



An
Bord
Pleanála

Inspector's Report 27RL3534

Question

Whether use of golf course for ancillary activities (Bush Crafts, Walks / Jogging / Running, Bike Track, Zorbing, Footgolf & Tag Archery) at off peak times is or is not development and is or is not exempted development.

Location

Djouce Golf Club, Ballinastoe, Roundwood, Co. Wicklow.

Declaration

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

67/16

Applicant for Declaration

Donal Óg McGillicuddy.

Planning Authority Decision

Is development and is not exempted development.

Referral

Referred by

Donal Óg McGillicuddy.

Owner/ Occupier

Donal Óg McGillicuddy

Observer

None.

Date of Site Inspection

10th May 2017.

Inspector

Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located in a rural area close to the village of Roundwood, Co. Wicklow. The site comprises the lands laid out as Djouce golf course. Djouce is a nine-hole golf course. On site also are a clubhouse which includes office and reception space as well as changing rooms. Attached to the clubhouse building is an operation called *The Grange Kitchen* which comprises a commercial style restaurant and a food hall. This has separate signage to attract passing members of the public and also welcomes groups.
- 1.2. The golf course is stated to have been laid out in 1988. A significant extension to the clubhouse was undertaken on foot of a permission granted in 2003. A subsequent permission in 2011 allowed for the use of the clubhouse by non-members, which appears to be the basis for the development of *The Grange Kitchen*. At the time of inspection the restaurant was trading and a few customers were having lunch. However, the main draw to the site at that time was the golf course. Up to 20 no. cars were parked at any time in the car park.
- 1.3. The site entrance is from the regional road between Roundwood and Enniskerry. It is a relatively narrow road which is not very well aligned and is marked in the centre by a solid white line. Speed cameras are also in operation. The site entrance is south-west of the junction of a county road from which there is a secondary service entrance to the golf course.
- 1.4. The golf course is unremarkable in terms of its layout. There is an existing hard surfaced pathway along part of the north-eastern boundary – it has a gravel finish and joins the county road at a set of timber gates. The wastewater treatment unit and percolation area are to the east of the clubhouse. In the south-eastern corner of the course is a large pond and there are belts of trees throughout the course.
- 1.5. There have been recent works on site involving the construction of a track close to the south-western boundary. This includes the crossing of a small watercourse which is now piped under the pathway.
- 1.6. Photographs taken by me at the time of inspection are attached.

2.0 The Question

- 2.1. Whether the use of a golf course for ancillary activities is or is not development or is or is not exempted development – Djouce golf club, Ballinstoe, Roundwood, Co. Wicklow.
- 2.2. The submissions to the planning authority refer to the nature of the proposed uses, the time of the activity, the location of the activity and the relationship with the playing of golf.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority made a declaration in accordance with A5(2)(A) under case reference 67/16 that the ancillary use of the golf course for alternative leisure activities at off peak times is development but is not exempted development.

The order refers to the conclusion of the planning authority that the use as described is development and is not exempted development as it would constitute a material change of use from use as a golf course. This change of use would not fall under one of the classes of use specified in Part 4 of Schedule 2 and therefore A10 would not apply and the proposed ancillary uses could not be considered exempt.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report comments as follows

- As to whether the proposed change of use is a material change and therefore development it is noted that the proposal involves changing the use of the golf course at off peak times for use as bush crafts, bike track, zorbing, Footgolf, tag archery, walking jogging and running
- It is unclear when off-peak times for golf are – the required weather and light conditions for golf would also be required for the proposed activities and the

uses would impinge on the golfers use of the facility and therefore would not be considered ancillary

- The proposed new uses would be large group activities and would result in increased vehicular activity, noise and wastewater generation than golf
- Would therefore be considered a material change of use of the golf course and constitute development
- The existing use as a golf course does not fall under any class in Part 4 of Schedule 2 and therefore A10 of PDR 2001 as amended does not apply.

3.2.2. Other Technical Reports

None.

4.0 Planning History

4.1.1. Reg. ref. 11/4341 refers to an application for an upgrade to the percolation area, for permission to retain revisions to landscaping and other elements of the layout and for permission to omit condition 7 of reg. ref. 03/8239. The applicant indicated that it was clear that from the outset and permission reg. ref. 6548/90 that the restaurant and clubhouse were to be open to the public and the restriction imposed under condition 7 of 03/8239 was threatening the viability of the golf course. The application details include references to the number of parking spaces and capacity of the wastewater treatment system. Permission was granted, including in relation to the omission of condition 7.

4.1.2. Reg. ref. 03/8239 refers to permission for a 340m² extension to the existing golf clubhouse including a pro shop, meeting rooms and ancillary rooms and for upgrading of the existing wastewater treatment unit and new entrance and other works. It was clarified that the facilities would include a Snooker area for members and a coffee shop for members. No function other than Golf functions were to be hosted. The conditions refer to development being in accordance with the site layout submitted on 14/05/2003, works to roadside boundary, restriction on use of bar, lounge, function room, coffee shop and other facilities to use by members of the club only and not available for the use of members of the general public or for private functions other than those connected to the Golf Club, provision of 80 parking

spaces minimum. A number of conditions were subject of correspondence after the decision issued and the matter of restriction on use of the lounge and other areas (condition 7) to members was stated to be proposed for removal under a future application.

- 4.1.3. Reg. ref. 02/6701 refers to an application for a clubhouse – further information requested.
- 4.1.4. Reg. ref. 01/4928 refers to permission for a golf club house – the application was withdrawn following a recommendation to refuse permission including for reasons of sporadic development, public health and traffic safety.
- 4.1.5. Reg. ref. 97/6266 relates to an application for gates.
- 4.1.6. Reg. ref. 90/6548 refers to permission being granted for conversion of the property to clubhouse and for alterations and extensions.

5.0 Policy Context

5.1. Development Plan

The site is within the North-East Mountain Lowlands (4-AHA). Listed views are in the vicinity of the Vartry reservoir. There are no listed view or prospects relevant to the site.

5.2. Natural Heritage Designations

Carriggower Bog SAC is 500m metres to the east. The Vartry river flow between the designated site and the golf course.

6.0 The Referral

6.1. Referrer's Case

The referrer's submission on behalf of the owner of the golf course states

- The nature, location and timing of the ancillary activities is described

- In relation to Footgolf this is played by individuals or groups – it is intended to use the entire golf course for this purpose at specified times in order to also accommodate golf at most other times
- Zorbing involves use of one hole at specified times in order to also accommodate golf at other times
- The perimeter of the course would be used as a bike track at appropriate times
- Tag archery would be played in an area adjacent the clubhouse and as games are relatively short golfers would be able to ‘play through’ at intervals
- The planning authority considered the totality of all possible outdoor activities as if they would take place at the same time, which clearly not be the case
- The planning authority also failed to request information relating to ‘off peak’
- No works are involved
- Ancillary outdoor leisure facilities will be managed and incorporated with golfing through use of members’ time sheets
- Only Zorbing and Target Archery in any way restrict use of particular golf holes and these uses will be managed by including them in the members’ time sheet system - Footgolf will similarly be included in the time-sheets
- The planning authority decided that the majority of users would be large group activities and anticipated that most of the ancillary uses would take place as organised group activities i.e. company days, birthday parties etc and that groups would arrive in minibuses or shared cars
- We do not accept this – given the time-sheet system the proposed leisure activities must be accommodated within the existing golfing time-sheet and therefore there can be no increase in usage – the proposed use as a golf course will remain and members will continue to have access to the entire golf course as reserved in the time-sheet
- It is not likely that one or two of these alternative uses would be taking place at the same time e.g. if Footgolf was taking place it would be unlikely that zorbing would be taking place

- Golf courses can have times which are not very busy and membership at the club has reduced from 280 at peak to 120 in 2016 – the new activities would simply take up the spare capacity that exists and would not lead to intensification over the peak membership –
- The change of use therefore would not result in a change of use which is material and would not impact on water supply, wastewater treatment and disposal or car parking capacity
- There is massive overcapacity in the car park of 105 spaces
- As the proposed activities would not happen at the same time it is unlikely that there would be any material intensification of use and any limited traffic increase would not reduce traffic safety
- There is overcapacity in the effluent treatment and disposal system and the proposed marginal increase in the intensity of the existing off-peak usage would not place excessive demands on the system
- The proposed activities do not contravene any planning condition and the outdoor use of the leisure lands is not inconsistent with the use specified
- The enclosed submission from the owner indicates that of the six activities proposed only two (Tag Archery and Zorbing) might have an impact on the golfers because they take place on golf holes while the other activities take place on the dense woodland areas which are not in use for golf (Bush Crafts) or along the perimeter (biking and walking) and would not have an impact on the golf
- Footgolf is played at many courses in conjunction with golfers using the golf course
- Zorbing would be introduced on the golfers timesheet and if properly managed should not impact on golfing
- Reservation of the tee for Tag Archery would similarly be booked with groups of 8/10 participating for up to 10 minutes at a time and golfers could go through at intervals between tag archery games.

6.2. Planning Authority Response

The planning authority has not responded.

6.3. Further Responses

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1 Section 2 (1)

“Works” are defined in this section as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and “use” is defined in the same section as in relation to land does not include the use of the land by the carrying out of any works thereon.

7.1.2 Section 3 (1) of the Act defines “*Development*” as, ‘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’.

7.1.3 Section 4 of the Act refers to ‘*Exempted Development*’ and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

‘development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which 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 of neighbouring structures’.

7.1.2 In addition to specified exemptions in the Act, Subsection (2) of the Act provides that the Minister may by regulations provide for any class of development being exempted development.

7.2. Planning and Development Regulations, 2001 as amended

7.2.1 Subject to Article 9 (1) (a), development specified in Column 1 of Part 1 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2.

7.2.2 Class 33(c) refers to development consisting of the laying out and use of land for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms) where no change is made for admission of the public to the land.

7.2.3 Class 34 refers to works incidental to the maintenance and management of a golf course as follows:

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

There are no conditions or limitations to this class.

7.2.4 Article 9 (1) (a) lists the exceptions where development would not be exempted development (by virtue of Article 6).

7.2.4 Part 4 of Schedule 2 lists 11 different classes of use. Golf courses or clubs are not listed.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The question presented refers to a suite of activities which are to take place at this golf course, both on the course and at the perimeter. In view of the stated occasional and off-peak nature of the activities, I propose to address the identified recreational activities separately rather than as a group.
- 8.1.2. Development involves 'works' or the making of a 'change of use'.
- 8.1.3. **Works** The referrer's submission is that no works are involved. In general I accept this point. The activities of Bush Crafts, Zorbing, Footgolf and Tag Archery would all involve equipment. These activities would take place at the course and use mobile equipment which could be stored within the clubhouse. I am satisfied that these activities would be carried out without works. A larger hole would be required for Footgolf but I would consider these works to be *de minimis*.
- 8.1.4. No other works are proposed. I refer later to the partly constructed Bike Track, which I noted on inspection.
- 8.1.5. **Change of use**
- 8.1.6. I consider that it is self-evident that the use of this golf course for new recreational activities, which were not previously practiced is a change of use.
- 8.1.7. The question is whether the change of use is material. In this regard I consider that the factors to be considered relate to the ancillary nature of the uses, to compatibility of the proposed uses with the use as a golf course and to the intensity of the use which would take place. In this context the issue to be determined is whether there would be material planning consequences.
- 8.1.8. I submit that none of the uses would be deemed to be ancillary to the playing of golf. They are new uses which would be pursued by different people who would come to the facility for that purpose.
- 8.1.9. The information presented by the applicant in different submissions is not entirely without contradiction and I conclude that the new recreational activities would take place within the same time slots as scheduled for golf. That is a different proposition to off-peak usage. The referrer's statements in relation to the taking up of the spare

capacity of the golf course are relevant also. This is a reference to the availability of parking and wastewater capacity.

- 8.1.10. I have considered the nature of the recreational activities subject of this referral and consider that there are likely to be material planning consequences in terms of traffic generation in particular. Golf is a game which attracts a steady flow of people who arrive primarily in cars and who in general will travel short distances. I do not consider that the travel patterns associated with the proposed recreational activities would mirror the established patterns. As set out below I consider that the proposed uses would give rise to materially different impacts in terms of traffic.
- 8.1.11. In relation to my statements below these are based on the available information and in this regard I note that the onus is on the referrer to prove their case.
- 8.1.12. I consider that the pursuit of Bush Crafts is likely to attract children. The relevant part of the course is a distinct area which is segregated from the golf holes and fairways and which can be accessed on foot by a gravel pathway. The Bush Crafts use is not ancillary to the golf course but it would not be incompatible with the existing function. However, this activity is likely to attract large vehicles including buses and to draw people from a wider catchment.
- 8.1.13. I submit that the use of the golf course for walking and jogging would not generally be deemed to be an activity which is compatible with golf, even if walkers are advised to use the perimeter. In addition I consider that the course would be likely to attract clubs and other groups, which would have material consequences for the pattern of travel.
- 8.1.14. The use of the actual course arises in the pursuit of Zorbing, Footgolf and Tag Archery. At times the entire course would be reserved for Footgolf. Thus for periods of time the use of the lands would not be as a golf course at all but would accommodate another recreational pursuit entirely.
- 8.1.15. Zorbing and Tag Archery would be accommodated within the 'time sheet' and golf could be played at the same time. Numbers using the individual golf hole could be substantially greater than use by golfers.
- 8.1.16. In relation to the intensity of use I submit that there is an acknowledge intention to use the facility for corporate and other events. There is a substantial lack of clarity

relating to the number of events, the timing of events and information to support any claim that there would be no material planning consequences.

- 8.1.17. I consider it unlikely that the successful operation of premises with a new suite of activities would not give rise to significant intensification of use of the site with consequences for traffic generation in particular and also for wastewater treatment.
- 8.1.18. I accept that there is likely to be spare capacity at present. Nevertheless, the combined effect of the uses which are proposed to be undertaken would be likely to result in an intensification of use. In particular it would give rise to travel patterns which are likely to be materially different in terms of the catchment, the types of vehicles, timing of arrivals and the numbers.
- 8.1.19. In relation to the nature of the proposed uses my overall conclusion is that there is significant potential for conflict with the existing use and evidence to suggest that a material change of use with material external impacts in terms of traffic impacts would arise.
- 8.1.20. I conclude that the use of the golf club for the leisure activities described is a material change of use and is therefore development.

8.2. Is or is not exempted development

- 8.2.1. The use as a golf course is a *sui generis* use. There is no exemption under the Act or the planning regulations for any change of use in these circumstances.
- 8.2.2. My conclusion is that the use of the lands for the recreation activities identified is development and is not exempted development.

8.3. Bike Track

- 8.3.1. One element of the 6 no. listed recreational activities is a Bike Track. At the time of inspection I noted that substantial amounts of material has been placed on land and that earthworks have taken place. The resulting partly constructed track would appear to be part of the Bike Track.
- 8.3.2. The Board will note that this is not subject of the referral specifically in that there is no description of the works undertaken. The question posed does refer specifically to a 'Bike Track' but the referral states that there are no works proposed.

- 8.3.3. The Board may wish to consider whether it is appropriate to revise the question in this case. As any such revision would involve an expansion of the question rather than a simple clarification. As such I do not consider that a re-wording of the question is appropriate. The question as put to the Board relates to the use of lands only.
- 8.3.4. In the event that the Board determines that it would be appropriate to consider this structure and to re-word the condition I next address the matter of whether the works would be exempted.
- 8.3.5. Under Class 33(c) of Schedule 2 Part 1 of PDR 2001 the laying out and use of land for athletics or sports other than golf or activities involving use of fire arms and vehicles is deemed to be exempted development. This is not relevant in this case by virtue of the location of the site within a commercial facility and the restricted of 'where no charge is made for admission of the public to the land'. The exempted development provisions under Class 33(c) do not apply.
- 8.3.6. Another relevant provision is Class 34. The nature of works which would be deemed to be exempted under Class 34 relates only to maintenance and management of the golf course. The construction of a substantial track involving bridging over a drain does not fall within this description.
- 8.3.7. Similarly consideration of the track under s4(1)(h) of the Act would result in a conclusion that the development would not be exempted.
- 8.3.8. I conclude that the partly built structure is development and is not exempted development.
- 8.3.9. In setting out of a recommended draft order below I have omitted reference to the partly constructed track.

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 use of Djouce Golf Course for ancillary recreational activities (Bush Crafts, Walks/Jogging, Bike Track, Zorbing, Footgolf and Tag Archery) is or is not development or

is or is not exempted development:

AND WHEREAS Donal Óg McGillicuddy requested a declaration on this question from Wicklow Council and the Council issued a declaration on the 7th day of December, 2016 stating that the matter was development and was not exempted development:

AND WHEREAS Donal Óg McGillicuddy referred this declaration for review to An Bord Pleanála on the 12th day of January , 2017:

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)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 and Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) The nature of the traffic generated by the existing golf club
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of Djouce Golf Course for ancillary recreational activities (Bush Crafts, Walks/Jogging, Bike Track, Zorbing, Footgolf and Tag Archery) would give rise to materially different traffic impacts

(b) The use is a material change of use

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the use of the golf course for ancillary recreational activities is development and is not exempted development.

Mairead Kenny
Senior Planning Inspector

31st May 2017