



An
Bord
Pleanála

Inspector's Report ABP 304225-29

Question	Whether the construction of a track/gallops for the exercising of equine animals as constructed is or is not exempted development.
Location	Killegar, Enniskerry, Co. Wicklow.
Declaration	
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref.	11/19.
Applicant for Declaration	NIJINSKY Property Company.
Planning Authority Decision	Is development and is not exempted development
Referral	
Referred by	NIJINSKY Property Company.
Owner/ Occupier	NIJINSKY Property Company.
Observer(s)	None.
Date of Site Inspection	18 th July 2019.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

The site forms part of a larger landholding, was previously known as the Kiltiernan Golf and Country Club. That use has ceased and the element of the holding closest to the Enniskerry Road is now in use by a film location company. The section of the exercise track/gallops which is the subject of this assessment is located to the south of the main holding. Between the site and the Enniskerry Road are the artificial ski slopes which are closed for maintenance during the summer months. To the northeast of the former Kiltiernan Sports Hotel which is currently vacant. Access is via internal roads. The gallops forms part of the larger scheme to develop an Equine Centre of Excellence on the landholding.

The section of track/gallops which is before the Board the forms part of a larger gallops/track which is located to the north within the Dun Laoghaire Rathdown administrative area.

The landholding extends both sides of the Dun Laoghaire/Rathdown County Council border with County Wicklow but the works the subject of this referral are wholly within the Wicklow County Council administrative area.

2.0 The Question

The question posed is whether the construction and operation of a track/gallops for the exercising of equine animals as constructed at Killegar is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1 On the 20th March 2019 Wicklow County Council declared that the construction of a track/gallops for the exercising of equine animals as constructed at Killegar is development and is not exempted development under Class 10 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended)

for the reason that while the subject works would generally come within the scope of the exempted provisions of Class 10, but it does not comply with condition and limitation no.4 of this class because:

- The height of the surface area of this track/gallops in the area of this development where it straddles the boundary between the planning administration areas of Wicklow County Council and Dun Laoghaire Rathdown County Council exceeds 2 metres in height which encompasses an estimated distance of c.80 metres on the part of this structure situated within Co. Wicklow.

The erection (works) of the respective boundary fences (structures) on this track/gallops do not come within the scope of the exempted provisions of class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) because the parts of the structure referred to above, when measured from the lowest level of the adjacent ground levels in accordance with the provisions of Article 5(2) of these regulations, exceed the exempted height threshold of 2 metres provided in condition and limitations no. 1 of this class. Therefore those parts of the subject respective fence structures do not comply with that condition and limitation.

As a consequence, the erection of the entire length of boundary fences on each side of the subject track/gallops come within the scope of restriction on exemption under Article 9(1)(viii) of the said planning regulations because it constitutes the extension of section of these fences that are deemed to constitute unauthorised developments, in the absence of a grant of planning permission for such forms of non-exempted developments.

3.2. Planning Authority Reports

3.2.1. Planning Reports (20th March 2019)

- Reference to the planning history and planning enforcement history associated with the landholding.
- The Area Planner in their assessment had regard to the Wicklow County Development Plan 2016-2022 and the Dun Laoghaire Rathdown County Development Plan 2016-2022.

- Reference to the Lissadell public right of Way Supreme Court judgement.
- The height of the surface area of the track/gallops in the area of the development where it straddles the boundary between Wicklow and Dun Laoghaire Rathdown exceeds 2m in height which encompasses an estimated distance of 80m on the part of the structure that is located within the functional area of Wicklow County Council.
- The erection (works) of the respective boundary fences (structures) on this track/gallops do not come within the scope of the exempted provision of Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) because parts of these structures when measured from the lowest level of the adjacent ground levels in accordance with the provisions of Article 5(2) of these regulations, exceed the exempted height of 2m provided in the conditions and limitations of Class 4.
- The Area planner concluded that this means by virtue of the fact that the 'raised part' (c.155m in total length) is an integral part and thus physically attached to the overall equestrian gallops, the entire gallops structure (all 3km of it) is a non-exempted development.
- As a consequence the erection for the entire length of boundary fences on each side of the subject track/gallops come within the scope of the restrictions on exemption under Article 9 (1)(viii) of the said planning regulations because it constitutes the extension of sections of these fences that are deemed to constitute unauthorised developments, in the absence of grants of planning permission for such forms of non-exempted development.
- As the remit of the Section 5 Referral only includes lands within the functional area of Wicklow County Council, the order only refers to the section within the Wicklow administrative area.

3.2.2. Other Technical Reports

No other reports received.

4.0 Planning History

Landholding:

An Bord Pleanala Reference No. 06D.RL.3363

Whether the erection of an unroofed fenced area for the exercising or training of horses/ponies and a drainage bed or soft surface is or is not development or exempted development at the former Kiltarnan Golf and Country club. This referred to lands within Dun Laoghaire Rathdown County Council Area. The Board made a decision on the **11th April 2016** that the development was exempted development.

Dun Laoghaire Rathdown County Council Applications:

Equine Centre of Excellence:

Planning Authority Reg. No.D15A/0453 (An Bord Pleanala Reference PL.06D.246501) refers to a **2016** grant of permission to Luke Comer for permission for development of a centre of excellence for equine breeding and training, consisting of: 1. A stable building over three floors incorporating 74 no. horse boxes, drying and clearing room, veterinary clinic, office, lift and wc at ground floor level, 86 no. horse boxes, sick rooms, store, cleaning, drying and tack rooms at first floor level and 36 no. self-contained studio/dorm rooms, internal and external track viewing areas at second floor level. 2. A gallops c1.6km in length. 3. Parade circuit. 4. Equine Pool. 5. Three bay agricultural shed. 6. Car parking, access road, gabion retaining walls, landscaping, boundary treatment and all associated site development works and services. The development may be considered to be within the curtilage or attendant grounds of Kiltarnan Golf and Country Club (formerly Springfield House) a Protected Structure (RPS. No. 1861), which is part of the adjacent hotel complex, but no works to the Protected Structure were proposed.

Condition No. 2 included:

The proposed development shall be amended as follows-

(a) The minimum size of the residential units (studio/dorm rooms) shall be 40 square metres, and the design of the proposed main building shall be altered accordingly.

(b) The gallops shall terminate at Chainage 1515, and the trees beyond this point shall be retained.

Revised drawings showing compliance with these arrangements shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In order to comply with the minimum residential standards set out in national and local policy, and in order to protect trees on the site that area of landscape value.

Planning Authority Reference No. D19A/0355 refers to current application for permission for retention within the area where permission was granted to develop a 'centre of excellence for equine breeding and training' (Reg. Ref. D15A/0453 and PL06D.246501). Part of that approval was to construct an agricultural building, 50m wide by 50m long, with hard standing adjoining. An agricultural building has been built 51.3m wide by 78.97m long, with hard standing, together with an adjoining building, 12.79m wide by 43.84m long and in a marginally different position within the overall holding than proposed in the earlier permission. Retention permission sought to retain those two buildings as constructed, together with ancillary site works. This is the subject of a Further Information request

The Gallops:

In 2017 (**D17A/0813**) and subsequently in 2018 applications were lodged with DLRCC for the for the retention of as constructed existing horse training gallops of 1.6km in length and 8m wide including the two sections which are in excess of 5 metres above adjoining ground level. Both applications were deemed invalid.

The Kilternan Sports Hotel

Under **Planning Reg. Ref. D03A/0458** permission was granted for alterations and extensions to an existing hotel and associated leisure facility, including 80 no. additional bedrooms, golf clubhouse facilities and conference centre, extended bar/restaurant and kitchen, spa and reception facilities, banqueting facility, extension to existing tennis centre to provide additional gym/leisure centre facilities, floodlighting, additional car-parking facilities to provide total 570 no. car-parking spaces, new waste water treatment works, percolation area and outfall and decommissioning of existing waste water treatment works, surface water attenuation tank. This was extended to 2nd July 2014.

Under **Planning Reg. Ref. D04A/1515** permission was granted for minor revisions to Reg. Ref. D03A/0458. This was extended to 8th May 2015.

Under **Planning Reg. Ref. D04A/1502** permission was granted for development of a 78-unit apart-hotel on 4 levels over under-croft car parking (36 spaces), at existing hotel leisure centre complex, which is to be extended and modified. This permission was extended to 8th May 2015.

Planning Reg. Ref. D06A/0789 relates to a woodchip biomass boiler.

Planning Enforcement:

Wicklow County Council Ref. No. UD4840 refers to a current case regarding the section of site within Wicklow. A section 152 Warning letter was issued on the 7th December 2018. Enforcement action is on hold pending a decision of the current Section 5 Referral.

Dun Laoghaire Rathdown County Council have a current planning enforcement case relating to the equestrian buildings on the landholding. **Planning Authority Reference No. D19A/0355** is in response to this action.

Permission for Re

5.0 Policy Context

5.1. Development Plan

5.1.1 The current operative Development Plan is the Wicklow County Development Plan 2016-2022. Section 8.3.2 Agriculture, recognises the importance of the equine industry. Objective AGR1 to AGR6 in particular apply.

The northern part of the county close to the site is designated as an Area of Outstanding Natural Beauty.

None of the listed views or prospects are relevant to the site.

5.2. Natural Heritage Designations

5.2.1 Natura 2000 sites in the vicinity of the site are Knocksink Wood SAC (000725) and Ballyman Glen SAC (000713) located c. 1.2km southwest of the site and c.1.6km southeast of the site respectively.

6.0 The Referral

6.1. Referrer's Case

- The majority of the training Gallops is in the function area of Dun Laoghaire Rathdown County Council with a small portion of the gallops in Wicklow. An Bord Pleanála determined under PL.06D.RL3363 that the track was exempted development.
- Subsequent to that decision there was correspondence that two public rights of way crossing the land in an east-west line may be restricted by the track. The more northerly was, and remains, passable. The more southerly route was never fully accessible or usable. The owners of the land facilitated and assisted the Dublin Mountain Partnership to construct a proper walkway parallel to the southern right of way which is now in use.
- The area within the functional area of Wicklow County Council contains an artificial ski slope, changing rooms, coffee shop/tea rooms, walkers pathways (constructed in 2018 by Dublin Mountain Partnership), grassed

open space and a small section of the Gallops. The primary use of the lands within the function area of Wicklow County Council are therefore recreational and not agricultural. Therefore there is no material change of use of this portion of land.

- Reference to a right of way within the functional area of another local authority is of no relevance to this Section 5 and should not form part of the adjudication process of the Section 5 Referral.
- The Council has erred in its reference to restrictions on exempted development under article 9(1)(a)(viii) in their conclusion that as the gallops is an extension of an equestrian facility the restrictions apply.
- The track generally falls into the definition of exempted development prescribed under Class 10 of Schedule 2, Part 3 of the Planning and Development Regulations, 2001 (as amended). In terms of the requirement to not be more than 2m higher than the surrounding land, it is submitted that given the mountainous topography of the area it is necessary to smooth out the extreme in level changes. It is argued that it would be unreasonable to decide on the exemption based on a small section of the track alone rather than looking at how the track, as a whole complies with the exemptions for the majority of its distance within Wicklow. Where the surrounding ground level is higher than the track in parts, it is submitted that this balances the declines.
- The railings around the track fall into the definition of exempted development prescribed under Class 4 of Schedule 2, Part 3 of the Planning and Development Regulations, 2001 (as amended) as they have a height of 1.35m.
- The track was constructed late 2015/early 2016, yet Wicklow County Council have only raised the issue in 2018. The Section 5 is on foot of a warning letter dated 13th December 2018.

6.2. Planning Authority Response

Comments from the Senior Executive Planner (15th May 2019).

- Reference to the gallops, directly to the north of the area which is the subject of the current Section 5 application, located in the Dun Laoghaire Rathdown County Council function area which were the subject to ABP Ref. No. PL.06D.RL3935. At the time the Inspector stated that the railings shown bounding the track on both side were approx. 1.35m high. There was no reference to alterations in ground levels directly resulting from the cut and fill process that was required to construct the gallops development.
- It is considered that this type of development constitutes a singular construction and as such should comply in its entirety with condition and limitation 4 with its overall height not exceeding 2m when measured from the original ground level of the land that existed prior to construction.
- Under Referral RL3307 the Board did not accept the recommendation of the Inspector, which had sought to distinguish between the different parts of a deck. The Board decided that the deck in question was one single construction and was development and not exempted development.
- There are areas of the Gallops development (Specifically where it meets the county boundary with Dun Laoghaire Rathdown) where the development, if considered as a singular construction, extends above the original ground level significantly in excess of the 2m height limitation as per condition and limitation 4 of Class 10 and based on the Boards own interpretation under RL3307, this breach of condition and limitation 4 would render the entire structure non-compliant with the exempted provision of Class 10 and render it development that is not exempt development.

The above would render mute any concern regarding obstruction of access through any ROW.

6.3. Submissions

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 (1) of the Act provides the following definitions:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.”

Section 3(1) of the Act states the following in respect of ‘development’:

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”

Section 3 (2) (b) (iii) states *“for the purposes of subsection (1) and without prejudice to the generality of that subsection – where the land becomes used for any of the following purposes – the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders waste, rubbish or debris, the use of the land shall be taken as having materially changed.”*

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

7.2. Planning and Development Regulations, 2001

Article 5 (2) in Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is

situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1), subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with certain conditions and limitations.

Article 9 (1) of the regulations sets out various restrictions on works that would otherwise be exempted development under Article 6.

Class 4 of Schedule 2 of Part 3 provides that *“the construction, erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.”*

This exemption is subject to 2 conditions/limitations:

1. The height of the wall or fence, other than a fence referred to in paragraph 2, shall not exceed 2 metres.
2. The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.

Class 10 of Schedule 2 of Part 3 provides that *“the erection of an unroofed fenced area for the exercising or training of horse or ponies together with a drainage bed or soft surface material to provide an all weather surface”*.

This exemption is subject to 4 conditions/limitations:

1. *No such structure shall be used for any purpose other than the exercising or training of horses or ponies.*
2. *No such area shall be used for the staging of public events.*
3. *No such structure shall be situated within 10 metres of any public road, and no entrance to such area shall be directly off any public road.*
4. *The height of any such structure shall not exceed 2 metres.*

8.0 Assessment

It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the exercise track/gallops run, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

In carrying out this assessment, the planning referrals data base was consulted. The following referrals of relevance were found.

RL3812

Whether the erection of an unroofed fenced area for the exercising or training of horses or ponies together with a drainage bed or soft surface material to provide an all weather surface is or is not development or is or is not exempted development at Palmerstown House Estate, Johnstown, Co. Kildare.

The Board in May 2018 made a decision stating that the development was not exempted development.

RL2676

Whether the construction of unroofed fenced area for exercising horse/ponies with drainage bed and all weather surface and construction of 2 metre wall/fence is or is not exempted development or is or is not exempted development at Kilconlea, Abbeyfeale, Co. Limerick.

The Board in the August 2010 made a decision stating that the development was not exempted development.

Pertaining to the applicant's landholding:

RL3363

Whether the erection of an unroofed fenced area for the exercising or training of horse/ponies and a drainage bed or soft surface is or is not development or exempted development at the former Kiltiernan Golf and Country Club. The Board made a decision on the April 2016 stating that:

- (a) Construction of an unroofed fenced area constitute works.

- (b) The works constitute development pursuant to section 3 of the Planning and Development Act, 2000.
- (c) The development comes within the scope of Class 1 of Part 3 of the Schedule 2 of the Planning and Development Regulations 2001.

And concluded that the works were development and were exempted development.

Other:

The Planning Authority is in their correspondence dated 15th May 2019 have referred to **RL3307** as a precedent in relation to not distinguishing between sections of a deck for the purposes of a section 5 referral. RL3307 does not refer to decking, it refers to a section 5 where the question was *whether the removal of exterior lights, removal of sign and replacement of window with PVC window is or is not development or is or is not exempted development.*

RL3370 refers to whether the construction of decking at Villa Marina, Sorrento Heights, Dalkey, Co Dublin is or is not development and is or is not exempted development. The referral related to decking at a residential property on a steeply sloping site. The property had several distinct levels, as did the adjoining property (Referrer's). As such, a key issue was the actual ground level per Article 5(2). The referral was made by a Third Party (adjoining landowner). The Planning Authority had issued a split decision.

The Board decided that the erection of decking was development and not exempted development, as follows:

- The erection of decking constitutes works that are development.
- Schedule 2 Part 1 Class 6(a) sets out exempted development provisions in respect of decking.
- The erection of the decking resulted in the level of the ground being altered by more than one metre above the level of the adjoining ground level (i.e. adjoining property).
- the decking therefore did not comply with the Condition and Limitation set out under Column 2 of Class 6(a.)

8.1. Is or is not development

The subject development required the excavation of land, backfilling and the construction of track topped with sand. I am satisfied that due to the nature of the proposed works, that these would fall within the definition of 'works' under Section 2 of the Act and thus are considered to constitute 'development' for purposes of Section 3 of the Planning and Development Act.

8.2. Is or is not exempted development

Article 6(3) of the Planning and Development Regulations 2001, as amended makes provision for classes of development set out in Part 3 of the Regulations to be exempted development subject to any provisions of Article 9.

In determining whether the development is or is not exempted development in this instance the Board should also have regard to Article 5 (2) in Schedule 2 of the Planning and Development Regulations which sets out that unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose "ground level" means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Class 10 of Schedule 2 of Part 3 of the Regulations provides that *"the erection of an unroofed fenced area for the exercising or training of horses or ponies together with a drainage bed or soft surface material to provide an all weather surface"* shall be exempted development subject to 4 conditions.

Having reviewed the information submitted by the applicant, I am satisfied that the development would meet 3 of the 4 conditions/limitations. 1) It is understood that the track is used for the purpose of exercising horses, 2) it will not be used for the staging of public events and 3) the track is not located within 10 metres nor accessed from a public road.

Having regard to the provisions of Article 5 (2) of the Regulations applied to the issue of what constituted the level of the adjoining ground, for the purposes of interpreting the conditions and limitations of Class 10. The track/gallops exceeds the 2 metre height threshold for a section of the track which is the subject of this referral.

I conclude, therefore, that the track as described in the referral documentation comes does not within the exempted development provisions of Class 10 of Schedule 2 of Part 3 of the Regulations.

Class 4 of Schedule 2 of Part 3 of the Regulations provides that a wall or fence shall not exceed 2m in height.

Having regard to the provisions of Article 5 (2) of the Regulations applied to the issue of what constituted the level of the adjoining ground, for the purposes of interpreting the conditions and limitations of Class 4. The railings along both sides of the track have a height of c.1.35m along the section track that is over 2m in height above ground level and therefore does not meet condition/limitation no.1.

I conclude, therefore, that the railings as described in the referral documentation do not come within the exempted development provisions of Class 4 of Schedule 2 of Part 3 of the Regulations.

8.3. Restrictions on exempted development

Article 9 of the Regulations sets out a number of restrictions on exempted development. Having regard to these restrictions I am satisfied that under Article 9 (1) (a):

(i): The development does not contravene a condition of a previous permission as there is no planning history pertinent to the site. Condition No 2(b) of PL.06D.246501 set out '*that gallops shall terminate at Chainage 1515, and the trees beyond this point shall be retained*'. The reason noted was to protect trees on the site are of landscape value. The application boundary as outlined in red under PA Ref. No. 15A/0453 (ABP PL.06D.246501) does not include the relevant area which is the subject of the current referral before the Board. As

such the relevant trees were not located on the site which is the subject of this referral, I consider that the section of the track that is the subject of this referral does not contravene condition no. 2(b) of PL.06D.246501.

(ii), (iii): The development does not relate to a development which would comprise alterations to an entrance to a public road. Nor would the development endanger public safety by reason of a traffic hazard. The site has no access to a public road and the proposed use would not result in any intensification of traffic to the site.

(iv): The development does not relate to the construction of a building and thus will have no impact on building lines.

(v): The development does not relate to development comprising alterations to a building or works under a public road.

(vi): Having regard to the extent of development and the provisions of the current Wicklow County Development Plan, I am satisfied that the development would not interfere with the character of the landscape or a view or prospect of special amenity value or special interest, the preservation of which is an objective of the plan.

(vii), (viiA): The development will not impact on places, caves, sites or features of archaeological, geological, historical, scientific or ecological interest. It will not consist of or comprise the excavation, alteration or demolition of any archaeological monument. The nearest recorded monument is c. 100 metres south of the site and the nearest protect structure is located a significant distance away.

(viiB): In relation to Article 9(1)(a)(viiB) the Board must satisfy itself that the development does not require appropriate assessment. There are a number of Natura sites as detailed in section 5.2 above within 15 km radius of the site. Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant

effect on European Site No.002122 Wicklow Mountains SAC or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

(ix): The track does not comprise works to a building or structure to which this article would apply.

(x), (xi): The track does not comprise fencing or enclosure of land habitually open to the public nor is there any evidence that it would obstruct a right of way. The two Right of Way which have been noted in the documentation are do not affected the section of track/gallops which is the subject of this referral.

(xii) (9) (1) (b): The development is not within an ACA or an area subject of a Special Amenity Area Order.

Article 9 (1) (a) (viii) sets out the following restriction:

“Consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.”

The current referral relates to lands that are located within the administrative area of Wicklow County Council. However, the track subject of the referral is in fact part of a larger track, the majority of which is located on lands within the applicant's control, in the administrative area of Dun Laoghaire Rathdown County Council.

On the basis of the planning history, it is evident that there are elements of the wider track/gallops that do not have the benefit of planning permission nor have been the subject of a previous Section 5 referral.

I do not consider that the part of the track/gallops subject to this referral cannot be considered in isolation. It is intrinsically and functionally connected to the wider race track, and as such must be considered as a single development.

As parts of the wider track/gallops do not have the benefit of planning permission or exempted development status, I consider the current proposal constitutes and extension to an unauthorised structure and therefore, the restriction on exemptions under Article 9 (1) (a) (viii) of the Planning and Development Regulations, 2001 (as amended) apply.

Section 9 (a) (viiC) sets out the following restriction:

“Consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.” The development does not impact on a designated NHA.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction and operations of a track/gallops for the exercising of equine animals as constructed at Killegar is or is not development or is or is not exempted development:

AND WHEREAS NIJINSKY Property Company requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 20th day of March 2019 stating that the matter was development and was not exempted development:

AND WHEREAS NIJINSKY Property Company referred this declaration for review to An Bord Pleanála on the 16th day of April 2019.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2, 3 and 4 of the of the Planning and Development Act, 2000, as amended,
- (b) Article 5(2), 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,

- (c) Class 10 of Part 3 of the Planning and Development Regulations, 2001, as amended,
- (d) Class 4 of Part 3 of the Planning and Development Regulations, 2001, as amended,
- (e) The planning history of the landholding.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction of a track/gallops for the exercising of equine animals constitutes works;
- (b) the works constitute development pursuant to section 3 of the Planning and Development Act, 2000;
- (c) the development does not come within the scope of Class 10 of Part 3 of Schedule 2 to the Planning and Development Regulations 2000 as the track/gallops exceeds 2m in height.
- (d) the development does not come within the scope of Class 4 of Part 3 of Schedule 2 to the Planning and Development Regulations 2000 as the fence exceeds 2m in height as a result of (c) above.
- (e) the restrictions on exemptions outlined in Article 9 (1) (a) (viii) are applicable in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the said works, consisting of the construction and operation of a track/gallops for the exercising of equine animals as constructed is development and is not exempted development.

Dáire McDevitt
Planning Inspector

25^h July 2019