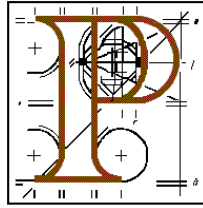


An Bord Pleanála



Inspector's Report

Referral Case: 03. RL3483

Question:

Whether raising the height of an existing driving range berm at Trump International Golf links, Doonbeg, County Clare is or is not development, or is or is not exempted development.

Referral Application

Planning Authority:	Clare County Council
Planning Authority File	No. RL16/32
Referrer:	TIGI Enterprises Ltd
Owner/occupiers:	TIGI Enterprises Ltd
Date of Site Inspection:	4 th August 2016

Inspector: Karla Mc Bride

1.0 INTRODUCTION

1.1 Inspection

I inspected the site on 4th August 2016, during which I took photographs that are included in the Appendix to this report together with a location map.

1.2 Site Location

The referral site is located at the Trump International Golf Links and Hotel in Doonbeg, County Clare. The site is located to the SE of the hotel complex and NW of Mountrivers Road. It comprises the existing berm that runs along the SE boundary of the driving range. The berm is separated from the access road by a small stream that ultimately discharges to the sea at White Strand to the W. There is a single dwelling house to the immediate SE of the berm.

1.3 Planning History

Reg. Ref. 98-655: Permission granted for hotel, golf course and related facilities. Decision upheld on appeal by ABP under PL03.109516.

Reg. Ref. 01/677: Permission granted for revisions to 98-655.

Reg. Ref.01-1153: Permission granted for continued use of a dwelling as a golf club house and related facilities.

Reg. Ref. 01-678: Permission granted for revisions to 98-655.

Reg. Ref.02-152: Permission granted for an intake structure and related development at the Skivaleen River for water extraction.

Reg. Ref.02-486: Permission granted for revisions to 01/1153.

Reg. Ref. 02-591: Permission granted for revisions to 98-655 comprising a revised layout and design of the scheme to include a hotel complex and club house.

Reg. Ref. 03-937: Permission granted for revisions to 02/591.

Reg. Ref. 03-1180: Permission granted for revisions to 98-655 comprising changes to a refreshment house with a new water supply and wastewater treatment system.

Reg. Ref.03-2375: Permission refused on appeal by ABP for coastal protection works along three sections of coastline at White Strand.

Reg. Ref.04/688: Permission granted for minor revisions to 03-937.

Reg. Ref.05-972: Permission granted to retain modifications to development permitted under 98-655 and 03-937 (internal reconfiguration, relocated and new buildings, access and landscaping).

Reg. Ref.07/2476: Permission granted for the erection of a temporary marquee and decking area at previously permitted building.

Reg. Ref.09/1097: Permission granted for coastal erosion management works to protect the golf course.

Reg. Ref.10-215: Permission granted to retain a gravel path (110m x 3m) from the edge of the road across a section of the golf course and a dry stone retaining wall (20m).

Reg. Ref.10-634: Permission granted for continues use of the marquee and decked area permitted under 07/2476.

PL03.PC0215: The Board decided that development comprising coastal erosion management works at Carrowmore Bay, Doonbeg County Clare does not constitute Strategic Infrastructure.

1.4 Background

This referral under Section 5 of the Planning and Development Act 2000 (as amended) has been made by TIGI Ltd and it relates to the proposed raising of the height of an existing driving range berm at Trump International Golf Links and Hotel at Doonbeg, County Clare.

1.5 Submission with referral to Planning Authority

The Agent (Cunnane Stratton Reynolds) acting on behalf of the Referrer (TIGI Ltd) made a formal request for a Section 5 Declaration to the planning authority on 30th March 2016 in relation to whether or not the proposed raising of the height of an existing driving range berm at Trump International Golf Links and Hotel, Doonbeg, County Clare, is or is not development, or is or is not exempted development. The referral was accompanied by a Screening Report for Habitats and Appropriate Assessment.

1.6 Planning Authority reports

The planning authority's decision on the Declaration is based on a report from its Planning Officer dated 25th April 2016, and the Declaration was issued on 25th April 2016.

The Planning Officer had regard to the relevant sections (2, 3 & 4) of the Planning and Development Act 2000 (as amended) and the relevant articles (6 & 9) of the Planning and Development Regulations, 2001 (as amended), and Class 34, Part 1 of Schedule 2, of the Planning and Development Regulations, 2001-2015.

The Planning Officer had regard to the report and Screening Report for Habitats and Appropriate Assessment submitted by the Agent for the Referrer. The Planning Officer concluded that raising the height of an existing driving range berm at Trump International Golf Links and Hotel, Doonbeg, County Clare constitutes development. The Planning Officer also concluded that and that the works, which are located within a Heritage Landscape in close proximity to the Carrowmore Dunes SAC, the Mid Clare Coast SPA and the White Strand/Carrowmore Marsh pNHA, are not incidental to the maintenance and management of the golf course and therefore do not constitute exempted development having regard to Class 34, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

2.0 THE DECLARATION

The Planning Authority issued the Declaration on 25th April 2016 which stated that the works constitute development and do not constitute exempted development having regard to:

- (i) Class 34 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 as amended, as it is considered that the proposed works are not incidental to the maintenance and management of the golf course.
- (ii) Article 9 (vi) of the Regulations and Clare County Council Development Plan (as varied) Objective CDP 16.5 “Heritage Landscape” as it is considered that the said development would interfere with the character of a landscape the preservation of which is an objective of a development plan.
- (iii) The particulars of the development, the proximity to the Carrowmore Dunes SAC and the Mid Clare Coast SPA, and Article 9 (viiB) of the Regulations whereby it is considered that it cannot be excluded that the proposed development, individually or in combination with other plans or projects, will not have a significant effect on a European site and therefore an appropriate assessment is required.
- (iv) The particulars of the development, its location within the White Strand/ Carrowmore Marsh pNHA and Article 9 (viiC) of the Regulations whereby it is considered that it cannot be excluded that the proposed development, individually or in combination with other plans or projects, will not have a significant effect on White Strand/ Carrowmore Marsh pNHA.

3.0 SUBMISSIONS

3.1 Submission by referrer

The Agent (Cunnane Stratton Reynolds) on behalf of the Referrer (TIGI Enterprises Ltd) made a referral to the Board which was received on 23rd May 2016 and it was accompanied by maps, drawings, photographs and a Screening Report for Habitats and Appropriate Assessment.

The Referrer asked the following question: -

Whether raising the height of an existing driving range berm is or is not development, and whether it is or is not exempted development within the meaning of the Planning and Development Act 2000, as amended, at Trump International Gold Links and Hotel, Doonbeg, County Clare.

The main points of the submission are summarised below:

- The proposed modifications are exempted development under Class 34 as the works are incidental to the maintenance and management of the golf course.
- The berm was originally 1m to 2m high on the N edge and it has been elevated to 3-4m in places, and the proposal is intrinsically linked to the golf course as it separates the driving range from vehicular traffic and adjacent properties.
- ABP has previously considered golf course development to be exempt when it took account of Class 27(c) of the 1977 Regulations (now revoked) when assessing scale under PL08.RF0811 & PL08.RF0840 and the proposed works accord with Class 34 as they related to management issues.

- The referral was accompanied by a Screening Report for Habitats and Appropriate Assessment which concluded that although the site is adjacent to a European site, the works are localised in nature and immaterial, with no negative effects arising from the development.

3.2 Response by Planning Authority

No response from the planning authority.

4.0 THE QUESTION

Having regard to the foregoing, and in the light of the issues set out in the referral, the question to be determined by the Board in this case is:

Whether the proposed raising of the height of an existing driving range berm at the Trump International Golf Links and Hotel at Doonbeg County Clare, is or is not development, or is or is not exempted development.

5.0 EVALUATION

5.1 Statutory provisions.

The following statutory provisions are relevant to this referral case:

EU Habitats Directive (92/43/EEC)

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation

objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

Planning and Development Act 2000 (as amended)

Section 2 (1) of the Act states: -

“In this Act, except where the context otherwise requires –
“development” has the meaning assigned to it by Section 3
"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1) of the 2000 Planning and Development Act states: -

“In this Act, ‘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 other land.”

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2) sets out various forms and circumstances by which the Minister may, by regulations, provide for any class of development to be exempted development for the purposes of this Act.

Section 4 (4) states that notwithstanding paragraph (a) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment is required.

Planning and Development Regulations, 2001-2015

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 3 opposite the mention of that class in the said column 1.

Article 9(1) states that:

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:

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of the development plan.

(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.

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a Natural Heritage Area by order made under section 18 of the Wildlife (Amendment) Act 2000.

Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations states that the following are exempted development:

Works incidental to the maintenance and management of any golf course or pitch and putt course, including alterations to the layout thereof, excluding any extension to the area of the golf course or pitch and putt course.

5.2 Previous referrals/references

05B.RL.2252: The Board decided that site excavation works to accommodate regrading and alteration to a golf course layout at Narin, Portnoo, County Donegal are development and are not exempted development.

The Board had regard to:

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000,
- (b) Article 6 of the Planning and Development Regulations, 2001, and
- (c) class 34 of Part 1 of Schedule 2 to the said Regulations:

And concluded that-

- (a) the works carried out constitute development within the meaning of section 3 of the Planning and Development Act, 2000,
- (b) the said works constitute works of alteration which are not incidental to the maintenance and management of the golf course, and
- (c) the said works of alteration constitute an extension to the area of the golf course.

5.3 European sites

The site is located in close proximity (c.0.3km) to the following European sites:

- Carrowmore Dunes SAC (Site code: 002250)
- Mid Clare Coast SPA (Site code: 004182)

The site is also located within c.2.5km to 8km of the following European sites:

- Carrowmore Point to Spanish Point & Islands SAC
- Tullaheer Lough & Bog SAC
- Kilkee Reefs SAC
- Lower River Shannon SAC
- River Shannon & Fergus Estuaries SPA

5.4 Development Plan

The site at the Trump International Golf Links and Hotel at Doonbeg is located within an area covered by the Clare County Development Plan 2011-2017 (as varied).

The site is located in close proximity to the Carrowmore Dunes SAC, the Mid Clare Coast SPA and the White Strand/Carrowmore Marsh pNHA, it also located within a Heritage Landscape, and the western area of the site is located within fluvial and tidal flood zones A and B.

The following objectives are relevant:

Objective 17.3 seeks to:

- (a) To afford the highest level of protection to all designated Natura 2000 sites in accordance with the relevant Directives and legislation on such matters;
- (b) To require all planning applications for development within, adjacent to, or with the potential to affect a Natura 2000 site to submit a Natura Impact Statement in accordance with the Habitats Directive (1992);
- (c) To recognise and afford appropriate protection to any new or modified SPAs or SACs that are identified during the lifetime of this Plan.

Objective 17.5 seeks to:

- (a) actively promote the conservation and protection of areas designated as an NHA (including proposed sites) and to only consider proposals for development within or affecting an NHA where, having assessed the impact, it can be clearly demonstrated that the proposed development will not have a significant adverse effect on the NHA or pNHA.

- (b) Where a development proposal is shown to have a significant adverse effect, it will only be considered where it can be demonstrated that the development is of regional or national significance and serves the common good, in the areas of transport, energy (including energy transmission and storage), communications and necessary flood protection works and tourism.

- (c) To identify and afford appropriate protection to any new, proposed or modified NHAs identified during the lifetime of this Plan.

Objective 16.5 requires that all proposed developments in Heritage Landscapes, demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal- from site selection through to details of siting & design. All other relevant provisions of the Development Plan must be complied with. All proposed developments in these areas will be required to demonstrate; -

- i That sites have been selected to avoid visually prominent locations.
- ii That site layouts avail of existing topography and vegetation to minimise visibility from scenic routes, walking trails, public amenities and roads.
- iii That design for buildings and structures minimise height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.

5.4 Assessment

(a) “Is or is not development”

In the case of the items that are the subject of this referral, it is evident that they involve the carrying out of works, as defined, and hence constitute development within the meaning of the Act.

(b) “Is or is not exempted development”

The Referrer submits that the works, which comprise the proposed raising of the height of an existing driving range berm, constitute exempted development.

Exempted development:

The question as to whether or not the proposed raising of the height of an existing driving range berm at the Trump International Golf Links and Hotel at Doonbeg County Clare is exempted development will be assessed.

The existing Trump International Golf Links and Hotel complex is located to the N of Doonbeg on the west coast of Clare, in close proximity to White Strand and Carrowmore Dunes and the surrounding area is both coastal and rural in character. The complex comprises a golf course, golf driving range, hotel and ancillary facilities and the golf driving range is located in the SE section of the complex. The SE boundary is defined by an existing berm of varying height which runs parallel to the access road and a small stream that ultimately discharges to White Strand to the west. The berm occupies an open and exposed position within a predominantly low-lying landscape.

The existing berm is located in close proximity to the Carrowmore Dunes SAC and Mid Clare Coast SPA and there several other European sites in the wider area as detailed in section 5.3 above. The berm is also located to the S of the White Strand/Carrowmore Marsh pNHA, and the entire complex, including the existing berm, is located within a Heritage Landscape.

The referral application was accompanied by a Screening Report for Habitats and Appropriate Assessment which concluded that the works would be localised in nature with no negative effects anticipated.

Section 4 (1) of the Planning and Development Act 2000, as amended, sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (2) deals with regulations to provide for any class of development to be exempted development.

However, Section 4 (4) states that notwithstandingany regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment is required.

Article 6 of the Planning and Development Regulations, 2001 to 2015 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 3 opposite the mention of that class in the said column 1.

Article 9 (1) (a) (viiB) of the Planning and Development Regulations 2001-2015 states that 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 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. The site is located in close proximity to the Carrowmore Dunes SAC (c.0.3km) and Mid Clare Coast SPA (c.0.4km) and there are several other European sites located within between c.2km and c.8km of the referral site. The existing berm runs adjacent and parallel to a small stream that ultimately discharges to White Strand a short distance to the west of the referral site.

The Carrowmore Dunes SAC (Site code: 002250) is designated for the following Qualifying Interest Annex 1 & 2 habitats and species:

- Reefs
- Embryonic shifting dunes (white dunes)
- Fixed coastal dunes with herbaceous vegetation (grey dunes)
- *Vertigo angustior* (Narrow-mouthed Whorl Snail)

The Mid Clare Coast SPA (Site code: 004182) is designated for the following Qualifying Interest Annex 1 species:

- Cormorant
- Barnacle Goose
- Ringed Plover
- Sanderling
- Purple Sandpiper
- Dunlin
- Turnstone
- Wetland and Waterbirds

The Conservation Objectives for each of these European sites seeks to maintain their favourable conservation condition, which is defined by a list of site specific attributes and targets for each of the habitats and species.

Having regard to the above and to the presence of a direct aquatic link between the existing berm and the European sites over a relatively short distance, it is quite clear that an Appropriate Assessment would be required for any of the works associated with the proposed raising of the existing berm, both on their own and in-combination with other plans and projects in the surrounding area. Therefore, the development which is the subject of this referral does not constitute exempted development with regard to Section 4 (4) of the Planning and Development Act, 2000 (as amended) and Article 9 (1) (a) (viiB) of the Planning and Development Regulations 2001-2015.

Article 9 (1) (a) (viiC) of the Planning and Development Regulations 2001-2015 states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the works would consist of or comprise development which would be likely to have an adverse impact on an area designated as a Natural Heritage Area by order made under section 18 of the Wildlife (Amendment) Act 2000. The referral site is located in close proximity to the White Strand/Carrowmore Marsh pNHA (Site code: 001007) and the possibility of the proposed works having an adverse impact on the pNHA cannot be ruled out. Therefore, the development which is the subject of this referral does not constitute exempted development with regard to Article 9 (1) (a) (viiC) of the Planning and Development Regulations 2001-2015.

Article 9 (1) (a) (vi) of the Planning and Development Regulations 2001-2015 states that 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 interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of the development plan. The referral site is located within a Heritage Landscape as designated in the County Clare Development Plan 2011-2017 (as varied). Objective 16.5 of the Plan requires that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact. The proposed development would be located within a Heritage Landscape and the possibility of the proposed works having an adverse impact on the visual amenities of this landscape cannot be ruled out. Therefore, the development which is the subject of this referral does not constitute exempted development with regard to Article 9 (1) (a) (vi) of the Planning and Development Regulations 2001-2015.

Notwithstanding the above,

Class 34 of Part 1 of Schedule 2 of the Regulations states that works incidental to the maintenance and management of any golf course or pitch and putt course, including alterations to the layout thereof, excluding any extension to the area of the golf course or pitch and putt course, are

exempted development. The Referrer submits that the proposed raising of the existing berm forms part of the general management of the golf course and the planning authority disagrees. Maintenance is defined in the Oxford Dictionaries as “The process of keeping something in good condition” whilst management is defined as “The process of dealing with or controlling things or people”. It is clearly evident that the proposed raising of the existing berm at the golf driving range does not fit with these definitions. The proposed development would constitute an alteration to an existing berm which is not incidental to the maintenance and management of the golf course. Therefore, the development which is the subject of this referral does not constitute exempted development with regard to Class 34 of Part 1 of Schedule 2 of the Regulations.

Precedent: The Referrer referred to Class 27(c) of the 1977 Regulations (now revoked) when assessing the scale of works at a golf course under PL08.RF0811 and PL08. RF0840. The Board decided that the laying out and use of land as a golf course at Inch, Anascaul, County Kerry and at Ballinprior, Ardfert, County Kerry, is exempted development as the development comes within the scope of Class 26(c) of Part I of the Third Schedule to the 1977. These Board decisions were made in 1994 and 1998 respectively, and given that the current Planning and Development Regulations, as amended, date from 2001, declarations made with reference to Class 26(c) of Part I of the Third Schedule to the 1977 cannot be used as a precedent.

5.5 Conclusion

I conclude that the works related to the proposed raising of the height of an existing driving range berm at the Trump International Golf Links and Hotel at Doonbeg County Clare that was the subject of the Planning Authority’s Declaration is not exempted development, by reason of non-compliance with Section 4 (4) of the Planning and Development Act, 2000 (as amended), and Article 9 (1) (a) (vi, viiB & viiC) and Class 34, Part 1 of Schedule 2 of the Planning and Development Regulations 2001-2015.

6.0 Recommendation

Having regard to the above, I recommend that the Board should decide as follows:

The question was referred to the Board, by way of review of the Planning Authority's Declaration of 25th day of April 2016 under Section 5 of the Planning and Development Act, 2000, is:

Whether or not the proposed raising of the height of an existing driving range berm at the Trump International Golf Links and Hotel at Doonbeg County Clare is or is not development, or, is or is not exempted development.

In considering this referral, the Board had regard particularly to:

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000 (as amended);
- (b) Section 4 (4) of the Planning and Development Act, 2000 (as amended);
- (c) Articles 6 (3) and 9 (1) (a) (vi), (viiB) and (viiC) of the Planning and Development Regulations, 2001-2015; and
- (d) Class 34, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001-2015.

AND WHEREAS An Bord Pleanála, in exercise of its powers conferred on it by Section 5 of the 2000 Act, hereby decides that the proposed raising of the height of an existing driving range berm at the Trump International Golf Links and Hotel at Doonbeg County Clare is development, and is not exempted development.

Karla Mc Bride

Inspectorate

20th December 2016