



An
Bord
Pleanála

Inspector's Report RL06D.RL3549

Question

Whether the erection of ball fences at Milltown Golf Course is or is not development or is or is not exempted development

Location

Milltown Golf Club, Lower Churchtown Road, Milltown, Dublin 14

Declaration

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

149/16

Applicant for Declaration

Milltown Golf Club

Planning Authority Decision

Is not exempted development

Referral

Referred by

Milltown Golf Club

Owner/ Occupier

Milltown Golf Club

Observer(s)

None

Date of Site Inspection

31st May 2017

Inspector

Mary Kennelly

1.0 Site Location and Description

- 1.1. Milltown Golf Club is located in Churchtown to the south of the River Dodder. It has a long, narrow golf course which is bound by Lower Churchtown Road to the East and by Orwell Road to the West. There is an additional rectangular section of the golf course on the western side of Orwell Road. The clubhouse is located at the northern end, adjacent to Churchtown Road Lower.
- 1.2. The site of the ball fences is on the 18th Fairway, which is close to the eastern boundary, approximately half way along this boundary. The eastern side of Churchtown Road Lower is lined with suburban houses facing the boundary of the golf course. The boundary is defined by a tree belt within the golf course.

2.0 The Question

- 2.1. The question has arisen as to whether erection of a catch fence within the tree belt area is or is not development or is or is not exempted development. The catch fence would extend for 60 linear metres, would be 22m high and would be supported by four timber poles which are described as being similar to telephone/electricity supply poles. It is stated that the catch fence is required for the management of stray balls in the interests of public safety and residential amenity. Photographs of similar catch fences erected elsewhere are provided for demonstration purposes.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The P.A. made the following declaration on 20th January 2017

Having regard to

- (a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended).
- (b) Schedule 2: Part 1: Exempted development – General Class 34 of the Planning and Development Regulations 2001 (as amended)
- (c) The documentation submitted as part of the application reference 149/16.

The planning authority considers that the erection of a catch fence on the golf course at Milltown Golf Course, Lower Churchtown Road is development but is not exempted development.

3.2. Planning Authority Reports

- 3.2.1. The Planning Report considered that the development constitutes 'works' as defined under section 2(1) and 'development' as defined under Section 3(1) of the Planning and Development Act 2000, as amended. In respect of Exempted Development, consideration was given to Class 34 of Part 1, Schedule 2 of the P & D Regulations, 2001, as amended, which provides for exemption in respect of works which are incidental to the maintenance and management of a golf course, including alterations to the layout or extension of the course.
- 3.2.2. The Area Planner acknowledged that the structure would provide benefit to the neighbouring properties adjacent to Lower Churchtown Road, whereby any stray balls from the course would be caught by the fence. However, it was considered that the works would go far beyond what the regulations set out as works incidental to the maintenance and management of a golf course.
- 3.2.3. It was considered that Class 34 would allow for minor works to the course such as the insertion of minor drainage works, erection of small structures, reconfiguration of the direction of the tees etc. It was considered that the erection of 4 large poles over a 60m stretch, by reason of their size and scale does not form part of the maintenance/management of the golf course. It was, therefore, concluded that it does not come within the scope of Class 34.

4.0 Planning History

- 4.1 D16/0379 – Planning application current/pending for permission for the construction of a single storey structure to accommodate course maintenance equipment, area 192sq.m and associated site development works. An FI request was issued on 18th July 2016. No final decision made to date.
- 4.2 D09A/0254 – planning permission granted for the demolition of an existing outhouse building and the erection of single storey prefabricated structure to accommodate course maintenance staff facilities, including changing rooms, sanitary area, canteen

and course managers office area 78sq.m and a single storey prefabricated outhouse store building area 28sq.m.

4.3 D04A/1399 – planning permission granted for a 2-storey extension to the north of the existing clubhouse.

4.4 D05A/0417 – planning permission granted for alterations to the previously granted permission (D04A/1399) comprising insertion of new fire escape stair and associated internal and external alterations.

5.0 Policy Context

5.1. Development Plan

The lands are zoned 'F' the objective of which is “to preserve and provide for open space with ancillary active recreational amenities”. There is also an objective on the site to “protect and preserve Trees and Woodlands”.

6.0 The Referral

6.1. Referrer’s Case

6.1.1 Ball catch fences are ubiquitous and are associated with many ball sports and field sports where projectiles are in flights and where they may become a hazard or a nuisance to adjacent private properties or public areas including roads. It is submitted that there is an accepted association between sports grounds and ball catch fences as an integral part of the laying out and use of land for recreation and sports activities.

6.1.2 The view of the P.A. that Class 34 would only allow for minor works such as drainage works or the insertion of small structures is disputed. It is submitted that the P.A. has effectively imposed a limitation of Class 34, whereas none exists in terms of this particular class in the Regulations.

6.1.3 It is submitted that the management of risk in relation to potential for damage to property, to individuals or to public safety are essential considerations in the management of any golf course and includes a duty of care to any persons

potentially affected by the operation of the golf course. Thus these works are considered to be 'incidental to the maintenance and management of the golf course'. The Area Planner acknowledged that the structure would provide benefits in terms of residential amenity and public safety. It is noted that Churchtown Road Lower is a busy distributor road which would benefit from such measures.

- 6.1.4 The Board has previously held that fencing associated with sports and recreation is an integral part of the laying out of sports grounds facilitated under the exempted development provisions. The catch fencing associated with Gaelic sports is ubiquitous and sized to cater for the nature of the games played. The catch fencing associated with golf course is sized to deal with the nature of the game played. The ball fencing is, therefore, consistent with the provisions of Class 34 and is 'incidental to the maintenance and management of a golf course'.
- 6.1.5 Class 34 allows for significant alteration to the layout of a golf course provided that the golf course is not extended into previously occupied lands. It is not accepted that the works under this exemption are restricted to drainage, reconfiguration of the direction of tees etc. The P.A.'s assessment of the limitations within this class is therefore not supported by a proper consideration of what is included in this class.

6.2. Planning Authority Response

The P.A. responded on 20th March 2017. It had no further comments to make.

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

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

(a) Where the context so admits, includes the land on, in or under which the structure is situate,”

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 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

7.2.1 Article 6 of Part 2 of the Regulations provides that 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. The only class of relevance is Class 34 which refers to works incidental to the maintenance and management of a golf course as follows:

Class 34 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 of limitations of this class. Article 9 (1) (a) lists the exceptions where development would not be exempted development (by virtue of Article 6).

8.0 Relevant Board Decisions

The following Board decisions in relation to Section 5 Reference/Referral cases are considered to be of relevance.

8.1 RL2121 – Whether the erection of fences at Arinary, Ennerkilly, Co. Wicklow is or is not exempted development.

The Board (May 2004) concluded that the erection of two fences on a golf course at the European Golf Club at Arinary, Ennerkilly did not come within the scope of Class 4 of Part 3 of Schedule 2 or Class 34 of Part 1 of Schedule 2 to the P & D Regulations, 2001, and was, therefore, development and was not exempted development. Class 4 of Part 3 relates to fences on agricultural lands. The Inspector's report indicated that the fences were not wholly within the golf club lands and as such did not come within the scope of Class 34.

8.2 RL2167 – Whether works carried out on the lands of Doonbeg Golf Club involving the closure of the existing public right of way and the movement and alteration of the natural line of the public vehicular right of way at this location are or are not development or are or not exempted development.

The Board (Jan. 2005) concluded that the works comprising the laying of gravel paths, construction of a dry stone wall, the raising of ground levels come within the meaning of section 3, but not within the scope of section 4(1)(h) of the P & D Act 2000. However, the laying of grass did not constitute development, not being works within the meaning of section 3 of the said Act. It was found that all of the works (apart from the laying of grass) did not come within the scope of Class 34 of Part 1 of Schedule 2 to the P & D Regulations 2001, not being works incidental to the maintenance or management of the golf course. The works consisting of the construction of the dry stone wall and raising of ground levels were found to come within the restrictions of exemption in Article 9(1)(a)(xi) of the said Regulations in that the works obstructed a right of way. Thus the works in question were considered to be development (apart from the laying of grass) and were not exempted development.

8.3 RL2252 – Whether site excavation works to accommodate regrading and alteration to golf course layout at Narin, Portnoo, Co. Donegal is or is not development and is or is not exempted development.

The Board (Dec. 2005) concluded that the said works constituted development within the meaning of Section 3 of the P & D Act 2000 and that the works constituted works of alteration which are not incidental to the maintenance and management of the golf course. It was further found that the works of alteration constituted an extension to the area of the golf course. The said works were, therefore, considered to be development and not exempted development.

8.4 RL2405 – Whether the renovation and alteration of a section of The Curragh Plain, consisting of the relocation of an existing green to a previously unused area for use as part of an existing golf course is or is not development and is or is not exempted development and whether the use is exempted development and whether the change of use is a material change of use requiring planning permission.

The Board (July 2007) concluded that the works referred to comprise 'development' as defined in Section 3 of the P & D Act, although not a material change of use, but that the said works do not come within the scope of S4(1)(h) of the P & D Act. It was decided that the development did, however, come within the scope of Class 34 of Part 1 Schedule 2 to the P & D Regs. 2001, but could not avail of this exemption by reason of Article 9(1)(a)(vii) of the said Regulations. This was due to the fact that the entire golf course lies within the Curragh Archaeological complex (RMP KD023-076) and is protected under Objective AH1 of the CDP. Thus it was concluded that the works were considered to be development and not exempted development.

8.5 RL3483 – Whether the raising of the height of an existing driving range berm is or is not development or is or is not exempted development at Trump International Golf Club and Hotel, Doonbeg, Co. Clare

The Board concluded (7/3/17) that the raising of the existing berm at the edge of the driving range from between 1-2 metres to 3-4 metres came within the scope of Class 34 as it formed part of the management and maintenance of the golf course. In coming to this conclusion, the Board disagreed with its Inspector who had considered that the works did not accord with the Oxford Dictionary definition of either 'Maintenance' or 'Management'. The Board Direction (attached with Report and Order) indicated that the works effectively improve the safety of the driving range and are necessary for the management of the golf course.

9.0 Assessment

The question arising from this referral is whether the works to the golf course involving the erection of a ball catch fence is development and/or is exempted development. The question to be decided may be summarised as follows:

- Are the works to the golf course involving comprising the erection of a 22 metre high fence for a distance of 60 metres development?
- If development, would these works be exempted development under Class 34 of Part 1 of Schedule 2 of the P & D Regulations 2001 (as amended)?

9.1. Do the works of the erection of a ball catch fence constitute development?

9.1.1 The plans show the proposed fence opposite the 18th Green and approx. 200m to the north/north-east of the 18th Tee. There is a dense band of trees between the fairway and the roadside boundary with Churchtown Road Lower. It is proposed to erect the fence in amongst the trees. The fence would be supported by 4 no. poles which are 22m high. Thus works would be required to remove soils and lay foundations to support the four poles to which the fence would be attached for a distance of 60 metres. It is considered that such works come within the scope of 'Development' as defined in Section 3 of the Planning and Development Act 2000, (as amended).

9.2. Are the works exempted development under Class 34 of Part 1, Schedule 2 of the 2001 P & D Regulations?

9.2.1 The Referring Party submits that the erection of ball catch fences is 'Ubiquitous' in respect of sports grounds and that as such it is an integral part of the layout/use of the lands for sporting activities. It is further submitted that there is no limitation on Class 34 which restricts such works to 'minor works' and that the management of risk is an essential element of the management of a golf course. It is claimed that, as such, the provision of the proposed fence in the interests of public safety is incidental to the maintenance and management of a golf course and that the Board has previously held that fencing associated with sports and recreation is an integral part of laying out of sports ground facilities under the exempted development provisions. I will address each of these submissions below.

9.2.2 Association between sports grounds and ball catch fences

9.2.2.1 Firstly, Class 34 relates specifically to golf courses and does not convey any exemption in respect of other forms of sporting grounds or recreational uses. Thus the relevance of the erection of ball catch fences in respect of other sporting grounds is questionable. Secondly, I do not accept that a ball catch fence is an "integral part of the laying out and use of land for recreation and sports" as it is not a prerequisite for the use of lands as sporting grounds. The Oxford Dictionary defines the word "integral" as "necessary to make a whole complete essential or fundamental" and "included as part of a whole rather than supplied separately". The erection of a ball catch fence is not necessary or essential to make a sports ground 'complete' and would not in my view be 'integral' to the use of such lands.

9.2.2.2 In any case, the wording of Class 34 is "incidental to the maintenance and management of a golf course" and not "integral". I note that the Oxford Dictionary defines "incidental" as "happening as a minor accompaniment to something else", i.e. ancillary or subordinate to. It is considered, therefore, that notwithstanding the apparent increase in the use of such fences across the country, it does not follow that such fences form an integral part of such uses or that they are incidental to the management or maintenance of a golf course.

9.2.3 Limitation on nature of works under Class 34

The Referring Party submits that the P.A. is effectively imposing limits on a class where no such limits exist. However, this is to suggest that anything that constitutes works that would be associated with the use of the lands as a golf course would automatically be exempt from the need for planning permission. I do not believe that this was the intention of the legislation. Class 34 provides for an exemption for “works which are incidental to the maintenance and management of a golf course, including the alterations to the layout, but excluding extensions to the golf course”. The proposed ball catch fence is 22m high and 60 m long. If the logic suggested by the Referrer was to be applied, this would mean that every golf course could be enclosed by fences of any height for any length, provided that it was stated to be necessary in the interests of public safety and residential amenity.

9.2.3 The management of risk is an essential element of the management of a golf course.

9.2.3.1 The Referring Party considers that the Golf Club has a duty of care to any persons who could potentially be affected by the operation of the golf course, and that the management of risk to property or individuals as part of this duty of care means that the erection of the fences is incidental to the management of the golf course. It is noted that the Board has recently determined that the increase in height of a berm to a golf course driving range is in the interests of public safety and is exempt under Class 34 (RL3483). In this case, the works related to an existing grassed berm to an established driving range, which is an area of a golf course where golfers can practise shots. The increase in height of the berm was from 1-2 metres to 3-4 metres. It is considered that the Board’s decision in relation to these works on this golf course does not necessarily mean that all works relating to the improvement of safety of a golf course would come within the scope of Class 34.

9.2.3.2 It is considered that there are many ways in which the duty of care in respect of ensuring the safety of property and individuals can be addressed including alterations to the layout of the golf course. At present, the 18th Tee is located close to

the boundary with Churchtown Road Lower, and the fairway extends in a north-westerly direction (with a target attached to a tree approx. 200m to the north-west). The roadside boundary extends along an axis to the north/northwest and there is a tall, dense band of mature trees between the boundary and the fairway. The 18th Green is located to the west of the fairway. There is a risk of stray balls travelling due North in the direction of the public road and houses on the eastern side of the road. However, this risk is currently mitigated to a considerable extent by the direction of the fairway and the presence of the thick band of trees. I also note that no information or evidence has been provided regarding any problems that have arisen in this regard to date. Notwithstanding this, it is acknowledged that a ball fence would reduce this risk further.

9.2.3.3 The management of the risk of stray balls could conceivably be addressed by a number of means. For example, the existing band of trees could be intensified and/or the layout of the golf course could be altered in terms of relocation of tee areas, fairways, greens etc., none of which would require planning permission. It is considered that the erection of a 22m high fence is just one possible solution. If it were to be considered an essential part of the management of the golf course, this raises the question of whether a structure other than a fence, such as a masonry wall or other structure which provided the same function would equally be considered to be incidental to the management and maintenance of the golf course. Thus it is not accepted that the proposed fence is incidental to the maintenance and management of a golf course.

9.2.4 The Board has previously held that fencing associated with sports and recreation is an integral part of laying out of sports grounds facilities under the exempted development facilities

9.2.4.1 The Referring Party has stated that the Board has previously considered the issue of ball catch fences to be exempt from the need for planning permission. However, no Board Reference Numbers have been provided and I have been unable to find any such examples. The Board cases listed above (8.0) which relate to Class 34 are considered to differ to the current case and none of them relate to the erection of a ball catch fence or a fence of the scale currently proposed. As stated earlier, the

erection of fences at GAA grounds and other sporting facilities is of little relevance to the current question before the Board, as these would not come within the scope of Class 34. In any case, I was unable to find any referrals where the Board had decided that such a fence is exempted development.

9.2.4.2 Notwithstanding the above, I note that the Board has granted planning permission in respect of one such fence (220453) and refused permission in the case of another (201313). The first of these cases (220453) related to Fermoy Golf Club and involved the erection of a 6m high fence for 67 metres at the fifteenth hole. The golf course straddled a road and crossed a right of way. The Board granted permission in 2007 subject to conditions and it was considered that it would not adversely affect the visual amenities of the area. The second of these cases related to ball catch fences at Old Conna Golf Club (201313) which related to a fence that would be 8m high and 50m long adjoining the 9th front tee. The Board refused permission having regard to its height, length and design and to its location in proximity to a protected structure and was considered to be a visually inappropriate structure. Thus, the fences in question were significantly smaller in scale (6m and 8m as opposed to 22m).

9 Recommendation

10.1 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 erection of a ball catch fence which would be 22m in height and 60m in length is or is not development or is or is not exempted development:

AND WHEREAS Simon Clear & Associates on behalf of Milltown Golf Club requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 20th day of January, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 15th day of February, 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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works of alteration to the golf course comprising the erection of a ball catch fence with a height of 22 metres and a length of 60 metres comes within the meaning of Section 3 of the said Act and are, therefore, development.
- (b) The said works to the golf course do not come within the scope of Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, (as amended), not being works incidental to the maintenance or management of the golf course.

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 works of

alteration to the golf course comprising the erection of a ball catch fence are development and are not exempted development.

Mary Kennelly
Planning Inspector

7th June 2017