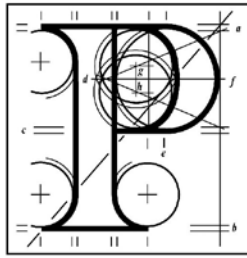


# An Bord Pleanála



## Inspector's Report

**An Bord Pleanála Ref.:** PL07.246346

**Development:** Retention of putting green and 12no. additional driving range bays to existing driving range and associated floodlighting.

### Planning Application

Planning Authority: Galway County Council

Planning Authority Reg. Ref.: 15/1599

Applicant: Baswal Limited

Type of Application: Retention Permission

Planning Authority Decision: Grant Retention Permission

### Planning Appeal

Appellant(s): 1) Jim Hughes  
2) Prior Park Assets Ireland Limited

Type of Appeal: Third Party

Observers: None

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

**Inspector:** Angela Brereton

## **1.0 SITE LOCATION AND DESCRIPTION**

The application site for retention is in the townland of Kentfield in the grounds of a substantial property incorporating the Glenlo Abbey Hotel complex and its associated golf course on the western outskirts of Galway city. The location is within the Galway County area. It occupies sloping ground between the N59 national secondary road (Galway – Clifden) and the southern shore of Lough Corrib. The hotel complex occupies the original small scale “Glenlo Abbey” and since its development as a hotel in the 1990s – has been extended over the years including the more recent Pavilion building.

The golf course and driving range are in separate locations within the Glenlo Abbey complex. The club building is to the north west of the hotel buildings. This includes a reception area and toilets (ladies/gents). It has a total of 22 driving range bays in total, this includes the 12 bays for retention which are in situ and are, all sited to the north of the existing covered bays. Unlike the older bays they are uncovered and are outside of the golf club building. It is noted that the older bays have been angled away from the southern boundary.

There is a sizable dwelling to the south west of the site and there is mature planting along this boundary. There are some glimpses of the dwelling house to be had especially where the vegetation is not as high along this part of the southern boundary of the driving range. There is a stream/ditch along this boundary. The new bays are sited further north and are some distance from the dwelling house. There is a wire mesh fence and low hedge screening the bays for retention from the carpark area. The floodlighting in this area proximate to the extended driving range is in situ.

The putting green is in the southern part of the area as shown in red (which does not include the driving range carpark). This is located on top of a hillock and has a sign ‘Members only’ in situ. There are mature trees/shrubs along the western boundary of the putting green and there are limited views of the house from this green. However the site visit was conducted in June when the broadleaf trees are in full leaf.

## **2.0 PROPOSED DEVELOPMENT**

This proposal is for Retention permission for a practice putting green and 12no. additional driving range bays to existing driving range and associated floodlighting all in the grounds of the Glenlo Abbey Hotel.

The application form provides that the area of the site to which this application relates is 1.423 hectares. A Site Layout Plan has been submitted showing the area for retention within the red line boundary and this is within the wider boundary in blue. Layout Plans are also included showing the extension to the driving range, the fencing and floodlighting.

The location of the Site Notices are shown on these drawings at the entrance to Glenlo Abbey and proximate to the putting green area of the site.

McCarthy Kenville O'Sullivan has submitted some background history relative to the retention application.

### **3.0 PLANNING HISTORY**

Planning history relevant to this site includes the following as outlined as relevant in the documentation submitted:

- Reg.Ref.95/1257 – permission granted by the Council to build a driving range, clay pigeon shooting etc at Glenlo Abbey. The entire Glenlo Abbey property was outlined in red for this application and on the application form the area of the property was stated as being approx. 51 ha.
- Reg.Ref.04/3217 – permission granted by the Council to erect new nets and support structure to form part of the existing driving range building and retention permission for the existing position of the driving range building (g.f.a 292sq.m). The site maps show the entire Glenlo Abbey property being outlined in red and the application form stated that the area of the site was 48.8ha.
- Reg.Ref.14/220 – permission granted: 1) for elevation alterations to existing Pavilion; 2) to construct extension to first floor function room and carry out associated siteworks/services at Glenlo Abbey Hotel. Permission was granted by the council and was upheld on appeal where permission was granted subject to conditions Ref.PL07.243403 relates. It was then noted that the application form provided that the stated site area is 54.23ha.

#### **Enforcement History**

WL/EN15/027 – Warning Letter served by the Council on Baswal Ltd dated 30<sup>th</sup> of March 2015. The description of the Unauthorised Development is as follows:

- Unauthorised installation of new additional driving range bays with associated floodlighting.
- Unauthorised development of putting green with associated floodlighting.
- Unauthorised change of use from a Class 3 (office) to a Class 1 (shop).
- Unauthorised installation of a septic tank/treatment system serving driving range building.

### **4.0 PLANNING AUTHORITY APPLICATION**

#### **Submissions**

Prior Park Assets Ireland Ltd (holding Co. for the Trust) has made a detailed submission outlining their concerns regarding the proposed retention application. As these are also subsequent Third Party Appellants, their submission is noted and a brief summary of their concerns is as follows:

- Ownership issues. The Applicant has not produced any Land Registry Documents or Folio's to support their ownership of the property as is common with Planning Applications and is often specifically required by the Planning Authority.

- They have regard to the planning history of the site and in particular to the site areas stated.
- They consider that this site should require separate permission due to the substantial change of the original planning unit.
- The applicant has not listed the wider renovation works of the golf course and as to whether these require permission. Galway County Council needs to examine this matter.
- They note that part of the Golf Club in an SAC and area proposed as pNHA.
- No risk analysis study or health and safety plan was submitted with the plans for the driving bays as is usual practice for such developments.
- Drainage and Flooding issues and relevant to the greater site area for Glenlo Abbey.

Mr Jim Hughes – A detailed submission has been made on his behalf by Stephen Dowds Associates. His property is adjacent to Glenlo Abbey and he is also a subsequent Third Party Appellant. This submission is noted and a brief summary of his concerns given below:

- The proposed works for retention are located on the part of the hotel site that is proximate to his boundary.
- Impact of wayward golf balls on residential amenity (photographs included). No details are given of safety measures relative to this driving range.
- No details of landscaping are given. This and safety netting have not been erected relative to his boundary.
- No details are given regarding facilities associated with the driving range.
- They note the planning history relevant to the golf course/driving range.
- The application should be accompanied by proposals for landscaping particularly along the common boundary.
- The location of the putting green relative to his boundaries is a significant invasion of his privacy.
- Sufficient information has not been given on the floodlighting within the application. The site is within an unlit rural area. There is no analysis of the lighting proposed or proposals regarding opening hours.
- There is an unauthorised septic tank in the vicinity and that this issue has not been addressed in this application.
- They are concerned about impacts on a European site – Lough Corrib SAC and SPA.
- The public notices are ambiguous regarding which parts are for retention and which are new.
- Issues concerning the validity of the planning application.
- The impacts of a driving range on residential amenity are much greater than that of a golf course.
- The development constitutes an extension of unauthorised development.
- They recommend that the Council seek further information to clarify a number of issues.

### The Planner's Report

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made. They have regard to the retention application and note that there is no covered structure proposed. They note that 7no. floodlights are proposed and they are 6.2m in height and are a standard lamp construction. There are no toilets proposed as part of this application. They note that all development within this application is within the boundaries of the site proposed, the driving range is removed from both the SAC and the river/lake itself and will therefore not be affected or affect the SAC. They considered that on the basis of the information submitted and having regard to planning policy in the GCDP 2015-2021 it is appropriate to grant permission subject to conditions.

## **5.0 PLANNING AUTHORITY DECISION**

On the 25<sup>th</sup> of February 2016 Galway County Council granted planning permission for the proposed development subject to 4no. conditions. These are relatively standard and include the following:

- Condition no.1 – Development to be carried out and retained in accordance with the plans and particulars submitted.
- Condition no.2 - Restriction on hours of operation and floodlighting from 8am to 8pm.
- Condition no.3 – Restriction on signage.
- Condition no.4 – Disposal of surface water.

## **6.0 GROUNDS OF APPEAL**

Two separate Third Party grounds of appeal have been submitted from:

- 1) Stephen Dowd Associates Town Planning Consultants on behalf of proximate local resident Mr. Jim Hughes;
- 2) Prior Park Assets Ireland Limited.

Their grounds of appeal are summarised separately below:

### **6.1 Mr. Jim Hughes**

This includes regard to the Planning Background to the site, planning policy and the history of the golf course and driving range relative to the proposed development. Mr Hughes residence adjoins the hotel grounds on its western side close to the driving range. There is a boundary hedge and a stream along the boundary of the site with his property. It is noted that there is a prolonged dispute between the appellant and the hotel management over the years regarding infringement of his site by errant golf balls and the associated hazard and damage created by same. They are concerned that an inadequate description of development has been given in the current application. Their grounds of appeal include the following:

- Photographs in Appendix D showing the damage caused to their property by the nuisance of errant golf balls.
- They have regard to previous planning history and in particular to the issue of netting to mitigate the impact of the driving range.

- They refer to Reg.Ref.04/3217 and suggest that the temporary restriction on netting should have applied to the driving range and not to the netting. The netting is now gone but the driving range remains.
- It is of note that their Appendix C includes the following:
  - Copies of Planning Permissions 95/1257 and 04/3217.
- Landscaping was not implemented and would have contributed towards the protection of the privacy and amenities of Mr. Hughes' home as well as providing additional protection against offending golfballs.
- There is a much greater intensity of usage from a driving bay than a golf course. This is an entirely more intensive operation, having regard to number of patrons, hours of operations, need for floodlighting etc.
- There is a significant residential dis-amenity caused by wayward golfballs. No details or proposals of how to deal with such a nuisance have been given in this application.
- The existing driving range is unauthorised and the proposal therefore constitutes an expansion of an unauthorised development and should have been refused as such.
- The application should have been accompanied by landscaping particularly along the common boundary.
- Landscaping would also help the issue of privacy as his private garden is visible to the large numbers of the public who may use this facility. The location of the putting green proximate to his property is noted in this regard.
- They note previous history with hotel management regarding these issues and refer to litigation and to detailed technical reports regarding this problem and proposals to address this which have not been included with this application.
- They attach a copy of the detailed report 'Control of Errant Golf Shots' prepared by Tobin Consulting Engineers.
- This shows that considerable efforts were previously made to address this problem and the current proposal makes no mention of this nor incorporates the mitigation measures recommended.
- They also refer to a subsequent report 'Glenlo Abbey Driving Range: Modification Measures' (copy enclosed) and note the modification measures then recommended.
- Inadequate information has been submitted regarding the floodlighting. They are concerned about impact on this sensitive rural area landscape and submit that a development that requires floodlighting cannot be considered in such a location.
- They note that there are toilets in this driving range and are concerned that details of the effluent treatment system have not been submitted with this application. While one of the issues raised in the Council's Warning letter of the 30/3/2015 they are concerned that it has not been addressed in this application.
- The application site is close to a European site and they have regard to the proximity of Lough Corrib SAC and SPA.
- Any issues regarding effluent therefore have implications not only for public health and the environment but also for these European Sites.

- An AA Screening Report should have been required and probably a full NIS and AA.
- If AA is required then this application would be invalid as it is no longer permissible to apply for planning permission for retention when such is required.
- They consider that the Planner's Report does not take adequate account of these matters.
- They contend that there are issues regarding the validity of the application. These include procedural issues relative to the description of the application and that the public notices are ambiguous. They also consider that the planning fee has not been correctly calculated.
- They ask the Board to seek additional details and information about the issues raised and provide a list of these in their Conclusion.
- Notwithstanding this, in view of all the issues raised including that of unauthorised development they urge that permission for this proposal be refused and provide a number of reasons.
- They include a number of attachments i.e. – Map of the site with the Hughes' house indicated, and copies of the Technical Reports referred to above.

## 6.2 Prior Park Assets Ireland Limited

Their grounds of appeal include the following:

- Regard to ownership issues and differences stated in Paragraph 9 of the application form relative to the information given in the previous application (Reg.Ref. 14/220, ABP Ref. PL07.243403).
- The site location map shows the application boundary in red and the landholding in blue, therefore there is a presumption that Baswal Ltd are the owners of this entire property which is not the case.
- No permission has been given or letter of consent has been provided by the private irrevocable contract c/o Prior Park Assets Ireland Ltd to make this planning application.
- The issue of ownership of the property has not been considered in the Planner's Report.
- Land Registry details have not been submitted.
- Therefore on the issue of ownership alone this application should be refused.
- The site area stated on the application form is 1.423ha which is a lot less than the site size of 51ha or 48.8sq.m as referred to in the previous applications.
- The creation of a new smaller site within a larger site is 'development' as defined by the Planning and Development Acts and Regulations as the size of the planning unit has changed substantially and would require a separate permission to subdivide this property and would be seen as a material change.
- They have regard to the previous conditions of Reg.Ref. 04/3217 and note that the nets mentioned in condition no.1(b) are still in place and have not been removed after 5years as specified in that condition. Therefore this development is in breach of this condition and appears to be unauthorised development.

- They refer to Section 160(6)(b) of the Planning and Development Act 2000 in this respect. This means that any condition related to a planning permission pertains to the site and land always and only until it can be changed by a new permission.
- As the conditions in Reg.Ref.04/3217 have not been complied with it is considered that this grant of permission would facilitate further unauthorised development on this site and would be contrary to the proper planning and sustainable development of the area.
- Taking all these facts into account it is presumed that ABP has no option but to refuse permission.
- The applicant has not listed as to whether the wider renovation works of the golf course would require retention permission.
- The location of the Golf Course relative to the SAC and pNHA has also not been assessed.
- ABP are in a position to assimilate fully the works that have been carried out and decide if they are unauthorised or not. If the Board decide that they are not authorised then a decision to refuse planning permission would be appropriate.
- No risk analysis study or health and safety plan was submitted with the plans for the driving bays, such is the usual practice for such developments. It is difficult to comprehend how such an application can be decided without such important information.
- Information on the application form relative to the surface water drainage to a public sewer/drain does not appear to be correct. They are not aware of any public sewer or drain within the grounds of Glenlo Abbey.
- They consider that in view of its location proximate to a river that the site has probably flooded in the past.
- In determining a Planning Appeal the Board must look at the appeal as if it is a new planning application and they refer to a number of legal cases in this regard.
- Therefore ABP must decide if this application is valid. Given the issues raised in this appeal it may be decided as invalid.
- As there is nothing in the legislation for ABP to invalidate this application then the only avenue for the Board is to refuse permission for the application.
- Section 34(13) of the Planning and Development Act 2000, is not relevant in this situation as it is an application for retention and therefore the works have already been carried out.
- ABP must consider all the issues raised in this appeal must be seriously investigated before a decision is made.

## 7.0 RESPONSES

There has been no response from Galway County Council to the grounds of appeal.

### 7.1 First Party Response

McCarthy Kenville O'Sullivan Ltd. has submitted a response on behalf of Baswal Ltd. They have regard to the two Third Party appeals and to the



issues raised. They provide that their response demonstrates that the subject development is appropriate in terms of the overall planning and sustainable development of the area and is consistent with local and relevant national planning policy guidelines, requirements and standards. They have regard to the planning policy context, planning history and their response includes the following:

- They attach a letter from Kelly & Ryan Solicitors confirming that their client Baswal Ltd is the registered owner of the property. This letter is accompanied by Land Registry documents and details that demonstrate that Baswal Ltd are the full owners of the site.
- Therefore they provide that the applicant has the necessary legal ownership to make the subject planning application.
- Since 2013 their clients have sought to improve the management of the leisure and golf facilities in particular the upkeep of the greens and fairways. These works included the modernisation of facilities at the driving range along with improvements in the security and compilation of management standard operating procedures.
- They note operational management and provide that Appendix 2 contains the standard operating procedures for the driving range (this has not been included in the documentation submitted).
- They confirm that the septic tank was decommissioned in April of 2015 and that the toilets in the driving range are now connected to the onsite wastewater treatment plant. Appendix 3 indicates that this was accepted by Galway County Council.
- Having regard to ecology the use of this site as a golf course has been long established. Lough Corrib SAC is located approx. 320m north of the subject site, they note that the Council considered that significant impacts on Natura 2000 sites could be ruled out. They consider that the proposed development which is for retention will not have any significant impact on any Natura 2000 site.
- They provide that a good relationship with neighbours is paramount to their client and that several alterations to the operation of the driving range have been made to respect and enhance the residential amenities of these adjacent properties.
- They have taken numerous steps to address the issue of wayward golfballs trespassing on neighbouring properties.
- They consider that to protect the residential amenities of the appellant and in particular their unrestricted view of Lough Corrib that the erection of netting is not feasible.
- An alternative mitigation measure has been to change the alignment of the individual driving bays by approx. 20 degrees to the north away from adjoining properties which results in their client removing one bay – Appendix no.4 contains photographic evidence demonstrating the realignment of the individual driving bays.
- They have regard to the Technical Reports referred to by the Third Party and provide that these Reports were conducted before mitigation measures were implemented.
- According to the Galway CDP the site is located within mapping designation 3 and is approx. 400m south of landscape sensitivity

designation 4. Therefore they assume that given the distance to the latter designation there is no possibility for any potential effects.

- They have been advised that the floodlights have been in operation for many years and are long established on this site. The direction of the lights has recently been altered to improve the residential amenities of neighbouring properties – Appendix 5 refers.
- Their client has made significant alterations to help mitigate any possible impacts on neighbouring properties residential amenities.
- A review of available data from the OPW indicates that there is no history of flooding on the subject site.
- The putting green is only used by Glenlo Abbey Golf Club members and this is strictly enforced. They do not consider that this impacts adversely on neighbours.
- The practice putting green and the driving range are ancillary to the adjacent golf course use. They are considered as one entity.
- They refer to Article 22 2(b)(i) of the Planning and Development Regulations 2001 and consider that the issue raised in the planning appeal relative to planning unit is incorrect.
- They conclude that the driving range use has been established for many years, the addition of the practice putting adjacent to the driving range has not led to any intensification on site as it restricted to members only.
- They consider that the proposal is in accordance with the proper planning and development of the area and the relevant planning policy context and request the Board to uphold the Council's decision to grant retention permission for the additional driving range bays and practice putting green in this location.

## **7.2 Third Party Responses to the First Party Response**

### **7.2.1 Mr Jim Hughes**

Stephen Dowds Associates has submitted a response on his behalf, which includes the following:

- The most important issue in this appeal from the viewpoint of Mr Hughes is that of wayward golf balls infringing his property which is a serious hazard as well as a dis-amenity.
- They consider that there is a need for protective netting and question why the inclusion of this is not feasible.
- They have included the full report by Tobin Consulting Engineers 'Control of Errant Golfballs'. As a result of this report and subsequent erection of netting High Court proceedings between the two parties were ended. They refer in particular to Section 8.0 of this Report.
- They note that some of the amendments that have been made are only recent and that there is no indication as to the adequacy of this amendment to solve the problem.
- The applicant challenges their contention that the site is on the border of a Class 4 and Class 5 protected landscape. It is their view that it is within a Class 3 landscape.
- The entire area is clearly visible from Lough Corrib and the surrounding lands are most definitely within Class 4 and 5.

- The number of floodlights has increased in the area of the site.
- They are concerned that there is no clarity in the Council's letter that the toilets in the driving range building are connected to the Hotel Treatment Plant and consider that they maybe connected to an unauthorised septic tank.
- They provide that the Treatment Plan has been subject to long running serious complaints and attach a letter from their client's engineer Mr. James Roche which demonstrates long standing concerns in this regard.
- Neither is an acceptable approach to a site upstream and proximate to an SAC.
- Privacy is the issue with the putting green – this could be addressed by appropriate landscaping which it is not.
- A Screening Report should have been submitted to address the Lough Corrib SAC and SPA. It is upstream of the site and this proposal involves an intensification of the site.
- They have concerns about Procedural issues and Validity issues. They consider that the fee calculation was incorrect.
- Landscaping proposals to comply with the conditions of earlier planning permissions have not been submitted.
- They refer to recent activity on site and provide a list of modifications being made.
- These include that the septic tank has only recently been decommissioned.
- If the Board decide to accept this application as valid they are requesting that permission be refused and include a number of reasons for this.
- Should the Board decide to grant they ask that a condition be included to provide protective netting at the golf driving range and include wording for this suggested condition.

#### 7.2.2 Prior Park Assets Ireland Limited

They provide that they can only concur with any points or items of objection that are in agreement with their original appeal submitted.

In a subsequent response they include the following:

- They have concerns regarding procedural issues concerning the time frame allowed for response and refer to Par. 129 of the Planning and Development Act 2000 (as amended). They consider that the time frame given to them for response has been limited.
- They refer to a legal case and ask the Board to confirm as to whether it is their opinion that the ownership issue of the property has been complied with in compliance with the relevant Planning and Development Regulations.
- It is the responsibility of the Owner or Management of any property to comply with the relevant planning permissions and all the planning laws, acts and regulations.
- The Planning permissions come with the properties and not with the different individuals.

- They refer again to conditions of previous permissions that have not been complied with.
- They refer to the Reports aforementioned in Mr Hughes appeal and to Health and Safety issues.
- They provide that a very detailed Health and Safety Analysis is required to deem whether the measures outlined in the Baswal Ltd reply are suitable.
- They outline concerns relative to netting and compliance issues and unauthorised development.
- They have regard to Ecology and Effluent treatment and consider that the larger site area rather than the smaller site area the subject of this application should be considered relative to compliance with important national and international legislation.
- They have concerns about the treatment and disposal of effluent from the development and consider that sufficient detailed information has not been submitted on this issue.
- The application does not address the requirements of sections 22-29 of the Planning and Development Regulations and should therefore be refused.
- They provide a copy of an extract from *Irish Planning Law and Practice by O'Sullivan and Shepard* which has regard to site size and planning unit in Appendix A of their submission.
- They consider that permission for a new smaller planning unit has not been sought and that permission should be refused as this is contrary to good planning practices and planning legislation.
- They note that there is no statement from the Golf Professional in Appendix 2 of the Baswal Ltd response.
- They consider that the reply from Baswal Ltd has not satisfactorily addressed any of the issues raised in either appeal on this application.
- Important issues including non-compliance with planning conditions have been ignored.
- Talking all the issues raised into account they request the Board to refuse permission for this retention development.

## 8.0 PLANNING POLICY

### Galway County Development Plan 2015-2021

The site is just outside the Galway City boundary and therefore comes under the policies and objectives of the Galway County Development Plan 2015-2021. There are no landuse zoning objectives in this area. It is a rural area and within the commuter belt around Galway City which is designated as a rural area under pressure for housing development and within which strict limits apply concerning application for planning permission for new housing.

Chapter 4 has regard to Economic, Tourism and Retail Development and includes Objective EDT 17 which supports Outdoor Pursuits including golf in appropriate locations throughout the County.

DM Standard 13 provides for Tourism Infrastructure Development and notes this maybe open for consideration outside settlement centres and this includes reference to golf and associated ancillary facilities.

Chapter 9 relates to Heritage, Landscape and Environmental Management. Map LCM1 relates to Landscape Value Rating where the site is located in a high value area.

The site is within a sensitive landscape being designated as area within Class 3 to 5 i.e. Class 3 'Medium', Class 4 'Special to Class 5 'Unique' (by the shores of Lough Corrib) in the Plan – Map of Landscape Sensitivity and Character Areas – LCM2 relates.

## **9.0 ASSESSMENT**

### **9.1 Principle of Development**

The issue for consideration in a retention application is whether the development would be sustainable and permission would have been granted in the first instance in accordance with planning policies and taking into account the character and amenities of the area, if the unauthorised development had not taken place.

The Third Parties are concerned about the impact of the proposed retention application on the character and amenities of the adjoining residential property and on the wider area. The issue in this application is the impact of the intensification of use i.e the retention of a further 12no. driving bays, associated floodlighting and a putting green, in particular relative to the amenities of the proximate Third Party residential. Other issues raised include the impact on the environment, the Natura 2000 sites, landownership relative to site boundaries and what constitutes the planning unit.

The site is located outside and to the west of the Galway City boundaries and it therefore comes within the Galway County Development Plan. While the site is within the City commuter belt, there are no specific land use zoning objectives in the area, the site is located in a sensitive landscape character area. However there has long been established use as a golf course associated with the grounds of Glenlo Abbey. As noted in the Planning History Section above there have been planning applications associated with the usage of the driving range, Reg.Refs.95/1257 and 04/3127 above refer. Therefore the concept of a driving range on this site is not new. The issue in this retention application is whether the development now proposed for retention would be considered to be sustainable and in the interests of the proper planning and sustainable development of the area, or whether it would provide for an intensification of use such that would be considered excessive and impact adversely on the amenities and character of the area.

### **9.2 Validity of the Planning Authority decision**

The Appellant has raised concerns regarding the validity of the application and Planning Authority decision and refer to Article 22 of the Planning and Development Regulations 2001-2015. They have raised a number of issues in this regard, and request the Board to declare the application invalid. They are concerned about the clarity of the description of the development and provide that incorrect information has been submitted including having regard to fee calculation. They submit that the golf driving range use is entirely different to that of a golf course in its nature and intensity of use and does not fit within Class 11, Schedule 9 of the Planning and Development Regulations 2001 (as

amended) which concerns: *The use of land as golf course or a pitch and putt course.*

They consider the details submitted for the retention development are flawed and question the validity of the application. These concerns have been noted and a response has been provided by the First Party. However I am of the opinion that this is a procedural matter for the P.A. to address, a determination on whether the P.A decision is valid or not, would not be appropriate to make here.

### **9.3 Regard to Ownership issues and Planning Unit**

The Third Party Appellant Prior Park Assets Ireland Ltd has raised concerns about ownership issues. This is particularly with regard to the area of the site as stated on the current application form it is 1.423ha. relating to the site area as shown in red on the plans submitted, does not relate to the entire Glenlo Abbey site, rather it relates only to the driving range and putting green areas for retention. They note that Paragraph 9 of the application form states that Baswal Ltd are the current owners of the property. However a recent application Reg. Ref.14/220 (ABP Ref.PL07.243403) lodged with Galway County Council on 5<sup>th</sup> of March 2014 for extensions and alterations to the Pavilion at Glenlo Abbey stated that the property was in receivership and the owners were stated as Grant Thornton being the receivers who gave a letter of consent allowing Baswal Ltd to make that application. It was also noted that the application form then stated that the site area was 54.23ha and the drawings submitted showed the total site area in red.

As noted in the Planning History section above there have been two previous planning applications of particular relevance to the current application i.e Reg.Refs.95/1257 and 04/3127. The former was to build a driving range, clay pigeon shooting etc and the entire Glenlo Abbey property was outlined in red for this application and the area of the site was stated as being 51ha approx. The latter application was to erect new nets and support structure to form part of the existing driving range building and included retention permission for the existing position of the driving range building (g.f.a 292sq.m). The site maps showed the entire Glenlo property being outlined in red and the site area was then given as 48.8ha.

The Third Party are concerned that documentation to prove ownership including Land Registry documents has not been submitted. They have regard to the definition of 'owner' and the specific onus on the applicant in planning application forms to prove that the land is in their ownership. In this case they provide it is held in private irrevocable contract trust c/o Prior Park Assets and they refer in this respect to The Planning and Development Acts and Regulations 2000 – 2015.

It is of note that the Planning and Development Act 2000 (as amended) includes an interpretation of 'owner' in Part 1, S.2 which is as follows:  
*"owner", in relation to land, means a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;*

Article 22 (2) b of the Planning and Development Regulations 2001 (as amended) refers to - *The contents of planning applications generally* and includes:

*(i) the land or structure to which the application relates and the boundaries thereof in red,*

*(ii) any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land which is the subject of the application in blue.*

*(iii) any wayleaves in yellow, and ..*

The Third Party Prior Park Assets Ireland Limited, are concerned as to what constitutes the planning unit in this case and note that the applicant has not listed the 'wider renovation of the golf course'. They contend that the reduction in this site to 1.423ha is in breach of the conditions of the earlier planning permissions, which showed the greater site area and note that an application to change the site boundaries has not been submitted. Also it is submitted that the creation of a 'new smaller unit' within a larger site is 'development' as defined by the Planning and Development Acts and Regulations as the size of the planning unit has changed substantially, this is material and would require a separate planning permission. They consider that it does not make sense that permission can be given for driving bays without also including the landing area for which these driving bays shall be used. Also that permission cannot be granted for this application as it is for development on a site for which no specific permission has been applied for or granted and this is contrary to good planning practices and planning law. They also have regard to legal issues regarding the issue of 'planning unit' and to an extract from *Irish Planning Law and Practice* by O'Sullivan and Shepherd in Appendix A of their response submission.

The First Party response addresses the issue of ownership. Having regard to article 22 of the Regulations as quoted above the First Party consider that the Third Party issue relative to boundary issues has not been correctly interpreted. They provide that their client has recently obtained full ownership while the day to day running of the hotel and golf course was under their ownership since 2013. Appendix no.1 of their response includes a letter from Kelly & Ryan Solicitors confirming that Baswal Limited, is the registered owner of the property. This letter is accompanied by Land Registry documents to demonstrate that as of the 29<sup>th</sup> of October 2015, Baswal Limited is the full owner. Therefore they provide that the applicant has the necessary legal ownership to make the subject application.

In response Prior Park Assets note the Supreme Court Case (appeal no.473/2013) between Tom Kavanagh and Bank of Scotland PLC and Patrick McLoughlin and Roseanne McLoughlin and how it affects this property and other similar properties and their ownerships. (A copy of this Decision is included in the Appendix to this Report). They provide that given the results of this judgement and taking into account the ownership of this property is being disputed the Board will have to confirm as to whether it is of the opinion that

the ownership issue of the property has been complied with in accordance with the relevant Planning and Development Act and Regulations.

I note here the provisions of S.34(13) of the Planning and Development Act: “*A person shall not be entitled solely by reason of a permission under this section to carry out any development*”. The Third Party considers that this clause is not relevant in a retention application. However it is noted that under Section 5.13 ‘Issues relating to title of land’ of the ‘Development Management - Guidelines for Planning Authorities’ (DoECLG June 2007) it states, inter alia, the following: “*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*” Therefore it is of note that the issue of ownership is a civil matter and while the issues presented in the documentation submitted have been noted and raised in this Report it is not considered appropriate for the Board to adjudicate on this issue.

#### **9.4 Unauthorised Development and other Legal issues**

The Third Party, Prior Park Assets provide that An Bord Pleanála are in a position to assimilate fully the works that have been carried out and decide whether they are authorised or not and that the wider ‘renovation works’ should have been considered. It is of note that the Board does not have a role in Enforcement and in this respect regard is had to Section 10.1 of the Development Management Guidelines 2007 which provides: *Enforcement of planning control is the responsibility of the planning authority and this is the case, of course, whether the planning decision, including conditions, was made by the planning authority or the Board.*

They note that in determining a Planning Appeal that ABP must look at an appeal as if it is a new application i.e. as if the application had been made to it in the first instance and they have regard to legal cases. They note that this had been determined in Costello J in O’Keefe v. An Bord Pleanála [1993] I.I.R.39 at 52. Also, that this was reiterated by Charleton J [2010 1 JR] Brian McMahon (applicant) and ABP (respondent) and Galway Co. Co., Sean Forde, Jane Joyce (notice parties). Copies of these decisions are included in the Appendix to this Report.

In this case regard is had to the current application which as per the Public Notices and the application form is for: *Retention permission for a practice putting green and 12no. additional driving range bays to existing driving range and associated floodlighting.* The Board is looking at this application de novo, as if it had been made to it in the first instance. However while regard is being had to previous planning history as has been noted in the grounds of appeal, there is no remit or onus on the Board to consider afresh under the subject application the merits of, or compliance issues relative to previously granted permissions on the whole of Glenlo Abbey and grounds, including the various activities thereon such as the golf club and the driving range previously permitted.

#### **9.5 Regard to the usage to be retained**

The details submitted with the application by McCarthy Keville O’Sullivan provide that the retention application relates to some additional works that



have been carried out at the existing golf course and driving range at Glenlo Abbey Hotel. The additional driving range bays contain 12no. individual bays approximately 3.5m in width with dividers between them. The associated floodlighting is to ensure that patrons can use the facility in the winter months. The practice putting green was also developed during the renovation works in recent years. They provide that the driving range closes at 9.30pm during weekdays and 6.30pm at weekends. The putting green hours are the same.

There is concern that the potential impacts of a driving range are much greater than those of a regular golf course, involving a far greater intensity of use, large numbers of patrons and larger reliance on the land and far greater intensity of golf shots and resultant errant balls. The driving range which is very close to the Third Party boundary is a source of consistent and repeated problems relevant to the residential amenity of the occupants. It is contended that a driving range is entirely different from that associated with a golf course. The driving range with 22 bays can have 22 golfers all hitting balls at one time and each hitting multiple balls. On a golf course there might be a very small number of groups in any one hour each person hitting a single ball. The intensity of use is entirely different. Therefore it is contended that the potential impacts of a golf driving range are much greater than those of a regular golf course involving a far greater intensity of use, large numbers of patrons, larger presence on the land and far greater intensity of golf shots and resultant errant balls. It is also entirely different in its hours of operation (golf courses do not require floodlighting).

In response the First Party consider that a driving range and practice putting green are considered to be ancillary to a golf course. They provide that in summary the golf club has been in use for many years, and the development of the additional bays was an attempt by management to properly control and monitor patrons as the area was previously used as an unofficial tee-off area. The practice putting green was constructed as a warm up area for members of the golf club and is restricted to members only. They conclude that as the putting green is restricted to members only it will not lead to intensification of use.

## **9.6 Impact on Third Party property**

The driving range is very close to their site boundary and is a source of consistent and repeated problems for the Third Party proximate residential (photographs have been submitted showing damage caused to his property by golf balls). There are concerns regarding Health and Safety issues and it is noted that no risk analysis study or health and safety plan has been submitted with this application. The Third Party is concerned that no details or proposals have been submitted on how to deal with the nuisance and health and safety implications of wayward golf balls, which is an important issue relative to the proximity of his house to the driving range.

They refer to previous disputes between the parties regarding this issue. Detailed Reports prepared by Tobin Consulting Engineers (Glenlo Abbey Driving Range: Control of Errant Golf Shots 2004) providing detailed proposals to address the issue of wayward golfballs and a second report from Tobin (Glenlo Abbey Driving Range: Modification Measures) as well as an

analysis by a golfing expert (Simon Gidman, International Golf Course Architects). These Reports included a number of mitigation measures which are listed by the Third Party and these have not been implemented or included with the subject application. These modifications which included security netting, boundary planting, appropriate management of the facility etc. have not been addressed. Copies of these Reports are included with the Grounds of Appeal.

The First Party have regard to the Technical Reports referred to by the Third Party and provide that these Reports were conducted before mitigation measures were implemented, including the realignment of the individual bays, the employment of a full-time professional and commissioning of CCTV to monitor patrons using the driving range facility. It is of note that these Reports relate to the existing driving range (including several maps and drawings) that has been in situ for some time and do not relate specifically to the current retention application.

It is submitted that this proposal will exacerbate the existing serious situation causing trespass, dis-amenity and hazard for the appellant's property. It is contended that details of day to day management of the driving range area and putting green are required to ensure there is no adverse impact on the adjoining residential property. No details have been submitted of netting or other proposals to restrain stray balls or of the trajectory of golf balls. Also no details have been submitted regarding additional landscaping.

Conditions of the earlier permissions had regard to the issues of landscaping and netting and they provide these have not been implemented. In this case they have regard to Condition no.3 of Reg.Ref.95/1257 which provides for the retention of existing trees and additional planting in the interests of visual and residential amenity. Also to Conditions in Reg. Ref 04/3217 relative to the provision of temporary netting (for a period of five years) and a comprehensive landscaping scheme to be submitted. This netting has now been removed. They consider that proposals should be submitted for the provision of protective netting to control errant balls.

They note that landscaping required by condition in previous permissions has not been implemented to the detriment of the amenities and privacy of the adjoining property. The netting has now been removed but the driving range remains. It is therefore contended that the driving range which has not complied with previous conditions is unauthorised and that this proposal therefore contributes an expansion to unauthorised development and should be refused as such.

The putting green for retention is located on elevated ground and in close proximity to the boundary of the Third Party residential. They are concerned that this is a significant invasion of their privacy, bringing significant numbers of people up to this point, proximate to their boundary without any ameliorating landscaping. In response the First Party provides that this is a 'Member's Only' putting green and note that this is not an activity that leads to much noise. I noted on my site visit that 'Member's Only' signage has been

erected on the putting green. There is also significant landscaping along the boundary of the putting green with the Third Party property.

The issue of Landscaping is of considerable concern to the Third Party, whose property is located proximate to the south western boundary of the site. It was noted on site that there is landscaping of mature trees and hedgerows along the site boundaries with the Third Party property. The putting green while more elevated appeared well screened. There are glimpses of the Third Party property through the trees from the driving range. However as can be seen on the photographs the landscape coverage is more sparse in places along this boundary proximate to the northern side elevation of the property. Therefore the upper floor of the property can be seen more clearly from a distance on the driving range. Also it is noted that the site visit was conducted in June when the trees are in full leaf.

In response the First Party provide that recent changes in management have sought to improve the facilities at the golf course. These works include modernisation of the facilities at the driving range along with improvements in the security and the compilation of management standard operating practices. They provide the erection of a fence affectively closes off the driving range outside of the hours of operation. They consider that to protect the residential amenities of the applicant and in particular their views of Lough Corrib that the erection of netting is not feasible.

They consider that an alternative measure is the realignment of the driving bays and refer to Appendix 4 of their response relative to this issue. They have recently realigned (Fig. 4.1 refers) the direction of the individual driving bays by approx. 20 degrees to the north, to direct golf balls away from adjoining properties. The consequence of the realignment of the individual driving bays has resulted in one of the bays being lost. Two individual bays to the south west (closest to the adjoining property) remain unaltered but these are used by a golf professional. They note that there is currently a full time golf professional employed by the hotel to oversee the operations at the driving range and thereby monitor patrons at the facility.

The Third Party response considers that a very detailed Health and Safety Analysis of such measures to deem whether they are suitable or not should be required. In addition the Third Party on behalf of Mr Hughes considers that if the Board decides to permit that a detailed condition regarding the installation of netting along the boundary with his property should be included and refer to the Report produced in 2004 by Tobin Consulting Engineers '*Glenlo Abbey Driving Range: Control of Errant Golf Shots*'.

I noted that there appeared to be monitoring and supervision relative to the use of the driving range during my site visit. It is also of note that the 12no. bays proposed for retention are sited further to the north of the residential property than the existing bays and club house. Therefore it is considered that in view of the distance the impact of these bays for retention relevant to any potential for errant golf balls would be less than that of the previously permitted driving range and unlikely to cause nuisance to the residential property to the south west. In view of the status of the current retention

application I would not advise that the inclusion of such a condition relative to netting would be merited.

## **9.7 Floodlighting issues**

The floodlighting to be retained is in situ and serves the 12no. driving range bays to be retained. The adjoining Third Party is concerned that adequate detail has not been submitted relative to this i.e there is no analysis of the lighting or its potential impact and no details of the strength, orientation etc of the proposed lighting. They consider that a detailed report on the design, impact and mitigation measures for lighting should have been submitted. They submit that the proposal should be rejected on the grounds that the development and in particular its associated lighting will detract from the amenities of the unspoilt rural area and a Class 4/5 protected landscape.

It is noted that the information from McCarthy Keville O'Sullivan provided that the practice putting green contained associated floodlighting, but that their client was in the process of removing the floodlighting. They also provide that the putting green hours of operation are the same as the driving range. As the putting green is much closer to the residential that the driving range bays to be retained, I would recommend that if the Board decide to permit that in the interests of residential amenity that it be conditioned that there be no floodlighting for the putting green area.

As shown on the drawings and seen on site the floodlighting is proximate to these new driving range bays and in view of their location adjacent to the boundary fence with the driving range/golf carpark will mainly be seen in that context. 7no. floodlights are proposed and they are 6.2m in height and are a standard lamp construction. There are concerns about light pollution in what is essentially a more rural area. Regard is also had to the landscape character of the area. It is noted that condition no.2 of the Council's permission restricts the hours of the lighting to between 8.00am and 8.00pm daily. It is recommended that if the Board decide to permit that a similar type condition be included.

## **9.8 Effluent Treatment**

Section 19 of the application form provides that there is an existing connection to water supply and to the public sewer/drain. There are toilets located in the existing driving range building. Whilst they are not part of this application the Third Parties are concerned about the issue of discharge of effluent. It is noted that there is a septic tank located in the vicinity of the nearby Maintenance Shed and there is concern that this may be unauthorised development. While it was mentioned as one of the issues in the Warning letter sent by the Council of the 30<sup>th</sup> of March 2015, this issue has not been addressed in the current application. There is concern that the development constitutes an extension to a development which is unauthorised by virtue of failing to comply with the conditions of previous permission and a reliance on a septic tank that is unauthorised. Also there is concern of the impact of such a treatment system relative to the Natura 2000 sites. They are concerned that this application does not address environmental issues and does not contain the relevant requirements of the Planning and Development

Regulations in particular sections 22-29 and therefore should be refused on these issues.

The First Party response confirms that the septic tank was decommissioned in April 2015 and the toilets and driving range are now connected to the onsite Wastewater Treatment Plant. A letter in Appendix 3 indicates that this was accepted by Galway County Council. The Third Party response provides that they attach a letter from their client's engineer Mr. James Roche which with accompanying correspondence demonstrates long standing and serious concerns by Galway County Council over unacceptable discharges from the plant.

While all of the documentation submitted regarding the disposal of effluent has been noted, this issue is not included in the description of development for retention submitted and is therefore not considered within the remit of this application. It is considered that if there are issues concerning the disposal of effluent or any unauthorised development that has occurred this is more appropriately dealt with under Enforcement by Galway County Council.

### **9.9 Flood Risk**

The application form provides that the site has never been flooded. The Third Parties consider that while the driving range has not, that flooding may have occurred on other parts of the greater Glenlo Abbey site as the northern site boundary is a river. They provide that if the site boundaries are considered concurrent with the main boundaries of Glenlo Abbey as the 'planning unit' then this should be investigated. However it must be noted that the northern boundary of the subject site i.e. that shown in red is c.350m to the south of the river.

Regard is had to 'The Planning System and Flood Risk Management Guidelines' 2009. Table 3.1 provides a classification of vulnerability of different types of development. While not specifically referred to it is considered that golfing activities would fall under 'outdoor sports and recreation' and is 'Water Compatible Development'. In accordance with Table 3.2 this is considered to be 'appropriate' in Flood Zones A,B,C. Therefore it is considered that relative to the proposed use, flooding is not an issue. It is not considered that flood risk is a particular issue for consideration relative to the current application.

### **9.10 Impact on the Character and Amenities of the Area**

The First Party response notes that there are several properties located adjacent to the area and that it has been their client's intention to engage with property owners over concerns they may have in relation to the driving range and the putting green. They also note that several alterations have been made to the operation of the driving range to respect and enhance the residential amenities of adjoining properties.

However having regard to my site visit and to O.S Mapping and aerial photography it is noted that the Third Party residence is the most proximate to the driving range and putting green site. Some screening has been provided by landscaping along the site boundaries. The hotel and golf course complex

is long established and the driving range is well set back and is not visible from the road. It is not considered that the scale of the current retention application impacts adversely on the character or amenities of the area.

### **9.11 Appropriate Assessment**

Part of the Golf Course is to the east of the old railway line and is shown on the NPWS Maps and the northern part adjacent to the river is shown as being Lough Corrib SAC and SPA. The retention application site as shown in the current plans is shown c.320m to the south of these Natura 2000 sites.

As has been noted in the documentation submitted the Third Parties have raised concern relative to the disposal of effluent and to potential for adverse impact on the Natura 2000 sites. They provide that it cannot be claimed the larger site to legitimise the driving range and then insist a smaller site (which permission was never sought) on the other hand to preclude it from complying with important national and international legislation. They contend that a Screening Report is required and probably a full Natura Impact Statement and AA. They note that if a full AA is required, the application will then be invalid as it is no longer permissible to apply for planning permission for retention when such is required.

The First Party response provides that in relation to ecology, the use of the site as a driving range has long been established and refers to the previous permissions. They note the distance to the Lough Corrib SAC and that Galway Co.Co has provided that significant impact on habitats within Natura 2000 sites can be ruled out and that no further assessment is required in relation to habitats. They therefore conclude that the proposed retention development will not have any significant impact on Natura 2000 sites.

It is considered that having regard to the nature and scale of the retention development proposed, which does not include regard to the disposal of effluent, and to the nature of the receiving environment, namely within the established Glenlo Abbey Hotel and Golf Course complex, no appropriate assessment issues arise, relative to the subject application.

## **10.0 CONCLUSION AND RECOMMENDATION**

Having regard to all of the information submitted including submissions made and to the Assessment above, to relevant planning policy and the Third Party grounds of appeal and to the responses made and having visited the site, it is considered that the retention development is acceptable in principle in the context of the existing driving range and wider golf course usage in the grounds of Glenlo Abbey. In view of the small scale of the development, and having regard to the location and the nature of the use of the proposal for retention it is considered that this proposal would not detract from the character and amenities of the area and would be acceptable on this site.

It is therefore recommended that retention permission be granted subject to the conditions below.

## 11.0 REASONS AND CONSIDERATIONS

Having regard to the scale and nature of the development proposed to be retained, the location to the north of the existing driving range and relative to the established Glenlo Abbey golf complex, it is considered that the development proposed to be retained, subject to compliance with the conditions set out below, would not unduly affect the appearance of the residential area, would not seriously injure the amenities of the area or of property in the vicinity and would not be prejudicial to public health. The development proposed to be retained would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12.0 CONDITIONS

1 (a) The development shall be retained 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.

(b) The development hereby permitted to be retained relates solely to the practice putting green and 12 no. additional driving range bays to the existing driving range and associated floodlighting as applied for.

**Reason:** In the interest of clarity and to ensure that this permission only relates to those works proposed for retention in this application.

2. (a) The hours of operation shall be between 0800 to 2000 Monday to Sunday. The activity or floodlighting shall not operate outside these hours without the prior written agreement of the planning authority.

(b) The operational hours of the floodlighting shall not extend beyond 2000 hours with automatic cut-off of floodlighting at that time.

(c) The floodlights shall be directed onto the playing surface of the driving range and away from adjacent housing. The floodlights shall be directed and cowled such as to reduce, as far as possible, the light scatter over adjacent houses.

(d) There shall be no floodlighting adjacent to or on the putting green.

**Reason:** In the interests of residential amenity.

3. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected within the site unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity. In order to allow the planning authority to assesses the impact of any such advertisement or structure on the amenities of the area.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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

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Angela Brereton,  
Inspector,  
1<sup>st</sup> of July 2016