



An
Bord
Pleanála

Inspector's Report PL27.RL3568

Question

Whether the use of the Wicklow Mountains National Park for a competitive adventure racing event is or is not development or is or is not exempted development.

Location

Wicklow Mountains National Park,
Lugduff, Derrybawn and Brackagh,
Laragh Co. Wicklow.

Declaration

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

EX07/17.

Applicant for Declaration

Joe O'Neill.

Planning Authority Decision

Is not development.

Referral

Referred by

Joe O'Neill.

Owner/ Occupier

Wicklow Mountains National Park.

Observer

None.

Date of Site Inspection

25th January 2018.

Inspector

Mairead Kenny.

1.0 Introduction

- 1.1. This referral is related to the running of a competitive adventure event at Glendalough / Laragh. It relates to the length of the route. There is a related case under RL3542, which refers to the use of the GAA lands as the staging post for this race.

2.0 Site Location

- 2.1. The referral relates to areas of public road, private track and part of the Upper Lake all of which are broadly located within the Wicklow Mountains National Park (WMNP) at Laragh / Glendalough. The subject site refers to areas which are used in the undertaking of a competitive racing event, which is subject of the referral. The event involves cycling on public roads, which are located to the south-east of Laragh village, running along a track which runs east west direction between an area south of Laragh village and towards the Upper Lake at Glendalough and finally kayaking at the eastern end of the Upper Lake. In all the events subject of the referral is limited to an area of 19 km length. For the most part the subject lands are on public road or within the WMNP. The route is along areas which are identified on the relevant OS Discovery map as tracks and includes part of the Wicklow Way.
- 2.2. Photographs taken at the time of my inspection are attached.

3.0 The Question

The question relates to whether or not use of the Wicklow Mountains National Park for a competitive adventure racing event is development and is or is not exempted development.

Details of the applicant's submission in the request for a declaration describe the event as follows:

- Elite Event Management runs the Quest events – routes attached – the 19km mini route is of concern and is subject of this declaration.

- That route runs from Laragh GAA club along the Green Road to the Spinc and on to the Upper Lake finishing at the Monastic City close to the Glendalough Hotel.
- Figure 1 attached shows the route and a description from the website is enclosed.
- The WMNP is in place to secure conservation of biodiversity and landscape and it is an invaluable recreation space.
- The most visited area is Glendalough Valley and the monastic settlement of St Kevin's.
- The 2005 WMNP management plan is in force and refers to erosion including at Kevin's Way.
- The 19km mini route traverses the most intensively used and sensitive part of the WMNP.
- Participants leave the GAA and return there later leaving their bicycles at the pitch and run up along the Green Road to the Upper Lake for the kayaking leg.
- This continues all day and endangers the safety of users of the Park.
- The density of the competitors, the absolute numbers, the conflict with normal walking activities, the hazard to tourists and day trippers including elderly people and children constitutes a material change of use of these lands.
- The WMNP management plan does not include such activities and the use is contrary to the management of the park and its purpose.
- Class 37 is not relevant as this is not a local event.
- This material change of use requires permission.

4.0 Planning Authority Declaration

4.1. Declaration

Under EX07/17 the planning authority issued a declaration on the question.

The planning authority declared that the use of the WMNP for a competitive adventure racing event is not development. The event usage would take place within a heavily used part of the national park, on existing track / public roads and a lake and the event usage would be similar to the existing use of the Park and would not result in a material change of use.

The declaration refers to sections 2 and 3 of the Act, to referral cases RL3404 and RL3309 and the submission of DAHRRGA.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The main points of the planner's report include:

- The Conservation Objectives of Wicklow Mountains SAC and Wicklow Mountains SPA are listed and reference is made to RL3404 and RL3309.
- The submissions of the applicant and of DAHRRGA are summarised.
- The scale of the event is below the requirements for licensing, under section 230 of the Act.
- The first question is whether the use of lands for biking/running and for kayaking is development
- In establishing whether a change of use has occurred one needs to examine the scale of the activities, the character of the activities and associated impacts.
- WMNP is used extensively for various leisure activities as evident from the 1 million visitors and the running will be all on existing hard tracks which are currently used by visitors and biking will be on public roads and kayaking at the lake.
- The event will be focused on one day but it is considered that such high usage already takes place and this is further evidenced by the zoning grade that this area has been given under the WMNP plan.

- Whilst a more intense use is taking place it is not consider that this represents a material change of use of the WMNP.

4.2.2. DAHRRGA

The report of **DAHRRGA** states that an event of this nature does not constitute a change of use and that an event took place last year and in previous years and did not constitute a danger to public safety nor is the event contrary to the objectives of the WMNP plan.

A permit was issued in 2016 and NPWS was satisfied that the event would not adversely affect the qualifying interests of the Park. The organisation of the event involves liaison with the local authority and An Garda Siochana (AGS) in respect of traffic management. AGS has confirmed to NPWS that it is satisfied proposals with regard to traffic management and extra AGS will be on duty to manage traffic.

Conditions of the permit include that safety procedures are in place to protect against accidental collisions between participants and other visitors on the green road. The event in 2016 had no adverse impacts on the environment or heritage of the park. NPWS is satisfied that the event would not adversely affect the qualifying interests of the park in respect of its status as SPA and SAC.

Section 7.3 of WPMP identifies that the site location where the event takes place is classified as zone C which is intensively used by visitors and there are no qualifying interests affected based on our knowledge and assessment. The event added 0.12% to the annual footfall in this area of the park, is on hard trails and forest road and will not affect national monuments.

4.2.3. Conservation Ranger

Conservation Ranger reports on the application for a permit to run the event. The issues of most concern were the use of the lake, its management and bio security and secondly the timing and event management. Enacting the inland fisheries protocol for dealing with boats and equipment in waterways addresses the issue of the lake. Concerns about timing are addressed by schedule start of 6:30 AM on site clearance by 14:30 hours. A comprehensive management plan has been put in place and adequate provision of marshals and stewards on the route. Use of the GAA pitch as a staging post and car park and of the Glendalough hotel for registration and for

the finish. A range of special conditions (16 no.) refer and these include measures to avoid contamination of lake waters by invasive species and the cleaning of boats in this context.

5.0 Planning History

5.1. None relevant.

6.0 The Referral

6.1. Referrer's Case

The submission to the Board outlines the following case:

- Wicklow County Council gave little or no consideration to the inherent dangers which an event of this magnitude in such a confined area would create for walkers, children and the elderly.
- This is only the second year of the event.
- Comments made on behalf of NPWS are disputed – including the comment relating to the small proportion of the total area of the Park and the statement that the additional competitors (up to 5,000) is a modest increase.
- The relevant statistic is that on the day in question the footfall in the area doubles.
- The competitors bear down on other persons including elderly and small children and to state that there is no threat to public safety is ludicrous.
- I witnessed competitors running through the monastic enclosure and down to the old archway as this back towards the nearby Finish Line. All similar events in other countries are held in remote mountain and heathland areas and not all heritage sites which in themselves attract large numbers of people.
- Other comments are made in relation to protection of the Park and the monastic city.

The application for a declaration includes the substantive legal arguments, which are as follows:

- The event and specifically the Mini route due to the large numbers of people involved and serious endangerment of public safety and the competitive nature of the event renders it a material change of use of this part of the National Park which is contrary to the management plan aims and objectives.
- This material change of use requires permission.
- Class 37 is not relevant as this is not a local event but is a national event.
- Enclosed copies of orders of RL3309 and RL3404 and maps of the route and other documentation.

6.2. **Planning Authority Response**

No further comments.

6.3. **Owner/ occupier's response**

The main points of the response by Elite Event Management are:

- The event has been organised in April 2016 and 2017 and this is prior to the peak holiday visitor season.
- The portion of the event that takes place on the National Park grounds is less than 10 km in total the majority of which is on vehicular access width forest trails that are not frequented by the majority of visitors to the area.
- Competitors are not directed to any part of the monastic city and this is not part of the event route.
- No reported incidents in either event of any members of the public being scattered out of the way of competitors and both participants and visitors to the area were able to mutually participate in their chosen activities without any issues.
- Over 100 marshals work on the event to ensure safe running for participants and members of the public.
- We have extensive experience of running similar events in Killarney National Park since 2012.

These points are reiterated in a further submission of 16th of August 2017.

6.4. Further Responses

NPWS reiterates points made previously. Provides further data on the numbers of people on the Green Road in April 2017 which indicates that the participants associated with the event constituted 30% of the total traffic of 4,859 persons. On another date in June 3,637 persons were recorded, without any event taking place. The Monastic Site was not part of the route. AA Screening was undertaken.

Mr O'Neill (Referrer) in response to the above stated that the information is misleading. Necessary precautions were not undertaken. The presentation of figures is a cynical manipulation of the statistics. It is not likely that any agreed cap of participant numbers will be met. It would have been virtually impossible for competitors not to go through the Monastic Site.

Planning Authority – no further comment.

7.0 Statutory Provisions

7.1. Planning and Development Act 2000 as amended

Section 2 – (1) In this Act, except where the context otherwise requires –
“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

“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) 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) prescribes development which shall be exempted developments for the purpose of the Act.

Section 4(2) states that the Minister may provide for any class of development to be exempted development.

Section 4(4) indicates that notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Part XVI relates to events and fairs. Section 230 identifies an obligation to obtain a licence in respect of the holding of an event of class of event prescribed for this purpose.

Planning and Development Regulations 2001 as amended

A6 provides that subject to A9 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.

A9(1)(a) sets out restrictions on the development which would normally be exempted under A6 – includes if the carrying out of such development would -

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users.

Article 183

An event at which the audience comprises 5,000 or more people shall be an event prescribed for the purposes of section 230 of the Act.

Schedule 2, Part 1 Exempted development

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.

Conditions and Limitations

1. The land shall not be used for any such purpose 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.

7.2. Relevant Referrals and Case Law

- 7.2.1. RL3404 Use of an agricultural building and associated lands for small scale events constituted a change of use from existing agricultural use, which was deemed to be material change of use and constituted development. A number of the uses would fall under Class 37. However, would contravene condition of permission. Not exempted development.
- 7.2.2. RL3240 Use of airfield for sponsored parachute jumps. Is development and is not exempted development. Intensification of use as the activity gave rise to increased frequency of take-off and landing of aircraft and resulting noise impacts on residential property which might not have been anticipated in the original permission.
- 7.2.3. RL2970 related to use of agricultural lands by light aircraft (72 flight movements in 12 months). Board determined that a change of use occurred for the time that aircraft approached, landed and took off, and that this was a material change of use of the land. The extent of the material change of use was not so fleeting or infrequent to be considered temporary. Not exempted development.
- 7.2.4. RL2978 Use of public lane beside a public house as a bin store and smoking area was not development. Not a material change of use given the nature and frequency of the use.
- 7.2.5. RL3471 Use of agricultural fields as a car park constituted a change of use of these lands. Raised issues that are material in planning terms including in respect of traffic and residential amenity impacts and is therefore considered to be a material change of use and is development.
- 7.2.6. RL3309 Use of (industrial / related) lands for 12 days for outdoor cinema for attendance by 300 people. Planning conditions not contravened and not a traffic hazard. Exempted development under Class 37.

7.2.7. In the case of Galway County Council versus Lackagh Rock Limited [1985] I.R.120, Barron J. held that in order “to test whether or not the uses are materially different, it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made, either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different”.

8.0 **Assessment**

8.1. **Is or is not development**

8.1.1. Regarding whether or not the use of the National Park for a sporting event is ‘development’ I consider that the matter falls to whether or not a material change of use is involved. The running of the event does not involve the carrying out of works.

8.1.2. I note the submission of NPWS which indicates that only half of the event involves lands which are within the WMNP. The question is thus limited to a part of the event.

8.1.3. Further I note that the declaration refers to the ‘Mini’ event only, which is a 19km route. There are also two other longer routes on the day.

8.1.4. I have considered whether it is appropriate to re-word the question. It would appear to me that the referrer is concerned with the ‘Mini’ event, which traverses lands which are within and outside of the WMNP, including substantial areas of public road. However, the heart of the issue of concern to the referrer relates to the National Park lands and I recommend that the question be accepted as presented.

8.1.5. The starting point for consideration of this case is whether or not the use of the WMNP constitutes development by reason of a material change of use.

8.1.6. I consider that the significant matters to which the Board should have regard in this case include:

- The heavily used nature of the lands which would be used for the event
- The nature of the tracks which would be used
- The measures put in place to manage the event including to ensure avoidance of traffic hazard

- The short duration of the use and its limited contribution to increasing numbers of people on the paths – in this regard I accept the 30% figure presented by NPWS and consider that for a short duration of time this increase would not give rise to material planning consequences
- The normal pattern of activity in the area which is heavily used by tourists and for recreational activity.

8.1.7. I am in agreement with the conclusion of the planning authority that the use of the WMNP for this event does not constitute a change of use and is not development.

8.2. Section 4(4)

8.2.1. Section 4(4) specifies that a restriction on exempted development under section 4(1) and section 4(2) applies in the event of a requirement for EIA or AA. The screening for AA has been undertaken by NPWS and the management of the event includes measures to prevent significant effects on the qualifying interests. These would include measures such as cleaning of boats to prevent spread of invasive species. Regard has been had by NPWS to the Zone C designation (under the WMNP management plan) of the location and to the nature of the tracks on which the running would take place. Based on my inspection of the area, the nature of the tracks and the measures addressed in the permit granted by NPWS for the running of the event I consider that the position of NPWS in relation to AA can be supported.

8.2.2. I consider that the Board can be satisfied that the development subject of the application would not be likely to have a significant effect on any designated Natura 2000 and that a Stage 2 Appropriate Assessment is not therefore required. As such the restriction on exempted development under Section 4(4) is not relevant.

8.2.3. I therefore conclude that the running of the events as described at this location would not constitute development.

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 Wicklow

Mountains National Park is or is not development or is or is not exempted development:

AND WHEREAS Joe O'Neill requested a declaration on this question from Council and the Council issued a declaration on the 10th day of March 2017 stating that the matter is not development:

AND WHEREAS Joe O'Neill referred this declaration for review to An Bord Pleanála on the 5th day of April 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), Section 4(2) and Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) The nature of the tracks and pathways
- (e) The regulation of the event by permit by NPWS
- (f) The pattern of heavy usage in the area:

AND WHEREAS

An Bord Pleanála has concluded that:

- (a) The nature of the event due to its short duration and occasional nature would not give rise to material changes in the intensity or pattern of usage of the Wicklow Mountains National Park
- (b) The event would not result in significant health and safety concerns
- (c) The running of the event would not be likely to have a significant effect on any designated Natura 2000 Site and a Stage 2

Appropriate Assessment is not therefore required

- (d) The proposed use of the lands as specified does not constitute a material change of use of the Wicklow Mountains National Park.

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 use of the Wicklow Mountains National Park for a competitive adventure racing event is not development.

Mairead Kenny

Senior Planning Inspector

26th February 2018