



An  
Bord  
Pleanála

## Inspector's Report ABP-300834-18

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<b>Development</b>	2 No. marquees, 3 No. prefabricated units consisting of kitchen, wash-up, store, w.c. facilities and 1 No. 40ft. container.
<b>Location</b>	Kippure Estate, Manor Kilbride, Blessington, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	17/1335
<b>Applicant(s)</b>	Kippure Lodge Ltd.
<b>Type of Application</b>	Permission for Retention
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	First Party v. Conditions
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	25 <sup>th</sup> June, 2018
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

1.1. The proposed development site is located in the rural townland of Kippure, Co. Wicklow, approximately 6.8km southeast of the village of Kilbride and 5.6km northwest of the Sally Gap, in the foothills of the Wicklow Mountains where it occupies a position to the south of the R759 Regional Road within the confines of the Kippure Estate which presently functions as a leisure / recreational / holiday home complex that offers a variety of services / facilities including holiday rental accommodation as well as providing a venue for weddings and other events / functions. The site itself has a stated site area of 0.6692 hectares, is irregularly shaped, and is situated to the northwest of the main leisure / holiday complex on an area of green space / lawn alongside the main coach parking area.

## 2.0 Proposed Development

2.1. The proposed development involves the retention of the following:

- 1 No. marquee (30m x 9m): floor area: 270m<sup>2</sup> (Marquee No. 1)
- 1 No. marquee (12.05m x 9.12m): floor area: 109.89m<sup>2</sup> (Marquee No. 2)
- 3 No. prefabricated units consisting of a kitchen area, a wash-up area & store with associated lobby linking through to Marquee No 1, and W.C. facilities.
- 1 No. 40ft. storage container (12.192m x 2.4m): floor area: 27.65m<sup>2</sup>

2.2. Permission has been sought to retain the structures in question for a temporary period of 2 No. years in order to accommodate weddings and other functions on site within the Kippure Estate.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On 4<sup>th</sup> January, 2018 the Planning Authority issued a notification of a decision to grant permission for the retention of the proposed development subject to 6 No. conditions which can be summarised as follows:

Condition No. 1 – Refers to the submitted plans and particulars.

Condition No. 2 – Requires the payment of a development contribution in the amount of €21,258 within four months of the date of the final grant of permission.

Condition No. 3 – Requires the applicant to enter into a legal agreement with the Planning Authority within six months of the final grant of permission to ensure that the entirety of the development proposed for retention is held in single ownership with the existing tourism infrastructure on site and is not subdivided, sold, transferred or conveyed save as part of the existing facility. This agreement is also to be registered as a burden against the site in the Land Registry within one year of the grant of permission.

Condition No. 4 – States that the storage container is to be used solely for the storage of equipment associated with the use of the marquees for weddings and functions. In the event the container becomes redundant or obsolete, it is to be removed from the landholding.

Condition No. 5 – Prohibits any further events from taking place until such time as the upgrading of the wastewater treatment plant and an additional polishing filter has been completed and installed pursuant to the grant of permission issued in respect of PA Ref. No. 17/352.

Condition No. 6 – Refers to the installation of a grease trap / oil interceptor.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports:

States that there is an extensive planning history pertaining to the existing tourism / recreational facility on site and that the principle of the proposed development is acceptable when taken in conjunction with the established use. With regard to the visual impact of the proposed development, whilst it is noted that the site is located within an 'Area of Outstanding Natural Beauty' and that the design of the structures proposed for retention differs from the main buildings on site, it is considered that the proposal would not adversely impact on the character or amenity of the area and can be satisfactorily assimilated into the surrounding landscape. The report proceeds to state that the Environment Section of the Local Authority has indicated that it is satisfied that the design of the upgraded wastewater treatment plant previously approved under PA Ref. No. 17/352 is sufficient to accommodate the demands of the proposed development, however, it is also noted that in light of the proximity of the site to the River Liffey, which flows into the Poulaphouca Reservoir (i.e. a Special Protection Area), the Planning Authority would need to be satisfied that the on-site wastewater treatment system is functioning correctly so that the proposal would be unlikely to pose any significant risk to the Natura 2000 site. Therefore, it is deemed to be necessary to ensure that the wastewater treatment and disposal system is working effectively and is suitably maintained and monitored so as to protect the conservation objectives of the designated site. The report thus concludes by recommending a grant of permission for retention, subject to conditions.

### 3.2.2. Other Technical Reports:

*Baltinglass Municipal District:* No objection.

*Environmental Health Officer:* States that the wastewater treatment system serving Kippure Lodge has a capacity in excess of 5m<sup>3</sup> / day and that this may require a discharge licence under the relevant Water Pollution Act before subsequently recommending that the Environment Section of the Local Authority should be consulted on the matter. It also notes that the water supply to the development is currently under observation by the Environment Section and that its input should be sought.

*Water and Environmental Services:* States that it is satisfied that the figures provided in the wastewater flow / strength measurements / population have been used in the design of the upgraded wastewater treatment plant as approved under PA Ref No. 17/352. It also recommends the inclusion of a condition in any grant of permission requiring the installation and monitoring of an appropriately sized passive grease removal separator.

*Roads:* No objection.

### 3.3. **Prescribed Bodies**

*Dublin City Council:* States that the Dublin City Council Water Services Dept. has no objection to the proposed development from the point of view of minimising pollution threats to the raw water in the Poulaphouca Reservoir.

### 3.4. **Third Party Observations**

None.

## 4.0 **Planning History**

### 4.1. On Site:

PA Ref. No. 041945. Was granted on 5<sup>th</sup> August, 2005 permitting Kippure Village Ltd. permission for an extension of the existing holiday complex involving the construction of 14 no. 2-storey dormer holiday homes (1 no. terrace format and 1 no. semi-detached format) located within the walled garden at Kippure, Manor Kilbride, Co. Wicklow.

PA Ref. No. 052468. Was granted on 17<sup>th</sup> August, 2005 permitting Tadhg O'Cadhain permission for the retention of the change of use of part of the existing building (94/1113) from a self catering area to a common room / dining room and wine bar at Kippure Lodge, Manor Kilbride, Blessington, Co. Wicklow.

PA Ref. No. 052792. Was granted on 5<sup>th</sup> October, 2005 permitting Kippure Village Ltd. permission for the refurbishment of the existing Belfry Building (197sqm) for use as backup facility for outdoor facilities at Kippure House, Manor Kilbride, Blessington, Co. Wicklow.

PA Ref. No. 114773. Was granted on 12<sup>th</sup> December, 2011 permitting Kippure Lodge Ltd. permission for the retention of 3 no. rooflights on south elevation and 1 no. door with two sidescreens and 1 no. window on north elevation at the Belfry Building, Kippure House, Manor Kilbride, Blessington.

PA Ref. No. 126455. Was granted on 2<sup>nd</sup> August, 2012 permitting Kippure Lodge Ltd. permission for the retention of end of terrace 3 bedroom, 2 storey dormer House No. 1 within walled garden to comply with planning permission 04/1945 at a holiday and adventure centre, Kippure Estate, Manor Kilbride, Blessington, Co. Wicklow.

PA Ref. No. 126539. Was granted on 23<sup>rd</sup> August, 2012 permitting Kippure Lodge Ltd. permission for the retention of revised floor levels and changes to elevations for 14 no. two storey houses within walled garden to comply with planning permission 04/1945 at a holiday and adventure centre, Kippure Estate, Manor Kilbride, Blessington, Co. Wicklow.

PA Ref. No. 126761. Was granted on 2<sup>nd</sup> May, 2013 permitting Kippure Lodge Ltd. permission for a single storey function room extension to rear of conference and admin building. Materials to match existing, with new roof lights to existing and new roof to a holiday and adventure centre. All at the Kippure Estate, Manor Kilbride, Blessington, Co. Wicklow.

Condition No. 2:

*'No development shall commence on foot of this permission until the Water and Environmental Services Authority confirms in writing that the Wastewater treatment and disposal system and the water supply, serving both the existing and proposed development, have been installed to their satisfaction*

*Reason: To ensure that an adequate water supply and wastewater treatment facility is available to serve the proposed development and in the interests of public health'.*

PA Ref. No. 17352. Was granted on 4<sup>th</sup> January, 2018 permitting Kippure Lodge Ltd. permission for a replacement dormer style building in place of the section of the original building which was burnt down in June 29<sup>th</sup> 2016. Permission is also sought for alterations to the original design layout of the section of the overall building, elevational alterations, the construction of a single storey kitchen extension to the rear, the construction of an open canopy above the existing entrance doors over the

eastern facade of the existing two storey section which was undamaged in the fire, relocating the front entrance door to the existing two storey building, minor internal and external elevational alterations to all the existing building.

Condition No. 3:

- a) *'Within 6 months of the final grant the wastewater treatment plant shall be upgraded and additional polishing filter provided, which shall be appropriately designed in accordance with the details submitted and the requirements of the Discharge License. Within 7 months of the final grant, a certificate from a Chartered Engineer, or Hydrogeologist, (with professional indemnity insurance) stating that the effluent disposal system has been installed to this requirement, shall be submitted to the Planning Authority including as constructed drawings, site layout map and photographic evidence of installation.*
- b) *Within 3 months of the upgrade of the wastewater treatment plant and polishing filter service contracts of 5 years duration should be entered into with competent firms for the preventative maintenance of the wastewater treatment plant and polishing filter, and for the monitoring of effluent from the wastewater treatment plant. The frequency and details of maintenance visits for effluent monitoring shall be submitted to and agreed in writing with the Planning Authority.*

*Reason: To ensure the provision of an adequate sewage disposal system in the interests of public health'.*

## 5.0 Policy Context

### 5.1. Development Plan

**Wicklow County Development Plan, 2016 – 2022:**

Chapter 7: Tourism and Recreation:

Section 7.3: Strategy for Tourism and Recreation

Section 7.4: *Tourism and Recreation Objectives:*

- T1:* To promote, encourage and facilitate the development of the tourism and recreation sectors in a sustainable manner.
- T2:* To ensure that all tourism and recreation developments are designed to the highest quality and standards.
- T3:* To generally require tourism and recreation related developments to locate within existing towns and villages, except where the nature of the activity proposed renders this unfeasible or undesirable. Within existing towns and villages, the Planning Authority will promote and facilitate the development of tourist related uses at appropriate sites. In all cases, the applicant must submit a robust assessment setting out the sustainability of any proposal with respect to economic, environmental and social sustainability, as defined herein.
- T4:* To only 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. The need to locate in a particular area must be balanced against the environmental impact of the development and benefits to the local community.
- T5:* The Planning Authority recognises that certain tourist facilities that are located in rural areas may be provided as stand alone development, and that ancillary uses (e.g. club house, café, restaurant, shop etc) may be required in order to ensure the long term viability of the tourist facility. Additional uses will only be permitted in cases where the additional use is integrated with and connected to the primary use of the site as a tourist facility, and in cases where the Planning Authority is satisfied that the additional use is ancillary to the primary use of the



site as a tourist facility. The additional use shall be located adjacent to the tourist facility, and avail of shared infrastructure and services, insofar as possible.

*T6:* To ensure that tourism and recreation related developments are appropriately located in the County.

Subject to the following exceptions, all tourist and recreation related developments are 'open for consideration' in all landscape areas:

- The following tourist uses will not be permitted within the Area of Outstanding Natural Beauty (both the Mountain Uplands Area and the Coastal Area): Static caravans and mobile homes;
- Holiday homes will not be permitted in any landscape category other than urban zones except where they comply with objectives T13, T14 and T15

*T7:* To favourably consider proposals for tourism and recreation related development, which involve the reinstatement, conservation and/or replacement of existing disused buildings and to adopt a positive interpretation to plan policies to encourage such developments. This shall be subject to all other objectives being complied with, and subject to the proper planning and sustainable development of the area. In all areas, preference will be given to the conversion and adaptation of existing buildings rather than the provision of new development on greenfield sites.

*T18:* To give sympathetic consideration to the improvement of, and extension to, existing tourist accommodation related developments, subject to the proper planning and sustainable development of the area, and subject to compliance with all other objectives of this plan.

### Chapter 9: Infrastructure:

#### Section 9.2: *Water Infrastructure and Flooding:*

*WI2:* To protect existing and potential water resources of the County, in accordance with the EU Water Framework Directive, the River Basin

Management Plans, the Groundwater Protection Scheme and source protection plans for public water supplies.

Section 9.2.3: *Waste Water*

Chapter 10: Heritage:

Section 10.3: *Natural Heritage and Landscape:*

Section 10.3.9: *Wicklow's Landscape:*

*The Mountain and Lakeshore Area of Outstanding Natural Beauty:*

*1(a) - The Mountain Uplands:*

The central mountain upland area extends from the Dublin border in the north of the County at Kippure towards Aughrim in the south and from east of the Glen of Imaal as far as west of Roundwood Village. A key characteristic of this area is mountainous topography with U-shaped valleys, lakes and glacial topography. This area generally relates to lands immediately surrounding and above the 300m+ contour line.

*NH49:* All development proposals shall have regard to the County landscape classification hierarchy in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment (set in Volume 3 of this plan) and the 'Key Development Considerations' set out for each landscape area set out in Section 5 of the Wicklow Landscape Assessment

*NH50:* Any application for permission in the AONB which may have the potential to significantly adversely impact the landscape area shall be accompanied by a Landscape / Visual Impact Assessment, which shall include, inter alia, an evaluation of visibility and prominence of the proposed development in its immediate environs and in the wider landscape, a series of photos or photomontages of the site / development from clearly identified vantage points, an evaluation of impacts on any listed views / prospects and an assessment of vegetation / land cover type in the area (with particular regard to commercial forestry plantations which may be felled thus altering character / visibility). The Assessment shall demonstrate that

landscape impacts have been anticipated and avoided to a level consistent with the sensitivity of the landscape and the nature of the designation.

*NH51:* To resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling / reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and / or not give rise to adverse impacts

Section 10.3.10: *Views and Prospects:*

*NH52:* To protect listed views and prospects from development that would either obstruct the view / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.

*Appendix 5: Landscape Assessment:*

The proposed development site is located within 'The Mountain and Lakeshore Area of Outstanding Natural Beauty: 1(a) - The Mountain Uplands' as set out in Map No. 10.13(b).

Section 5.3: *Key Development Considerations:*

Section 5.3.2: *The Mountain Uplands KDC (see Appendix 4 Map 10.13(b)):*

1. All developments within the Mountain Uplands AONB landscape area shall be accompanied by a detailed justification of the need for the proposed development at this location.
2. Where development is to be permitted within the Mountain Uplands AONB landscape area a very high standard of siting, design and landscaping will be required in order to ensure that the proposed development will be assimilated into the existing landscape.
3. To ensure that developments on steep slopes (i.e. 10%) will not be conspicuous or have a disproportionate or dominating visual impact on the

surrounding environment as seen from relevant scenic routes and settlements.

4. To maintain the favourable conservation status of existing natural habitats including Natura 2000 sites (SACs and SPAs) and Annex I-Habitats and Annex II-Animal and Plant species within this Mt. Uplands AONB landscape area.
5. To support and facilitate in co-operation with relevant bodies, the provision of amenity routes within and adjoining the Mountain Uplands AONB landscape area in a manner which does not detract from the scenic nature of the area.

## **5.2. Natural Heritage Designations**

5.2.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The Wicklow Mountains Special Protection Area (Site Code: 004040), approximately 170m south of the application site.
- The Wicklow Mountains Special Area of Conservation (Site Code: 002122), approximately 170m south of the application site.
- The Poulaphouca Reservoir Special Protection Area (Site Code: 004063), approximately 7.8km southwest of the application site.
- The Glenasmole Valley Special Area of Conservation (Site Code: 001209), approximately 7km north of the application site.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The subject application was lodged as a result of the need for additional facilities in order to accommodate bookings at the Kippure Estate after the main building was destroyed by fire in June, 2016.
- Whilst permission was granted in January, 2018 under PA Ref. No. 17/352 for the construction of a replacement dormer style building and associated facilities, these works have yet to be completed due to the weather conditions.

Moreover, there are a number of events bookings in place at the Kippure Estate for February and March, 2018 and the imposition of Condition No. 5 in the subject grant of permission effectively serves to prohibit the use of the Kippure Estate until such time as the wastewater treatment plant is upgraded.

- The restriction on further events until the new upgraded wastewater treatment plant and additional polishing filter have been completed will have a significant and unnecessary impact on the business operation of the Kippure Estate Manor and will consequently have a direct impact on those parties that have made bookings at the venue.
- The Board is requested to omit Condition No. 5 in order to allow the ongoing use of the Kippure Estate Manor, after the damage to the original structure, until such time as the full repair and replacement works are carried out under PA Ref. No. 17/352 which are expected to be completed by June, 2018.
- The accompanying correspondence prepared by Mitchell Environmental outlines the reasons for the delay in the sewage treatment upgrade works. In the interim, Molloy (Mitchell) Environmental have provided a number of actions which will allow for the continued use of Kippure Estate Manor until the full upgrading works are completed. These include the use of the existing sewage treatment plant as a holding tank with no discharge to the existing percolation area and regular monitoring. It is submitted that these temporary measures will allow Kippure Estate Manor to continue to operate as per the grant of permission issued for the subject proposal until such time as the upgrading works approved under PA Ref. No. 17/352 have been completed.

## 6.2. **Planning Authority Response**

None.

## 6.3. **Observations**

None.

#### 6.4. Further Responses

None.

### 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, it is apparent that the key issue raised by the grounds of appeal relates to the imposition of Condition No. 5 in the notification of the decision to grant permission for the retention of the subject development as issued by the Planning Authority. In this respect I would advise the Board that whilst it may determine the subject appeal in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, on the basis that it relates only to the merits of the inclusion of the aforementioned condition, having reviewed the available information, I propose to assess the subject appeal from first principles (i.e. *de novo*) due to the fact that it concerns a 'temporary' development arrangement which requires further consideration.

#### 7.2. **The Principle of the Development to be Retained:**

7.2.1. Having regard to the planning history and established use of the site as a tourism / leisure / recreational facility, the relatively minor nature and extent of the development proposed for retention, and the temporary duration of the proposal (seemingly as an interim replacement for those facilities destroyed by fire in June, 2016 and pending the construction of the development approved under PA Ref. No. 17/352), in my opinion, the subject proposal would represent a complementary and ancillary addition to the overall use on site and, therefore, I am satisfied that in this instance the development to be retained is acceptable in principle.

#### 7.3. **The Duration of the Development to be Retained:**

7.3.1. Although not detailed in the description of the development proposed for retention as set out in the planning application form and the public notices, it is apparent from a review of the supporting correspondence that the subject application has sought permission to retain the structures in question for a temporary period of 2 No. years only with the expressed intention of removing same as soon as the replacement facilities approved under PA Ref. No. 17352 have been constructed. In this regard, it

is regrettable that the notification of the decision to grant permission for retention as issued by the Planning Authority makes no express reference to the temporary duration of the development and, therefore, in the interests of clarity, I would advise the Board to include a suitable condition in any decision to grant permission which clearly specifies the duration for which the subject proposal has been granted permission for retention. Moreover, given that the subject application was initially lodged with the Planning Authority on 6<sup>th</sup> November, 2017, and in keeping with the timeframe suggested in the application documentation for the completion of the replacement facilities approved under PA Ref. No. 17352, I am inclined to suggest that the duration of any grant of permission for retention should be limited to 18 months from the date of the Board's Order (*N.B.* During the course of my site inspection on 25<sup>th</sup> June, 2018, it was noted that work had not commenced on the construction of the replacement building approved under PA Ref. No. 17/352, although some works appeared to be underway in the vicinity of the on-site wastewater treatment system).

#### 7.4. **Wastewater Treatment and Disposal:**

- 7.4.1. From a review of the grounds of appeal, it is apparent that particular concerns arise with regard to the imposition of Condition No. 5 in the notification of the decision to grant permission for retention as issued by the Planning Authority which states the following:

*'No further events shall take place until the new upgraded wastewater treatment plant and additional polishing filter has been completed and installed in compliance with planning permission Reg. Ref. 17/352.*

*Reason: To ensure the provision of an adequate sewage disposal system in the interest of public health'.*

- 7.4.2. In this respect I would advise the Board at the outset that there would appear to have been concerns within the Local Authority as regards the adequacy / capacity of the historical wastewater treatment and disposal arrangements on site serving the wider tourism / recreational facility and whether these posed a risk of pollution to the nearby Poulaphouca Reservoir which serves as the source for a substantial proportion of the raw water supply serving the Greater Dublin Area. In particular, I would draw the Board's attention to PA Ref. Nos. 12/6538, 12/6761 & 17/352

wherein Dublin City Council opposed those developments given the potential impact on water quality within the reservoir whilst it is also of relevance to note that the Waste & Environmental Services Division of the Local Authority had concerns as regards the satisfactory functioning of the existing wastewater treatment plant on site. Indeed, it should be noted that in its determination of PA Ref. No. 12/6761, the Planning Authority imposed a condition which prohibited the commencement of any development on foot of that grant of permission until the Water and Environmental Services Authority had confirmed in writing that the wastewater treatment and disposal system serving both the existing and proposed developments had been installed to its satisfaction. Similarly, Condition No. 3 of the grant of permission issued in respect of PA Ref. No. 17/352 required the upgrading of the wastewater treatment plant and the installation of an additional polishing filter to be completed within 6 No. months of the date of that grant of permission in order to ensure the provision of an adequate sewage disposal system in the interests of public health.

7.4.3. Whilst I would acknowledge the Planning Authority's concerns as regards the subject proposal and the adequacy of the existing wastewater treatment and disposal arrangements on site (including the need to upgrade same), it should be noted that the continued use of the existing wastewater treatment system does not obviate the applicant / operator from its obligations to adhere to the terms and conditions of any Discharge Licence issued under the Water Pollution Acts nor does the determination of the subject appeal negate the requirement for the applicant to comply with the terms and conditions of any previous grants of planning permission. Accordingly, I am inclined to suggest that the Local Authority is already sufficiently empowered by legislation to ensure that the existing facility does not give rise to water pollution.

7.4.4. In addition to the foregoing, given that the structures proposed for retention effectively serve as substitute floorspace for the function room, offices, staff facilities and bedroom accommodation etc. which was destroyed by fire in June, 2016, and as the associated loadings on any existing wastewater treatment arrangement are perhaps comparable to those previously generated by the aforementioned facilities (since demolished), on balance, it is my opinion that the subject development does not pose any significant additional threat to water quality etc. over and above that of the original accommodation / facilities, particularly as the applicant is still obliged to upgrade the wastewater treatment system pursuant to Condition No. 3 of PA Ref.



No. 17/352 and to adhere to the terms of any discharge licence. Furthermore, I note the additional actions proposed by the applicant in the grounds of appeal to provide for the on-going use of the Kippure Estate pending the completion of the wastewater treatment plant upgrading works, including the use of the existing sewage treatment plant as a holding tank with no discharge to the existing percolation area (*N.B.* The Board is advised that although the timescale for the upgrading of the treatment plant as set out in the grounds of appeal would not appear to have been achieved to date i.e. June, 2018, I would acknowledge that some ground works were observed to be underway in the vicinity of same during the course of my site inspection).

7.4.5. Therefore, in light of the aforementioned considerations, including the temporary nature of the proposal, and noting the applicant's obligations pursuant to previous grants of permission on site and the Water Pollution Acts (in addition to the powers of enforcement etc. conferred on the Local Authority by legislation), in my opinion, it is not reasonable in this instance to impose the restriction sought by Condition No. 5 of the notification of the decision to grant permission for retention as issued by the Planning Authority.

7.5. **Appropriate Assessment:**

7.5.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, there are a number of Natura 2000 sites within the wider area, including the Wicklow Mountains Special Protection Area (Site Code: 004040) and the Wicklow Mountains Special Area of Conservation (Site Code: 002122) approximately 170m south of the application site, in addition to the Poulaphouca Reservoir Special Protection Area (Site Code: 004063) c. 7.8km southwest of the application site.

7.5.2. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 10 of the Wicklow County Development Plan, 2016, to avoid negative impacts upon the natural environment and to promote the appropriate enhancement of the natural environment as an integral part of any development. Furthermore, Objective NH2 of the Plan states that no projects which would give rise to any significant cumulative, direct, indirect or secondary impacts on Natura 2000 sites arising from their size or scale, land take, proximity, resource requirements,

emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects will be permitted on the basis of the plan (either individually or in combination with other plans or projects). By way of further clarity, Objective NH4 also states that all projects and plans arising from the Development Plan (including any associated improvement works or associated infrastructure) will be screened for the need to undertake Appropriate Assessment pursuant to Article 6 of the Habitats Directive whilst any such plan or project will only be authorised after the competent authority has ascertained, based on scientific evidence, Screening for Appropriate Assessment, and a Stage 2 Appropriate Assessment, where necessary, that:

- 1) The Plan or project will not give rise to significant adverse direct, indirect or secondary effects on the integrity of any European site (either individually or in combination with other plans or projects); or
- 2) The Plan or project will have significant adverse effects on the integrity of any European site (that does not host a priority natural habitat type and / or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. In this case, it will be a requirement to follow procedures set out in legislation and agree and undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000; or
- 3) The Plan or project will have a significant adverse effect on the integrity of any European site (that hosts a natural habitat type and/or a priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons for overriding public interest, restricted to reasons of human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest. In this case, it will be a requirement to follow procedures set out in legislation and agree and undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000.

- 7.5.3. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of ‘appropriate assessment’.
- 7.5.4. Having reviewed the available information, in light of the nature and scale of the proposed development, the specifics of the site location relative to certain Natura 2000 sites, and having regard to the prevailing site topography, in my opinion, by employing the source/pathway/receptor principle of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of the Poulaphouca Reservoir Special Protection Area (Site Code: 004063) on the basis that the application site is situated upstream of this Natura 2000 site and thus drains towards same via the River Liffey which is located to the south of the lands in question i.e. it will be necessary to consider the potential for any water-based / pollution / contamination impacts given that any deterioration in water quality downstream as a result of the proposed development (such as by way of pollution or other contamination) could potentially have a significant effect on those protected species within the SPA which are to be maintained and / or restored to a favourable conservation condition pursuant to the relevant conservation objectives. In this respect I would further advise the Board that whilst there are a number of other Natura 2000 sites within a 15km radius of the proposed development site, given the absence of any pathways, such as hydrological links (*N.B.* The River Liffey effectively serves to intersect any potential hydrological connection between the subject works and the Wicklow Mountains Special Protection Area and / or the Wicklow Mountains Special Area of Conservation), between the proposed works area and those sites, it is my opinion that there is no potential for the subject proposal to have a significant effect on other European Sites.
- 7.5.5. Having reviewed the available information, and following consideration of the ‘source-pathway-receptor’ model, it is my opinion that, given the nature and scale of the development proposed for retention (including its temporary duration and use as substitute floorspace for the function room, offices, staff facilities and bedroom accommodation etc. which was destroyed by fire in June, 2016), the planning history

and established use of the site, the existing and proposed servicing arrangements on site and the obligations imposed on the site operator as regards same by reference to the previous grants of planning permission on site and the requirement to adhere to the terms and conditions of any Discharge Licence issued under the Water Pollution Acts, the site location outside of any protected site, the limited ecological value of the lands in question, the separation distances involved between the subject site and nearby Natura 2000 designations, the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of any Natura 2000 site. Therefore, I am inclined to conclude that the development proposed for retention would not be likely to significantly effect the integrity of Natura 2000 sites and would not undermine or conflict with the Conservation Objectives applicable to same.

- 7.5.6. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the development proposed for retention, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

7.6. **Other Issues:**

7.6.1. **Visual Impact:**

Having regard to the site location within 'The Mountain and Lakeshore Area of Outstanding Natural Beauty: 1(a) - The Mountain Uplands' as set out in Map No. 10.13(b) of Appendix 5 of the County Development Plan, the siting of the structures proposed for retention within a wider complex of structures which form part of an established tourism / recreational facility, and the limited scale and temporary nature of the development in question, in my opinion, the subject proposal will not have an undue adverse impact on the visual amenity or character of the surrounding landscape.

7.6.2. **Traffic Implications:**

Given that the development proposed for retention effectively serves as interim substitute floorspace for the accommodation etc. which was destroyed by fire in

June, 2016, I am satisfied that the proposal will not give rise to any significant additional traffic impact.

## 8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention of the proposed development be granted for the reasons and considerations and subject to the conditions set out below:

## 9.0 Reasons and Considerations

- 9.1. Having regard to site location, the nature and scale of the development proposed to be retained, and to the established and permitted use of the overall site, it is considered that, subject to compliance with the conditions set out below, the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on the 31<sup>st</sup> day of January, 2018, 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 within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. This grant of permission is for a period of eighteen months from the date of this order. On or before the expiry of the period of eighteen months, the

structures shall be removed from the site, unless, prior to the end of the period, permission for their retention for a further period shall have been obtained.

**Reason:** To allow for a review of the development having regard to the circumstances then pertaining and in the interest of clarity and orderly development.

3. Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

4. 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, as amended. The contribution shall be paid within three months of the date of this order 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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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Robert Speer  
Planning Inspector

27<sup>th</sup> June, 2018