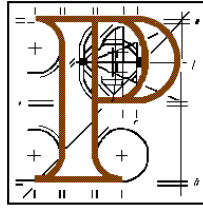


## An Bord Pleanála



### Inspector's Report

**PL27.246288**

**Development:** Extension of existing farm out-building and change of use to 2 no. holiday homes & upgrade previously approved on-site effluent treatment system.

**Location:** Kilmurry Lower, Arklow, Co. Wicklow.

### **Planning Application**

Planning Authority: Wicklow County Council

Planning Authority Reg. Ref. No: 15/1352

Applicants: Richard Mulcahy

Type of Application: Permission

Planning Authority Decision: Refuse

## **Planning Appeal**

Appellant: Richard Mulcahy

Type of Appeal: First Party

Observers: None

**Date of Site Inspection** 9<sup>th</sup> of June 2016

**Inspector:** Siobhan Carroll

## **1.0 SITE LOCATION AND DESCRIPTION**

1.0.1 The appeal site is located in the townland of Kilmurry Lower, Arklow, Co. Wicklow. It is situated 9km to the south of Arklow. The village of Castletown is located 4km to the south of the site. The site is access via an 800m gated private road located on the northern side of the public road which serves Kilmichael Beach to the east.

1.0.2 The site has a stated area of 1.78 hectares and comprises part of the farmyard and lands immediately to the north. The subject outbuilding is single storey and of stone construction with an area of 114sq m. It was originally used as a dairy and the building has been restored and renovated. The converted outbuilding has a number of rooms, including a kitchen and sanitary facilities which were previously used as staff facilities and are currently used for storage.

## **1.1 THE PROPOSED DEVELOPMENT**

Permission is sought the extension of existing farm outbuilding and change of use to 2 no. holiday homes & upgrade previously approved on-site effluent treatment system. Features of the scheme include;

- Site area – 1.78 hectares,
- Floor area of existing outbuilding – 114sq m,
- Floor of proposed extension – 48sq m.

## **1.2 THE PLANNING AUTHORITY'S DECISION**

### **Internal Reports:**

Environmental Services Section: Refusal recommended – P value of 888 indicates site is unsuitable for on-site wastewater treatment.

Environmental Health Officer: Refusal recommended – The submitted site characterisation report indicates that the subsoil is unsuitable for the disposal of effluent as the percolation T and P tests failed because the percolation rate was too slow. No percolation T or P values were recorded. Notwithstanding the fact that An Bord Pleanála granted

permission for an effluent treatment system for the existing dwelling, further development would only increase the risk of larger public health nuisance in the event of a mal-function of the percolation area. Also the applicant has used a T-value of 75 to size the final discharge to ground but as stated above no percolation T or P values were recorded because the percolation rate was too slow.

### **Submissions**

The Planning Authority received no submissions in relation to the application.

### **Decision**

The Planning Authority refused permission for the following reason.

1. The proposed development would be prejudicial to public health because the site is unsuitable for the disposal of effluent and onsite wastewater treatment system.

## **1.3 PLANNING HISTORY**

There is an extensive planning history relating to the appeal site which is set out the report of the Planning Authority. The most recent decision is as follows;

Reg. Ref. 14/1653 & PL27.244830 – Permission was granted by the Board for the upgrading of the effluent disposal system to serve house. Permission was refused for the retention of existing effluent disposal system and permission on the basis that the Board is not satisfied that the existing effluent treatment system is capable of adequately and safely treating the effluent discharging to it. The development for which retention is sought would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

## **2.0 PLANNING POLICY**

### **2.1 Development Plan**

#### **Wicklow County Council Development Plan 2010-2016**

The subject site is located within Coastal Cell 12 Arklow Rock to Kilmichael Point.

- Objective CZ12 refers to Coastal Cell 12
- Chapter 9 – Tourism & Recreation

## **2.2 National Policy**

### **EPA's Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses**

This policy document provides guidance on the assessment of on-site wastewater disposal systems for single house. The government considers that the implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

## **3.0 APPEAL**

A first party appeal was submitted by OTE Solutions on behalf of Mr Richard Mulcahy on the 11<sup>th</sup> of March 2016. The content of the appeal submission can be summarised as follows;

- The Planning Authority refused permission on the basis that the proposed development would be prejudicial to public health because the site was considered unsuitable for the disposal of effluent and onsite waste water treatment. Three previous permissions have been granted on the site by Wicklow County Council and the Board to upgrade the on-site effluent disposal system.
- The applicant purchased the farm in July 2007 and renovated the farm house and outbuildings which were in a state of disrepair. The original 100 year old property's foul services were total inadequate and failed to meet basic standards.
- The applicant installed a Klargestor effluent treatment unit and percolation area as he was previously unaware that planning permission was required. The Planning Authority contacted Mr Mulcahy first in 2008 in relation to the outbuilding and effluent treatment system to notify him that unauthorised development had taken place and need to be addressed.
- A number of applications were made to regularise the situation. Under Reg. Ref. 12/6406 permission was granted for an extension to north elevation of the outbuilding, change of use from outbuilding to dwelling and change of use of existing farmhouse to serve as outbuilding with

farm office and storage and retention of existing effluent disposal system.

- Under Reg. Ref. 13/8936 permission was sought to modify effluent disposal system and to modify condition no. 3 of permission ref no. 12/6406 which required that the applicant shall enter into a legal agreement with the Planning Authority under Section 47 that the proposed development and existing development on the lands outlined in blue shall be held in single ownership. Permission was granted but not to amend condition no. 3 of ref no. 12/6406.
- Under Reg. Ref. 14/1653 & PL27.244830 permission was granted to upgrade the existing effluent treatment system.
- It is currently proposed to upgrade the existing on-site effluent treatment system to a tertiary treatment system and with the proposal for 2 no. holiday homes it is proposed to increase the size of the treatment plant to cater for additional occupancy.
- The on-site suitability report is the same as that submitted and accepted under Reg. Ref. 11/4334, Reg. Ref. 12/6406, Reg. Ref. 14/1653 & PL27.244830.
- Under Reg. Ref. 12/6406 permission was granted for an effluent treatment plant with a PE of 12 and a 600sq m polishing filter. Under Reg. Ref. 13/8936 permission was granted for an effluent treatment plant with a PE of 12 consisting of 3 no. puraflo pods and a raised 94sq m polishing filter. Under Reg. Ref. 14/1653 & PL27.244830 permission was granted for a tertiary treatment system consisting of a Platinum P6 treatment system with 2 no. puraflo pods and a raised bed of 56.25sq m.
- The current proposal is for a tertiary treatment system with a PE of 14 consisting of a Platinum treatment system with 4 no. puraflo pods and a raised bed of 131.25sq m.
- The proposed holiday homes meet the criteria in relation to “Tourism & Recreation” as set out in the Development Plan.
- Policy TR4 refers to the development of a tourism or recreational facility in a rural area and requires that where the product or activity is dependent on its location in a rural situation it should be demonstrated that the proposed development does not adversely affect the character, environmental quality and amenity of the rural area or the vitality of any settlement and the provision of infrastructure therein.

- The site is located in a coastal area at the southern tip of Co. Wicklow. The area is a hugely popular and established tourist area which includes Kilmichael Point, Kilmichael Strand and there are many tourist activities in the area including golf, fishing, hiking, forest walks and cycling. The appeal site is unique in that there is access to a beach which is otherwise inaccessible to the public.
- The applicant proposed to provide a rural tourism package including environmental and ornithology courses on the farm. The location provides for the observation of species including pheasants, owls, sparrow hawks and red kites. The applicant intends to bring experts to provide outdoor talks on trees, birds, marine life and the environment to people staying in the holiday homes. It is noted that the holiday homes would provide for a maximum of 8 occupants only.
- The proposed development fully adheres to the policies set out in Objective CZ12 for cell 12, Arklow Rock to Kilmichael Point.
- Policy TRA 6 states “Holiday homes will not be permitted in any zone other than urban zones except where they comply with objectives TA4, TA5 and TA6”. It is considered the proposed development is in compliance with these policies.
- Policy TA 4 refers to the location of new holiday homes and requires that they be within established settlements or at established tourism/recreational facilities other than those developments involving the renovation or conversion of existing buildings.
- The proposal involves the renovation and conversion of the existing outbuilding to tourism development. The proposed extensions are to the western elevation and are within the courtyard and therefore would have no visual impact on the coastal landscape.
- Policy TA5 requires that developers/landowners of new holiday home/self catering developments enter into a Section 47 agreement stating that units may only be used for tourism purposes and shall not be used as permanent residents.
- The applicant is amenable to accepting such a condition as part of a grant of permission. Subject to it stating that the existing farmhouse, proposed development and farm yard as outlined in red on the submitted drawings would be held in single ownership.
- Policy TA6 requires that “holiday home/self catering developments on a farm holding shall be provided by farmhouse extension or by the

utilisation of other existing dwellings/structure on the property.” The proposed development is in accordance with this policy.

- Policy TA7 refers to the reinstatement of buildings in the provision and tourism accommodation and states that favourable consideration will be given to proposals for tourism and recreation related development, which involve the reinstatement, conservation and/or replacement of existing ruinous or disused buildings. The proposed development is in accordance with this policy.
- It is considered that the proposed development is also in compliance with the criteria set out in section 9.4.1 of the Development Plan. The proposed development is located within an existing farm and therefore would not impact upon the scenic character of the area.
- Regarding traffic and parking considerations it is stated that sufficient car parking can be provided within the existing boundaries of the farm complex. There are satisfactory sightlines available at the existing site entrance and the farm access road can accommodate the additional traffic which would be generated.
- Section 9.4.3 of the Development Plan states that holiday home developments in courtyards will be particularly encouraged.
- It is noted that the Planner’s report dated 9/2/206 states *“the principle of the development is acceptable subject to all other planning issues being resolved.”*
- The applicant requests that the Board grant permission for the reasons set out the appeal submission.

### **3.1 Planning Authority response submission**

- None received

### **4.0 ASSESSMENT**

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Principle of Development



- Effluent treatment
- Appropriate Assessment

#### **4.1 Principle of Development**

- 4.1.1 The subject site is located within the rural townland of Kilmurry Lower, Arklow, Co. Wicklow and forms part of a working farm. The subject development consists of the extension to an existing farm outbuilding and its change of use to 2 no. holiday homes and the upgrading of the previously approved effluent treatment system.
- 4.1.2 There are a number of policies and objectives contained in the Wicklow County Council Development Plan 2010-2016 which are directly relevant to the proposed scheme. The subject site is located within Coastal Cell 12 Arklow Rock to Kilmichael Point. Objective CZ12 states that it is policy to facilitate the enhancement of recreational amenities and facilities in the cell to cater for day visitors and long stay holiday makers to the extent that it is consistent with maintaining the capacity of the cell and in a manner that does not diminish its unique rural, scenic and recreational amenities.
- 4.1.3 Chapter 9 of the Development Plan refers to Tourism & Recreation and the following objectives are relevant TR4, TR6, TR7, TA4, TA5 & TA6. Section 9.4.1 of the Development Plan refers to General Criteria for Tourism & Recreational Development.
- 4.1.4 Objective TR4 states that it is Council policy to permit the development of a tourism or recreational facility in a rural area in cases where the product or activity is dependent on its location in a rural situation and where it can be demonstrated that the proposed development does not adversely affect the character, environmental quality and amenity of the rural area or the vitality of any settlement and the provision of infrastructure therein. The natural resource / tourist product / tourist attraction that is essential to the activity shall be located at the site or in close proximity to the site, of the proposed development.
- 4.1.5 In respect to this Development Plan requirement that applicant proposes a rural tourism package to provide environmental and ornithology courses on the farm. The applicant has stated that the holiday homes would provide for a maximum of 8 occupants and that it is intended to bring experts to provide outdoor talks to the people staying in the holiday homes on subjects of trees, birds, marine life and the environment. The location of the site provides for the observation of many bird species including pheasants, owls, sparrow hawks and red kites. It is also noted that there is access from the subject farm to a

beach to the north which is otherwise inaccessible to the public and Kilmichael Strand a publicly accessed beach is situated to the south of the site. I consider that the applicant has provided an integrated rural tourism proposal which is based on the local environmental and physical resources and which is therefore in accordance with Objective TR4.

- 4.1.6 Objective TR6 refers the location of holiday home accommodation and requires that tourism and recreation related developments are appropriately located and that holiday homes will not be permitted in any zone other than urban zones except where they comply with objectives TA4, TA5 and TA6 below.
- 4.1.7 Objective TR7 states that favourable consideration will be given to proposals for tourism and recreation related development, which involve the reinstatement, conservation and/or replacement of existing ruinous or disused buildings. The proposed scheme involves the extension and conversion of an existing outbuilding and is in accordance with this objective.
- 4.1.8 Objective TA4 refers to location of new holiday home accommodation and states that it is required that new holiday home / self-catering developments be located within either established settlements or at established tourism / recreation facilities, other than those developments involving the renovation / conversion of existing buildings. The proposed scheme complies with the objective.
- 4.1.9 Objective TA5 requires that the developers / owners of new holiday homes / self catering developments enter into a Section 47 Agreement specifying that the units may only be used for tourism purposes and shall not be allowed to be used as a permanent residences, that the entire development be held in single ownership and shall not be subdivided and that the units shall be available for short term letting only of a maximum duration of 4 weeks. The applicant has indicated in the appeal submission that he is amenable to the inclusion of such a condition if it is considered appropriate by the Board subject to it stating that the existing farmhouse, proposed development and farm yard as outlined in red on the submitted drawings would be held in single ownership.
- 4.1.10 Objective TA6 requires that holiday home / self-catering developments on a farm holding be provided by farmhouse extension or by the utilisation of other existing dwellings / structures on the property. As the proposal entails the change of use of the farm outbuilding to 2 no. holiday homes, it is fully in accordance with this objective.
- 4.1.11 Section 9.4.1 of the Development Plan refers to General Criteria for Tourism & Recreation Development. These include that proposals

would be acceptable in terms of water supply, wastewater disposal and surface water and in terms of traffic and car parking considerations. I shall examine the issue of wastewater disposal in the subsequent section of the report. The proposed vehicular access arrangements and car parking entail the use of the farm entrance and access road with parking within the farmyard complex. Having regard to the limited scale of the proposed holiday homes, I consider that the location can satisfactorily accommodate the additional traffic movements which would be generated.

4.1.12 It is proposed to extend the converted outbuilding by 48sq m to provide an increased floor area for the 2 no. holiday homes. The extensions are to the western elevation of the building and within the courtyard. Having regard to the limited scale of the proposed extensions and the proposed design, I consider that it has been designed to integrate with the outbuilding and that it would be visually acceptable.

4.1.13 Therefore I would consider that the proposed development is in accordance with the relevant policies and objectives concerning tourism and recreational development set out in Chapter 9 of the Wicklow County Council Development Plan 2010-2016.

## **4.2 Effluent treatment**

4.2.1 It is proposed to upgrade the previously approved on-site effluent treatment system. Permission was granted under Reg. Ref. 14/1653 & PL27.244830 for the upgrading of the existing effluent disposal system to service the farmhouse and permission was refused for the retention of the existing effluent disposal system. I note the reference in the appeal to the other permissions previously granted on site for upgraded effluent treatment systems including Reg. Ref. 12/6406 where permission was granted for a treatment system with a PE of 12. Under Reg. Ref. 13/8936 permission was granted for a tertiary treatment system with a PE of 12.

4.2.2 The tertiary treatment system granted under Reg. Ref. 14/1653 & PL27.244830 comprised an Anua Platinum P6 treatment system with discharge to 2 no. Puraflo pods over a raised bed with an area of 56.25sq m. Average  $T_{100}$  value was recorded as 888. The Inspector in their assessment considered that the proposal was acceptable as it was an upgrade of the existing system serving the farmhouse. The Board in their consideration of the proposal stated that having regard to the site characterisation report and other documentation that the upgrade of the effluent disposal system was acceptable as it would be located at a different site to the existing effluent treatment system

however permission was refused for the retention of the existing effluent treatment system based on the site characterisation report and other documentation.

- 4.2.3 It is proposed to locate the treatment plant circa 65m to the north and downhill of the farmhouse and 40m and downhill from the proposed holiday homes. The polishing filter is located on the layout plan 79m from the farmhouse and 45m from the proposed holiday homes. A bored well provides the existing water supply it located on site uphill and 110m from the soil polishing filter. Table 6.1 of the EPA Manual – Treatment Systems for Single Houses sets out the minimum separation distances, the minimum distance from a watercourse or stream to a percolation area is stated as 10m and the minimum distance from a road to the a percolation area is stated as 4m. It is noted that there are no watercourses within close proximity of the site.
- 4.2.4 Regarding the site suitability assessment the report indicates the groundwater protection response for the area is R1 which means the site is suitable for an on-site system subject to normal good practice. The water table was encountered at a depth of 1.5m below ground level during the site testing. A  $T_{100}$  value of 888 was recorded on site. This indicates a T Test failure. P tests were also carried out and a  $P_{100}$  value of 899 was recorded. This indicates a P Test failure.
- 4.2.5 In order to address the T & P Test failure results the applicant is proposing a tertiary treatment system. Under Reg. Ref. 14/1653 & PL27.244830 the Board granted permission for a tertiary treatment system consisting of a Platinum P6 treatment system with 2 no. puraflo pods and a raised bed of 56.25sq m to serve the farmhouse and to accommodate a PE of 6. I note that the site suitability report used to determine that proposal is the same as that which is submitted with the current proposal.
- 4.2.6 While the site suitability report and test results are the same as the previous application the current proposal differs in the following manner. Firstly, it is proposed to serve the existing farmhouse and the 2 no. holiday homes. Secondly, a different tertiary treatment system providing for a greater PE is proposed.
- 4.2.7 The proposed tertiary treatment system comprises a Platinum treatment system with 4 no. puraflo pods and a raised bed of 131.25sq m to accommodate a PE of 14. The Platinum treatment system includes a submerged aerated filter with airlift recirculation and the puraflo pods work in conjunction with the Platinum treatment system

where a high level of effluent filtration is required before being dispersed into the ground.

4.2.8 Section 10 of the EPA's Code of Practice (2009) provides guidance in relation to tertiary treatment systems. The subsequent Clarification on disposal of effluent from Polishing Filters (Tertiary Treatment System) issued in 2012 by the EPA provides further guidance. Having regard to the T & P Test failure results it is therefore necessary that the tertiary treatment effluent is treated to a high enough standard so that it can discharge to groundwater.

4.2.9 As set out in the EPA's clarification document calculations are provided which include a safety factor of 3.5 to ensure that the area of subsoil required to serve the tertiary treatment system is provided. The calculation is as follows;

$$A = 0.125 \times T^1 [\text{m}^2 \text{ per p.e}]$$

4.2.10 The applicant's Consultant Engineer has indicated that the proposed polishing filter area sizing is calculated as follows;

$$\text{Polishing filter area} = 0.125 \times 75 [14] = 131.25 \text{ m}^2$$

4.2.11 Regarding the design of the Polishing filter area, I note that the guidance requires that a minimum depth of 300mm is maintained between the point of infiltration and the bedrock/water table and that a minimum thickness of 900mm of free-draining unsaturated soil or sand is provided between the point of infiltration and the top of the filter and the bedrock/water table. Having regard to Drawing No: 2015-RM-005 which indicates the plan and section of the proposed treatment system I note that a stone layer is proposed at a depth of 300mm below the point of infiltration and that the layer below has a depth of 900mm. Therefore the proposed tertiary treatment system has been design in accordance with EPA requirements.

4.2.12 Therefore, having regard to the planning history on the site including the previous decisions to grant permission to upgrade the on-site effluent treatment system to cater for population equivalents of 12 and having regard to the mainly seasonal nature of the usage of 2 no. holiday homes, I consider subject to the provision of conditions limiting the use of the holiday homes to short term holiday letting only and subject to a condition requiring that the proposed tertiary treatment system being constructed and maintained in accordance with the details submitted, I consider that proposal would be acceptable.

### **4.3 Appropriate Assessment**

4.3.1 The site located at Kilmurry Lower, Arklow, Co. Wicklow. The Kilpatrick Sandhill SAC (Site Code: 001742) is located 620m to the south of the appeal site. Having regard to the established residential use of the site, the nature of the proposal and separation distance to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **5.0 Recommendation**

5.0.1 I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be granted for the following reasons.

## **REASONS AND CONSIDERATIONS**

Having regard to the planning history of the site, the provisions of the current Wicklow County Development Plan, the proposal to renovate and convert the existing outbuilding to provide for holiday home accommodation within the existing farmyard and the proposal to upgrade the existing on-site effluent treatment system, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be prejudicial to public health, would not seriously injure the visual amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the

planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Prior to commencement of development, the developer shall enter into a legal agreement under Section 47 of the Planning and Development Act, 2000 with the planning authority specifying that the entire development, consisting of 2 no. holiday homes, existing farmhouse farmyard and effluent disposal system as outlined in red on the submitted drawings that this permission refers to, shall be held in single ownership and shall not be subdivided and shall be available for short term holiday letting only of maximum duration four weeks.

**Reason:** In the interest of orderly development.

3. None of the proposed holiday homes shall be occupied until the planning authority have agreed in writing that the effluent treatment system has been installed and completed to their satisfaction, together with details of future maintenance.

**Reason:** In the interest of public health and the proper planning and sustainable development of the area.

4.
  - (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 23<sup>rd</sup> day of December, 2015, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.
  - (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
  - (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the installation of the treatment plant, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

5. The external finishes of the proposed extension shall harmonise in colour and texture with the existing finishes on the building.

**Reason:** In the interest of visual amenity.

6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Siobhan Carroll,**  
**Inspectorate**  
**28<sup>th</sup> of June 2016**