



An
Bord
Pleanála

Inspector's Report ABP-318222-23

Question

Whether the extension of Shannon Rugby Clubhouse by the erection of an adjoining and linked marquee measuring 30ft x 70ft for the purposes of discos and other events and consequent intensification of use of the clubhouse premises at Thomond Park, Old Cratloe Road, Limerick is or is not development or is or is not exempted development.

Location

Thomond Park, Old Cratloe Road, Limerick.

Declaration

Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	EC46/23
Applicant for Declaration	Pat Downes
Planning Authority Decision	Is exempted development

Referral

Referred by	Pat Downes
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Owner/ Occupier	Shannon Rugby Football Club
Observer(s)	None
Date of Site Inspection	9 th October 2024
Inspector	Ciara McGuinness

1.0 Site Location and Description

- 1.1. The referral site relates to the grounds of Thomond Park, which lies to the northwest of Limerick City and which fronts onto the Old Cratloe Road. The Shannon Rugby Football Club (RFC) clubhouse is a L-shaped building, located directly to the west of the stadium within the Thomond Park Grounds. The north, east and south of the site comprise predominantly residential areas. Mayorstone Park Garda Station and the Limerick Institute of Technology and its associated grounds are located to the west of the site. The referral question relates to an extension of the Clubhouse by the erection of a marquee. I note on the day on my site visit that there was no marquee present within the site.

2.0 The Question

- 2.1. The referrer has sought a determination as to “Whether the extension of Shannon Rugby Clubhouse by the erection of an adjoining and linked marquee measuring 30ft x 70ft for the purposes of discos and other events and consequent intensification of use of the clubhouse premises at Thomond Park, Old Cratloe Road, Limerick is or is not development or is or is not exempted development.”
- 2.2. The purpose of this referral is not to determine the acceptability or otherwise of the marquee in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority made the following declaration on the 18th September 2023;

“The Planning Authority has concluded that the extension of Shannon Rugby Clubhouse by the erection of an adjoining and linked marquee measuring 30ft x 70ft for the purposes of discos and other events and consequent intensification of use of the clubhouse premises at Thomond Park, Old Cratloe Road, Limerick comes within

the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 01 as amended.

Now therefore the Planning Authority in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended) hereby decides that the said development as described above is Development and is Exempt Development”.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planners Report notes that there was previously an enforcement case in relation to a marquee at this location that was in place for more than 30 days. The case was finalised when the marquee was removed. There was no marquee in place at the site on the day of the planner’s site inspection on the 16th June 2023. The Planning Authority issues a cert of exemption under ref EC17/22 on the 1st July 2022 for a marquee to be erected on certain dates for fund-raising discos and special match dates. The Authority was of the opinion it was exempt development under Class 37 of the Planning & Development Regs 2001. Shannon RFC have not breached planning laws since the issue of this exemption cert on 1st July 2022. The erection of a marquee for the purposes of discos and other events is not an extension of the clubhouse or the consequent intensification of use of the clubhouse. The proposed marquee is considered exempt under Class 37 once it is removed within the time conditions.

3.2.2. Other Technical Reports

None.

4.0 Planning History

It is noted that Thomond Park was extensively redeveloped in 2008.

With regards to the Shannon RFC clubhouse, it is noted that permission was granted in 2008 for its redevelopment, but the permission was not implemented;

PA Reg Ref 08770211: Permission granted to demolish existing pavilion within the grounds of Thomond Park and to construct a proposed pavilion facility to include

sports hall, gymnasium, sports injury treatment area, changing and shower room areas and reception rooms with bar amenities and associated site works.

There have been two other Section 5 applications at the site;

EC17/22 – Whether the erection of a 70ft x 30ft marquee for social events within the grounds of Thomond Park, Old Cratloe Road, Limerick is or is not Development or is or is not Exempted Development. The Planning Authority concluded that the said development as described above comes within the scope of Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations and is Development and is Exempt Development.

EC16/23/ ABP-316438-23 – Whether the erection of 3 tented structures shown on the attached map and marked location 1 ,2 and 3 at Thomond Park, Old Cratloe Road, Limerick is or is not Development or is or is not Exempted Development. The Planning Authority concluded that the tented structure marked Location 1 does not come within the scope of Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations and is Development and is NOT Exempt Development. The Planning Authority concluded that the tented structure marked Location 2 and 3 comes within the scope of Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations and is Development and is Exempt Development. The decision in relation to tented structures marked Location 2 and 3 has been referred to the Board (Live Referral).

5.0 Policy Context

5.1. Development Plan

The site is zoned 'Sports Arena' in the Limerick Development Plan with the objective to 'protect, provide for and improve sports arenas and stadiums and associated ancillary facilities.

The following objective in the Development Plan relates to Thomond Park;

Objective TP O1 Thomond Park It is an objective of the Council to:

a) Facilitate creation of a mixed-use development providing employment, tourist and leisure related opportunities.

- b) Enhance the character of the area through urban design and placemaking, incorporating buildings of landmark design, having cognisance of the Thomond Park Stadium.
- c) Require provision of an integrated sustainable mobility network, with walking, cycling and public transport as the main components.
- d) Ensure green infrastructure is a key component of the design and layout.
- e) Ensure open spaces, where proposed, are positioned to provide passive and active surveillance.

5.2. Natural Heritage Designations

Lower River Shannon SAC (Site Code: 002165) – c.0.5km to the east of the site.

6.0 The Referral

6.1. Referrer's Case

- The referrer lives opposite the subject site. When the marquee is erected adjacent to and used consecutively with the clubhouse this leads to an intensification of use. The residential amenity of the referrer is adversely affected due to noise pollution from the marquee, anti-social behaviour from those attending the premises, and traffic issues when parents are undertaking drop offs/picks ups for teenager events.
- Shannon RFC are acting outside the parameters of the allowed planning for the clubhouse which requires the use of the facility to be limited to the staff and members for use ancillary to the operation of the rugby club and not used for commercial renting/letting for independent persons/groups for functions or other activities.
- The development contravenes Article 9(i)(iii)(vi)(viii).
- The Planners Report has not had regard to the residents and the effect of this development on their lives.

- The referrer has outlined the planning history of the site and their extensive consultations with Shannon RFC and the Local Authority.
- It is noted that a previous declaration to the marquee under EC17/22 was granted on 1st July 2022. The referrer did not receive the relevant paperwork until the 16th August 2022, and therefore could not object to An Bord Pleanála as the 4-week timeline had elapsed.
- The development does not qualify under the conditions of Class 37. Class 37 is designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants of a locality or by people of a particular group of religious denomination and is not to be used mainly for profit or gain.

6.2. Planning Authority Response

None

6.3. Owner/ occupier's response

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- 7.1.1. **Section 2 (1)** of the Act states: - In this Act, except where the context otherwise requires -

“development” has the meaning assigned to it by Section 3,

- 7.1.2. **Section 3(1)** of the Act states -

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.

- 7.1.3. **Section 138. Board may dismiss appeals or referrals if vexatious, etc.**

(1) The Board shall have an absolute discretion to dismiss an appeal or referral—

(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,

or

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6 (1) of the Regulations states:

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2. Part 1 of Schedule 2 sets out exempted development to which Art 6(1) refers:

Development for amenity or recreational purposes

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 purposes 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.

7.3. Relevant Legal Cases

Court of Appeal 2020/232 Narconon Trust v ABP

A challenge to two ABP decisions pursuant to s.5 PDA 2000 whereby ABP decided that change of use from a nursing home to a residential drug rehabilitation centre was development and was not exempted development.

ABP decision quashed (High Court judgment upheld).

The basis for decision to quash:

The court held that ABP was precluded from determining a s.5 referral in circumstances where a planning authority has previously determined substantially the same question in respect of the same land and where there is no evidence of a change in planning facts and circumstances since the planning authority's determination.

8.0 Assessment

8.1. Preliminary Assessment

- 8.1.1. As noted in Section 4.0 above, the erection of a temporary marquee for social events was the subject of a previous referral decided by the Local Authority under Declaration No. EC17/22. The Board decided that the erection of the marquee was development and concluded that:

"The Planning Authority has concluded that the erection of a 30ft x 70ft marquee for social events within the grounds of Thomond Park, Old Cratloe Road, Limerick comes within the scope of exempted development as defined by Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations 01 as amended.

Now therefore the Planning Authority in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended) hereby decides that the said development as described above is Development and is Exempt Development.”

- 8.1.2. The referrer is the same in both cases. I consider that there are no material changes in the facts or circumstances, and therefore the Board should have regard to the previous referral.
- 8.1.3. I refer to the legal case Narconon Trust and An Bord Pleanála as detailed in section 7.3, where the Court of Appeal held that ABP was precluded from determining a section 5 referral in circumstances where a planning authority has previously determined substantially the same question in respect of the same land and where there is no evidence of a change in planning facts and circumstances since the planning authority's determination.
- 8.1.4. I note that only the phrasing of the question asked in this instance has changed. I consider that the question asked by the referrer, in substance, is the same as that previously considered and answered by the Local Authority, wherein the Local Authority considered the marquee exempt.
- 8.1.5. Under Section 138. (1) of the Planning and Development Act 2000 (as amended), the Board has the absolute discretion to dismiss a referral where the Board is satisfied that in the particular circumstances, the referral should not be further considered having regard to the nature of the referral or any previous referral which in its opinion is relevant.
- 8.1.6. As the erection of the marquee has previously been considered exempted development and there are no material changes in the facts or circumstances, I consider that this referral should not be further considered.

9.0 Recommendation

- 9.1. I recommend that the Board dismiss this referral under Section 138 (1) (b)(ii) of the Planning and Development Act, 2000.

10.0 Reasons and Considerations

10.1. The referral relates to the erection of a marquee which was deemed exempted development under PA Reg Ref EC17/22.

As it has previously been established that the marquee is exempted development the Board is therefore satisfied that in the particular circumstances, this referral should not be further considered by it having regard to the nature of the appeal.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ciara McGuinness
Planning Inspector

15th October 2024