

Sonias,
Cahercalla Wood,
Cahercalla,
Ennis,
Co. Clare V95HW14

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Connellan
&
Associates

Architectural,
Planning &
Energy Rating
Consultants

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

30/1/2023

AN BORD PLEANÁLA	
LDG-	<u>0610 47-23</u>
ABP-	_____
07 FEB 2023	
Fee: €	<u>220</u> Type: <u>CHEQUE</u>
Time: _____	By: <u>REG-POST</u>

Dear Sir/Madam,

We act for and on behalf of Spanish Point Golf Club. We wish to refer a decision on a Declaration with respect to works on the Spanish Point Golf Club site for a review by An Bord Pleanála under the provisions of section 5 (3) (a) of the Planning & Development Act 2000, as amended.

Details of the declaration appeal and the grounds for review are set out below –

- An Bord Pleanála review fee in the amount of 220 euro
- Copy of application for declaration lodged with Clare County Council – appendix 1
- Copy of Council acknowledgement of receipt of declaration – appendix 2
- Copy of Declaration decision from the County Council – appendix 3
- Copy of planner's report on application for declaration – appendix 4

DETAILS WITH RESPECT TO REVIEW APPLICATION

Planning Authority:	Clare County Council
Planning Authority Reference Number:	R22-85
Date of Decision:	18/1/2023
Name & Address of applicant for Declaration	Spanish Point Golf Club
Nature of Development:	Erection of berms
Location of Development Site:	Spanish Point Golf Club, Dough, Spanish Point, Co. Clare

Person requesting review: Spanish Point Golf Club

Address of person requesting review: Spanish Point Golf Club,
Dough, Spanish Point, Co. Clare
V95 RP28

Address for correspondence: c/o Connellan & Associates,
'Sonas', Cahercalla Wood,
Cahercalla, Ennis, Co. Clare

We request that the Board consider the documentation as originally lodged as part of the review. The question put to the Planning Authority and now before the Board is –

Whether or not the berms erected adjacent to the N67 at Spanish Point Golf Club is/is development and is/is not exempted development

We consider what is involved is 'works' and therefore development within the meaning of the statutory provisions. We also consider, however, that what is involved can be considered 'exempted development' by reason of Class 34 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001, as amended.

We have set out the case for exemption in the submission made with the Council for the Declaration which is now attached. This is the basis of our case for planning exemption status which we request the Board to have regard to in its review.

We also set out below some observations on the Council assessment that we would like to have taken into consideration.

Council Assessment/observations

- We note that the Council slightly reworded the original question but consider that this does not alter the query and are happy to go with this wording or something similar as the Board sees fit.
- We note the assessment under the statutory provisions set out in the planner's report. In particular it is noted that the 'works' involved are deemed to be development. This is accepted.
- It is also noted that the Council considered that Class 34 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001, as amended, is the relevant class of use with respect to consideration of the declaration request. This class has no qualifying conditions or limitations within the class itself.
- The Council as competent authority carried out an AA screening and determined that the development would not require an appropriate assessment as it would not be likely to have a significant effect on the integrity of a European site

- The Council's decision that the works were not exempted has been based on the provisions of article 9 of the Planning & Development Regulations 2001, as amended, and in particular on subsection viii) of same which relates to '*interference 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 a development plan for the area in which the development is proposed ..*'.

In this regard the planner's report note –

The N67 is a designated scenic route at this location where it is an Objective under the Development Plan as set out under CDP 13.7 to protect sensitive areas from development and to ensure that developments take into consideration their effects on views from the public road towards scenic features in order to minimise visual impact.

The subject berms are stated in the application to be a maximum height of 2.8m though no survey of same has been submitted with the application and appear somewhat higher in parts on inspection. In any event the question before the Planning Authority is whether the works would interfere with the character of the landscape at this location based on the designation of the road as a Scenic Route. In this regard I accept that there are some intermittent views of the site from the road however given the extent of the works as carried out, the open nature of the landscape, the proximity of the berm to the road and properties across from same, and the designation of the N67 at this location as a Scenic Route, I consider that the works as carried out interfere with the character of the landscape at this location. I have attached a screen shot from Google Streetview below and in my view the works as carried out would interfere with the character of the landscape here.

It is considered that this may also form one of the main items for assessment by the Bord. In this regard we would like to make the following observations –

- The 'character/view/prospect' of the landscape at this location is very much determined by the existence of the golf course which has been in existence for over 125 years at this stage. Berms of this nature are part and parcel of the existing course and are necessary for its management and operation.
- The scenic route passes the golf course over an extensive area as it runs along the eastern side of the course. The route also runs through the designated settlement boundary of Spanish Point where there is a build-up of structures (tourist accommodation, caravan parks) to the west. It is, therefore, not a pristine open landscape over this section but in fact runs through zoned land. The golf course is zoned REC 1 in the plan and land across the road zoned for tourism use. This zoning presupposes changes may occur over the plan period and does not presume a static case scenario.
- The objective with respect to scenic routes is set out in CDP 13.7 of the Development Plan 2017-2023 as follows -

CDP13.7

Development Plan Objective: Scenic Routes

It is an objective of Clare County Council:

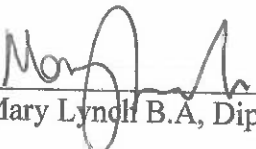
- A To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- B To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;
- C To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

In this regard -

- The development involved is not 'inappropriate' as it forms part of the existing club development
- The development does not interfere with the character/view/prospect within the context of what is set out under CDP 13.7 above in so far as there is an existing golf club use of the land with all that entails with respect to greens, fairways, hillocks, berms etc.
- The development/change benefits the rural community in the area as the golf club is part and parcel of the wider rural area community and its continued survival and development is part of the needs to sustain the rural community in this area
- The views and features from the scenic route to the west at this location are into the golf course and the berms form part of the course
- The berms are of standard construction and their siting, length and height are related to the need to stop balls going onto the national road or nearby houses. In this regard the location, siting, design and finishing complies with appropriate standards.

We request An Bord Pleanála to review what is involved and to find that the development is exempted development.

Yours sincerely,


Mary Lyndh B.A, Dip TP, MIPI

P07

CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))
FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.

(a) Name and Address of person seeking the declaration	SPANISH POINT GOLF CLUB DOUGH SPANISH POINT Co. CLARE
(b) Telephone No.:	XXXXXXXXXXXX
(c) Email Address:	XXXXXXXXXXXX@XXXXXX
(d) Agent's Name and address:	CONNELLAN & ASSOCIATES SOFAS CATHRACHA WOOD ENNIS U95 HW 14

2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
Note: only works listed and described under this section will be assessed.

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

WHETHER OR NOT THE BERMS ERRECTED ADJACENT TO THE
N 67 BT SPANISH POINT GOLF CLUB. IS/IS NOT
DEVELOPMENT AND IS/IS NOT EXEMPTED DEVELOPMENT.

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

SEE ATTACHED DRAWING AND REPORT

(c) List of plans, drawings etc. submitted with this request for a declaration:
(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

SITE LAYOUT AND LOCATION PLANS
1658 — 01

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT																			
(a) Postal Address of the Property/Site/Building for which the declaration sought:	SPANISH POINT GOLF CLUB DOUGH SPANISH POINT Co. CLARE																		
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No																		
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	FULL OWNER																		
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A																		
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes																		
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	No.																		
(g) Were there previous planning application/s on this site? If so please supply details:	<table style="border: none;"> <tr> <td style="border: none;">94</td> <td style="border: none;">/</td> <td style="border: none;">917</td> <td style="border: none;">20</td> <td style="border: none;">/</td> <td style="border: none;">985</td> </tr> <tr> <td style="border: none;">02</td> <td style="border: none;">/</td> <td style="border: none;">1318</td> <td style="border: none;">21</td> <td style="border: none;">/</td> <td style="border: none;">610</td> </tr> <tr> <td style="border: none;">05</td> <td style="border: none;">/</td> <td style="border: none;">490</td> <td></td> <td></td> <td></td> </tr> </table>	94	/	917	20	/	985	02	/	1318	21	/	610	05	/	490			
94	/	917	20	/	985														
02	/	1318	21	/	610														
05	/	490																	
(h) Date on which 'works' in question were completed/are likely to take place:	15/11/2022																		

SIGNED: Neil Conboy

DATE: 16/12/2022

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:.....			

APPENDIX 1

COPY OF APPLICATION FOR DECLARATION

"Sonas"
Cahercalla Wood,
Ennis,
Co. Clare.

Phone: 00 353 65 68 24520
E-mail: connellanandassociates@gmail.com

Eircode V95 HW14

V.A.T Number 3015496R



**Connellan
&
Associates**

**Architectural,
Planning & Energy
Rating Consultants
Consulting Engineers**

Planning Office,
Clare County Council,
Council Offices,
New Road,
Ennis, Co. Clare

12/12/2022

**Re/ Request for declaration on development/exempted development
Spanish Point Golf Club – Dough, Spanish Point, Co. Clare
UD 22-099 refers**

Dear Sir/Madam,

We refer to your letter of 16/11/2022 reference UD 22-099 referring to recent works carried out adjacent to N67 at Dough Spanish Point by Spanish Point Golf Club and inviting the submission of a reference for a declaration or a planning application.

Spanish Point Golf Club considers that the works are exempted development and has chosen to submit the attached section 5 declaration for the consideration of the Council.

The application includes –

- Completed application form giving details of development and making reference to this submission regarding the description of the works involved
- Fee in the amount of 80 euro
- Required site location and site layout plans

In this submission we will set out –

1. The background to the development
2. A description of the works involved
3. The relevant Development Plan provisions
4. Planning History
5. The case for consideration that the works involved can be considered exempted development

1. Background to development

Spanish Point Golf was founded in 1896 and celebrated its 125th anniversary in 2021. It is a 9-hole links golf course, designated the best 9-hole course in Munster in 2019. The site area of the club is 15.77 ha.

The club lands lie between the N67 to the east and the R 482 to the west. The development also includes a club house and machinery shed adjacent to the R482 overlooking Spanish Point beach. The golf club lands adjoining the N67 principally overlook caravan parks, residential development and a commercial guest house over a long stretch of its road frontage at this location.

The operation and management of a golf club course relies on constant site maintenance and attention to safety issues. This requires regular course re-configurations as issues arise or where hole re-alignment is deemed necessary. One of the issues that has caused concern in recent times has been the fact that stray golf balls are going onto the N67 and also into residential/commercial property fronting onto this route. This has been the subject of complaints to the club from the residents. The club is obviously very concerned about these matters. The provision of the berms adjacent to the N67 has been carried out to address the safety issues involved and was discussed and agreed with the residents whose property faces the berms.

2. Description of works involved

The Council in its letter of 16/11/2022 described the works as the provision of an 'embankment'. We do not consider that this would be a particularly accurate description of what is involved as an embankment would normally be a raised structure to hold back water or to carry a roadway (Merriam Webster dictionary). In this case what is involved is the provision of 'berms', a mound of earth/sand.

The 1/1250 site layout maps lodged with the application show the location of the berms. We also enclose photos showing the berms in situ.

The golf club boundary along the N67 is demarcated by a wall that varies 1.2 to 1.8 metres in height. This wall is covered in vegetation such that it looks like a ditch. There is a vehicular access from the Golf Club onto the N67 located approx. opposite the local road that runs- east west just to the south of the Atlantic Star Lodge guesthouse at the junction.

There are two berms involved – marked 1 & 2 on the 1/1250 site layout plans for ease of reference. Both berms run approx. parallel with the N67 although the southern- most berm (berm 1) has an angled piece for a short distance at the end of its run.

The wall along the N67 has been retained. The berms are located directly behind the wall. Berm 1 varies in height from 2.8 down to 2.2 metres and berm 2 averages around 2.2 metres.

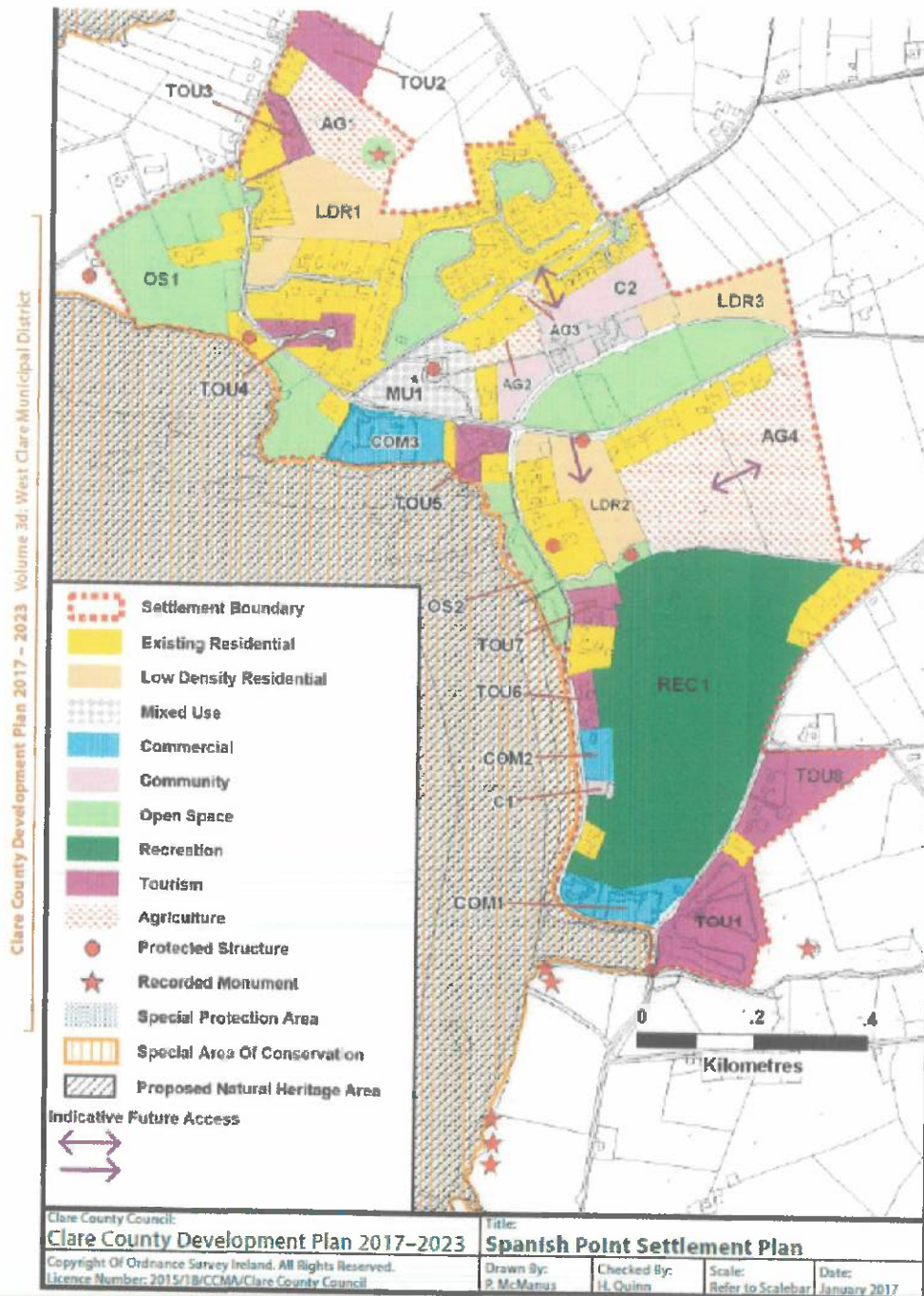
The berms are made up of sand with sods on top. The material for the berms has been taken totally from within the golf club lands from an area directly behind the berm locations. It should be noted that the height of the berms will drop by approx. 1 to 1.5 metres as the material settles over the next year. This has been the experience with other berms on the golf course and they have to be built up again where necessary.

The berms involved are similar in design, materials and appearance to the other standard berms that have been constructed over the remainder of the 9 – hole course over the years and are visible around the course.

3. Relevant Development Plan provisions

The operative development plan is the Clare County Development Plan 2017-2023. As part of this Plan, particular reference is made to the West Clare Municipal District Volume 3d: written statement and settlement plans. The main relevant factors include -

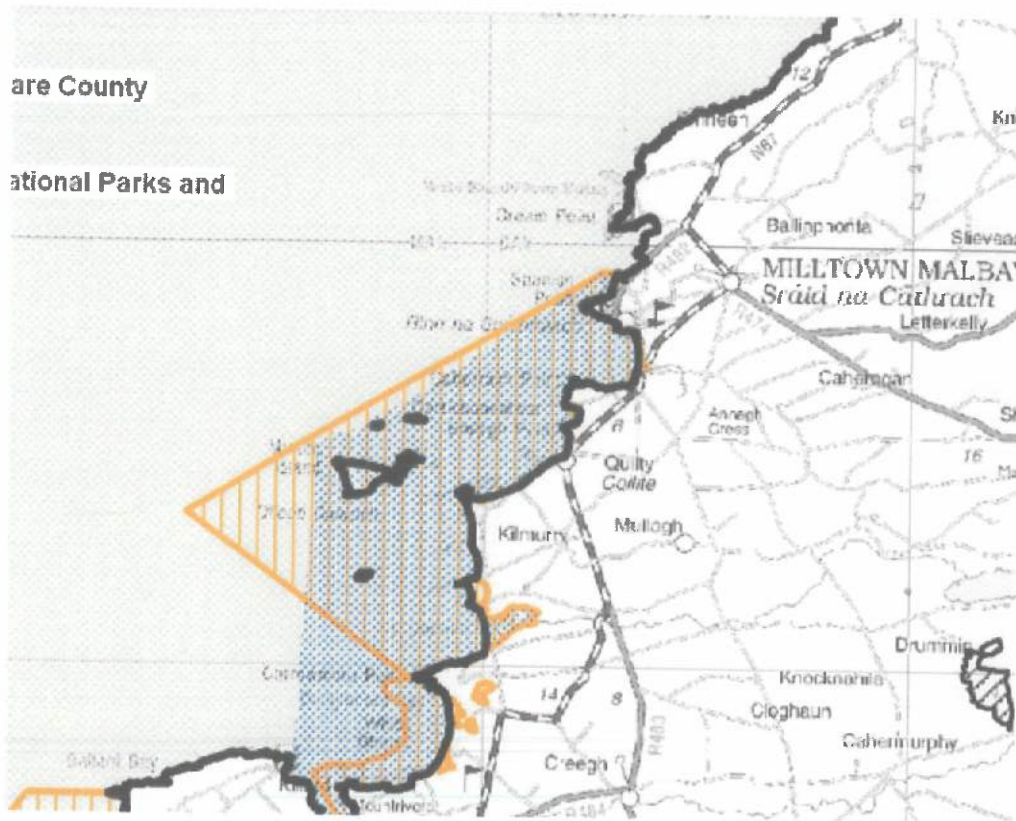
- Spanish Point is designated a 'small village' within the settlement hierarchy. The golf club lands are contained within the settlement boundary of the village and are zoned 'REC 1' or recreation within the Plan – map from volume 3 d refers as set out below.



**Map 1: Clare County Development Plan 2017-2023: Vol 3 d
 Spanish Point Settlement Plan**

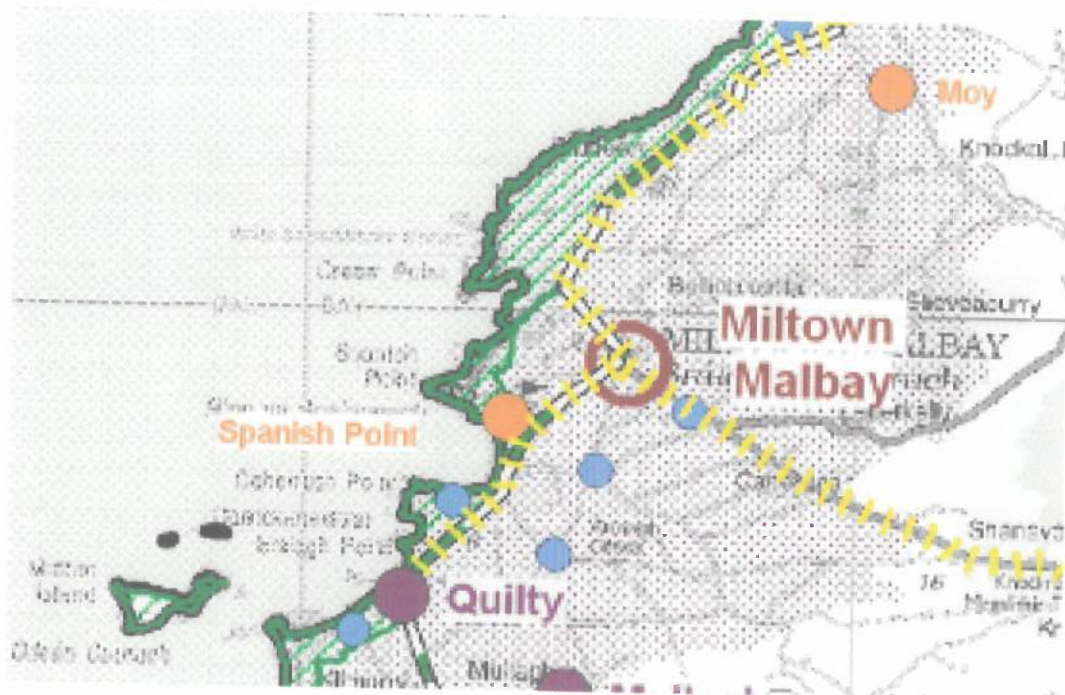
Recreation zoning is described in the plan as providing for 'the use of land for the provision of sports grounds/playing pitches, golf courses, tennis courts and other active indoor and outdoor recreational facilities that contribute to meeting the leisure, recreation and amenity needs of the immediate community and/or the wider area' – section 19.4 of volume 1 of Clare County Development Plan 2017-2023 refers.

- A Special Area of Conservation (SAC) and a Special Protection Area (SPA) adjoin the settlement boundary of Spanish Point. These are located to the west of the village and are known as the 'Carrowmore Point to Spanish Point and the Islands SAC' and the 'Mid Clare Coast SPA'. The locations of the SPA & SAC are shown below in an extract from volume 2, map F of the Clare County Development Plan 2017-2022, as varied. The eastern boundary lines of both designations run along the R482 to the front (west) of the golf club land boundary. These areas are given special protection in the plan.



Map2: Clare County Development Plan 2017-2023: Vol 2 – extract from Map F
 SAC shown with orange vertical lines and SPA shown dotted blue

- A scenic route designation runs along the N 67 on the eastern boundary of the Golf Club lands as indicated in extract from Map D of volume 2 the Clare County Development Plan 2017-2023 – extract shown below as map 3



Map 3: Clare County Development Plan 2017-2023: Extract from Vol 2, Map D showing scenic route designation in yellow along N67

The relevant policy provision regarding such designated routes is given in CDP 13.7 set out below

CDP13.7

Development Plan Objective: Scenic Routes

It is an objective of Clare County Council:

- A** To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- B** To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;
- C** To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

4. Planning History

The recent planning history is indicated below –

- 94/917 Application to build a new machinery shed - permitted
- 02/1318 Application to demolish section of existing clubhouse and to construct new extension consisting of ladies and gents changing rooms, office and disabled toilets – permitted
- 05/490 Application to renovate and construct extension to existing club house – permitted
- 20/985 Application to construct extension to rear of existing club house – permitted
- 21/610: Application to construct golf training room, covered area, extension to lounge, refuse area, enlarge window – permitted

5. The case for exempted development status of works

It is accepted that what is involved in the provision of the two berms constitute '*works*' within the definition of the Planning & Development Act 2000, as amended. It is contended, however, that the works involved can be considered exempted development by reference to Class 34 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001, as amended.

Class 34 column 1 describes the following as exempted development –

CLASS 34
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 a golf course or pitch and putt course.

It is noted that there are no '*conditions and limitations*' given in column 2 with respect to the class of development involved.

There are two further considerations –

- a) Does what is involved come within what would normally be understood to be '*maintenance and management of a golf course*'
- b) Are the works restricted by the provisions of article 9 of the Planning & Development Regulations, 2001 as amended.

In relation to a) we would refer the Council to the fact that the provisions of berms of this nature are standard practice within golf courses all over Ireland where safety factors or reconfiguration of golf courses are involved. Such berms are also a particular existing feature of Spanish Point golf course.

We also refer the Council to a reasonably recent reference (March 2017) regarding a similar matter made to An Bord Pleanála – Bord Reference RL3473. The question there was *'whether the raising of the height of an existing driving range berm at Trump International Golf links, Doonbeg, is or is not development or is or is not exempted development'*

The inspector in the case considered what was involved to be development and not exempted development. The Board, however, decided that the raising of the height of the berm was exempted development stating that the works improved the 'safety' of the driving range and were necessary for the 'management' of the golf course and therefore came within the scope of Class 34 – see Board consideration below -

- (a) The works to the golf driving range which effectively improve the safety of the driving range are necessary for the management of the golf course and, therefore, come within the scope of Class 34, Part 1, Schedule 2 of the Planning and Development Regulations 2001- 2015,
- (b) Having regard to its nature and limited scale, there is no evidence of any mechanism or connectivity by which the White Strand/Carrowmore Marsh pNHA would be interfered with as a consequence of the construction of the berm. Furthermore, the Board noted the status of the area in which the site is located remains that of a proposed NHA rather than that of an NHA confirmed by Order pursuant to section 18 of the Wildlife (Amendment) Act, 2000 and, therefore, it is considered that the de-exemption provision under Article 9(1)(a)(viiC) of the Planning and Development Regulations 2001 – 2015 does not apply,
- (c) The development, involving an increase in the height of an existing berm, is of limited scale and visually integrates with the surrounding topography and vegetation. Therefore, it has only a minor visual impact on the landscape and due to its scale and setting it would not interfere with the character of the Heritage Landscape as designated in the Clare County Development Plan 2017- 2023,
- (d) The development would not be likely to have significant effects on any designated European Sites (Carrowmore Dunes SAC (Site Code 002250), Carrowmore Point to Spanish Point and Islands SAC (Site Code 001021) Tullaheer Lough and Bog SAC (Site Code 002343), Kilkee Reefs SAC (Site Code 002264), Lower River Shannon SAC (Site Code 002165) and Mid-Clare Coast SPA (Site Code 004182)), in the vicinity in light of the sites conservations objectives. In coming to this conclusion the Board took account of the distance to the site of any qualifying interests, the nature of the qualifying interests and the expert AA Screening Report that was submitted with the referral and concurred with the conclusions of this report.

While the existing case relates to the provision of 2 new berms rather than the raising the height of an existing berm, it is considered that the same considerations apply.

In relation to b) we refer to the provisions of article 9 of the Planning & Development Regulations 2001, as amended. The following should be noted in relation to the works -

- There is no condition on any permission that is being contravened
- There is no access to a public road involved
- The works will not endanger public safety by reason of traffic hazard – in fact the opposite is the case. The works are in fact designed to improve public safety on the N67

- There are no works involved on the public road itself
- While the works are adjacent to a scenic route they will not interfere with the character of the landscape or any view or prospect of special amenity value which it is an objective of the development plan to preserve. In this regard we refer to the specific objectives of CDP 13.7 outlined above. It refers to the protection of sensitive areas from inappropriate development and that effects on views towards scenic features are taken into consideration. The views in this case are of the golf course itself and berms within the golf course are a normal part of the existing course. In addition the berms are of limited height and length, just sufficient to ensure the proper management of the course with respect to operational safety. See photos in appendix 1 with respect to views from N67.
- There is no place, cave, site, feature or other object of archaeological, geological, historical, scientific or ecological interest being interfered with, excavated, altered or demolished
- No archaeological monument is being interfered with, altered or demolished
- It is considered that the Council as competent authority would not require an appropriate assessment given the nature of what is involved, its distance from the SAC and SPA designated areas and the lack of any connectivity with these areas. In this regard we refer to the Council's AA screening to other developments within the Golf Club when the more recent planning applications referred to above were being assessed.
- The works do not consist of or comprise development likely to have an adverse impact on an area designated as a NHA
- There is no unauthorised structure or unauthorised use involved that are being extended, altered, repaired or renewed
- There is no existing use of a building or structure involved that it is an objective of the Council that such building or structure remain available for such use
- The works do not involve the fencing or enclosure of any lands habitually open to the public in the 10 years preceding
- The development does not obstruct any right of way
- The works do not involve works in an architectural conservation area (ACA)

Conclusion

While it is considered that the works involved are 'development' within the meaning of same as defined by planning legislation, we consider that what is involved can be considered 'exempted development' by virtue of class 34 of the Planning & Development Regulations 2001, as amended for the reasons set out above.

Yours sincerely,



Mary Lynch B.A, Dip TP, MIPI

Appendix 1: Photos from N67

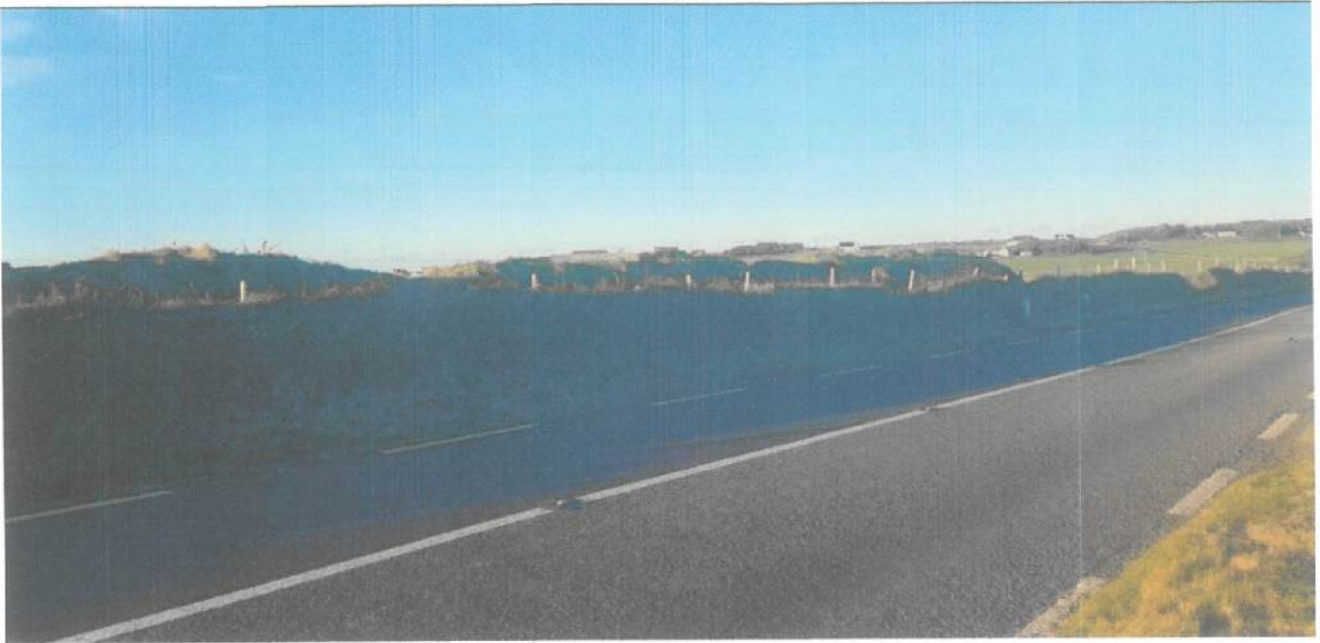


Photo 1: View of berm 2 from N 67 heading towards Miltown Malbay

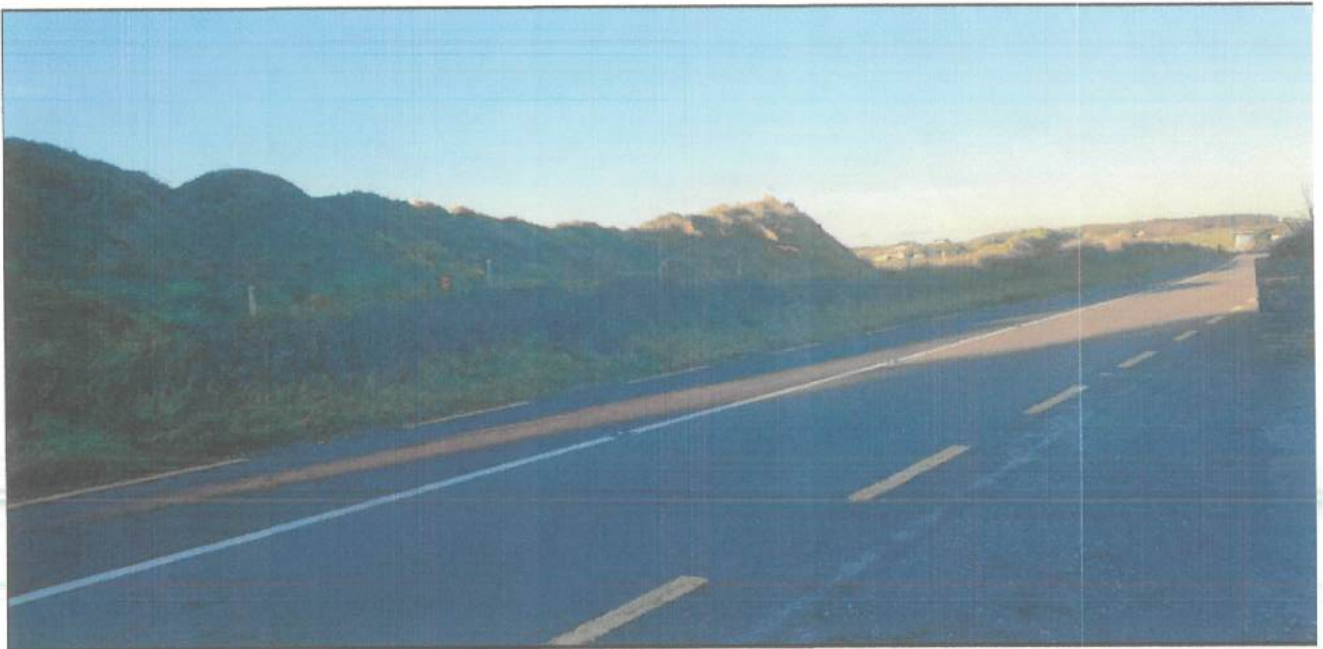


Photo 2: View from N67 heading towards Miltown Malbay



Photo 3: View from N67 beside strand of trees along N67 heading towards Quilty



Photo 4: View from N 67 directly onto golf course

APPENDIX 2

COPY OF COUNCIL ACKNOWLEDGEMENT
OF RECEIPT OF DECLARATION



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Spanish Point Golf Club
c/o Connellan & Associates
Sonas
Cahercalla Wood
Ennis
Co. Clare
V95 HW14

19/12/2022

Section 5 referral Reference R22-85 – Spanish Point Golf Club

Whether or not the berms erected adjacent to the N67 at Spanish Point Golf Club is considered development, and if so, is it exempted development?

A Chara,

I refer to your application received on 16th December 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Brian Fahy
Planning Department
Economic Development Directorate

APPENDIX 3

COPY OF DECLARATION DECISION FROM COUNCIL



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

220

14 Feb

Registered Post

**Spanish Point Golf Club
c/o Connellan & Associates
Sonas
Cahercalla Wood
Ennis
Co. Clare
V95 HW14**

18th January 2023

Section 5 referral Reference R22-85 – Spanish Point Golf Club

Whether or not the berms erected adjacent to the N67 at Spanish Point Golf Club is considered development, and if so, is it exempted development?

A Chara,

I refer to your application received on 16th December 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

**Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúirthóireacht Forbairt Gheilleagrach**
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department
Economic Development Directorate**
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R22-85



**Comhairle Contae an Chláir
Clare County Council**

Section 5 referral Reference R22-85

Whether or not the berms erected adjacent to the N67 at Spanish Point Golf Club is considered development, and if so, is it exempted development?

AND WHEREAS, Spanish Point Golf Club has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, and 3 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer as received by the Planning Authority on the 16th December 2022.

And whereas Clare County Council has concluded:

- (a) the construction of berms erected adjacent to the N67 at Spanish Point Golf club constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended.
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended.
- (c) the said development consisting of the erection of two berms, and being works for the maintenance and management of a golf course would fall within the exemptions of development as set out under Class 34 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, however having regard to the restrictions on exempted development as set out under Article 9 (1) (a) (vi), and having regard to the nature and extent of the works as carried out together with the proximity of same to the N67 which is a designated Scenic Route in the Clare County Development Plan 2017-2023, as varied, it is considered that the works would interfere with the character of the landscape at this location and would not therefore constitute exempted development.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the berms erected adjacent to the N67 at Spanish Point Golf Club, Co. Clare **constitutes development** which is **not exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

18th January 2023

APPENDIX 4

COPY OF PLANNER'S REPORT ON APPLICATION
FOR DECLARATION

**CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF:	R22-85
APPLICANT(S):	Spanish Point Golf Club
REFERENCE:	Whether or not the berms erected adjacent to the N67 at Spanish Point Golf Club is considered to be development and if so, is it exempted development.
LOCATION:	Spanish Point, County Clare
DUE DATE:	19 th January 2023

Site Location and Designations

The site is situated within the settlement of Spanish Point and is zoned for recreational purposes. The zoning objective for recreation is to provide for the use of land for the provision of sports grounds/playing pitches, golf courses, tennis courts and other active indoor and outdoor recreational facilities that contribute to meeting the leisure, recreation and amenity needs of the immediate community and/or the wider area.

The berms in question are located along the boundary with the N67 which is a designated scenic route (CDP 13.7 refers).

CDP13.7 Scenic Routes

It is an objective of Clare County Council:

- a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;*
- b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;*
- c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.*

Planning History on Site

21/610 - Permission granted to construct the following (a) A golf training room with compressor room and store room at basement level (b) A covered area between the existing clubhouse and the proposed training room (c) A small extension off the lounge to front of building (d) A refuse area with low walls on either side parallel to clubhouse (e) Enlarge window to front of building.

20/985 - Permission granted to construct an extension to rear of existing clubhouse
94/917 - Spanish Point Golf Club. Permission granted to build a new machinery shed at Dough, Milltown Malbay.

02/1318 Spanish Point Golf Club. Permission granted to demolish section of existing Clubhouse & to construct new extension comprising ladies & gents changing rooms, office & disabled toilets.

05/490 Spanish Point Golf Club. Permission granted to renovate and construct extension to existing club house.

UD History

UD - 22/99 Correspondence issued to the Secretary of the Golf Club on the 05th November 2022. The applicant was advised that no permission had been granted and the situation required to be regularised by applying for a section 5 or submitting a retention application. No warning letter or enforcement notice have been served to date.

Background to Referral

This referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Spanish point Golf Club. The applicant is seeking a Section 5 Declaration as to whether the is or is not development and is or is not exempted development.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

'Works' are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

"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.

'Development' is defined in Section 4 of the Planning and Development Act 2000, as amended as follows

S.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.*

Planning & Development Regulations, 2001, as amended
Article 6

Class 34 states:

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

Limitations and conditions

None

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 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 of the Planning and Development Regulations 2001, as amended

Under Article 9 (1) of the same Regulations, *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 –*
- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
 - (ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
 - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
 - (iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*
 - (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*
 - (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*
 - (vii) 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 a development plan for the area in which the development is proposed or, pending the variation of a development plan or the*

- making of a new development plan, in the draft variation of the development plan or the draft development plan.
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
- (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."
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- (xi) obstruct any public right of way,
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

Basis of Referral

The applicant is seeking a Section 5 Declaration as to whether or not the berms erected adjacent to the N67 at Spanish Point Golf Club County Clare is or is not development and is or is not exempted development.

Particulars of Proposal

- Cover letter states that the provision of the berm adjacent to the N67 has been carried out to address the safety issues involved and was discussed and agreed with residential who's property faces the berms.
- 1 : 2500 site layout map
- Two berms marked 1 and 2 on the site layout plan 1 :250
- The berms run parallel to the N67
- Berms are located directly being the existing wall
- The berms vary in height from 28. Down to 2.2m and berm 2 averages round 2.2m
- Berm 1 is 14m and berm 2 is 14.8m.
- There are made up with sand and sod on top (the material for which has been taken totally from within the Golf club)
- The height of the berms will drop by approx. 1 to 1.5m as the material settles.
- The berms are similar in design and appearance to other berms on the course.

Under Article 9 (1) of the same Regulations, *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 –

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act N/A

(ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, N/A

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users, **The berms are erected to prevent stray golf balls breaching the boundary at the N67***

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft, N/A

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, N/A

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or

cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies, N/A

(vii) 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 a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.

The N67 is a designated scenic route at this location where it is an Objective under the Development Plan as set out under CDP 13.7 to protect sensitive areas from development and to ensure that developments take into consideration their effects on views from the public road towards scenic features in order to minimise visual impact.

The subject berms are stated in the application to be a maximum height of 2.8m though no survey of same has been submitted with the application and appear somewhat higher in parts on inspection. In any event the question before the Planning Authority is whether the works would interfere with the character of the landscape at this location based on the designation of the road as a Scenic Route. In this regard I accept that there are some intermittent views of the site from the road however given the extent of the works as carried out, the open nature of the landscape, the proximity of the berm to the road and properties across from same, and the designation of the N67 at this location as a Scenic Route, I consider that the works as carried out interfere with the character of the landscape at this location. I have attached a screen shot from Google Streetview below and in my view the works as carried out would interfere with the character of the landscape here.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan, N/A See AA screening assessment attached.

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended, N/A

(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, N/A See screening assessment attached

(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." N/A

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use, N/A

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, **N/A**

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

The Golf Club is not land habitually open to or used by the public

(xi) obstruct any public right of way, **No right of way is shown on the drawings received.**

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

N/A

Other Section 5 referrals relating to Golf Club works

Section 5 R 16/ 32 -Whether raising the height of an existing driving range berm at Trump International Golf Links & Hotel, Doonbeg, Co. Clare is or is not development and is or is not exempted development. The Planning Authority determined that nature and extent of works could not be considered incidental to the maintenance and management of the course. In addition there were hydrological pathways ways connecting the subject site to the European sites and significant effects could not be ruled out. This decision was appealed to ABP (RL 3473). While the inspector considered the work constituted development which was not exempted development, the Board decided that the raising of the height of the berms stating that the works improved safety of the driving range and necessary to the management of the Golf course and therefore within the scope of class 34.

Recommendation

The following question has been referred to the Planning Authority:

Whether or not the berms erected adjacent to the N67 at Spanish Point Golf club is or is not development and is or is not exempted development.


The Planning Authority in considering this referral had regard to:

- (a) Sections 2, and 3 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (c) Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The works as indicated in submitted documents from the referrer as received by the Planning Authority on the 16th December 2022.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) the construction of berms erected adjacent to the N67 at Spanish Point Golf club constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended,
- (c) the said development consisting of the erection of two berms, and being works for the maintenance and management of a golf course would fall within the exemptions of development as set out under Class 34 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, however having regard to the restrictions on exempted development as set out under Article 9 (1) (a) (vi), and having regard to the nature and extent of the works as carried out together with the proximity of same to the N67 which is a designated Scenic Route in the Clare County Development Plan 2017-2023, as varied, it is considered that the works would interfere with the character of the landscape at this location and would not therefore constitute exempted development.

Now therefore Clare County Council (Planning Authority), hereby decides that berms erected adjacent to the N67 at Spanish Point Golf club is development and is not exempted development.


Garreth Ruane
Senior Executive Planner
18/01/2023

Agreed.
HQ 18/01/23

