



An
Bord
Pleanála

Inspector's Report ABP-319805-24

Question

Whether the construction of circa 40 no. self-contained units / apartments within the equestrian shed (granted under permission P97/396) exempt from planning permission noting the works are well underway?

Location

Wallslough Equestrian Facility,
Wallslough Village, Wallslough, Co.
Kilkenny

Declaration

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

DEC 792

Applicant for Declaration

Mark Hennessy.

Planning Authority Decision

Is exempted development

Referral

Referred by

Mark Hennessy.

Owner/ Occupier

Jim & Tommy Hughes.

Observer(s)

Ger Walsh.

Aidan Kelly.

Date of Site Inspection

7th October 2024.

Inspector

Jennifer McQuaid

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1.0 Site Location and Description

- 1.1. This application should be read in conjunction with adjoining referral planning reference ABP-320262-24 which asked the question whether construction of wastewater/sewage tanks within the grounds of the equestrian shed (granted under permission P97/396) allowed without planning permission noting these are now complete, is or is not development and is or is not exempted development.
- 1.2. The subject site is located in the rural area of Kilkenny County and approximately 5km south of the centre of Kilkenny City. The nearest Village is Bennettsbridge, located approximately 3km southeast of the proposed site. The site is accessed via a local road LS 6700 off the R700.
- 1.3. There is an existing equestrian centre building on site with associated outbuildings. The site is currently under renovation and upgrade works for the proposed temporary emergency accommodation. There are a number of holiday homes at the entrance to the site known as Wallslough Village. And there is an operating furniture store on site.

2.0 The Question

- 2.1. The question before the Board relates to one question:

Whether the construction of circa 40 no. self-contained units/apartments within the equestrian shed (granted under permission P97/396) exempt from planning permission noting the works are well underway?
- 2.2. A neighbour of the landowner has requested a determination from the Board.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority declared that the construction of c.40 no. self-contained units/apartments within the equestrian shed (granted under permission P97/396) is exempt development by the virtue of S.I 306 of 2022 – European Union (Planning

and Development) (Displaced persons from Ukraine Temporary Protection) Regulations 2022.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report dated 17th April 2024 outlines the relevant legislation, the planning history, impact on Natura 2000 sites, assessment declaring the works are development and fall within the exemption criteria. The assessment also notes that the landowner has received a letter of intent from the Department of Children, Equality, Disability, Integration and Youth dated 12th January 2024 in order to provide residential accommodation.

3.2.2. Other Technical Reports

- None

4.0 Planning History

ABP-307584-20 (Kilkenny Reference 19954): Permission granted for change of use of the existing equestrian events & conference centre to light industrial unit for dry foods processing & packaging.

031467: Permission & Retention granted for the existing equestrian facility for use as public events centre, extension, outdoor display area, car parking, flood lighting, signage, entrance and hay barn and the sand arena.

97396: Permission granted to demolish existing sheds and construct 8 holiday homes, a pine furniture workshop, a hay barn & equestrian facility.

91257: Retention permission granted for stables and re-site farm and dwelling house entrance.

5.0 Policy Context

5.1. Development Plan

Kilkenny City and County Development Plan 2021 – 2027, Volume 1 but there are no provisions for relevant to this referral.

5.2. Natural Heritage Designations

The nearest Natura 2000 site is located approximately 1km east of the subject site is:

- River Nore SPA (site code: 004233)
- River Barrow and River Nore SAC (site code: 002162)

6.0 The Referral

6.1. Referrer's Case

A referral has been received from a local resident Mark Hennessy seeking a declaration whether the construction of circa 40 no. self-contained units / apartments within the equestrian shed (granted under permission P97/396) exempt from planning permission noting the works are well underway. The issues raised are:

- Proposed site is located 1km from the River Nore SAC, the Planning Authority concluded the development would not be likely to have a significant effect on any Natura 2000 designated site. Yet requested additional information in relation to water supply and wastewater sewerage proposals.
- The proposal has not been properly screened for Environmental Impact Assessment on the basis of installation of wastewater treatment plants are a type of project covered by category 11(c) of Part 2.
- Material removed off site to accommodate tank, was this removed by licensed haulier? and was it deposited at a licensed landfill facility?
- Images provided and claimed the tank is un-bunded and without any waterproofing membrane to stop leakages.

- New material brought into site, was this transported by licensed carrier and demonstrated it is not waste material but certified material.
- The new tank is located less than 99 metres from the private well and Irish Water Pumping Station both of which are downstream from the tank's location. This tank will accommodate 299 people.
- New boreholes are within 100metre radius of the tank, and this is concerning.
- Water Framework Directive – in the event of a serious spillage will there be a serious incident to River Nore?
- Potential spillage and impact on Wallslough Lake
- Is the on-site effluent storage proposal as is being progressed in this instance identified in the Water Framework Directive as an acceptable approach and suitable management process for any premises?
- Proposal for on-site storage system for wastewater, is this acceptable and in accordance with Kilkenny policies?
- Is an EPA IPC Licence required?
- Developer should clearly outline the direct and significant risks of the proposal in relation to:
 - Population and human health
 - Biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC.
 - Land, soil, water, air and climate.
 - Material assets, cultural heritage and the landscape
 - Interaction between the factors referred to in points (a) and (d).
- The local aquifer is described as “vulnerability”. There appears to be gravel overburden throughout indicating significant pollution pathways.
- Two potential pathways for pollution into local wells.
 - Spill from the facility to the lake and from the artesian spring supplying the lake back into the groundwater/aquifer and

- Pollution directly into the ground from the storage tanks.
- No source protection zone.
- The proposed storage tank could overflow, leak and require emptying on a regular basis, all could result in significant risk of spills and contamination.
- A groundwater protection plan for each well should be developed in accordance with good practice and EPA Drinking Water Advice Note no. 7.
- Potential impact on Wallslough Lake and River Nore and local drinking wells (through the local aquifer) due to the following:
 1. Sources are petrol, potential chemical spills, potential firefighting extinguishment water, industrial chemical cleaning products, effluent and process discharge.
 2. Pathway – indirect pathway within the aquifer from the site to the Wallslough Lake and the River Nore.
 3. Receptor is into the ground water, which is Karst Limestone, and an aquifer deemed to be of a high vulnerability which in turn has the potential to pollute (through the local aquifer) groundwater wells, the Wallslough Lake and River Nore.
 4. EPA requires water abstraction of 25 cubic metres (25,000 litres) of water or more per day, registration of this abstraction with the EPA is mandatory. Has this been done?
 5. A number of questions are put forward to Kilkenny County Council. These are:
 - Do you need planning permission to sink a well for non-domestic purposes?
 - Does the abstraction on the local aquifer have significant environmental impacts on the adjacent groundwater and surface water bodies?
 - Is the local aquifer suitable and does it have adequate recharge for the supply required to facilitate new installation?

- The surface water course and the karst aquifer could be impacted if there are significant pumping and drawdown rates?
- What environmental assessments have been undertaken?
- Is the water supply registered with the local authority and comply with the requirements of the European Union (Drinking Water) Regulations 2023.
- Has any risk assessment or analysis with regard to the well(s) being drilled on the site?
- Any assessment on the potential impact such as well(s) shall have on local wells in the immediate vicinity?

6.2. Planning Authority Response

A response was received, and the following comments were made:

- A valid commencement notice was submitted via the Building Control Management System (BCMS) and are currently carrying out works following a letter of intent from DCEDIY.
- On completion of the refurbishment works and subject to independent certification being issued confirming regulatory compliance has been achieved with Building Control and satisfactory compliance with waste disposal and water supply, Kilkenny County Council are required to issue a Letter of Offer.
- The Planning Authority has taken the view that a letter of intent is equivalent to a contract offered by the state.
- In assessing the proposed development Kilkenny County Council Ukrainian response unit is seeking compliance with all regulatory statutes that are required under building control (Parts A as applicable to the proposed development).
- There is an existing lough known as Wallslough Lake located beside the subject site to the northeast across the local road L6700. The nearest surface water receptor is the River Nore located c. 1.1km northeast of the development route. There is no evidence of open drainage inflow or outflow

from the lake. Surface water from the site, roofs, and hard standing areas, is collected and discharged via an onsite soakaway. There is no evidence of an open water hydrological link between the site and Wallslough Lake.

- There is no evidence of a direct hydrological pathway or ecological stepping stone to the SAC from the subject site.
- On this basis, it is considered that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on any Natura 2000 designated sites.
- The proposed site is not listed in Part 1 of Schedule 5 of Planning and Development Regulations.
- The proposed site is not within the threshold of Part 2 of any type and does not equal or exceed, a quantity, area or other limit specified in that schedule in respect of the relevant class of development.

6.3. Owner/ occupier's response

The owners have responded to the referral with the following comments:

- All excavated material for the construction of the wastewater holding tank has been retained on site. And will be used as a berm to provide a sound barrier to reduce noise from outdoor amenity areas.
- The wastewater holding tank has been constructed in accordance with Uisce Eireann specifications.
- No treatment of wastewater on site and all will be tinkered off site by a registered contractor to a license treatment facility. Therefore, no impact on any borewells located within the vicinity of the tank.
- No licence/permit required to store wastewater on site pending removal by a registered contractor to a permitted facility.
- The site is located approximately 1km from the River Nore SAC, however, there is no evidence of a direct hydrological pathway or ecological stepping stone to the SAC.

- No discharge of wastewater into the groundwaters. All wastewater emanating from the development will be stored in a holding tank which will be emptied when required and tinkered by a license haulier/registered contractor to a permitted waste treatment facility in agreement with Uisce Eireann.
- There is an existing mains water connection from Uisce Eireann, this will be retained and supplemented by an additional water supply from a new on-site borewell. A ground water abstraction impact assessment was carried out by a hydrologist. The most appropriate location for a borehole was considered regarding the volume of water required and to limit any potential impacts from potential sources of contamination to neighbouring domestic wells. The borewell is a highly productive aquifer with 3 times the required demand. The well water was tested and confirmed the water quality will only require minimal treatment by disinfection, would only require softening if required from a network perspective. A worse case zone of contribution area of approximately 10 hectares was calculated, and this does not impose on any neighbouring wells. It will comply with the GAP regulations SI113 of 2022, and with the European Drinking Water Regulations of 2023.
- No changes to the existing access/entrance to the site. No further impact onto the existing surface water on the public road. Mitigation measures were undertaken by Kilkenny County Council in 2021 which have improved and alleviated much of the intermittent surface water flooding after significant periods of heavy rainfall. The management of Wallslough carry out routine maintenance and de-silt gullies on a regular basis.

6.4. Further Responses (observations)

Observation received from Aidan Kelly (local resident)

- No Appropriate Assessment undertaken prior to works commencing.
- Subsurface groundwater vulnerability was not assessed, and any pathways cannot be ruled out.
- Wastewater holding tanks required and therefore SI376/2023 does not apply.

- Article 9(1)(a)(iii) does not allow for an exemption if traffic hazard or obstruction to road users. No footpath or lighting in the area and the proposed residents will not have private transport and have no alternative only to walk.
- Article 9(1)(a)(viii) does not allow for exemptions on extension, alteration, repair or renewal of an unauthorised structure. The last application 19/954 was never implemented and included retention of a side extension to the existing building. Therefore, the use of an unauthorised structure.
- Lack of information on wastewater management proposals of mitigation measures being needed to capture spillage when emptying the wastewater holding tanks.
- SI306/2022 cannot be used to provide accommodation for other International Protection applicants.
- SI376/2023 can accommodate both Ukrainians displaced from war in Ukraine and other International Protection applicants.

Observation received from Ger Walsh (local resident)

- SI306 of 2022 does not contain any exemptions under Class 20F, nor does it pertain to Class 20F. Class 20F falls under SI376 of 2023, indicating a fundamental error in the local authority's assessment. Consequently, the works carried out to date are not in compliance and are not considered an exempted development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2(1) – Interpretation

Development has the meaning assigned to it by Section 3 and “develop” shall be construed accordingly.

Exempted development has the meaning specified in section 4.

Structure means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and – (a) where the context so admits, includes the land on, in or under which the structure is situate,

Works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

7.1.2. Section 3(1) – Development

In this Act, except where the context otherwise requires, “development” means –

- (a) The carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

7.1.3. Section 4 – Exempted Development

Section 4 (1) The following outlines exempted developments for the purposes of this Act.

Section 4 (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

7.1.4. Section 181 – Works by State

Sections 181(1) (a) The Minister may, by regulations, provide that, except for this section and sections 181A to 181C, the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

Section 181A Approval of certain state development requiring environmental impact assessment.

Section 181B Section 181A, Criteria for decision, certain exemptions, etc.

Section 181C Procedures in advance of seeking approval under section 181B.

7.2. Planning and Development Regulations, 2001

7.2.1. 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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2. Article 9 (1) –

Development to which article 6 relates shall not be exempted development for the purposes of the Act and the restrictions and limitations are outlined in this Article.

7.2.3. Class 20F –

Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.

Restriction/Criteria

1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.
2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001.

3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.
4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary protection use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class.
5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.
6. “Displaced persons”, for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.
7. “International protection”, for the purpose of this class, has the meaning given to it in Section 2(1) of the International Protection Act 2015 (No. 66 of 2015).
8. “Temporary protection”, for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.

Comments: Class 20F is inserted by article 2 of SI No. 605/2022 Planning and Development (Amendment) (No. 4) Regulations 2022.

Class 20F is substituted by Article 2 of SI No. 376/2023 Planning and Development (Exempted Development) (No. 4) Regulations 2023.

7.3. Statutory Instruments 2022 & 2023

- 7.3.1. S.I. No. 376/2023 – Planning and Development (Exempted Development) (No. 4) Regulations 2023.

Citation and Construction

1. (1) These Regulations may be cited as the Planning and Development (Exempted Development) (No. 4) Regulations 2023.
- (2) These Regulations shall be included in the collective citation Planning and Development Regulations 2001 to 2023.

Amendment of Part 1 of Schedule 2 to Planning and Development Regulations 2001.

2. Part 1 of Schedule 2 to the Planning and Development Regulations 2001 (SI. No. 600 of 2001) (as amended by Regulation 2 of the Planning and Development (Exempted Development) (No. 4) Regulations 2022 (SI. No. 605 of 2022)) is amended by the substitution for the matter set out at Class 20F.

7.3.2. S.I. No. 605/2022 – Planning and Development (Exempted Development) (No. 4) Regulations 2022

Citation and Construction

1. (1) These Regulations may be cited as the Planning and Development (Exempted Development) (No. 4) Regulations 2022.
2. These Regulations shall be included in the collective citation Planning and Development Regulations 2001 to 2022.

Amendment of Part 1 of Schedule 2 to Planning and Development Regulations 2001

2. Part 1 of Schedule 2 to the Planning and Development Regulations 2001 (SI. No. 600 of 2001) is amended by inserting the Class 20F.

7.3.3. S.I. No. 306/2022 – European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022.

These Regulations provide that the provisions of the Planning and Development Act 2000 (other than environmental considerations in Section 181A to 181C) will not apply to certain classes of development by or on behalf of a State Authority for the purposes of providing temporary protection and support to displaced persons from Ukraine.

1. These Regulations may be cited as the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations, 2022.
2. In these Regulations –
“Act of 2000” means the Planning and Development Act 2000 (No. 30 of 2000).

“Council Directive” means Council Directive 2001/55/EC of 20th July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

“Council Implementing Decision” means Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.

“development” has the same meaning as it has in the Act of 2000.

“Displaced persons” means persons to whom temporary protection applies in accordance with Article 2 of the Council Implementing Decision.

“Relevant period” means the period commencing on the making of these Regulations and ending when the temporary protection introduced by the Council Implementing Decision comes to an end in accordance with Article 6 of the Council Directive.

“State Authority” means –

- (a) A Minister of the Government, or
- (b) The Commissioners of Public Works in Ireland.

“Temporary protection” has the same meaning as it has in the Council Directive.

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.

(2) A reference to “proposed development” in sections 181A to 181C of the Act of 2000 shall include a reference to development of a class specified in the Schedule to which section 181A(1) of the Act of 2000 would apply if it was development of a class specified in regulations made under section 181(1)(a) of the Act of 2000.

Schedule – Classes of Development

Article 3

1. Reception and integration facilities.
2. Residential accommodation, including ancillary recreational and sporting facilities.
3. Medical and other health and social care accommodation.
4. Education and childcare facilities, including ancillary recreational and sporting facilities.
5. Emergency management coordination facilities.
6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.
7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

7.4. **Other**

- None

8.0 **Assessment**

8.1. **Is or is not development.**

- 8.1.1. Section 3(1)(a) of the Act defines development as the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land and in effect it relates to both works and the material change in the use of land.
- 8.1.2. The carrying out of works and/or the making of any material change in the use of any land or structure applies in relation to structures whether they are temporary or other structures.
- 8.1.3. The existing structure was in use as an equestrian centre and has the benefit of planning permission under planning reference 97257. Under planning reference 031467, retention permission was sought for a number of elements including flood

lighting, signage, service entrance, hay barn, sand arena, additional use for public events centre and permission for extension and outdoor public display area and parking.

- 8.1.4. The applicant has changed the use of the equestrian centre to temporary use for displaced persons from Ukraine. The equestrian centre has been divided into a number of self-contained apartments with cooking and welfare facilities.
- 8.1.5. Based on the definition of development as stated in Section 3(1)(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land and based on the information submitted and having regard to the works carried out on site in order to provide temporary accommodation in the form of self-contained apartments for displaced persons seeking international protection is development.
- 8.1.6. In conclusion, based on this assessment the provision of temporary accommodation for displaced persons seeking international protection constitutes development within the meanings described as in same in section 3 of the Planning and Development Act 2000 as amended.

8.2. Is or is not exempted development.

- 8.2.1. Based on the information submitted, the referral should be assessed in accordance with S.I. No. 306/2022 – European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022. The development consists of a temporary change of use of a former equestrian centre/conference centre for the temporary protection to displaced persons from Ukraine in the form of a number of self-contained apartments including cooking and welfare facilities. The facility will provide emergency accommodation and support to these displaced persons.
- 8.2.2. S.I. No. 306/2022 Regulations allow for temporary change of use and repurposing of existing buildings and facilities including temporary new-build accommodation and structures to address this emergency which is outlined in the accompanying circular. The works must be carried out by or on behalf of a State Authority. The class of development listed in the Schedule for the purposes of providing temporary protection to displaced persons comprise:

- Reception and integration facilities.
- Residential accommodation, including ancillary recreational and sporting facilities.
- Medical and other health and social care accommodation.
- Education and childcare facilities, including ancillary recreational and sporting facilities.
- Emergency management coordination facilities.
- Structures or facilities ancillary to development referred to above, including administration and storage facilities; and
- Infrastructure and other works ancillary to the above development.

8.2.3. The Regulations provide that the provisions of the Planning Act (other than the environmental considerations in Sections 181A to 181C) will not apply to certain classes of development by or on behalf of a State Authority i.e. A Minister of the Government or the Commissioners of Public Works in Ireland, for the purposes of providing temporary protection to displaced persons as specified in the Regulations.

8.2.4. The Planning Authority report notes a letter of intent from the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) was issued to Mr. Thomas Hughes (landowner) dated 12th January 2023 (Dept. Ref: 2023-67). This letter was not included within the file documentation. However, the response from the Planning Authority that the owners of the Wallslough premises submitted an offer and expression of interest in Commercial Accommodation for Beneficiaries of Temporary Protection (BOTPs) from Ukraine via the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) online portal on February 7th, 2023. The DCEDIY issued a letter of intent and noted “the Accommodation shall be made available by the contractor for the exclusive use of the Minister”. Therefore, I am satisfied that the works are been undertaken on behalf of the State.

8.2.5. The provisions of the Planning and Development Act 2000 (other than the environmental considerations in Sections 181A to 181C) will not apply to the specified classes of development in the Schedule only for so long as the Regulations are in force, which duration is linked to the duration of temporary protection activated by European Union Council Decision EU 2022/382 of 4th March 2022. At any time,

the European Commission may propose to the Council to end the temporary protection, based on the fact that the situation in Ukraine is such as to permit the safe and durable return of those granted temporary protection, or propose that the Council extend the temporary protection by up to one further year. As such, the maximum extended period for the duration of Temporary Protection Decision EU 2022/383 may be for a total period of three years from 4th March 2022. (currently expires 3rd March 2025).

8.2.6. In regard to proposed development in which the landowner has converted the former equestrian centre to c. 40 no. self-contained apartment/accommodation units with ancillary works including the provision of welfare facilities and kitchen units. There is sufficient information on file indicating that the works were undertaken on behalf of the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) and consist of the repurposing of existing buildings and facilities in order to provide temporary protection to displaced persons for the following classes of development:

- Reception and integrations facilities
- Residential accommodation, including ancillary recreational and sporting facilities.
- Emergency management coordination facilities
- Structures or facilities ancillary to development referred to above, including administration and storage facilities; and
- Infrastructure and other works ancillary to the above development.

8.2.7. Having considered the provision as set out in S.I. 306/2022, I consider the provision of temporary accommodation for displaced persons falls within the criteria as set out in S.I. 306/2022 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022.

8.3. Restrictions on exempted development

8.3.1. Article 9 of the PDR refers to restrictions on exempted development. I have assessed the proposed provision of accommodation for displaced persons or persons seeking international protection under S.I. 306/2022 having regard to the relevant Article 9 restrictions. The proposal does not:

- (i) Contravene a condition.
- (ii) Consist of or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.
- (iii) Endanger public safety by reason of traffic hazard or obstruction of road users.
 - (iiia) Endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft.
- (iv) Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest.
- (v) Comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (vi) 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.
- (vii) 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,

8.3.2. Therefore, the development complies with Article 9 of the Planning and Development Regulations 2001 as amended.

8.4. Environmental Impact Assessment (EIA) Preliminary Examination

8.4.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). The proposal relates to provision of c. 40 self-contained units / apartments within the equestrian shed with a proposed on-site connection to a wastewater or sewage holding tank facility which will be emptied on a regular basis by a licensed contractor and the collection of surface water from the site, roofs and hard standing areas to an onsite soakaways.

Schedule 5 of Planning and Development Regulations 2001-2024 sets out the prescribed classes of development for the purposes of EIA. Part 1 of Schedule 5 provides a list of specified developments where an EIA is mandatory. The proposal does not fall into any of these categories. Part 2 of Schedule 5 identifies sub-threshold developments where if a development does not equal or exceed, a quantity, area or other limit specified in that Schedule in respect of the relevant class of development. Having regard to the categories as listed in Part 2, the proposal does not fall into any of these categories.

- 8.4.2. Having regard to the limited nature and scale of the development and the absence of any significant environmental sensitivities in the vicinity of the site, 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. Please refer to Form 1 as per Appendix 1 below.

8.5. Appropriate Assessment

- 8.5.1. Having regard to proposal for c. 40 self-contained units / apartments within the equestrian shed with a proposed on-site connection to a wastewater or sewage holding tank facility which will be emptied on a regular basis by a licensed contractor and the collection of surface water from the site, roofs and hard standing areas to an onsite soakaways. The nearest European site is River Barrow and River Nore SAC (Site code: 002162) and River Nore SPA (Site code: 004233) located 1.1km and 1.2km respectively from the subject site. Wallslough Lake is located directly across the road from the site entrance and approximately 80 metres from the subject building and is currently used as amenity by the landowner and the residents of Wallslough holiday homes. There is no evidence of open drainage inflow or outflow from the lake. There is no evidence of an open water hydrological link between the site and Wallslough Lake. There is no evidence of a direct hydrological pathway or ecological stepping stone to the River Nore SAC from the subject site.
- 8.5.2. Having regard to the separation distance, the use of a wastewater storage tank on site, the use of a soakway on site for surface water and no evidence of direct open water pathways to the River Nore SAC, it is considered that no Appropriate Assessment issues arise as the proposed development would not be likely to have a

significant impact individually or in combination with other plans or projects on a European Site.

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 of circa 40 no. self-contained units / apartments within the equestrian shed is or is not development or is or is not exempted development:

AND WHEREAS Mark Hennessey requested a declaration on this question from Kilkenny County Council and the Council issued a declaration on the 22nd day of April 2024 stating that the matter was development and was exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 20th day of May 2024:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Section 181(1)(a) of the Planning and Development Act, 2000, as amended,
- (e) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

- (f) S.I. 306/2022 European Union (Planning and Development)
(Displaced Persons from Ukraine Temporary Protection)
Regulations 2022,
- (g) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction of circa 40 no. self-contained units / apartments within the equestrian shed constitutes development as defined under Section 3(1)(a) of the Planning and Development Act 2000 (as amended).
- (b) The construction of circa 40no. self-contained units/apartments within the equestrian shed is exempted development as it comes within the scope of S.I. 306/2022 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (1) of the 2000 Act, hereby decides that the construction of circa 40no. self-contained units/apartments is development and is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Jennifer McQuaid
Planning Inspector

21st October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-320262-24			
Proposed Development Summary	The development consists of temporary change of use of former equestrian centre to temporary use for accommodation for displaced persons.			
Development Address	Wallslough Equestrian Facility, Wallslough, Co. Kilkenny.			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No	X			
Yes				

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____