



An
Bord
Pleanála

Inspector's Report ABP 306905-20.

Development	Completion of first floor extension and roof to existing ground floor plan, parking and ancillary site works granted under Planning Register Reference Number 08/20.
Location	Woollen Mill Derrybawn, Laragh, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority Reg. Ref	2015.
Applicant	Joe O'Neill
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellants	(1) Aysar Barbouti (2) Adam English (3) Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht. (4) Michael Conway

Observers

John Brady TD

Date of Site Inspection

11th of August 2020

Inspector

Siobhan Carroll

DECISION QUASHED

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DECISION QUASHED

1.0 Site Location and Description

- 1.1. The appeal site is situated circa 730m to the south of the village of Laragh. The Laragh lies at the junction of three roads the R115, R755, and R756 which run through the Wicklow Mountains. It is situated 3km to the east of the monastic settlement of Glendalough and its' location within a highly scenic and historic landscape therefore makes it a popular tourist destination.
- 1.2. The stated site area is 1.037 hectares. It lies at the base of Derrybawn Mountain in the valley of the Glendasan River. This forms part of the Wicklow Mountains National Park. The Green Road walking route to Glendalough traverses the base of the mountain and passes through the woodland. Access between the farm complex and the site is by way of a 'green road' as well as by the main roads. The site is partially located within the Wicklow Mountains SAC (NPWS site code 002122).
- 1.3. The Regional Road the R755 serves the site and is accessed via a private road and over Derrybawn Bridge which is a protected structure. The site contains Glendalough Woollen Mills. It houses a craft and tourist shop which sells items including woollen knitwear, homewear and jewellery.
- 1.4. The premises is served by parking to the front and rear of the buildings. Access to the courtyard to the rear is under the archway which can accommodate a car/small van. Substantial work has been carried out on a hotel extension to the rear of the premises, however works have ceased at present.
- 1.5. The grounds of Laragh GAA are located to eastern side of the Glendasan River. Derrybawn House is situated to the south-west of the site.

2.0 Proposed Development

- 2.1. Permission is sought for the completion of 366.32 sqm first floor bedroom extension and roof to existing ground floor plan, consisting of dining room, reception, sun lounge, toilets, store, lift and lobby to existing ground floor extension, car parking, connection to existing services and site ancillary works granted Planning Ref No 08/20.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission subject to 3 no. conditions. Condition no. 3 specified that the development shall be carried out and completed in accordance with the terms and conditions of the permission granted under planning register reference number PRR 02/7344, PRR04/2045 and PRR08/20.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Authority note that proposal relates to the completion of development which was pursuant of previous permissions under PRR 02/7344, PRR 04/2045 and PRR 08/20 and that a significant amount of the development permitted has been carried out. It was concluded that the proposed development would not unduly impact on the visual amenities, the environment, public health, flooding and traffic.

3.2.2. Other Technical Reports

EHO: no objection subject to condition.

Roads: Requested that a yield system be put in place for vehicles crossing the bridge. Details of bus drop-off area to include turning area for same and should be detailed.

Environment: no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water: Further information requested.

3.4. Third Party Observations

- 3.4.1. The Planning Authority received 8 no. submissions/observations in relation to the application. The main issues raised are similar to those set out in the third party appeals.

4.0. Planning History

PA Reg. Ref. 12/6700 & PL27.241866 – Permission was refused by the Planning Authority and granted on appeal for the retention of conversion and alterations to outbuilding to residential use comprising first floor extension to side and rear, conservatory to rear and permission for window and dormer roof.

PA Reg. Ref. 08/20 – Permission was granted for retention of lower ground floor basement, extension to existing ground and first floor plans and minor alterations to elevations granted under PA Reg. Ref. 04/2045. Permission also granted for construction of two storey extension consisting of bedrooms to the first floor dining room, reception, sun lounge, toilets, store, lift, and lobby to ground floor plan, car parking and connection to existing services and ancillary works.

PA Reg. Ref. 13/8751 – Extension of Duration of PRR 08/20 was granted. Expiry date 25/7/2019.

PA Reg. Ref. 04/2045 & PL27.212167 – Permission was granted for change of use of previously approved bed and breakfast (PA Reg. Ref. No. 02/7344) to hotel.

PA Reg. Ref. 02/7344 & PL27.206158 – Permission was granted for extensions and alterations to existing Bed and Breakfast.

5.0 Policy Context

5.1. Wicklow County Council Development Plan 2016 – 2022

- Chapter 7 – refers to Tourism and Recreation
- Objective T2 – To ensure that all tourism and recreation developments are designed to the highest quality and standards.
- Volume 3 – Appendix 1 - Development and Design Standards
- Volume 3 – Appendix 11 – Strategic Flood Risk Assessment

5.2. Laragh – Glendalough Settlement & Tourism Plan 2016 – 2022

Objective LG8 – Facilitate the appropriate development of the following sites for mixed use tourist developments, whilst ensuring the protection of the character and setting of natural and built heritage, as relevant to the site:

- The Old Mill Building for a mixed use tourist development. Any proposed development shall be of an exceptionally high quality design and shall include uses that reflect its landmark location within the settlement.
- Woolen Mills at Derrybawn (including the provision of parking facilities and the promotion of the use of the Green Road as a pedestrian and cycle link to Glendalough),
- Derrybawn House, in accordance with T23, Chapter 7: Tourism and Recreation of the CDP.
- Laragh Castle/ former Military Barracks

5.3. Natural Heritage Designations

- 5.3.1. The northern section of the site is located within the Wicklow Mountains SAC (Site Code 002122).
- 5.3.2. The Wicklow Mountains SPA (Site Code 004040) is located 1km from the site.
- 5.3.3. The Vale of Clara (Rathdun Wood) SAC is located 4.7km to the south-east.

5.4. Environmental Impact Assessment (EIA)

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0. The Appeal

6.1. Grounds of Appeal

(1) A third party appeal has been submitted by Kiaran O'Malley & Co. Ltd. on behalf of Ms. Aysar Barbouti. The issues raised are as follows;

- In relation to the planning history on the site it is noted that under PRR 02/7344 permission was granted for an extension to the existing B&B and that the extension was subsequently changed to a hotel on foot of PRR 04/2045 and PL27.212167. A commencement notice was lodged with the Council on 11th September 2006 which stated a commencement date of construction on 26th of September 2006.
- Under PRR 08/20 permission was granted for retention of lower ground floor basement, extension to existing ground and first floor plans and minor alterations to elevations granted under PA Reg. Ref. 04/2045. Permission also granted for construction of two storey extension, car parking and connection to existing services and ancillary works.
- An extension of duration for planning permission reference 08/20 was granted to extend the life of the permission up to the 25th of July 2019.
- It is submitted in the appeal that planning permission 02/7334 and 04/2045 both lapsed over 11 years ago and that no further works can be constructed on foot of those permissions. It is evident that none of the works approved by those planning permissions have been completed or are close to completion. It is noted that neither the extended B&B granted under PRR 02/7344 nor the change of use of that B&B to a hotel granted under PRR 04/2045 has ever been operational.
- The appellant disagrees with the Council's position that 'certain parts of the development are substantially completed' as detailed in a letter from the Council issued to the applicant dated 29th November 2019. It is submitted that the completion of the 'limited works' specified by the Council only relate to those works subject to PRR 08/20 would still render the development incomplete and uninhabitable.

- The applicant has been unable to put in place the foul drainage connection to the public foul system as required under condition no. 10 of PRR0 08/20 because the applicant requires the consent of the owner of the road and Derrybawn Bridge to do so. The appellant is the owner of the road. The development of the car parking has not been carried out, nor has the provision of sightlines at the R755 as required by condition no. 3 of PRR 02/7344 & PL27.206158. It is the appellant's position that none of the approved development as per PRR 02/7344, PRR04/2045 and PRR 08/20 have been completed or substantially completed. It is therefore submitted that the works on site constitute unauthorised development.
- The drawings submitted with the application do not include existing survey drawings of the 'as built works on site.
- Regarding the reports submitted with the application it is stated that none of the reports have been prepared for the proposed development that is the subject of the current application. It is the opinion of the appellant that the application should have been deemed invalid by the Council.
- It is submitted that the applicant has not provided a letter of consent for works on land outside the applicant's ownership for the proposed foul drainage. A conservation method statement was not provided in respect of Derrybawn Bridge, which is a Protected Structure. The applicant did not screen the proposed development for appropriate assessment or prepare a Natura Impact Statement. A substantial part of the site is located within the Wicklow Mountains SAC. A flood risk assessment was not submitted as part of the application. A large part of the site is located within Flood Zone A and Flood Zone B.
- It is proposed to connect the development to the public foul sewer. The appeal cites the section of the Laragh-Glendalough Settlement and Tourism Plan 2016-2022 which refers to waste water treatment. It states, '*Laragh is served by the Laragh Wastewater Treatment Plant, which is located at Brockagh. The plant provides preliminary, primary and secondary treatment. Treated effluent is of good quality and discharges to the Avonmore River. The plant is currently the subject of a Waste Water Discharge Licence that was*

granted in December 2009. The plant has a design capacity of 1,000p.e. and has a current loading of 902. No new development shall be permitted unless there is adequate capacity in the wastewater collection and treatment system.'

- It is submitted that the Council did not consider this matter in their assessment of the proposal.
- It is contended that the proposed development would create a traffic hazard at the Rathdrum Road through the provision of inadequate sightlines.
- It is contended that the proposed development would have a detrimental impact on the character and integrity of Derrybawn Bridge, a protected structure.
- The appellant requests that the Board overturn the decision of the Planning Authority and refuse permission for the reasons set out in the appeal.

(2) A third party appeal has been submitted by Adam English. The issues raised are as follows;

- The proposed development does not have access to foul drainage.
- The development would entail substantive works within the Wicklow Mountains SAC.
- An oral hearing was requested.

(3) A third party appeal has been submitted by the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht. The issues raised are as follows;

- It is considered that the Planning Authority made their decision contrary to its obligations under Article 6 (3) of the Habitats Directive as provided for in Part XAB of the Planning and Development Act 2000.
- The proposed works are comprised within and adjacent to the Wicklow Mountains Special Area of Conservation (SAC), site code 002122. The qualifying interest is the Old Sessile Oak Woods with Ilex and Blechnum in the

British Isles [91A0]. The conservation objectives for this habitat are to restore and increase this habitat and to reduce habitat fragmentation.

- It is considered that there was an absence of recorded and published screening decision and appropriate assessment.
- It would appear that the Council have relied on the Planners Report as the screening decision. It is submitted that the Council did not fulfil its obligation to publish a screening decision in this case in which it set out its reasons for “screening out” for a stage 2 appropriate assessment.
- The surveys submitted with the application were carried out with twelve years ago in 2008. The Department advises that any survey data over 3 years old needs to be updated.
- Based on the Planner’s report it appears that the Council relied on the 2008 surveys submitted with the application for PRR 08/20.
- The appellant cites the decision of the Court of Justice of the European Union in respect of the Waddenzee case (C-117/02) which emphasized the importance of using best scientific knowledge when carrying out appropriate assessment. The matter of cumulative effects in relation to appropriate assessment is also raised.
- It is submitted that without having regard to current survey data the local authority could not reasonably conclude that the application either individually or in combination with other plans and projects would not significantly affect the conservation objectives for the qualifying interest of the SAC.
- The Ecological report, 2008 relies on mitigation measures to protect the SAC. The decision of the Court of Justice of the European Union in respect of the People Over Wind v. Coillte case (C-127/02) is cited. The position held in the case was that mitigation measures cannot be considered at the stage 1 screening stage.
- It is submitted that the report of the Planning Officer did not provide sufficient or detailed reasons to “screen out” for appropriate assessment, it also relies on out dated surveys which rely on mitigation measures which cannot be taken into account at the screening stage.

- It is considered that the decision of the Council was made contrary to its obligations under the EIA Directive. It is the position of the Department that the Planning Authority in order to comply with the requirements of the EIA Directive is obliged to issue a screening decision on whether or not the project should be subject to an EIA.
- The property is subject to a legal right of way owned and enjoyed by the Minister by way of the "Green Road".
- The Minister's right of way runs through the applicant's yard which is the subject of the application. The current plans propose to amend the route of the Minister's legal right of way. The appellant states that the applicant did not seek to obtain the consent of the Department to alter the Minister's right of way. Furthermore, the Minister is not in a position to agree to the amendment because such an alteration would seriously encroach upon the Minister's enjoyment of the right of way.
- The proposed amendment entails the creation of access to the courtyard parking via the archway which will create a traffic hazard between motorists and walkers coming from and going to Glendalough.
- The weight restrictions on Derrybawn Bridge is highlighted. The access to the site is restricted due to the weight restrictions on Derrybawn Bridge, a Protected Structure. The Planning Authority should have had regard to the limited access to the site.
- The Traffic Management Report was prepared in 2010 and the Engineers report was prepared in 2003. Therefore, given that the Traffic Management Report is over a decade old the traffic management issues need to be revisited to take into account the current condition of the bridge.
- The Department understands currently due to restrictions on the bridge that any vehicle larger than a small single axel truck cannot access the bridge. The traffic management report does not make provision for large/awkward loads to access the site.

(4) A third party appeal has been submitted by Michael Conway. The issues raised are as follows;

- The appellant expresses concern in relation to the foul drainage proposals. The feasibility of providing a foul sewer on lands outside the site is raised.
- The proposed development would entail development within Wicklow Mountains SAC.
- An oral hearing was requested.

6.2. Applicant Response

A response to the third party appeal lodged by Aysar Barbouti was submitted by LPS Planning Consultants on behalf of the applicant Joe O'Neill on the 10th of June 2020. The issues raised are as follows;

- The application was required because the extension of duration of PRR 08/02 granted under Reg. Ref. 13/875 ran out and the Council refused a second extension of duration of planning permission of PRR 08/02 due to a reason of a technical nature.
- The current application seeks to complete PRR 08/02 as the applicant is in a position to do so now. The proposed development comprises (1) the completion of 366.32sq m first floor bedroom extension and roof to the existing ground floor plan, consisting of dining room, reception, sun lounge, toilet, store, lift and lobby to existing ground floor extension. (2) Car parking (3) Connection to existing services (4) Site ancillary works granted under PRR 08/02.
- One issue raised in the appeal is that the application refers to new development not previously granted under PRR 08/02. The applicant confirms that the planning application seeks to complete works started under the granted permission PRR 08/20 but which were not completed due to aftermath of the economic crash of 2008. It is highlighted that there is nothing in the proposed application which differs from that submitted to the Planning Authority under PRR 08/20.
- It is highlighted that the applicant Mr. Joe O'Neill maintains a Right of Way from the R755 to the Woolen Mills including across Derrybawn Bridge. This is

confirmed by Mr. O'Neill's solicitor, Freehill Craughwell Solicitors. A copy of Mr. O'Neill's 'Deed of Conveyance' is included with the appeal response.

- It is submitted that the proposed development is fully in line with the relevant policies of the Wicklow County Development Plan 2016-2022 including Section 7.4 and Objectives T1, T2, T3, T10 and T18. The proposal would also be in accordance with the provisions of the Laragh – Glendalough Settlement & Tourism Plan 2016 – 2022.
- The matter of up to date technical reports was raised in an appeal. In response to this it is stated that there is nothing in planning law, planning regulations or planning which prohibits the re-submission of technical reports where they remain accurate. While it may not be best practice the applicant considered that the cost of new reports is disproportionate and he and the Council both consider that there have been no material changes that require new reports.
- The applicant disagrees with the assertion that the proposed development would result in an intensification of unauthorised development. The application seeks to complete works granted under PRR 08/20 which stopped due to the economic downturn. Planning permission lapsed on the works and no deliberate unauthorised development has taken place.
- The matter of traffic hazard is raised in the appeals. The findings of the Traffic Assessment Report and the Wicklow Co. Co. Roads Department wholly disagree with this. No technical report produced by any qualified transport, roads and traffic consultant has been provided to support the suggestion that the proposal would create a traffic hazard on the Rathdrum Road.
- Vehicular access to the Woollen Mills via Derrybawn Bridge has been assessed under previous applications and was properly assessed under PRR 08/20 and has also been properly assessed under the current application.
- In relation to the matter of site falling within the Wicklow Mountains SAC this is acknowledged however it is the consideration of the applicant and the Council that the proposed development would have no impact on the SAC.

- It is set out in the appeal that the proposed development will be unable to the connect to public foul sewer as the connection would entail a route via the access road between the Woollen Mills and the R755. The applicant is proposing the same foul drainage arrangements as those permitted under PRR 08/20. The report of the Council's Planning Officer states 'connection into the public mains was permitted under PRR 08/20 to serve the permitted and authorised development. Therefore, the issue cannot be revisited.' Accordingly, the report makes it clear that connection to existing services and ancillary works are included in the development description.
- As previously detailed the applicant Mr. O'Neill maintains a legal Right of Way between The Woollen Mills and the R755. The public watermain serve the Woollen Mills via the road and the bridge. The subject site is located within a 'green road' which is de facto a public road which is a public Right of Way. The proposed connection to the public sewer network would be wholly located within the 'green road'.
- The Council granted permission for the proposed development despite the appellant's submission in relation to the proposed connection to the public sewer. It is considered that the Board can do likewise. The appellant argues that the applicant does not have sufficient legal interest to carry out the proposed development in terms of the sewer connection. The applicant disputes this and submits that this matter can be addressed by the Board by adding a note to a grant of permission that sets out Section 34 (1)(13) of the Planning and Development Act 2000 (as amended) which states: "A person shall not be entitled solely by reason of a permission under this section to carry out any development".
- In relation to matter of the validity of the application, on review of the hard copy planning file and also the online file it is clear that the validation process was undertaken and that it was found to comply with the requirements of Article 22 and Article 23 of the Planning and Development Regulations 2001 (as amended). The applicants planning consultant confirms that the drawings submitted with the application fully articulate the remaining areas of PRR 08/20 which are proposed.

- The appeal refers to proposed car parking be located within The Wicklow Mountains SAC. The appeal response notes the Report of the Planning Officer in respect of the matter which states, *“Under PRR 08/20 the impact of the overall development on the Wicklow Mountains cSAC was previously dealt with in an Ecological Assessment report. Having regard to the scale and nature of the current development which is the completion of the permitted development under PRR 08/20, it is note considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site and therefore a Stage 2 Appropriate Assessment (and submission of a NIS) is not required.”*
- The appeal stated that insufficient information had been submitted and that the report submitted with the application were produced for the previous planning permission Reg. Ref. 08/20. The applicant considers that the reports provided with the application remain accurate and up-to-date to assess the application.
- The report of the Council’s Planning Officer is noted which states, “The application relates to the completion of a development which was carried out pursuant to previous permissions under PRR 02/7344, PRR 04/2045 and PRR08/20. A significant amount of the development permitted has been carried out. Having regard to this and the design and scale of the development, it is considered that the proposed development would not unduly impact on the visual amenities, the environment, public health, flooding, traffic etc. The issues raised by Irish Water, Environment Section, Roads Section and EHO relate to the overall development on site. The proposed development does not significantly alter the impact relating to those issues particularly given water supply, sewerage, connection, traffic etc were dealt with and conditioned under the previous permission.
- In relation to the issue of appropriate assessment it is responsibility of the Planning Authority to decide whether a Natura Impact Statement is required.
- The appeal refers to issue of flooding. It is submitted that the development as permitted under PRR 08/20 was undertaken in line with the reports produced by O’Sullivan Scientific including; Assessment of the impact of flooding on the

site and the Geological and Assimilative Capacity Assessment of Proposed Discharge from Hotel at Woollen Mills, Derrybawn, Laragh, Co. Wicklow. These reports which assess the issue of flooding were considered by the Council to be sufficient to assess the previous application PRR 08/20 and the current application. It is noted that the Woollen Mills has operated as a tourist facility for the past thirty years and as a home of the applicant since prior to 1964. The property has not been flooded, and/or exacerbated flooding in the area.

- In relation to the proposed connection to the Laragh Wastewater Treatment Plant it is highlighted that the foul water discharge from the site, having previously been granted would have been anticipated by the Council under the existing capacity of the Laragh Wastewater Treatment Plant. The report of the Planning Officer in relation to the matter states, *“Connection into the public mains was permitted under PRR 08/20 to serve permitted and authorised development. Therefore the issue cannot be revisited.”*
- It is submitted that the decision of Wicklow County Council should be upheld.

A response to the third party appeals lodged by Mike Conway and Adam English was submitted by BPS Planning Consultants on behalf of the applicant Joe O'Neill on the 22nd of June 2020. The issues raised are as follows;

- The appeals refer to the planning history on site. It is noted that the current appeal is the fifth that the Board has been asked to assess since 1991 and that the Board were fully averse with the planning history of the site. It is also noted that the report of the Council's Planning Officer provides a comprehensive review of the planning history of the site.
- In relation to the matter of access to foul drainage it is highlighted that Section 3.6 of the Irish Water referral report on the file confirms that a waste water connection is feasible. Planning permission PRR 08/20 had already granted planning permission for the works necessary to achieve this connection. The current application confirms that the previously granted technicalities of achieving the connection are to be the same as before. As part of the appeal response the applicant has provided an alternative route to achieving this

connection to demonstrate to the Board that an alternative route to foul drainage connection can be achieved if necessary.

- It is noted that the report of the Council's Planning Officer concluded that *'Connection into the public mains was permitted under PRR 08/20 to serve permitted and authorised development. Therefore the issue cannot be revisited.'* The report further states, *'The issues raised by the Irish Water, Environment Section, Roads Section and EHO relate to the overall development on site. The proposed development does not significantly alter the impact relating to those issues particularly given water supply, sewerage, connection, traffic etc were dealt with and conditioned under the previous permissions.'* Therefore, the Council clearly had regard to the advice from Irish Water, however as detailed in the report it does place the advice in the context of a previous grant of planning permission for foul water to be treated in the same way as now proposed.
- The appeals refer to how works are proposed within the Wicklow Mountains SAC. Part of the site is located within the Wicklow Mountains SAC as are other parts of Laragh and Glendalough. The sensitivity of the part of the site located within the SAC is acknowledged. The proposed development aims to complete a part finished extension to the existing hotel already granted in 2008 which was assessed to have no impact on the SAC.
- The appeals do not provide any technical reports produced by qualified and experience environmental consultants which show that the proposed development would impact on the Wicklow Mountains SAC.
- These matters are addressed in full in the reports submitted with the appeal responses submitted on the 22nd of June 2020. These include reports prepared by NM Ecology Ltd – Consultant Ecologists and Future Analytics.
- Revised plans have been submitted which include an updated 'Proposed Site Layout Plan' which would cause no realignment of the Department's existing Right of Way. This would necessitate minor revisions including the relocation of surface parking spaces. Plans for an alternative route from the site to the public mains foul sewer are also submitted. Should the Board deem the alternative route for the proposed foul sewer connection appropriate the

applicant is amenable to the attachment of a condition requiring this alternative route.

A response to the third party appeal lodged by the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht was submitted by BPS Planning Consultants on behalf of the applicant Joe O'Neill on the 22nd of June 2020. The issues raised are as follows;

- In relation to the use of reports and surveys submitted with the application and which are over three years old, it is considered that the Best Practice Guidelines from the Chartered Institute of Ecology and Environmental Management (CIEE) does not state that all reports over three years old need to be updated because they are invalid. The report states that they are 'unlikely' to be still valid.
- The Council was entitled to decide if the reports surveys submitted with the application remained valid notwithstanding their age.
- In response to the appeal from the Department new reports have been submitted by the applicant.
- An Ecological Impact Assessment dated 17th of June 2020 was submitted. The report concluded that while part of the site is located within the Wicklow Mountains SAC, there will be no direct impacts on the qualifying interests of the SAC, however there is a potential risk of indirect impacts on otters.
- A report entitled 'Natural Impact Statement' and dated 17th of June 2020 was submitted. The report concluded that there will be no direct impacts on any of the qualifying interests of the Wicklow Mountains SAC. The report advised that indirect impacts could be addressed by implementing a number of recommendations.
- An Environmental Impact Assessment screening report dated 12th of June 2020 was submitted. It is detailed in the report that the proposed development does not fall within the list of activities requiring mandatory EIA as set out in Annex 1 of the EIA Directive and Parts 1 of the Planning and Development Regulations 2001, as amended. The proposed development was considered under the relevant list of activities which warrant discretionary

consideration for the requirement of an EIA. It was concluded that the proposed development does not exceed any of the thresholds listed in Annex II of the EIA Directive and Part 2 of Schedule 5 of the Planning and Development Regulations 2001 as amended. The proposed development does not fall within the list of activities requiring discretionary EIA as set out in the legislation. It is therefore concluded that an EIA should not be required for the proposed development.

- A report entitled 'Structural Review and Inspection of the Existing Stone Arch Bridge at Derrybawn Bridge, Laragh, Co. Wicklow dated 22nd of July 2019 was submitted. The report was originally produced in 2019, however it was reviewed by the project Engineer for the purpose of the appeal responses.
- The report recommends a number of additional ongoing measures which would help to maintain the bridge. Should the Board deem it appropriate to require any or all of the bridge protection measures then applicant will adhere to such a condition.
- The appellant details the planning history on site specifically PRR 02/7344 & PL27.206158 where permission was granted for the extension and alterations to the existing bed and breakfast and associated site works and PRR 04/2045 where permission was granted for change of use of previously approved bed and breakfast accommodation to hotel. The first party notes that the Department did not make a submission in relation to those applications.
- In relation to the permission granted under PRR 08/20, the first party notes that the letter from the Department dated 16/1/2009 concluded that the Department was satisfied that the proposed development would have a 'minor' impact and that the 'ecological survey of the proposed development site has been conducted in accordance with EU Habitat legislation.'
- The current application seeks to complete the development granted under PRR 08/20.
- It is noted that the Department did make a submission in respect of the permission granted under PRR 12/6700 & PL27.241866 for the retention of conversion and alterations to outbuilding to residential use comprising first

floor extension to side and rear, conservatory to rear and permission for window and dormer roof.

- An extension of duration of the permission granted under PRR 08/20 was granted by the Council under PRR 13/8751. The report of the Planning Officer stated that there had been no significant planning policy changes since the grant of planning permission which would make the proposed inconsistent with the proper planning and development of the area. It was noted in the report that the site is partially located within the Wicklow Mountains SAC and that under PRR 08/20 the proposed development was subject of an Appropriate Assessment in accordance with the requirements of Article 6(3) of the EU Habitats Directive.
- In relation to the current proposal as detailed in the report of the Planning Officer the Planning Authority were satisfied that there would be no significant adverse impact on the SAC and that there would be no new significant adverse environmental impacts arising from a grant of permission.
- In relation to the matter of weight restriction of Derrybawn Bridge, the issue was addressed by the Planning Authority by way of reapplying the conditions referring to PRR 08/20 which require specific measures to be undertaken regarding the bridge.
- In relation to Wicklow Co. Council's screening of the planning application with regard to Appropriate Assessment it is undertaken within the Planner's report which is the same approach taken by the Board in its assessment.
- The Department's current assessment of the proposal states that mitigation measures cannot be considered at the Stage 1 screening stage. Reference is made to how in case C-323/17 People Over Wind and Peter Sweetman v Comite that the CJEU ruled that mitigation measures could not be taken into account at the screening stage of an appropriate assessment.
- The appellant highlights that the Department in their previous assessment of the scheme under 08/20 considered that it would have no significant impact on any European site.

- The reports produced by NM Ecology Ltd confirm the assessment of the Planning Authority that the proposed development will have no significant impact on the European site.
- In relation to the matter of EIA screening, Future Analytics produced an 'Environmental Impact Assessment Report (EIAR) screening report. In order to satisfy the Department they treated the project as 'sub-threshold' development. They concluded that significant environmental effects are unlikely to arise from the proposed development. Therefore, it is concluded that an EIA should not be required for the proposed development.
- The appeal refers to the Minister's legal right of way along the "Green Road" which passes through the applicant's property. The applicant is aware of the Minister's Right of Way and has been since he purchased the property in the early 1960's. The applicant is unclear what is proposed in the current application which is any different to that proposed under the permission which was granted under PRR 08/20. The applicant is proposing to slightly amend the alignment of the Right of Way as it passes through the car parking area on the north side of the existing arch.
- Currently there are no road markings on the subject road the route through the arch 'The Green Road' is just an unmarked and unregulated road. The car parking area to the north of the archway is designed to act as a traffic chicane to slow vehicles down as they drive into or out of the arch in either direction.
- The appellant considers that the Department as seeking to revisit the matter Minister's Right of Way and that it is unreasonable given the extent of works which have already been carried out at the site with the Department's agreement under the permission granted under 08/20.
- The appellant disagrees with the suggestion that the car park if permitted and development will interfere with the Department's property rights and create access and safety concerns.
- Should the Board decide to grant permission, it can be granted in line with planning permission PRR 08/20 which the Department had no issue with at the time. Alternatively, the permission can be granted subject to a condition addressing the objection of the Department in relation to the Minister's Right

of Way. A condition could be attached requiring that a revised parking layout be agreed with the Council's Roads Department that does not result in any change to the existing Right of Way.

- In relation to Derrybawn Bridge and weight restrictions, the applicant appointed the Engineering firm, DJ Fitzpatrick Consulting Engineers to produce a report entitled 'Structural Review and Inspection of the Existing Stone Arch Bridge at Derrybawn Bridge, Laragh, Co. Wicklow.
- The conclusion of the report states, *'The sheer age of the masonry arch bridges means that virtually all such bridges can be deemed to be defective in one or more respects, whether it is spalling masonry or lack of waterproofing. However, from a structural point of view, the only defects which are of concern are those which will have a significant impact on the ability of a given bridge to successfully support foreseeable applied loading.' ... 'The findings of our visual inspection revealed the bridge to be in a good structural condition considering its age but also requiring some maintenance due to the presence of various defects such as the extent of overgrowth noted on the spandrel/wing walls.'*
- The report recommends a number of temporary measures which could be implemented to mitigate the risk of the spandrel wall movement and to safeguard the operational road without affecting the continued use of the bridge. These include temporary speed restrictions over the bridge, the removal of the vegetation to allow special/sensitive examinations, manual monitoring using traditional surveying techniques, structural monitoring using automated instrumentation, temporary strengthening works such as external tie bars, measures to ensure the traversing vehicles are positioned centrally on the bridge when crossing. This will reduce the possibility of lateral forces on the spandrel wall and the likelihood of any defects developing any further.
- It is concluded in section 6 of the report that straightforward maintenance and remedial works that would restore defects to the existing bridge to its original load carrying capacity.
- The issue of Derrybawn Bridge has been assessed in all the previous permission PRR 02/7344, PRR 04/2045 and PRR 08/20. The conditions

pertaining to PRR 08/20 address the issue in full specifically condition no. 8 and condition no. 9.

- Condition no. 8 states, 'The function room shall be ancillary to the hotel on site, and only residents of the hotel shall be allowed to be served in this facility, unless planning permission is granted for its use to outside residents. Reason: To protect the Derrybawn Bridge, in order to define the scope of the permission and in the interest of traffic safety.
- Condition no. 9 states, '(a) Access to the site shall be limited to normal transport, heavy/abnormal loads shall not be permitted to cross the Derrybawn Bridge. The proposed development shall not cater for or accept bus or coach traffic. No occupation of this development shall occur until such time as signage at the site indicated in the submissions has been licensed or received planning permission, to inform drivers of this issue. In addition all informational brochures, internet sites shall inform potential customers of this issue. (b) traffic management plan shall be put in place to deal with the following: (i) construction traffic to the site, (ii) Deliveries; (iii) customer traffic to the site. This plan shall be submitted to and agreed in writing by the Planning Authority **before any further works are carried out on site.** Reason: In the interest of the protection of Derrybawn Bridge, a protected structure, and traffic safety.
- If these conditions are attached again the applicant states that they will fully adhere to them.
- The report of the Council's Roads Department stated that, 'A yield system should be put in place for vehicles crossing the bridge.' It is noted that this would be carried out if condition no. 9 were reapplied.
- The Planning Authority in their issuing of permission in relation to the proposal attached condition no. 3 which states, 'The development shall be carried out and completed in accordance with the terms and conditions of the permission granted under planning register reference number PRR02/7344, PRR04/2045 and PRR08/20.

- Having regard to the above the appellant considers that there is no reason why the objections raised by the Department in respect of the stated restrictions on Derrybawn Bridge should be upheld.
- The applicant requests that the Board uphold the decision of the Council to grant permission.

6.3. Planning Authority Response

- None received

6.4. Observation

An observation to the appeals has been submitted by John Brady, TD in support of the proposed development.

6.5. Further Responses

A further response has been received from Kieran O'Malley & Co. Ltd. on the 12th of August 2020 on behalf of Ms. Aysar Barbouti in response to the other third party appeals. The main planning issues raised are as follows;

- It is reiterated that the appellant Ms. Aysar Barbouti is the owner of the road from Derrybawn House to the public road R755.
- Ms. Barbouti had the condition of the bridge examined by an accredited Consultant Engineer when she became concerned about the safety of the structure. Ms. Barbouti is undertaking the restoration of the bridge. The Consultant Engineers advised that the weight limit on the bridge be lowered from 28 tonnes to 5 tonnes.
- In relation to the submitted environmental impact assessment screening report it is considered that the report did not take into account the construction impacts of the overall development in the context of part of the applicant's landholding being located within a European Site and its proximate location to other European Sites.

- It is stated that the applicant is not entitled to submit a NIS in respect of unauthorised development. It is considered that the NIS does not address the cumulative impact of the proposed development taken together with the development which has already been carried out on the site.
- In relation to the connection to the foul sewer it is considered that the pipe connecting the sewer is not included within the red line boundary of the site. It is highlighted that connecting pipe runs through land which is owned by Ms. Barbouti.
- The appellant's concerns regarding alleged unauthorised development on the site are reiterated.
- It is submitted that the proposed development would be contrary to Objective LG21 of the Laragh – Glendalough Settlement and Tourism Plan. LG21 states, "no development will be permitted that adversely affects the integrity of a Natura 2000 site".
- The appellant reiterates their concerns in relation to the deficiencies in the Laragh waste water treatment system.
- The appellant reiterates their concerns in respect of the provision of adequate sightlines at the junction of the private road serving the site and the R755.
- It is submitted that the applicant has failed to address the appellant's grounds of appeal.

A further response has been received from Michael Conway on the 11th of August 2020 in response to the first party response to the appeal.

- Mr. Conway states that he reserves the right to appeal the decision of the Planning Authority in respect of Planning Register reference 20/15.

A further response has been received from Adam English on the 11th of August 2020 in response to the first party response to the appeal. The main planning issues raised are as follows;

- Concern is expressed in relation to the proposed foul drainage connection including the alternative proposal to locate foul drainage pipe.

- The appellant raises the matter of Irish Water and their recommendations in relation to the proposed connect to the Laragh wastewater treatment plant.
- The appellant reiterates concerns in respect of alleged unauthorised development at the subject site.

A further response has been received from the Development Applications Unit on the 11th of August 2020 in response to the first party response to the appeal. The main planning issues raised are as follows;

- As set out in the grounds of appeal if the Planning Authority relied on the 2008 surveys without having regard to updated scientific data and/or without having regard to the cumulative effect of other plans and projects on, or near, the SAC, in that event, the decision does not comply with the requirements, as set down by the CJEU in relation to Article 6(3) of the Habitats Directive.
- The Department welcomes the inclusion in the applicant's submission to the Board of a NIS dated 3rd of June 2020, an EIA^R screening report dated 17th of June 2020 and an Ecological Impact Assessment including the results of recent ecological surveys dated June 2020.
- These documents facilitate the fuller assessment of potential impacts on the European sites especially the Wicklow Mountains SAC. The possibility of direct and indirect impacts on the Wicklow Mountains SAC was recognised.
- The development site is adjacent to and overlaps the Wicklow Mountains SAC. In accordance with the permission granted under PRR 08/20 it is proposed to provide car parking for the hotel by widening and tarmacking an existing track within the SAC. Apart from the original track most of the new car park in the SAC will be constructed in areas previously used for camping. The removal of 17 no. trees will be required including 3 no. mature beech trees.
- The only Annex I Habitat and Qualifying Interest for the Wicklow Mountains SAC which is present in the section of the SAC in the vicinity of the proposed development is 'Old sessile oak wood with Ilex and Blechnum in the British Isles. It is noted that none of this habitat is affected by the proposed development. The habitat in the small section of the SAC which would be

directly affected by the development is beech dominated mixed broad-leaved woodland (plantation) with smaller areas of wet grassland and scrub.

Therefore it is determined that the proposed development will have not direct impact on any Annexed habitat/Qualifying interest for the Wicklow Mountains SAC.

- The Habitats Directive Annex II species otter *Lutra lutra* is a Qualifying Interest for the Wicklow Mountains SAC. Potential indirect effects on this species arising from the proposed development were identified. Surveying of the stretch of the Glendassan River in the vicinity of the site found no spraint or other signs of the definite presence of otters, it was considered likely that the stretch of river constitutes an important commuting and foraging area for the otter. Indirect impacts on otters might potentially arise if there was pollution of the Glendassan River by materials originating from the development during construction or operational phase.
- The NIS states that the decommissioning of the existing on site wastewater treatment plant and construction of a connection to the public sewer would represent an improvement on the baseline scenario by removing the outdated on-site treatment plant. The NIS does not consider the methodology of the transport of the foul sewage away from the development site or the impacts of additional loading to the Laragh wastewater treatment plant.
- Mitigation measures are proposed to avoid pollution of the Glendassan River during the construction phase. It is noted that no mitigation measures are proposed in the NIS to avoid impacts on the Wicklow Mountains SAC during the operational phase arising from surface water runoff from the Woollen Mills site.
- It is noted that one of the conditions attached by the Planning Authority in their grant of permission under PRR 08/20 condition no. 5(I) stated, all surface waters from the site should be channelled through adequately sized petrol/oil interceptors prior to discharge to the watercourse. Under the further information response submitted to the application PRR 08/20 the applicant proposed to install two petrol interceptors in the two parking areas associated with the development. The Site Layout Plan Drawing no: JONL/4 submitted

with the application indicates an oil interceptor in the first car parking but there is none indicated in the parking area to be built in the SAC.

- The NIS does not evaluate any potential impacts on otters which arise as a result of the applicant's proposal to the Board to consider an alternative route for the foul sewer connection.
- The Ecological Impact Assessment identified the danger that clearance of trees and scrub in the north of the proposed development site could result in the destruction of active birds nests if carried out during the bird breeding season. It is strongly recommended that all the tree felling and site clearance is carried out between September and February (inclusive) i.e. outside of the main nesting season.
- The Ecological Impact Assessment identified that bat roosts would be disturbed by an increase in artificial lighting. Consequently the design principles for 'bat sensitive lighting to be utilised during both the construction and operational phases of the Woollen Mills development are proposed.
- The submission advises that the Board should request further information from the applicant regarding the following matters. To indicate the location of where a petrol interceptor will be installed within the car park in the north-west of the development site. Provide a detailed construction management plan for the alternative foul sewage connection proposed to transport sewage from the Woollen Mills to the Laragh Wastewater treatment plant including details of proposed pumping station and details of the installation of the pipe along the route parallel to the Glendasan River up to Glendalough-Laragh Road and to include mitigation measures to be adopted to avoid pollution of the Glendasan River during construction.
- A detailed operation management plan for the alternative foul sewage connection was also recommended. A revised Natura Impact Statement was recommended to include evaluation of any potential impacts on the Wicklow Mountains SAC in particular the otter which may result from the construction of the alternative sewage connection between the Woollen Mills and the Laragh wastewater treatment plant.

- If the Board considers it appropriate to grant permission the DAU recommends the attachment of conditions. They recommend a condition to ensure that the mitigation measures proposed in the NIS to prevent pollution of the Glendasan River during the course of construction be implemented in full. That any clearance of vegetation from the development site including tree felling be carried out during the months of September to February. That only bat friendly lighting be installed in the proposed development and that a bat roost and activity survey of the Woollen Mills be carried out immediately before the commencement of works.
- The DAU notes in relation to mitigation measures necessary to protect the SAC the position, as they set out in the grounds of appeal that such mitigation measures cannot be considered at the stage 1 screening stage to screen out for appropriate assessment and therefore it will be necessary for the mitigation measures to be considered by way of a stage 2 appropriate assessment.
- Regarding the Minister's lands at Derrybawn it is noted that the applicant has now proposed an alternative route as set out in the Revised Site Layout Plan that does not seek to alter and encroach upon the Minister's Right of Way.
- The Department's position in relation to the original route proposed remains as set out in the grounds of appeal.
- The Department confirms that the new proposed alternative route as delineated on the plan entitled "Revised Site Layout Plan" does not encroach or interfere with the Minister's legal right of way as marked with a red dashed line on the plan.
- The Department notes that the applicant has commissioned a Structural Review and Assessment of the Derrybawn Bridge dates the 22nd of July 2020.
- As set out in the grounds for appeal the Department is one of the main users of the bridge to access their land holding on a daily basis by the Right of Way. Any damage to the bridge would therefore seriously hinder that ability of the Department staff to access the Minister's lands. They reiterate the points made in relation to the deficiency of the 2010 traffic management plan and

recommend that new traffic management plan is commissioned to address their concerns as well as the traffic safety issues.

A further response has been received from BPS Planning Consultants on behalf of the application on the 11th of August 2020 in response to third party further submissions. The main planning issues raised are as follows;

- In relation to the connection public foul sewer it is highlighted that the Board should consider the two options. Both the originally proposed route and the alternative route. The alternative route has been designed by Dunbar Lunn Consulting Engineers who confirmed to BPS that their work is based on site investigations and OS mapping.
- Regarding the 'Structural Review and Inspection of the Existing Stone Arch Bridge at Derrybawn Bridge, Laragh, Co. Wicklow dated 22nd of July 2019 and prepared by DJ Fitzpatrick Consulting Engineers, it is submitted that it provides a wholly adequate basis on which the Board can make its decision regarding the use of the bridge by the applicant.
- It is noted that issues relating to Derrybawn Bridge have been assessed in all previous applications. It is stated that the applicant is willing to accept any condition relating to the use of the bridge.
- It is reiterated that the applicant Mr. O'Neill maintains a legal Right of Way over the bridge and that this has been accepted under all previous planning decisions made by Wicklow Co. Council and the Board referring to Mr. O'Neill's property.
- It is submitted that the report prepared by DJ Fitzpatrick Consulting Engineers in respect of the Derrybawn Bridge which is only a year old has been accepted by Wicklow Co. Council as providing an acceptable basis for granting planning permission.
- It is submitted that the applicant has provided all the information which is required to address the concerns raised by all the appellants. It is respectfully requested that the decision of Wicklow Co. Council be upheld by the Board and that planning permission be granted for the proposed development.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeals and it is considered that no other substantive issues arise. The issues can be dealt with under the following headings:

- Principle of development
- Vehicular access
- Foul drainage
- Other issues
- Appropriate Assessment

7.1. Principle of development

- 7.1.1. The proposed development consists of the completion of a first floor extension and roof to existing ground floor plan with parking and ancillary site works to a development permitted under PRR 08/20. Under PRR 13/8751 an extension of duration of PRR 08/20 was granted by the Planning Authority. This permission expired on the 25/7/2019. A grounds of appeal raised the matter of the principle of the development in respect of the level of development carried out on foot of the previous permissions on site PRR 02/7344, PRR04/2045 and PRR 08/20. It was submitted in the appeal that the development has not been completed or substantially completed, that development carried out is different from that which permission was granted and that the works on site constitute unauthorised development.
- 7.1.2. In response to this the first party confirms that the current application seeks to complete works started under the granted permission PRR 08/20. These works were not completed within the duration of the permission because the applicant was impacted by the economic crash of 2008. The first party state that there is nothing in the proposed application which differs from that submitted to the Planning Authority under PRR 08/20. The Planning Authority in their assessment of the proposal considered that a significant amount of development has been carried. Having inspected the site, I would fully concur with the opinion of the Planning Authority.

Therefore, having regard to these matters I am satisfied that the current application seeks to complete a previously permitted development and that it does not entail any further development.

- 7.1.3. The proposal, the completion of the previously permitted development of a first floor bedroom extension to the permitted hotel is in accordance with Objective LG8 of the Laragh/Glendalough Tourism and Settlement Plan 2016-2022. Objective LG8 seeks to facilitate the appropriate development of a number of sites including the Woolen Mills at Derrybawn for mixed use tourist developments, whilst ensuring the protection of the character and setting of natural and built heritage, as relevant to the site.

7.2. Vehicular access

- 7.2.1. A number of the appeals raised the issue of vehicular access. The site is served by the existing vehicular access from the Regional Road the R755 to the east via a private road and over Derrybawn Bridge which is a protected structure.
- 7.2.2. The appeals refer to the provision of sightlines at the junction of the private road and the regional road the R755. The other matters raised in relation to vehicular access refer to the use of the Derrybawn Bridge and the existing Right of Way of the Minister of the Department of Culture, Heritage and the Gaeltacht along the "Green Road" which passes through the applicant's property.
- 7.2.3. Firstly, in relation to the proposed vehicular access arrangements I note that this matter has previously been assessed and permitted under PRR 08/20. The current application seeks the completion of this previously permitted development. The report of the Planning Officer refers to this and states that the proposed development does not alter the impacts relating to traffic and that the matter was dealt with and conditioned under the previous permissions. Therefore, the provision of sightlines at the junction of the private road and the R755 has been addressed.
- 7.2.4. Secondly, regarding the use of the Derrybawn Bridge, the applicant Mr. O'Neill has confirmed that he maintains a Right of Way from the R755 to the Woolen Mills including across Derrybawn Bridge. I note that the use of the Derrybawn Bridge by vehicular traffic generated by the development has previously been assessed and has been permitted under PRR 08/20. The first party submitted a report 'Structural Review and Inspection of the Existing Stone Arch Bridge at Derrybawn Bridge,

Laragh, Co. Wicklow dated 22nd of July 2019. This report which was originally produced in 2019 has been reviewed by the project Engineers to address the issues raised in the appeals. As detail in the response from the first party the DJ Fitzpatrick Consulting Engineers confirmed that the assessment detailed in the report of July 2019 is up to date. They recommend a number of additional ongoing measures which would help to maintain the bridge. The first party state that they would be amenable to the Board attaching a condition requiring bridge protection measure should they deem it appropriate. The first party note that the matter of the condition of Derrybawn Bridge was previously addressed in conditions attached to PRR 02/7344, PRR04/2045 and PRR 08/20. The relevant conditions including no's 8 and 9 of PRR 08/20 refer to limiting the use of the hotel function room and also restricting heavy/abnormal loads from accessing Derrybawn Bridge. The Planning Authority in their grant of permission of the current application attached a condition which specified that the development shall be in carried out and completed in accordance with the conditions attached to the permissions granted PRR 02/7344, PRR 04/2045 and PRR 08/20, except as amended by the plans lodged in connection with the application and the conditions attached to the permission. I consider that this is an appropriate approach to ensure that usage of Derrybawn Bridge will be in accordance with the levels as previously assessed and determined as acceptable.

7.2.5. Thirdly, in relation to the Right of Way of the Minister for Department of Culture, Heritage and the Gaeltacht along the "Green Road" the applicant acknowledges the right of way. They submit that the appellant did not makes submissions/observations in relation to the previous application under PRR 08/20 regarding the Minister's Right of Way and that the proposed access arrangements and car parking proposed under the current application are the same as that permitted under PRR 08/20.

7.2.6. In response to the matter the applicant has proposed an alternative route as set out in the Revised Site Layout Plan – Drawing No: JONL/4–20A submitted to the Board on the 22nd of June 2020. In their further submission to the appeal the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht state that the revised proposal does not alter or encroach upon the Minister's Right of Way. The proposal represents a minor alteration to the layout of the parking area and vehicular circulation area within the existing courtyard. Therefore, I would

recommend that should the Board decide to grant permission that a condition be attached requiring this revision in the layout.

7.3. Foul drainage

- 7.3.1. The appeals raised concern in relation to the proposed foul drainage connection. The appeals also questions whether the Laragh wastewater treatment plant has sufficient capacity to accommodate the additional loading the proposed development would generate.
- 7.3.2. The Laragh – Glendalough Settlement & Tourism Plan 2016 – 2022 refers to existing wastewater treatment plant which serves Laragh which is located at Brockagh. The Plan states that the plant has a design capacity of 1,000p.e. and has a current loading of 902. It advises that no new development shall be permitted unless there is adequate capacity in the wastewater collection and treatment system.
- 7.3.3. Regarding the connection to the Laragh wastewater treatment plant I note the report of the Planning Officer which states that the proposed development does not alter the impacts relating to sewerage connection and that the matter was dealt with and conditioned under the previous permissions. The permission granted under PRR 08/20 included the construction of a two-storey extension to the hotel with connection to existing services. Therefore, I would concur with the assessment of the Planning Authority that the additional loading generated by the previously granted extension to the hotel has already been factored into the capacity of the Laragh wastewater treatment plant and the principle of connection to the treatment plant from the subject development has already been permitted under PRR 08/20.
- 7.3.4. The appeal lodged by Aysar Barbouti argues that the applicant does not have sufficient legal interest to carry out the proposed development in terms of the sewer connection. The first party disputes this assertion. It is stated in the response from the first party that the applicant Mr. Joe O'Neill maintains a Right of Way from the R755 to the Woolen Mills including across Derrybawn Bridge. A copy of the 'Deed of Conveyance' is included with the appeal response. The appeal response also states that the matter can be addressed by the Board by adding a note to a grant of permission that sets out Section 34 (1)(13) of the Planning and Development Act

2000 (as amended) which states: "A person shall not be entitled solely by reason of a permission under this section to carry out any development".

- 7.3.5. As part of the appeal response the applicant has provided an alternative route to achieving this connection to demonstrate to the Board that an alternative route to foul drainage connection can be provided if necessary. This is indicated on revised drawings submitted to the Board on the 10th of June 2020. It would entail the construction of a new foul sewage pump station and the laying of a sewer pipe under the Glendasan River and across the lands to the north with connection to the public sewer on the R756. This is an option for the Board should they consider that the applicant would be unable to provide a connection to the public foul sewer via the route as proposed under the application i.e. via the private road with connection at the R755.
- 7.3.6. Having regard to the fact that the previous permitted development on site under PRR 08/20 included the connection to the public foul sewer via the route as proposed originally under this application, that the Planning Authority were satisfied with this and also that the applicant has confirmed that he maintains a legal Right of Way between the Woollen Mills and the R755, I consider that connection to the foul sewer as proposed under the application would be acceptable.

7.4. Other issues

Flooding

- 7.4.1. A ground of appeal refers to the matter of flooding. As indicated on the map titled 'Indicative Flood Zones' in the Laragh-Glendalough Settlement and Tourism Plan 2016-2022 areas of the application site lie within Flood Zone A. This includes a section of the existing Woollen Mill building immediately to the west of the Glendasan River. I also note that the area of car parking proposed to the northern section of the application site lies within Flood Zone A.
- 7.4.2. Appendix 11 of the Wicklow County Development Plan 2016-2022 is the Strategic Flood Risk Assessment. A Strategic Flood Risk Identification Assessment of Laragh-Glendalough was undertaken. It identified that the 'Laragh Glendalough Tourism Corridor' includes land that is at a high and moderate risk of flooding (Flood Zone A and/or B). The land use objective for these lands promotes uses that are acceptable

in the 'rural area' and uses relating to the development of tourist infrastructure and facilities, and recreational uses.

- 7.4.3. It is advised in the SFRA that it is considered appropriate to ensure that the type of development proposed on flood risk lands within the Tourism Corridor is not especially vulnerable to the adverse impacts of flooding. In relation to the current proposal it entails the completion of first floor extension and roof to existing ground floor plan with parking and ancillary site works to a development permitted under PRR 08/20. I note that the extension to the existing Woollen Mill building which includes the area of extension which is the subject of this application is located outside the designated flood zones. However, the car parking area to the north of the site lies within Flood Zone A. I would note that car parking is a more water compatible development than other uses such as residential or commercial and it can therefore be placed in the flood zones. Furthermore, having regard to the fact the subject scheme entails the completion of a previously permitted development, I would consider the proposal is acceptable in this context.

Birds and Bats

- 7.4.4. The further submission received from the Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht raised the matter of ecological impacts in relation to birds and bats. The proposed development would entail the clearance of trees and scrub in the north of the site. The Department advised that this could result in the destruction of active bird's nests if carried out during the bird breeding season. Accordingly, they recommend that all the tree felling and site clearance is carried out between September and February (inclusive) i.e. outside of the main nesting season. I note this matter. Should the Board decide to grant permission, I recommend the attachment of a condition to address the issue.
- 7.4.5. The Department in their further submission also highlighted that bat roosts could be disturbed by an increase in artificial lighting. The Department recommends the use of 'bat sensitive' lighting during both the construction and operational phases of the development. Should the Board decide to grant permission, I recommend the attachment of a condition requiring the applicant to provide a lighting scheme including proposals for 'bat sensitive' lighting for the agreement of the Planning Authority.

7.5. Appropriate Assessment

AA Screening

- 7.5.1. The application site at Derrybawn, Laragh, Co. Wicklow is partially located within the European Site, the Wicklow Mountains SAC (Site Code 002122). The area of the application site which lies within the Wicklow Mountains SAC is the proposed location of a car parking area. The Wicklow Mountains SPA (Site Code 004040) lies 1km to the west of the application site. The Vale of Clara (Rathdrum Wood) SAC (Site Code 000733) lies 4.7km to the south-east of the application site.
- 7.5.2. The Natura Impact Statement (NIS) submitted with the appeal response dated 3rd of June 2020 considers whether the proposed development would have any potential impact on the qualifying interests and conservation objectives of the Wicklow Mountains SPA, the Vale of Clara SAC and the Wicklow Mountains SAC.
- 7.5.3. The Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht in their appeal raised the matter of whether the surveys submitted with the application were adequate to assess the proposal. In response to this matter I note the further submission received from the Department which acknowledged that the applicant submitted a NIS dated 3rd of June 2020, an EIAR screening report dated 17th of June 2020 and an Ecological Impact Assessment which included the results of recent ecological surveys dated June 2020. In their further submission the Department advised the Board that these documents facilitate the fuller assessment of potential impacts on the European sites especially the Wicklow Mountains SAC. Accordingly, I am satisfied that the matter of the adequacy of surveys as raised by the Department in respect of potential impacts on the qualifying interests and conservation objectives of the European sites has been addressed.
- 7.5.4. The qualifying interests/special conservation interests of the designated sites, are summarised as follows:

Wicklow Mountains SPA – Site Code (004040)	Vale of Clara (Rathdrum Wood) SAC – (Site Code 000733)
Merlin (<i>Falco columbarius</i>) [A098] Peregrine (<i>Falco peregrinus</i>) [A103]	Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]

- 7.5.5. The conservation objective of the Wicklow Mountains SPA is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. The conservation objective of the Vale of Clara SAC is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
- 7.5.6. In relation to the Wicklow Mountains SPA the Merlin and Peregrine which are the qualifying species nest in conifer plantations or on the ground heath and bog habitat. These habitats are not found in the vicinity of the subject site. Therefore, it is unlikely these species would use the area of the subject site. Furthermore, given the distance from the subject site to the SPA pathways via surface water, ground water, land and air can be ruled out.
- 7.5.7. In relation to the Vale of Clara SAC the qualifying interest is the Old sessile oak woods with Ilex and Blechnum in the British Isles. The Glendasan/Glenealo/Avonmore River does provide a hydrological pathway between the subject site and the Vale of Clara SAC. The Old sessile oak woods with Ilex and Blechnum in the British Isles is a terrestrial habitat and there is a considerable distance of watercourse between the subject site and the SAC therefore any pollutants would be diluted and the river is not determined to be a viable hydrological pathway. Therefore, indirect impacts can be ruled out.
- 7.5.8. In relation to the Wicklow Mountains SAC (Site Code 002122) the qualifying interests/special conservation interests of the designated site, is summarised as follows:

Wicklow Mountains SAC – Site Code (002122)
Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]
Natural dystrophic lakes and ponds [3160]
Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]
European dry heaths [4030]
Alpine and Boreal heaths [4060]
Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130]

Species-rich *Nardus* grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230]

Blanket bogs (* if active bog) [7130]

Siliceous scree of the montane to snow levels (*Androsacetalia alpinae* and *Galeopsietalia ladani*) [8110]

Calcareous rocky slopes with chasmophytic vegetation [8210]

Siliceous rocky slopes with chasmophytic vegetation [8220]

Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]

Lutra lutra (Otter) [1355]

- 7.5.9. The only Annex I habitat which is located in the vicinity of the subject site is Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles. The only Annex II species which occurs in the Wicklow Mountains SAC is *Lutra lutra* (Otter).
- 7.5.10. The conservation objective of the Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles is to restore the favourable conservation condition of Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles in Wicklow Mountains SAC, which is defined by a list of attributes and targets.
- 7.5.11. Regarding the Old sessile oak woods, as detailed in the NIS, the area of the subject site located within the Wicklow Mountains SAC does not contain this Annex I habitat. Accordingly, the proposed development will not cause direct impacts on any Annex I habitat within the SAC. In relation to indirect impacts during the construction phase and operational phase, the Old sessile oak wood located in the vicinity of the subject site are situated at a higher ground level than the development site. Therefore, there would be no associated surface or ground water from the development which would have a pathway to the Annex I habitat. Accordingly, the proposal would not cause indirect impacts on any Annex I habitat.
- 7.5.12. The conservation objective of *Lutra lutra* (Otter) is to maintain the favourable conservation condition of Otter in Wicklow Mountains SAC, which is defined by a list of attributes and targets. As detailed in the NIS the otter may be active along the Glendasan River corridor. The surveying carried out did not detect otter holts in the vicinity of the application site and there were no field signs of this species including

spraint, latrines, slides and couches. Therefore, there would be no direct impacts upon this Annex II species.

- 7.5.13. The Development Applications Unit of the Department of Culture, Heritage and the Gaeltacht in their further submission raised the matter of potential impacts which may arise from the construction of the proposed alternative route for the sewage connection between the Woollen Mills and the Laragh wastewater treatment plant. I note that the NIS did not directly address this matter. However, following my assessment of the proposals for connection to the public sewer under Section 7.3 of this report, I determined that should permission be granted, that the connection to the public sewer as originally proposed under the application was the appropriate option and I therefore do not recommend the alternative route.
- 7.5.14. In relation to indirect impacts as detailed in the NIS it is possible that pollutants arising during the construction stage could reach the Glendasan River and cause a reduction in water quality. The document notes that pollution of surface water is not listed as a threat to otters in Ireland. Therefore, the risk of indirect impact is deemed low. In terms of the operational phase of the development the NIS states that the proposed development includes the decommissioning of the existing on-site treatment plant and discharge pipe which currently serves the existing premises. The connection to the Laragh wastewater treatment plant therefore represents an improvement on the baseline scenario. During the operational phase some limited sources of pollution could arise from petrol or oil leaks from vehicles.
- 7.5.15. The Development Applications Unit in their further submission raised the matter of whether the NIS considered the impacts of additional loading to the Laragh wastewater treatment plant. In relation to this matter I would note that the additional loading generated by the proposed development has been previously factored into the capacity of the treatment plant because connection to the treatment plant from the subject development has already been permitted under PRR 08/20. Furthermore, as detailed above the decommissioning of the existing on-site waste water treatment plant serving Laragh Woollen Mills located adjacent to the Glendasan River will provide an improvement in terms of water quality.
- 7.5.16. Regarding in-combination effects the NIS cites the permission granted for the changing room building and all weather GAA pitches adjacent to the subject site on

On the eastern bank of the Glendasan River. Should construction of this development take place at the same time as the proposed development it is possible that pollutants arising from both construction sites could cause in-combination effects.

7.5.17. It was concluded in the NIS that the risk of direct impacts on qualifying interests of the SAC can be ruled out, there is a slight risk of indirect impacts on otters arising from potential water pollution.

7.5.18. The NIS sets out a series of mitigation measures proposed to be implemented during the construction phase. They are;

- Fuel, oil or chemicals to be kept in containers in the west of the site.
- Machinery to be protected from vandalism and unauthorised interference.
- Any refuelling to take place on the western side of the site in a bunded impermeable area.
- Drip trays to be used to catch leaks from machinery.
- Spill kit to be kept on site.

7.5.19. While the NIS describes these as mitigation measures for the purposes of appropriate assessment, they are not. They constitute the standard operations which occur as part of normal construction practice. It would be expected that any competent developer would deploy them for works on a greenfield site whether or not they were explicitly required by the terms or conditions of a planning permission.

7.5.20. Provided the development is carried out in a competent manner with due regard to the need to control emissions to surface water that would arise on any greenfield land regardless of its proximity to any Natura 2000 site, there is no risk that pollutants could reach the Glendasan River in sufficient concentrations to have any likely significant effects on the conservation objectives of the otter which is an Annex II species of qualifying interest of the Wicklow Mountains SAC.

7.5.21. The Board should note that the submission of the NIS was not advertised. Should the Board wish to carry out a Stage 2 Appropriate Assessment they may wish to consider whether further notices need to be published.

AA Screening Conclusion

7.5.22. In conclusion, it is reasonable to conclude that 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 the Wicklow Mountains SAC (Site Code 002122), or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

8.0 Recommendation

8.1. I recommend a grant of permission.

9.0 Reasons and Considerations

9.1.1. Having regard to the planning history of the site, the provisions of the current Wicklow County Development Plan, the existing pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.

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

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

(2) The development shall be carried out and completed in accordance with the conditions attached to the permissions granted under planning register reference number 02/7344, planning register reference number 04/2045 and planning register reference number 08/20, except as amended to conform with the provisions indicated in the plans lodged in connection with this application and with the following conditions.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows: The layout of the courtyard car parking area shall be in accordance with the Revised Site Layout Plan – Drawing No: JONL/4–20A submitted to the Board on the 22nd of June 2020.

Reason: In the interest of maintaining the location of the existing 'Green Road' on site and the proper planning and sustainable development of the area.

3. A revised site layout plan indicating an oil interceptor within the new car parking area located to the northern section of the site shall be submitted to the Planning Authority for their written agreement prior to the commencement of development.

Reason: In the interest of public health and to protect local water sources.

4.
 - a) Lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning

authority prior to commencement of development. The light scheme shall include proposals for 'bat sensitive' lighting.

- b) The proposed external lighting design shall comply with the Guidance Notes for the Reduction of Obtrusive Light GN01:2011. Prior to the commencement of use of any lighting, confirmation, from a suitably qualified professional that the development complies with this standard shall be submitted to and agreed in writing with the Planning Authority.

Reason: In the interests of the environment, residential amenity and public safety.

5. Trees to be removed on site shall be felled in late summer or autumn. Any disturbance to birds and bats on site shall be in a manner to be agreed in writing with the planning authority on the advice of a qualified ecologist.

Reason: In the interest of nature conservation.

6. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, dust minimisation measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

7. 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 prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to 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.

Siobhan Carroll

Siobhan Carroll
Planning Inspector

8th of October 2020

DECISION QUASHED