014. Permission for development on adjoining land was granted on the 31st July 2014. The work could have been carried out to facilitate development to be carried out on foot of a permission, (Reg Ref PD14/48).
- 10.19. In relation to the entrance and roadway the Board must consider whether on the basis of the information available, they are intended to facilitate the passage of plant and equipment in connection with the carrying out of the development of the new pitch in respect of which Class 37, cited above, would provide an exemption.
- 10.20. The roadway does not appear to me to be a temporary structure, but I acknowledge that it is capable of being removed in order to reinstate the land on completion of the playing pitch development.
- 10.21. In light of the extent of the roadway provided, which accesses the main pitch rather than the development site, and in light of the availability of an alternative access route via the existing main entrance to the main site, and also in light of the option which was available to the first party, if wishing to provide a temporary site access route, to provide a more direct route across the lands from the eastern end of the road frontage, it is my opinion that the roadway construction is to facilitate the use of the land as an overspill car park rather than to facilitate development on adjoining lands; and that the entrance and roadway is therefore not exempted development.
- 10.22. In relation to the eastern entrance gate, the first party states that this is the widening of an existing entrance. The widening of this entrance would be exempted if it was connected with an exempted development; Class 37 cited above, would provide an exemption. In my opinion its purpose is to facilitate the use of the land as an overspill car park and the widening of the entrance is therefore not exempted development.

11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order:

WHEREAS a question has arisen as to whether or not the occasional use of land at Carrowmurragh, Kiltoom, Athlone, as an overspill carpark and the use of temporary lighting in association with that use, is or is not development and is or is not exempted development; and whether or not the opening of a gateway, the widening of a gateway and the construction of a roadway is or is not development and is or is not exempted development:

AND WHEREAS Liam O'Doherty requested a declaration on this question from Roscommon County Council and the Council issued a declaration on the 3rd day of March 2016 stating that the matter was development and was exempted development:

AND WHEREAS Liam O'Doherty referred this declaration for review to An Bord Pleanála on the 29th day of March 2016:

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

- (a) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1) of the Planning and Development Act, 2000,
- (c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site, and
- (f) the pattern of development in the area;

AND WHEREAS An Bord Pleanála has concluded that-

- (a) the occasional use of land at Carrowmurragh, Kiltoom, Athlone, as an overspill carpark and the use of temporary lighting in association with that use is development and is not exempted development as it does not come within the scope of class 37 of part 1 of Schedule 2;
- (b) the opening of a gateway, and the widening of a gateway and the construction of a roadway is development and is not exempted development as the development that has taken place does not come within the scope of class 16 of part 1 of Schedule 2.

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 occasional use of land at Carrowmurragh, Kiltoom, Athlone, as an overspill carpark and the use of temporary lighting in association with that use is development and is not exempted development; and the opening of a gateway, the widening of a gateway and the construction of a roadway is development and is not exempted development.

Name Dolores McCague

Inspector

Date 05/10/2016