



An
Bord
Pleanála

Inspector's Report ABP-320327-24

Question

Whether or not: (a) Structure No. 1: Gate Lodge A and Gate Lodge B; (b) Structure No. 2: semi-detached agricultural storage facility; (c) Structure No. 3: detached agricultural maintenance/storage facility; (d) Structure No. 4: electricity distribution building; (e) Structure No. 5: open fronted agricultural storage shed; (f) Structure No. 6: former agricultural building, now used to accommodate protected persons; (g) Structure No. 7 and Structure No. 8: pavillion and kitchen building; (h) Structure No. 10: former Belfry Building; (i) Structure No. 11: concrete paved area adjacent to structure no. 10 and 12; (j) Structure No. 12: accommodation block no. 1; (k) Structure No. 13: Art O'Neills building; (l) Structure No. 14: car park adjacent to the former Belfry Building; (m) Structure No. 15: large gravelled area to the north east of the holiday village; (n) Structure No. 16: accommodation block no. 2 and (o)

on-site storage of soil/stone, boulders, machinery and building materials is or is not development or is or is not exempted development.

Location

Kippure Lodge and Holiday Village,
Kippure Estate, Manor Kilbride,
Blessington, County Wicklow.

Declaration

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

EX53/2024

Applicant for Declaration

Goldstein Property ICAV

Planning Authority Decision

Is development and is not exempted
development

Referral

Referred by

Seefin Events Unlimited Company

Owner/ Occupier

Goldstein Property ICAV

Observer(s)

Peter O'Sullivan

Date of Site Inspection

6th May 2024

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1.0 Introduction

This report can be read in tandem with ABP.321463-24, ABP.322363-25 and ABP.WW27.322055.

2.0 Site Location and Description

- 2.1. The subject site is located in the rural townland of Kippure, Co. Wicklow, c. 6.8km southeast of the village of Kilbride and c. 5.6km northwest of the Sally Gap, in the foothills of the Wicklow Mountains.
- 2.2. The overall lands associated with Kippure Estate are irregular in shape and have an area of c. 96 ha. The site slopes down from its northern boundary with the R759 to the sites southern boundary with the River Liffey.
- 2.3. There is single access / egress to the site from the R759 Regional Road, with an additional access from the R759 currently blocked off.
- 2.4. The site is currently in use as accommodation for International Protection Applicants / Displaced Persons. It was previously used as a recreational complex with a variety of services and facilities including holiday rental accommodation, a venue for weddings and other events / functions.

3.0 The Question

- 3.1. Whether or not the following are or are not development, and are or are not exempted development:
 - **Structure No 1:** Gate Lodge A and Gate Lodge B pursuant to Class 17 of Part 1 Schedule 2 of the Planning and Development Regulations, 2001 as amended. Herein referred to as the PDR.
 - **Structure No. 2:** Semi-detached agricultural storage facility pursuant to Class 9 of Part 3 of Schedule 2 of the PDR.
 - **Structure No. 3:** Detached agricultural maintenance storage facility pursuant to Class 9 of Part 3 of Schedule 2 of the PDR.

- **Structure No. 4:** Electricity distribution building pursuant to Class 29 of Part 1 of Schedule 2 of the PDR.
- **Structure No. 5:** Open fronted agricultural shed pursuant to Class 9 of Part 3 of Schedule 2 of the PDR.
- **Structure No. 6:** Former agricultural building, now used to accommodate protected persons pursuant to Section 14(1)(h) of the Planning and Development Act, 2000 as amended. Herein referred to as the PDA.
- **Structure No. 7 and Structure No. 8:** Pavillion and kitchen building pursuant to Section 4(1)(h) of the PDA.
- **Structure No. 10:** Former Belfry Building pursuant to Section 4(1)(h) of the PDA.
- **Structure No. 11:** Concrete paved area adjacent to structure no. 10 and 12 pursuant to Class 33 of Part 1 of Scheule 2 of the PDR.
- **Structure No. 12:** Accommodation block pursuant to Section 4(1)(h) of the PDA and / or S.I. No. 582 of the Planning and Development (Amendment)(No.4) Regulations. 2015.
- **Structure No. 13:** Art O'Neills building pursuant to Section 4(1)(h) of the PDA.
- **Structure No. 14:** Car park adjacent to the former Belfry Building pursuant to Class 16 of Part 3 of Schedule 2 of the PDG.
- **Structure No. 15:** Large, gravelled area to the north-east of the holiday village pursuant to Class 16 of Part 3 of Schedule 2 of the PDG.
- **Structure No. 16:** Accommodation block no. 2 pursuant to Section 14(h) of the PDA and / or S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022.
- **On-site storage of soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure** pursuant to Class 16 of Part 1 of Schedule 2 of the PDR.

4.0 Planning Authority Declaration

4.1. Declaration

The Planning Authority issued the following declaration:

- a) **Structure No 1:** Gate Lodge A and Gate Lodge B **is development and is not exempted development.**
- b) **Structure No. 2:** Semi-detached agricultural storage facility **is development and is not exempted development.**
- c) **Structure No. 3:** Detached agricultural maintenance storage facility **is development and is not exempted development.**
- d) **Structure No. 4:** Electricity distribution building **is development and is not exempted development.**
- e) **Structure No. 5:** Open fronted agricultural shed **is development and is not exempted development.**
- f) **Structure No. 6:** Former agricultural building, now used to accommodate protected persons **is development and is not exempted development.**
- g) **Structure No. 7 and Structure No. 8:** Pavillion and kitchen building **is development and is not exempted development.**
- h) **Structure No. 10:** Former Belfry Building **is development and is not exempted development.**
- i) **Structure No. 11:** Concrete paved area adjacent to structure no. 10 and 12 **is development and is not exempted development.**
- j) **Structure No. 12:** Accommodation block **is development and is not exempted development.**
- k) **Structure No. 13:** Art O'Neills building **is development and is not exempted development.**
- l) **Structure No. 14:** Car park adjacent to the former Belfry Building **is development and is not exempted development.**

- m) **Structure No. 15:** Large-gravelled area to the northeast of the holiday village **is development and is not exempted development.**
- n) **Structure No. 16:** Accommodation block no. 2 **is development and is not exempted development.**
- o) **On-site storage of soil / stone, boulders, machinery and building materials** **is development and is not exempted development.**

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planners report dated 2nd July 2024 set out the planning history of the site, relevant sections of the Development Plan, Natura 2000 sites, relevant legislation and a summary of the submission from the agent on behalf of the applicant. The assessment is summarised below: -

Structure No 1: Gate Lodge A and Gate Lodge B.

The construction of the gate lodge units would come within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

The provisions of Section 4(1)(h) are not applicable as these are new structures on the land.

The exemption under Class 17 of Part 1 of Schedule 2 is for on-site accommodation for persons who are engaged in the development. The lodges are not for security for the construction works, but security for those occupying the facility. It is not evident that the on-going development has the necessary permissions or exemption, and therefore these lodges do not come within the description of Class 17.

The lodges do not come within the remit of Class 14 of Part (i) and (h) as these exemptions relate to change of use.

S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022 relates to proposed development carried out by or on behalf of a State authority for the purpose of providing temporary protection to displaced persons. There is no evidence that the structures are being

provided on behalf of the State and no evidence that the units are related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

There are no other exemptions available. Therefore, these structures are development and are not exempted development.

Structure No. 2: Semi-detached agricultural storage facility.

It would appear from aerial photography that this structure and the adjacent structure no. 6 were constructed between January 2020 and March 2022. The structure come within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA. Class 9 of Part 3 -Exempted Development - Rural of Schedule 2 provides an exemption for any store, barn, shed, glass house or other structure, having a gross floor area (GFA) not exceeding 300sqm. The structure has a GFA of 660sqm.

With regard to the limitations and conditions set out in column 2 of Class 9:

- From an inspection the structure is in use for the storage of building materials and would not appear to be in use for agriculture, as defined under Section 2 of the PDA.
- Taking into account the overall floor area of this structure and Structure no. 6 (1,134sqm) it would exceed the aggregate 900sqm limitation.
- The structure is in excess of 10m from the public road.
- The structure is not within 100m of any house.
- Metal sheeting on the structure is painted.

The structure would not come within the provisions of Class 9 and therefore is not exempted development.

Structure No. 3: Detached agricultural maintenance storage facility.

It would appear from aerial photography that this structure was constructed after March 2022. The structure comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

Class 9 of Part 3 of Schedule 2 provides an exemption for any store, barn, shed, glass house or other structure, having a gross floor area (GFA) not exceeding 300sqm. The structure has a GFA of 179sqm.

With regard to the limitations and conditions set out in column 2 of Class 9. The report notes:

- No evidence is provided to confirm the structures use and there appears to be some storage in relation to the construction works on site.
- Structure no. 2 and 6 were completed prior to this structure and have an overall area of 1,134 sqm and would exceed the aggregate 900sqm limitation.
- The structure is in excess of 10m from the public road.
- The structure is not within 100m of any house.
- Metal sheeting on the structure is painted.

The structure would not come within the provisions of Class 9 and therefore is not exempted development.

Structure No. 4: Electricity distribution building is development.

It would appear from aerial photography that this structure was constructed after March 2022. The structure comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

Class 29 of Part 1 of Schedule 2 provides that the carrying out by any electricity undertaking of development consisting of the construction or erection of a unit substation or minipillar for the distribution of electricity at a voltage not exceeding a nominal value of 220kV. As the applicant is not a person engaged in the supply and generation of electricity and is not licenced or authorised operator, the development would not come within the description set out under Class 29 and therefore is not exempted development.

Structure No. 5: Open fronted agricultural shed.

It would appear from aerial photography that this structure was constructed after March 2022. The structure comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

Class 9 of Part 3 of Schedule 2 provides an exemption for any store, barn, shed, glass house or other structure, having a gross floor area (GFA) not exceeding 300sqm. The structure has a GFA of 208sqm.

With regard to the limitations and conditions set out in column 2 of Class 9. The report notes:

- The use can be considered as part of the overall maintenance of agricultural areas not dedicated to the Kippure Holiday Village.
- Structure no. 2 and 6 were completed prior to this structure and have an overall area of 1,134 sqm and would exceed the aggregate 900sqm limitation.
- The structure is in excess of 10m from the public road.
- The structure is not within 100m of any house.
- Metal sheeting on the structure is painted.

The structure would not come within the provisions of Class 9 and therefore is not exempted development.

Structure No. 6: Former agricultural building, now used to accommodate protected persons.

It would appear from aerial photography that this structure and the adjacent structure no. 2 were constructed between January 2020 and March 2022. The structure comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

Class 9 of Part 3 of Schedule 2 provides an exemption for any store, barn, shed, glass house or other structure, having a gross floor area (GFA) not exceeding 300sqm. The structure has a GFA of 500sqm (excluding the external stairwell).

With regard to the limitations and conditions set out in column 2 of Class 9. The report notes:

- This structure is indicated to have been in agricultural use however no evidence is provided.

- Taking into account the overall floor area of this structure and Structure no. 2 (1,134sqm) it would exceed the aggregate 900sqm limitation.
- The structure is in excess of 10m from the public road.
- The structure is not within 100m of any house.
- Metal sheeting on the structure is painted.

Structure No. 7 and Structure No. 8: Pavillion and kitchen building.

Structure No 7 and No. 8 are interlinked. The reference to this building being permitted under Reg. Ref. 17/1335 is incorrect as this decision was overturned on appeal, ABP 300834-18.

The structure comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA. There are no exemptions in the PDR that would apply to Structure No. 7 and Structure No. 8.

S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022 relates to proposed development carried out by or on behalf of a state authority for the purpose of providing temporary protection to displaced persons. There is no evidence that these structures, at the time of their construction, were provided on behalf of the State. There is no evidence that the units are related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

There are no other exemptions available for these structures. Therefore, these structures are development and are not exempted development.

Structure No. 10: Former Belfry Building.

This building was constructed in c. 1830 and predates the Planning Acts and modern planning law. The structure has been upgraded and renovated as exempted development under Section 4(1)(h) of the PDA. Permission was also granted under Reg. Ref.05/2792 for the refurbishment of the Belfry Building and its use as a backup facility for outdoor facilities.

The structure has been extended and altered by reference to changes in height, length and width. The nature of the works would not comprise maintenance, improvement or other alteration and result in the structure being materially different to the former structure. The works have significantly altered the external appearance of the structure so that it is inconsistent with the character of the structure.

There are no exemptions under the PDR.

S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022 relates to proposed development carried out by or on behalf of a state authority for the purpose of providing temporary protection to displaced persons. There is no evidence that the structure, at the time of its construction, was provided on behalf of the State. There is no evidence that the units are related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

There are no other exemptions available for this structure. Therefore, it is development and is not exempted development.

Structure No. 11: Concrete paved area adjacent to structure no. 10 and 12.

The laying out and paving of the area with concrete comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

The laying out and use of land as a park, private open space or ornamental garden is exempted development under Class 33(a). Having regard to the Collins English definition the area is not considered to be a park. Having regard to the Sustainable Residential Development and Compact Settlement Guidelines the area is not considered to be private open space. The area is not an ornamental garden. Therefore, the concrete area does not come within the provisions of Class 33(a).

It is noted that the works would have required the building up of levels to a significant degree and cannot be considered to come within the description of laying out.

The concrete paved area between Structures No. 10 and Structure No. 12 is development and is not exempted development.

Structure No. 12: Accommodation block.

This building (sometimes referred to as the Long Barn) was constructed in c. 1830 and predates the Planning Acts and modern planning law. Retention permission was granted under Reg. Ref. 99/1150 for the conversion of part of this structure to a 2-storey recreation building. Upgrading and renovation works were carried out under Section 4(1)(h).

It would appear from drawings submitted with Reg. Ref. 99/1150, aerial photography and photographs from 2011 / 2012 that the Long Barn is not Structure 12. In addition, aerial photography from 2020 shows there are no structures within the location to the north of the holiday homes, the retained structure (Reg. Ref. 99/1150) and Structure No. 10: The Belfry. Therefore, it is considered that Structure No. 12 is a newly constructed accommodation unit.

The structure comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA. There are no exemptions in the PDR that would apply to Structure No. 7 and Structure No. 8.

Section 4(1)(h) is not applicable as this is a new structure.

S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022 relates to proposed development carried out by or on behalf of a state authority for the purpose of providing temporary protection to displaced persons. There is no evidence that the structure, at the time of its construction, was provided on behalf of the State. There is no evidence that the units are related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

This structure is development and is not exempted development.

Structure No. 13: Art O'Neill's building.

Planning Permission was granted under Reg. Ref. 94/1113 for a replacement building. Planning permission was granted under Reg. Ref. 05/2468 for a change of use from self-catering area to common room / dining room and wine bar. Therefore, this building is not a pre-63 structure.

The building was damaged by fire in 2016. Permission was granted under Reg. Reg. 17/352 for a replacement building. The commencement of this development occurred in September 2023, after planning permission had expired (May 2023).

It is considered that the re-cladding of the structure with timber and the provision of a covered area to the front of the structure and upgrade works come within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

The cladding materially affects the external appearance of the structure, as it was previously rendered in white plaster. The reference to the cladding being removed cannot be considered as part of this assessment, as the structure exists on site is the relevant works to be assessed, and not future alterations.

The provision of an extended cover to the front does not come within exempted definition under Section 4(1)(h).

S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022 relates to proposed development carried out by or on behalf of a state authority for the purpose of providing temporary protection to displaced persons. There is no evidence that the structure, at the time of its construction, was provided on behalf of the State. There is no evidence that the structure is related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

This structure is development and is not exempted development.

Structure No. 14: Car park adjacent to the former Belfry Building.

Structure no. 14 relates to a temporary car park. Aerial photography indicates that the area was hard cored and surfaced after March 2020. The construction of a car parking area is both works and a material change of use as this area would have been rural / agricultural lands and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

The placing of plant or machinery related vehicles on land for a temporary period in connection with the development being carried out is considered to be exempted

development under Class 16. However, as the car park (Structure No. 16) is also being used by administrative staff related to the residential facilities on site it is not considered to be exempted.

It is also noted that Class 16 only relates to works that have the benefit of planning permission or are exempted developments. Having regard to the construction works on the site which have taken place since March 2022 there is no evidence that such developments are exempted. Therefore, Class 16 is not considered applicable.

S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022 relates to proposed development carried out by or on behalf of a state authority for the purpose of providing temporary protection to displaced persons. There is no evidence that the car park, at the time of its construction, was provided on behalf of the State. There is no evidence that the car park relates to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

The car park area is development and is not exempted development.

Structure No. 15: Large-gravelled area to the northeast of the holiday village.

Aerial photography indicates that the area (1.3 ha) was in agricultural use in 2019. The area was gravelled and laid out between 2020 and 2022. The area has been used as both a car park and for the storage of materials. This area of land is located to the west of Wicklow Mountains SAC with Cransillagh (Brook) forming the boundary of the SAC. The site is also c. 365m north of the Wicklow Mountains SPA.

The laying out of hardcore to provide a car parking area is both works and a material change of use as this area would have been rural / agricultural lands and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

Class 16 is not applicable to the works in this instance as the works that have taken place are not in connection with development that is either permitted or exempted development.

Article 9 of the PDR notes that development shall not be exempted if the carrying out of works require appropriate assessment (AA). Given the proximity to the Wicklow Mountains SAC, potential impacts cannot be screened out. It is considered that a Stage 2 AA would be required for the works and therefore would not be exempted development by reference to Class 16 having regard to Article 9(1)(a)(viiB).

The gravel area is development and is not exempted development.

The development plan (Map no. 17.09B) identifies this landscape as an Area of Outstanding Natural Beauty. The works have clearly interfered with this character of the landscape, from natural vegetated rugged landscape to a semi-industrial character. Therefore, in accordance with Article 9(1)(a)(vi) the development would not be exempted. As the development plan does not provide a specific objective for the preservation of the landscape as would be met the legislative criteria, Article 9(1)(a)(vi) was not included in the recommendation conclusion.

Structure No. 16: Accommodation block.

This structure also referred to as The Stables and Grain Stores was constructed in c. 1830 and pre-dates the Planning Acts and modern planning law.

Information submitted with Reg. Ref. 12/6539 indicates that the 'existing shed' was a minor structure being limited in scale. The information provided with the submission indicates that Structure 16 is a modular building, and its principal components were manufactured off site, with the building assembled on site and fixed with bolts to a pre-constructed reinforced concrete retaining wall.

The structure comes within the meaning of works and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

Section 4(1)(h) is not applicable as Structure 16 is a new structure. There are no exemptions in the PDR that would apply to Structure No. 16.

S.I. 306 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulation 2022 relates to proposed development carried out by or on behalf of a state authority for the purpose of providing temporary protection to displaced persons. There is no evidence that the car park, at the time of

its construction, was provided on behalf of the State. There is no evidence that the car par relates to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

Structure No. 16 is development and is not exempted development.

On-site storage of soil / stone, boulders, machinery and building materials.

This is an extremely wide-ranging query. From the site inspection soil / stone, boulders, machinery and building materials are deposited at various locations within the Kippure lands. Aerial imagery from 2022 shows the extent of such areas.

The placing of materials on lands is both works and a material change of use as this area would have been rural / agricultural lands and would therefore come within the meaning of development as provided for in Section 3(1) of the PDA.

Class 16 is not considered to be applicable to the works that have taken place on lands that are not connected with works that are either permitted or exempted development.

Article 9 of the PDR notes that development shall not be exempted if the carrying out of works require appropriate assessment (AA). Given the proximity to the Wicklow Mountains SAC, potential impacts cannot be screened out. It is considered that a Stage 2 AA would be required for the works and therefore would not be exempted development by reference to Class 16 having regard to Article 9(1)(a)(viiB).

The development plan (Map no. 17.09B) identifies this landscape as an Area of Outstanding Natural Beauty. The works have clearly interfered with this character of the landscape, from natural vegetated rugged landscape to a semi-industrial character. Therefore, in accordance with Article 9(1)(a)(vi) the development would not be exempted. As the development plan does not provide a specific objective for the preservation of the landscape as would be met the legislative criteria, Article 9(1)(a)(vi) was not included in the recommendation conclusion.

Appropriate Assessment

There are issues with respect to the existing wastewater treatment system serving the overall Kippure development. The overloaded system has resulted in the pollution of

the groundwater and impacted on the quality of spring and land drainage down gradient of the percolation area.

Structure No 1, No. 6, No. 7, No. 8, No. 10, No. 12 and No. 16 would result in loading on this treatment plant and further potential pollution to groundwater. Accordingly significant impacts on the River Liffey and groundwater cannot be ruled out. As the River Liffey forms part of the Wicklow Mountains SAC it is concluded that the developments would require Stage 2 AA. Therefore, the works do not accord with the provisions of the PDA and the Habitats Directive.

4.2.2. **Other Technical Reports**

None on file. However, the Appropriate Assessment section of the Planners report states *'the treatment system has not been operating effectively, and the Environment Section have indicated that the system has exceeded the permitted discharge to groundwater limit for 80% of 2023. The overloaded system has resulted in the pollution of the groundwater and impacted on the quality of spring and land drainage down gradient of the percolation area'*.

5.0 **Planning History**

There is an extensive planning history on the site. The relevant planning history is summarised below: -

Reg. Ref 94/1113: Permission was granted for 14 no. holiday homes and a recreation centre to replace existing buildings and an extension of farm buildings to provide an equestrian centre.

Reg. Ref. 98/9461: Retention permission granted for cottages 9 & 10 and relocation of cottages 1-6.

Reg. Ref. 99/1150: Retention permission granted for the conversion of a farm building to a 2-storey recreation building.

Reg. Ref 04/1945: Permission granted for 14 no. holiday homes.

Reg. Ref. 05/2792: Permission granted for the refurbishment of the Belfry building (197sqm) for use as a backup for outdoor facilities.

Reg. Ref. 12/6455: Retention permission granted for an end of terrace house.

ABP 300834-18, Reg. Ref 17/1335: Retention permission was refused in 2018 for 2 no. marquees, 3 no. prefabricated units and 1 no. 40ft container. The reason for refusal stated: -

Having regard to the planning history of the site and to the ongoing concerns of the planning authority in respect of the adequacy of the on-site wastewater treatment and disposal system, the Board cannot be satisfied that the proposed development to be retained either individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Designated European Sites in proximity to the proposed development, in view of the sites' conservation objectives. In such circumstances the Board is precluded from granting permission

Reg. Ref: 17/352: Permission was granted in 2018 for a replacement dormer style building in place of the section of the original building (Art O'Neill building) which was burnt down in June 2016, works include alterations to the original design and layout of the building.

ABP 321463-24, Reg. Ref 2460587: Retention permission was refused in 2024 for an ESB substation, agricultural storage, maintenance buildings, mixed use building, accommodation building and all associated works. The four reasons for refusal are as follows:

1. Having regard to the location of the development in proximity to the Wicklow Mountains SAC and the Wicklow Mountains SPA, the hydraulic connection to the Poulaphouca Reservoir SPA, the qualifying interests of these Natura 2000 sites and their conservation objectives, the direct / indirect pathways to these Natura 2000 sites , the absence of any ecological assessment, the nature and scale of the works undertaken, the Planning Authority cannot be satisfied beyond reasonable scientific doubt, that the proposed development would not have had significant effects on these Natura 2000 sites, and therefore the development for which retention is sought would have required Appropriate Assessment. Therefore, to permit the proposed development would be contrary to the Habitats Directive, the Objectives of the County Development Plan 2022 and proper planning and sustainable development

2. Having regard to

- i. the sensitive location of the site,
- ii. the extent of the works subject of this application, and the works which will facilitate the overall operations/ development,
- iii. the Landscape designation Area of Outstanding Natural Beauty
- iv. the connection to Cransillagh Brook and the River Liffey,
- v. the proximity to the proposed development to the boundaries of the Wicklow Wetlands: River Liffey, Wicklow Mountains SAC and Wicklow Mountains SPA and Poulaphouca Reservoir SPA.
- vi. the potential that the works have impacted on Wetlands and Natura 2000 sites, vii. the absence of information in accordance with Schedule 7A of the Planning and Development Regulations 2001(as amended),

on preliminary examination, it is considered that the need for an Environmental Impact Assessment cannot be screened out. Insufficient information has been submitted to allow the Planning Authority to carry out a Sub-threshold Screening Determination, or to confirm that the works have not already breached the thresholds set out in the Planning and Development Regulations 2001(as amended). Therefore, to permit the proposed development in the absence of adequate information and a Sub-threshold Screening Determination, would be contrary to the provisions of EU Directive 2014/52/EU, the County Development Plan 2022- 2028, and proper planning and sustainable development.

3. Having regard to

- i. the location of the development within an Area of Outstanding Natural Beauty: Wicklow Uplands
- ii. the scale of works for retention
- iii. the current usage and proposed usage of the structures for retention and completion in the short / medium term for the accommodation of International Protection Applicants / Displaced Persons
- iv. The lack of a comprehensive justification for the design and scale of the structures for future tourism usage.

- v. Objectives CPO 11.1, CPO 11.2, CPO 11.3, CPO 11.14 of the County Development Plan 2022-2028 in respect of Tourism development
- vi. The settlement strategy as set out in the County Development Plan 2022-2028

it is considered that the development for retention would not ensure economic, environmental and social sustainability, would result in residential development outside of any settlement, remote from services, and with no public transport provision. The development would therefore materially contravene the Tourism Objectives and Settlement Strategy of the County Development Plan 2022-2028, would set a precedent for further unsustainable footloose development, and would result in a deterioration of the landscape quality of this Area of Outstanding Natural Beauty. The development would therefore be contrary to proper planning and sustainable development.

This decision is currently on appeal.

ABP 322363-25, Reg. Ref 2560075: Permission was refused in 2025 for additional underground effluent storage and treatment tanks, construction of a new plant and storage building and all associated site development works. The three reasons for refusal are as follows: -

1. *The Planning Authority is not satisfied that, the current use of Kippure Holiday Village as a reception centre/accommodation for displaced persons, and its future extension as a tourism product, have the necessary planning consents under the Planning and Development Act 2000(as amended) and associated Regulations. The proposed development to extend the existing wastewater treatment system would serve such unauthorised development. Therefore, to permit the proposed development, would represent consolidation of unauthorised development on these lands. The provision of such a form of development unduly impacts on the amenities of the area, public health, the amenities of adjoining properties, undermines the planning regulations and the provisions of the County Development Plan 2022-2028, and would be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to the location of the proposed percolation area, which is to be located within the confines of Recorded Monument WI006-015(enclosure), and*

the extent of the works for the percolation area, which are likely to impact on this recorded monument, and the lack of an archaeological assessment, it is considered that the development would materially contravene Objectives CPO 8.1 and 8.3 of the County Development Plan 2022- 2028, and would be contrary to proper planning and sustainable development.

- 3. The submitted Screening for Appropriate Assessment document, and the Screening for Environmental Impact Assessment document, have failed to assess the in-combination impacts of the proposed development and the existing operations/ development / future tourism development at Kippure Village, which are functionally interdependent. In addition, inadequate examination has been carried out in respect to the Ammonia discharge on the assimilative capacity of the groundwater, and potential impacts on the River Liffey. The River Liffey forms part of the Wicklow Mountains SAC, bounds the Wicklow Mountains SPA, and is linked to the Poulaphouca Reservoir SPA, which is also a major source of public water. In the absence of this information, the Planning Authority cannot be satisfied beyond reasonable scientific doubt, that the proposed development would not have significant effects on Natura 2000 sites. Therefore, it is considered that Appropriate Assessment and Environmental Impact Assessment of the proposed development is required. Furthermore, it cannot be confirmed that the development would not increase the likelihood of contaminants reaching the Poulaphouca Reservoir water source, through malfunction, lack of maintenance or otherwise. To permit the proposed development would, therefore, be prejudicial to public health, would be contrary to the Habitats Directive, to the EIA Directive, to the Objectives of the County Development Plan 2022-2028, and to proper planning and sustainable development.*

This decision is currently on appeal.

ABP 322055-25, Reg. Ref: L02-24: Permission was refused for an application for a discharge licence under Section 4 of the Local Government (Water Pollution) Act 1977 and Regulations, 1978 (as amended). This decision is currently on appeal.

Planning Enforcement

Information publicly available on the planning authority's website indicates that there are on-going enforcement proceedings (UD5239) relating to a number of structures within the site.

6.0 Policy Context

6.1. Wicklow County Development Plan 2022-2028

The subject site is not zoned.

The Landscape Assessment attached as Appendix 5 of the Wicklow County Development Plan 2016-2022 was carried forward to the current development plan. It identifies the site as being located within an Area of Outstanding Natural Beauty – The Mountain Uplands (1 – AONB). This landscape has a high sensitivity and a very high vulnerability.

Schedule 17.12 Prospects of Special Amenity Value or Special Interest lists views and prospects. Prospect 18: Sallys Gap Road R759: Prospect extending from Sroughmore to Ballysmuttan.

Recorded Monument WI006-015 – Enclosure is located within the Kippure Estate.

6.2. Natural Heritage Designations

The subject site is bound to the east by the Wicklow Mountains SAC. The Wicklow Mountains SPA partially overlaps with the Wicklow Mountains SAC and is located c. 400m south of the subject site. The Poulaphouca Reservoir SPA and Poulaphouca Reservoir pNHA overlap and are located c. 6km west of the subject site.

7.0 The Referral

7.1. Referrer's Case

The referral submitted on behalf of Seefin Events Unlimited Company provides a background context for the requirement for accommodation to shelter displaced persons seeking protection. The use as accommodation for such persons is exempted

development under Class 14(h) and / or Class 20F of the Part 1 of Schedule 2 of the PDR and is not the subject of this referral. The referral notes recent High Court judgements which recognises national policy regarding the need for additional residential provision for international protection seekers and displaced persons and that accommodation for such persons is exempted development.

The details of the buildings which are the subject on this referral are summarised below:

Structure No 1: Gate Lodge A and Gate Lodge B.

These are proposed temporary and demountable residential buildings to be used by security personnel on site during the period of use of the lands for those seeking protection. This development is exempted pursuant to Class 17 of Part 1 of Schedule 2 of the PDR as those providing security are doing so *in connection with* carrying out of the development.

Structure No. 2: Semi-detached agricultural storage facility.

This is exempted development pursuant to Class 9 of Part 3 of Schedule 2 of the PDR. The building is less than 300sqm and the materials in the structure are commonly found in agricultural context.

The aggregation should only apply to exempted structures, as the language is 'such structures' within the same complex or within 100m of that complex. The 'such' refers to the exempted structures only, not structures where the exemption is otherwise denied. Further aggregation with Structure No. 6 only makes sense where that structure remains used for agriculture, but not after its conversion under Class 4(1)(h) and or Class 20 F.

Structure No. 3: detached agricultural maintenance storage facility.

This is exempted development pursuant to Class 9 of Part 3 of Schedule 2 of the PDR. The building is less than 300sqm. The planning authority appears to accept that this structure is exempted apart from the aggregate with Structure No. 2 and No. 6. The planning authority have adopted the wrong approach to aggregation. It should only apply to exempted structures that are agricultural buildings. After its conversion, Structure No. 6 became irrelevant to the aggregation.

Structure No. 4: Electricity distribution building.

The distribution building is part of the infrastructure of the holiday village. This is exempted development pursuant to Class 29 of Part 1 Schedule 2 of the PDR. The work was done on behalf of ESB Networks as part of the distribution of electricity at the site.

Structure No. 5: Open fronted agricultural shed.

This is exempted development pursuant to Class 9 of Part 3 of Schedule 2 of the PDR. The gross floor area of this building is less than 300sqm. The planning authority appears to accept that this structure is exempted apart from the aggregate with Structure No. 2 and No. 6. The planning authority have adopted the wrong approach to aggregation. It should only apply to exempted structures that are agricultural buildings. After its conversion, Structure No. 6 became irrelevant to the aggregation.

Structure No. 6: Former agricultural building, now used to accommodate protected persons.

This building was first constructed as exempted development pursuant to Class 9 of Part 3 of Schedule 2 of the PDR. The gross floor area of this building is less than 300sqm and satisfied the conditions and limitations in the second column of the class.

It has since been converted to provide accommodation for protected persons. Such works as were necessary for the conversion are exempted development under Section 4(1)(h) of the PDA, comprising an improvement of the structure. The planning authority did not address the reliance on Section 4(1)(h) for improvements to the exempted structure as part of the conversion.

The use to provide accommodation is exempted development pursuant to the provisions of Class 14(h) and / or Class 20F of Part 1 of Schedule 2 of the PDR.

This structure should not be aggregated with any other structure after its conversion.

Structure No. 7 and Structure No. 8: Pavillion and kitchen building.

These are interconnected buildings that were granted permission under Reg. Ref. 17/1335.

Such works that were necessary for the replacement of the permitted development are exempted development under Section 4(1)(h) of the Act, comprising an improvement of the structure.

The planning authority note that Reg. Ref. 17/1335 was refused on appeal (ABP 300834-18). However, had the planning authority requested further information the concern could have been clarified.

Structure No. 10: Former 'Belfry' building.

This building was constructed in c. 1830 and predates the Planning Acts and modern planning law. The structure has been upgraded and renovated as exempted development under Section 4(1)(h) of the PDA. Section 4(1)(h) does not limit the size of a structure. It includes alterations of many kinds, including those which increase or decrease the size of a building. The only limitation is by reference to character. There is nothing by reference to the perspective of third parties to suggest that the finished treatment of the building is a change in character, or one that is inconsistent in a manner relevant to the exemption.

Structure No. 11: Concrete paved area adjacent to structure no. 10 and 12.

This area is for amenity or recreation purposes. It has been laid out and uses as a recreation facility for the protected persons resident at the estate. This is exempted development pursuant to Class 33 of Part 1 of Schedule 2 of the PDR.

The planning authority's reading of Class 33 is too narrow. It does not require a park to be open to the public. A better view is that both private and public parks are included.

The fact that this space also provides access is unremarkable.

The 2024 Compact Growth guidelines is confusing as these postdate the PDR and are not relevant to how Class 33 should be interpreted. The guidelines are focused with standards and ensuring how those are achieved.

The planning authority suggests that undulating lands cannot be levelled to form a recreational park. We suggest that the expression laying out includes the formation of appropriate ground level, by way of levelling.

Structure No. 12: Accommodation block.

Structure No. 12 is sometimes labelled the Long Barn. This building was constructed in c. 1830 and predates the Planning Acts and modern planning law.

Retention permission was granted under Reg. Ref. 99/1150 to convert part of this structure to a 2-storey recreation building.

Since the current owners purchased the estate in 2020, they have implemented a programme of refurbishment and improvement works to the extensive building complexes and infrastructure at Kippure. This programme of works included Structure No. 12, a part accommodation building, including toilets, recreation area, tuck shop, boot room and other utility compartments some of which had fallen into a state of disrepair. This building complex was known as the Long Barn and had various uses, renovations and alterations over the years.

Structure no. 12 was in need of major stabilisation works as the old stone walls were over stressed and were showing signs of excessive movement. The works included replacement of some walls with a specially designed reinforced cantilever retaining structure and the rebuilding of other areas. A steel frame was introduced, with precast slab divides, to aid the stabilisation process and refurbishment works, while reducing the loading on the existing foundations.

Structure 12 is a 26. no. bedroom accommodation block with associated plant rooms. Each bedroom has en-suite facilities and is fully occupied by protected persons.

Such works as were necessary for the upgrade and renovation of the pre-1964 structure was permitted under Reg. Ref. 99/1150 and are exempted under Section 4(1)(h) of the PDA as they comprise an improvement to the structure.

Structure No. 13: Art O'Neill's building.

Structure No. 13 is sometimes labelled the Art O'Neill's Building. This building was constructed in c. 1830 and predates the Planning Acts and modern planning law.

This building was damaged by fire in June 2016. Permission was granted under Reg. Ref. 17/352 for a replacement dormer style building in place of a section of the building that burnt down and alterations to the original layout and design.

Works which were necessary to the upgrade and renovation of the pre-1964 structure and the development permitted under Reg. Ref 17/352 are exempted development under Section 4(1)(h) of the PDA, comprising an improvement to of the structure.

The Board is invited to form its own view if the works were carried out after the permission had expired.

The cladding is irrelevant as this request is based on the structure after the cladding was removed.

The open canopy to the front is an alteration by way of improvement on which Section 4(1)(h) is relied. The planning authority did not address that question.

Structure No. 14: Car park adjacent to the former Belfry Building.

This is a temporary car park to facilitate construction personnel and administrative staff. This is exempted development under Class 16 of Part 1 of Schedule 2 of the PDR. The car park will be reinstated after the development is carried out, save to such an extent as may be authorised or required by a permission under the PDA.

It is considered that Class 16 allows the use for other than construction contractors. Those administrative staff are parking in connection with carrying out of the development.

Structure No. 15: Large, gravelled area to the north-east of the holiday village.

This is a temporary car park to facilitate construction personnel. This is exempted development pursuant to Class 16 of Part 1 of Schedule 2 of the PDR. The car park will be reinstated after the development is carried out, save to such extent as may be authorised or required by a permission under the PDA.

The planning authority considers this to be a material change of use. No request in relation to use was made.

The planning authority have taken to narrow a view of Kippure Estate and the use of the entire planning unit. These are complex matters not addressed in the request. The Board is invited to exclude any remark about use from the decision upon review.

The planning authority made remarks about the potential for impact on a European site without any request for information from the person requesting the declaration, or the owner, to inform those remarks. Those should be ignored.

Structure No. 16: Accommodation block.

Structure No. 16 is sometimes labelled the Stables and Grain Stores. This building was constructed in c. 1830 and predates the Planning Acts and modern planning law.

Structure No. 16 is now a 51 no. bedroom accommodation block, with associated plant rooms. Each bedroom has ensuite facilities. When complete this structure would be occupied by protected persons.

Structure no. 16 is a modular building, and its principal components were manufactured off site and comprise an insulated steel roof panels and associated flashings, steel frame structure, pre-cast concrete walls and floor panels and external windows and doors.

The building was assembled on site and fixed with bolts to a pre-constructed reinforced concrete retaining wall. Final fit out of the structure will be carried out on site, as will connection to services etc.

Such works were necessary for the upgrade and renovation of the pre-1964 structure and are exempted development under Section 4(1)(h) of the PDA, comprising an improvement of the structure.

The construction of this temporary building is necessitated by the on-going urgent need by Government to provide accommodation for displaced persons caused by the war in Ukraine.

The Minister for Children, Equality, Disability, Integration and Youth is a state authority. This means that the provisions of Part XI of the PDA apply to development carried out on his behalf. Part XI gave to the Minister of Housing, Local Government and Heritage a limited but clear and unambiguous power to set aside the PDA for certain state authority development.

Under the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (SI No. 306 of 2022) the PDA does not apply to certain development required for the purpose of providing temporary protection to displaced persons from Ukraine.

The entire PDA is set aside, save for Sections 181A – 181C for 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. These classes of development include: -

Residential accommodation including ancillary recreational and sporting facilities, ancillary structures or facilities and infrastructure.

The relevant period will remain in place until March 2025, at least.

It is considered that Structure No. 16 is exempted under the 2022 Regulations as a Temporary New Build Accommodation and Structures to address the urgent need to provide emergency accommodation and support to displaced persons from the conflict in Ukraine.

On-site storage of soil / stone, boulders, machinery and building materials.

Part of the estate is used for storage of soil / stone and or boulders, machinery and building materials as necessary and incidental to the development of Kippure. This is exempted development pursuant to Class 16 of Part 1 of Schedule 2 of the PDR.

The planning authority considers this to be a material change of use. No request in relation to use was made.

The planning authority have taken to narrow a view of Kippure Estate and the use of the entire planning unit. These are complex matters not addressed in the request. The Board is invited to exclude any remark about use from the decision upon review.

The planning authority made remarks about the potential for impact on a European site without any request for information from the person requesting the declaration, or the owner, to inform those remarks. Those should be ignored.

Conclusion

The team at all times acted in accordance with the Regulations in place to ensure protected persons were safely accommodated.

7.2. Planning Authority Response

The reasons and considerations are fully set out in the planning report and the declaration. However, in the interest of clarity the planning authority provides a number of comments on the submitted referral. These are summarised below:

- Information provided in Sections Context and Conclusion of the referral do not deal with the questions required to be decided upon in the referral. These sections contain irrelevant matters and should not distract from the technical core issues on which the referral has to be determined on. It is requested that these sections be disregarded.
- The Section 5 was worded having regard to the belief that the various use / uses were exempted development. Reference in this regard was made to Class 14(h) and / or Class 20F and the Dromaprop High Court decision. No documentation was submitted to support this view, and it was not shown how a High Court decision relating to specific development is wholly relevant to the subject site, where different matters pertain.
- Class 14(h) and / or Class 20F were not referred to in the Main Reasons in the Section 5 Declaration. This does not indicate that the planning authority concurs with the referrer.
- It is acknowledged that development can be either works or a material change of use. However, it is not always possible to have one without the other.
- Given the nature of the development, it is not readily obvious why the use was specifically requested to not form part of the Section 5 Declaration, particularly given various exemptions relied upon, can only be relied upon where a particular use is involved, for example Class 9 where the use has to be for agriculture. The submitted documentation also made reference to use.
- **Structure No. 1:** The rationale for Class 17 being applicable to those employed in the operation of the development does not make sense. Expanding the meaning of 'the carrying out of the development' to include the operation of the development, not only would represent a misunderstanding it would have the effect of using a class of exemption for temporary structures and uses for non-temporary / permanent uses.
- **Structure No. 2:** Just because materials can be used for agricultural purposes does not automatically mean that the requirement in Conditions and Limitations for Class 9 are met. What those materials are being used for is of relevance. If materials are being used for development other than agriculture or forestry,

then Conditions and Limitations would not be complied with. The aggregation of the floor areas is legitimate. The assessment of aggregate floor areas is included for the purpose of completeness. The inclusion of mezzanine areas in the calculation of floor area is appropriate.

- **Structure No. 3:** The use of the structure for agricultural uses was not demonstrated. The aggregation of the floor areas is legitimate.
- **Structure No. 4:** Class 29 does not include works carried out on behalf of an electricity undertaking.
- **Structure No. 5:** The aggregation of the floor areas is legitimate. The use of this structure may also require consideration. The exemption under Class 9 is in relation to the use being agriculture or forestry only. No evidence is provided to support the original agricultural use of the structure. It is considered appropriate to include the upper floor areas in the calculation of floor area.
- **Structure No. 7 and No. 8:** It is not clear why a request for further information was necessary to clarify incorrect statements made as part of the Section 5 Declaration request.
- **Structure No. 10:** The planning authority is entitled to determine that Structure No. 10 was significantly altered such that it is now inconsistent with the character of the original structure. There is no requirement to assess the perspective of third parties. It is also determined that the significant alterations did not come within the scope of Section 4(1)(h).
- **Structure No. 11:** The reference to the Compact Settlement Guidelines was to give context to the understanding of private open space. The scope of laying out of lands in Class 33 has to have regard to the degree of alteration to existing ground levels that is required to achieve the laying out. Not all proposed development is exempted just because it is the same type of development that is described in the class. Consideration has been given to what is envisaged by the exempted class. ABP 06D.RL.2076 is considered relevant in this regard. Concluding that the laying out and use of a field as a hard surface for sports and recreation use does not come within the scope of laying out and use as set

out in Class 33 having regard to the extent of the works, the raising and lowering of ground levels and the importation of large quantities of fill.

- **Structure No. 12:** No evidence is provided with regard to the various uses, renovations and alterations to the 'Long Barn' nor has any commentary been provided to the planning status of same. No detailed drawings are provided to accurately describe the original pre-'64 structure, and the alterations undertaken. It is considered that the existing structure is significantly different in terms of size, scale and location to the original structure. No evidence was provided that at the time of the construction of this structure it was done so on behalf of the state.
- **Structure No. 13:** Section 4(1)(h) does not apply to this structure based on what was in existence on the site in terms of cladding and the provision of an extended covered area.
- **Structure No. 14:** As per Structure 1, expanding the meaning of 'the carrying out of the development' to include the operation of the development, not only would represent a misunderstanding it would have the effect of using a class of exemption for temporary structures and uses for non-temporary / permanent uses.
- **Structure No. 15:** The planning authority is required to carry out an Appropriate Assessment (AA) Screening in relation to any development subject to a Section 5 referral. There is no requirement for the planning authority to seek information from the applicant. It is considered that AA is required.
- **Structure No 16:** It is not clear how a building manufactured off site can be considered within the scope of section 4(1)(h) for works carried out to what is stated as a pre-'64 structure. This was considered in the planning report.
- **On Site Storage:** No information has been provided in relation to the statement that on-site storage of soil / stone is exempted development by virtue of Class 16. As noted above, a planning authority is required to carry out an AA Screening in relation to any development subject to a Section 5 referral. There is no requirement for the planning authority to seek information from the applicant. It is considered that AA is required.

- There are concerns in relation to the structure of the Section 5 as submitted, and to the lack of evidence / information submitted to support the various contentions of the applicant.
- The Board may wish to broaden the referral to deal with the matter of use in a more detailed manner given use is an intrinsic matter in determining some of the questions posed.

7.3. **Observations**

The observation from Peter O'Sullivan includes newspaper headlines, information from the applicant's website, sections of legislation, photographs, planning enforcement details, planning history, water quality monitoring carried out at the site. The observation is summarised below:

- Concerns regarding the validity of the application having regard to an enforcement notice served on the site requiring all works to cease.
- It is considered that the applicant has sufficient knowledge of planning laws to understand the complex environmental sensitivities of the site.
- This development has had a significant impact on the environment around the estate.
- A large number of trees have been removed. The visual impact is substantial within a SAC.
- The development includes 65 no. new dwellings and there have been some sewerage spills in the last year. The River Liffey that feeds the Poulaphuca Reservoir is situated in close proximity to the development and its sewerage system. The development is likely impacting on water quality.
- Kippure Estate is not an agricultural operation therefore the buildings claiming to be agricultural in use are in use as commercial buildings.
- Construction traffic has negatively impact on the surrounding road network.
- A large town has been built without planning permission.

7.4. Further Responses

None

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000

Part 1 – Preliminary and General - Section 2(1) provides the following definitions: -

“agriculture” includes horticulture, fruit growing, seed growing dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agri-cultural” shall be construed accordingly;

“alteration” includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the structure or neighbouring structures.

“use” in relation to land, does not include the use of the land by the carrying out of any works thereon.

“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”.

Section 3(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1) of the Act states that ‘the following shall be exempted developments for the purposes of this Act—

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'

Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001-2020.

Section 177U (9) In deciding upon a declaration or a referral under *section 5* of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

Section 181(1)(a) Development by State Authorities: 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.

8.2. Planning and Development Regulations, 2001

Article 6(1) of the regulations states that '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).

Article 9(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would—

- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- (viiB) 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.
- (viii) 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.

Article 10(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised, and which has not been abandoned.

Schedule 2, Part 1 – Exempted Development – General

Class 13: The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

Conditions and Limitations: The width of any such private footpath or paving shall not exceed 3 metres.

Class 14: Change of use: Development consisting of a change of use —

(h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,

Conditions and Limitations: The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2

(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons, and

(j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both

Conditions and Limitations: Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.

Class 16: The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

Conditions and Limitations: Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

Class 17: The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-

site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.

Conditions and Limitations: Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission

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.

Conditions and Limitations:

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 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001².
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 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.

Class 29: The carrying out by any electricity undertaking of development consisting of the construction or erection of a unit substation (excluding a charging point for electric vehicles) or minipillar for the distribution of electricity at a voltage not exceeding a nominal value of 20kV.

Conditions and Limitations: The volume above ground level of any such unit substation or minipillar shall not exceed 11 cubic metres, measured externally.

Class 33(a) Development consisting of the laying out and use of land— (a) as a park, private open space or ornamental garden.

No limitations or conditions to this class.

Schedule 2, Part 3 – Exempted Development – Rural

Class 9: Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres

Conditions and Limitations:

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure

8.3. **The European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022)”**

The 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.

Section 1: These Regulations may be cited as the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations, 2022.

Section 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

Section 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.

Section 3(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.

8.4. 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.

8.5. 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 (Sl. No. 600 of 2001) is amended by inserting the Class 20F.

8.6. ***Site Specific Exemptions by the State***

A number of sites have been identified by the State as appropriate for the provision of accommodation for persons who qualify for international protection. An application to An Bord Pleanála for approval under section 181 (2A)(b) of the Planning and Development Act 2000 is not required for these sites.

- S.I. No. 365/2024 - Planning and Development Act 2000 (Section 181(2)(a)) Order 2024.
- S.I. No. 399/2024 - Planning and Development Act 2000 (Section 181(2)(a))(No.2) Order 2024.
- S.I. No. 481/2024 - Planning and Development Act 2000 (Section 181(2)(a)) (No. 3) Order 2024.
- S.I. No. 507/2024 - Planning and Development Act 2000 (Section 181(2)(a)) (No.4) Order 2024.

9.0 **Precedent and Legal Judgement**

Board Decisions

Relevant S5 decisions to date:

ABP319805-24: Whether the construction of circa 40 no. self-contained units / apartments within the equestrian shed (granted under permission P97/396) is or is not development or is or is not exempted development.

The Board concluded that:

(a) the construction of circa 40 number 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 40 number self-contained units/apartments within the equestrian shed is exempted development as it consists 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. As such it comes within the scope of SI. 306/2022 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022, for the duration of the relevant period.

Therefore, the construction of circa 40 number self-contained units/apartments is development and is exempted development.

ABP-320031-24: Whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children, is or is not development or is or is not exempted development.

The Board concluded that:

(a) The change of use from the established use as a dwelling house to the proposed use as accommodation for protected persons constitutes a change of use (b) The change of use raises planning considerations that are materially different to planning considerations relating to the established use,

(c) The change of use constitutes a material change in the use of the structure. Therefore, the change of use of a dwelling house to accommodation for protected persons is development and is not exempted development.

ABP 28. RL.3423: Whether the ongoing playing pitch relocation works at Beaumont Park, Ballintemple, Cork is or is not development or is or is not exempted development:

The Board concluded in relation to Class 33(c) of Part 1 of Schedule 2 to the said Regulations, the Board had regard to the extent of works that have taken place, as

shown on the submitted documentation (including the tender document and photographs submitted by the Football club) and in the inspection by the Board's Inspector, and noted that the works comprised significant raising and lowering of pre-existing ground levels. In the circumstances, the Board considered that these works did not come within the scope of the "laying out and use of land" as set out in this Class. In making this decision, the Board had regard to precedent referral cases where this issue was previously considered, including 06D.RL.2069, 11.RL.2071 and 06D.RL.2076.

ABP. PL 42.RL2554: Whether certain works including the provision of an ESB substation is or is not development or is or is not exempted development. The Board concluded that the ESB substation was development and was not exempted development.

Relevant Legal Judgements

In *Leitrim County Council and Dromaprop Ltd.* ([2024] IEHC 233) the issue of change of use, contravention of condition and internal works are considered. Humphreys J. concluded that the change of use from a hotel to accommodation of protection seekers was clearly exempt under Class 14 (h) and 20F. The change of use was not de-exempted by a condition of a previous permission, as reference to contravention of a condition "does not include reference to a condition whose only relevance is merely that non-compliance is inherent in the very action being permitted."

The change of use was concluded in the ruling, and the issue of internal works set aside for another date, while the applicant rectified this with the Planning Authority.

10.0 Assessment

- 10.1. It should be noted that the purpose of a referral is not to determine the acceptability or otherwise of the proposed works in respect of the proper planning and sustainable development of the area, but rather to determine whether or not the matter in question constitutes development and if so, falls within the scope of exempted development.
- 10.2. Information publicly available on the planning authority's website indicates that there are on-going enforcement proceedings (UD5239) relating to a number of structures

within the site. In accordance with Part 8 of the Planning and Development Act planning authorities are responsible for the enforcement relating to breaches of the planning system. The Board has no role in enforcement, and this assessment does not consider any allegations of unauthorised development. Therefore, this referral is assessed on the information at hand and relates to the questions asked the referral documents only.

10.3. This referral relates to 15 no. items. There is some overlap between some of the items, however, in the interest of clarity each item is addressed separately. Firstly, I will consider if the structure and / or works are or are not development and secondly, I will consider if the structure and / or works are or are not exempted development.

10.4. It is also acknowledged that there are some minor discrepancies in the total floor area of some of the structures noted by the planning authority and the referrer. In the interest of clarity, the total floor areas referenced in my assessment below are approximate floor areas based off the drawings submitted.

10.5. Is or is not development and is it or is it not exempted development

10.5.1. The referral states that the council were not requested to give a declaration regarding the use of the structures, and likewise this referral does not invite the Board to give a declaration regarding use. While this is noted, Section 2(1) of the PDA defines works as any *act or operation of construction, excavation, demolition, extension, alteration, repair or renewal* and Section 3(1) of the PDA defines development as *'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. Therefore, to determine if development has taken place in specific instances, material change of use may be relevant to the assessment and cannot be excluded from the determination as to whether development has or has not occurred.

10.5.2. It is noted that the referrer does not dispute that the structures and works listed in the referral are development.

Structure No 1: Gate Lodge A and Gate Lodge B

- 10.5.3. Structure No. 1 relates to 2 no. separate structures referred to as Gate Lodge A and Gate Lodge B.
- 10.5.4. Gate Lodge A is an existing single storey structure located in the north-west portion of the site adjacent to the site entrance / exit. This structure is a 2-bed unit with a gross floor area of c. 85sqm. During my site visit on the 6th May 2025 this building appeared to be vacant. Having regard to Section 2(1) and Section 3(1) of the PDA the construction of Gate Lodge A constitutes works, and, therefore, constitutes development.
- 10.5.5. Gate Lodge B is a proposed 85sqm, 2-bed single storey residential unit. Again, having regard to Section 2(1) and Section 3(1) of the PDA the construction of Gate Lodge B would constitute works, and, therefore, would constitute development.
- 10.5.6. Section 4(1)(h) of the PDA provides an exemption for development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. It does not provide an exemption for new structures. Therefore, the Regulations will be considered in relation to these works.
- 10.5.7. The referrer states that these are proposed temporary and demountable residential buildings to be used by security personnel on site during the period of use of the lands for those seeking protection and considers that this development is exempted pursuant to Class 17 of Part 1 of Schedule 2 of the PDR as those providing security are doing so *in connection with* carrying out of the development.
- 10.5.8. Class 17 relates to temporary on-site accommodation for persons employed or otherwise engaged in connection with the carrying out a development that has permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development. These gate lodges are stated to provide accommodation for security staff for persons occupying the facility during its operational phase. The Conditions and Limitations of Class 17 requires that the

accommodation be removed and the land reinstated once the carrying out of the development has occurred. It does not provide for accommodation for persons employed or otherwise engaged with the operational phase of a development. It is my opinion that these Gate Lodges (Structure No. 1) do not come within the scope of Class 17.

- 10.5.9. Having regard to the above, it is my opinion that Structure 1: Gate Lodge A and Gate Lodge B **are development** and are **not exempted development**.

Structure No. 2 semi-detached agricultural storage unit

- 10.5.10. Structure No. 2 is referred to as an agricultural storage unit. The 2-storey structure has a stated gross floor area of c. 680sqm and a height of c. 8.6m. It is attached to Structure no. 6 and located within a cluster of units, referred to as Structure No. 3, No. 4 and No. 5, fronting onto an open courtyard area in the central portion of the overall site. It would appear from aerial photography submitted with the referral that Structure No. 2 and No. 6 were constructed between January 2020 and March 2022. Having regard to Section 2(1) and Section 3(1) of the PDA the construction of this structure constitutes works, and, therefore, constitutes development.
- 10.5.11. The referrer considers that Structure No. 2 is exempted development under Class 9 of Part 3 of Schedule 2 of - Exempted Development – Rural. Class 9 provides an exemption for the provision of any store, barn, shed, glass-house or other structure for the purpose of agriculture or forestry having a gross floor space not exceeding 300 square metres. The drawings submitted indicate that Structure No. 2 has a total gross floor area of c. 680sqm, which is in excess of gross floor area limitation (300sqm) provided under Class 9 and therefore the exemptions available to agriculture or forestry no longer apply.
- 10.5.12. Condition and Limitation 1 of Class 9 requires that a structure be used for agriculture or forestry. Part 1 – Preliminary and General - Section 2(1) of the PDA defines agriculture as including *horticulture, fruit growing, seed growing dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agri-cultural” shall be construed*

accordingly. The planning history for the site, demonstrates that Kippure Estate was developed into holiday accommodation and associated uses and was not in use as agriculture. During my site visit Structure No. 2 in combination with Structure No. 3 and No. 5 appeared to be storing machinery and materials in relation to the operation of the facility and not agriculture. It is my opinion that the referrer has not adequately demonstrated that Structure No. 2 is being used for agriculture or forestry as set out in Condition and Limitation 1 of Class 9.

10.5.13. Condition and Limitation 2 requires that the gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate. From the drawings submitted it would appear that Structure No. 2 and No. 6 have a combined floor area of 1,272sqm. Therefore, in any event, these structures are not exempted development under Class 9 as they exceed the aggregate area of 900sqm.

10.5.14. It is noted that Structure No 2. complies with all other Conditions and Limitations set in column 2 of Class 9.

10.5.15. Having regard to the above it is my opinion that Structure No. 2 **is development and is not exempted development.**

Structure No. 3: Agricultural Maintenance / Storage Facility

10.5.16. Structure No. 3 is referred to as a detached agricultural maintenance storage facility. It is an existing single storey structure with a stated gross floor area of c. 179sqm and a height of c. 6.2m. It is located within a cluster of units, referred to as Structure no. 2, no. 4, no. 5 and no. 6. Having regard to Section 2(1) and Section 3(1) of the PDA the construction of this structure constitutes works, and, therefore, constitutes development

10.5.17. The referrer considers that Structure No. 3 is exempted development under Class 9 of Part 3 of Schedule 2 of - Exempted Development – Rural. As noted above, Class 9 provides an exemption for the provision of any store, barn, shed, glass-house or other structure for the purpose of agriculture or forestry, having a gross floor space not exceeding 300 square metres. The drawings submitted indicate that Structure No. 3

has a total gross floor area of c. 179sqm, which is within the gross floor area limitation (300sqm) provided under Class 9.

10.5.18. Condition and Limitation 1 of Class 9 also requires that the structure be used for agriculture or forestry. As noted above, the planning history for the site, demonstrates that Kippure Estate was developed into holiday accommodation and associated uses and was not in use as agriculture or forestry. During my site visit Structure No. 3 in combination with Structure No. 2 and No. 5 appeared to be storing machinery and materials in relation to the operation of the facility and not agriculture. It is my opinion that the referrer has not adequately demonstrated that Structure No. 2 is being used for agriculture or forestry, as defined in Part 1 – Preliminary and General - Section 2 and, therefore, does not comply with Condition and Limitation 1 of Class 9 and therefore the exemptions available to agriculture no longer apply.

10.5.19. Condition and Limitation 2 also requires that the gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate. It would appear from aerial photography submitted with the referral that Structure No. 3 was constructed after March 2022 and, therefore, after Structure No. 2 and No. 6. Structure No. 2 and No. 6 have a combined floor area of 1,272sqm and were constructed before Structure no. 3. Therefore, the aggregate floor area of these structures exceeds the permissible aggregate area of 900sqm provided under Condition and Limitation 2 of Class 9.

10.5.20. It is noted that Structure No 3. complies with all other conditions and limitations set in column 2 of Class 9.

10.5.21. Having regard to the above it is my opinion that Structure No. 3 **is development and is not exempted development.**

Structure No. 4: Electricity Distribution Building

10.5.22. Structure No. 4 is a detached single storey electricity distribution building with a gross floor area of c. 27sqm and a height of c. 3.1m. It is located within a cluster of units, referred to as Structure No. 2, No. 3, No. 5 and No. 6. Having regard to Section 2(1)

and Section 3(1) of the PDA the construction of this structure constitutes works, and, therefore, constitutes development.

- 10.5.23. The referrer considers that Structure No. 4 is exempted development under Class 29 which provides an exemption for the carrying out by any electricity undertaking of development consisting of the construction or erection of a unit substation or minipillar for the distribution of electricity at a voltage not exceeding a nominal value of 220kV. Conditions and Limitations require that the volume above ground level of any such unit substation or minipillar shall not exceed 11 cubic metres when measured externally.
- 10.5.24. The Electricity Regulation Act, 1999 Revised Updated to 31 December 2024 defines an "electricity undertaking" as any person engaged in generation, transmission, distribution, aggregation, demand response, energy storage, supply or purchase of electricity, and who is responsible for the commercial, technical or maintenance tasks related to those functions, including a holder of a licence or authorisation under this Act or a person who has been granted a permit under section 37 of the Principal Act, but does not include final customers. As the refer is the final customer and not a person engaged in the supply or generation of electricity and is not a licenced or authorised operator Structure No. 4 is not exempted by Class 29.
- 10.5.25. It is also note that Structure No. 4 exceeds the limitation of 11 cubic meters when measured externally as set out in the Conditions and Limitations of Class 29.
- 10.5.26. Having regard to the above it is my opinion that Structure No. 4 **is development and is not exempted development.**

Structure No. 5: Agricultural Shed

- 10.5.27. Structure No. 5 is referred to as an open fronted agricultural shed. It is single storey structure comprises 5 no. separate storage areas with a total floor area of c. 197sqm. It is located within a cluster of units, referred to as Structure No. 2, No. 3, No. 4 and No. 6. Having regard to Section 2(1) and Section 3(1) of the PDA the construction of this structure constitutes works, and, therefore, constitutes development.
- 10.5.28. The referrer considers that Structure No. 5 was constructed as exempted development under Class 9 of Part 3 of Schedule 2 of - Exempted Development – Rural. As noted above, Class 9 provides an exemption for the provision of any store, barn, shed, glass-

house or other structure for the purpose of agriculture or forestry having a gross floor space not exceeding 300 square metres. The drawings submitted indicate that Structure No. 5 has a total gross floor area of c. 179sqm, which is within the gross floor area limitation (300sqm) provided under Class 9.

10.5.29. Condition and Limitation 1 of Class 9 also require that the structure be used for agriculture or forestry. As noted above, the planning history for the site, demonstrates that Kippure Estate was developed into holiday accommodation and associated uses and was not in use as agriculture or forestry. During my site visit Structure No. 5 in combination with Structure No. 2 and No. 3 appeared to be storing machinery and materials in relation to the operation of the facility and not agriculture. It is my opinion that the referrer has not adequately demonstrated that Structure No. 5 is being used for agriculture, as defined in Part 1 – Preliminary and General - Section 2 and therefore, does not comply with Condition and Limitation 1 of Class 9 and therefore the exemptions available to agriculture no longer apply.

10.5.30. Condition and Limitation 2 requires that the gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate. It would appear from aerial photography submitted with the referral that Structure No. 5 was constructed after March 2022 and, therefore, after Structure No. 2 and No. 6. Structure No. 2 and No. 6 have a combined floor area of 1,272sqm and were constructed before Structure No. 5. Therefore, the aggregate floor area of these structures exceeds the permissible aggregate area of 900sqm provided under Condition and Limitation 2 of Class 9.

10.5.31. It is noted that Structure No 5. Complies with all other Conditions and Limitations set out in Column 2 of Class 9.

10.5.32. Having regard to the above it is my opinion that Structure No. 5 **is development and is not exempted development.**

Structure No. 6 former agricultural building, currently used to accommodate protected persons

10.5.33. Structure No. 6 is referred to as a former agricultural building, currently used to accommodate protected persons relates. It is an existing 2-storey semi-detached

structure with a stated floor area of c. 540sqm and a height of c. 8.6m. Having regard to Section 2(1) and Section 3(1) of the PDA the construction of this structure constitutes works, and, therefore, constitutes development.

10.5.34. It would appear from aerial photography submitted with the referral that Structure No. 2 and No. 6 were constructed between January 2020 and March 2022.

10.5.35. The referrer considers that Structure No. 6 was constructed as exempted development under Class 9 of Part 3 of Schedule 2 of - Exempted Development – Rural. Class 9 provides an exemption for the provision of any store, barn, shed, glass-house or other structure having a gross floor space not exceeding 300 square metres. The drawings submitted indicate that Structure No. 6 has a total gross floor area of c. 540sqm, which is in excess of gross floor area limitation (300sqm) provided under Class 9 and, therefore, the exemptions available to agriculture or forestry no longer apply.

10.5.36. Condition and Limitation 1 of Class 9 requires that the structure be used for agriculture or forestry. Structure No. 6 is currently being used to accommodate protected persons. No information has been submitted with the referral to indicate that Structure No. 6 was previously in use as an agricultural building, as defined in Part 1 – Preliminary and General - Section 2 and, therefore, does not comply with Condition and Limitation 1 of Class 9.

10.5.37. Condition and Limitation 2 also requires that the gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate. From the drawings submitted it would appear that Structure No. 6 and No. 2 have a combined floor area of 1,272sqm. Therefore, these structures are not exempted development under Class 9 as they exceed the aggregate area of 900sqm.

10.5.38. It is noted that Structure No 6. Complies with all other Conditions and Limitations set out in Column 2 of Class 9.

10.5.39. Class 14(h) allows for the change of use from a variety of uses to use as accommodation for protected persons and Class 14(i) allows for the change of use from a variety of uses to use as an emergency reception and orientation centre for

protected persons. The referrer states that Structure No. 6 was constructed as an agricultural building. Therefore, is no exemption under Class 14 for the change of use from an agricultural structure to accommodation for protected persons. It is my opinion that Structure no. 6 is not within the scope of Class 14 (h), (i) or (j).

10.5.40. Class 20F allows for the temporary change of use of a variety of uses to accommodate or support of displaced persons or persons seeking international protection by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth. As noted above, the referrer states that Structure No. 6 was constructed as an agricultural building. There is no exemption under Class 20F for the change of use from an agricultural structure to accommodation for protected persons. In addition, the referrer has not demonstrated that this structure was constructed on behalf of the Minister. It is my opinion that Structure No. 6 does not come within the scope of Class 20F.

10.5.41. The European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022) 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. The referrer has not demonstrated that Structure No. 6 was constructed on behalf of a state authority and no evidence that the structure is related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

10.5.42. Having regard to the above it is my opinion that Structure No. 6 **is development and is not exempted development.**

Structure No. 7 and Structure No. 8: Pavillion and Kitchen Building

10.5.43. Structure No. 7 and Structure No. 8 refer to 2 no. single storey interconnected structures with a maximum height of c. 5.1m. Structure no. 7 has a gross floor area of c. 418sqm with a covered outdoor area of c. 103sqm. This structure accommodates an event room with associated ancillary facilities including a bar, toilets, office and storage. Structure No. 8 has a gross floor area of c. 200sqm and accommodates a kitchen with associated storage and staff areas. Having regard to Section 2(1) and

Section 3(1) of the PDA the construction of these structures constitute works, and, therefore, constitute development.

- 10.5.44. The referrer considers that the works to these structures are exempted development under section 4(1)(h) of the PDA, as permission was granted for the structures under Reg. Ref. 17/1335. This decision to grant retention permission for 2 no. marquees, 3 no. prefabricated units and 1 no. 40ft container this decision was overturned on appeal (ABP 300834-18) due to the ongoing concerns of in respect of the adequacy of the on-site wastewater treatment and disposal system. Therefore, these structures (Structure No. 7 and No. 8) do not have the benefit of planning permission.
- 10.5.45. From the publicly available information on the planning authority's website and the planning history attached to the file, it would also appear that the existing structures have a different orientation and are located to the east of the proposed location of the development refused under ABP 300834-18.
- 10.5.46. Section 4(1)(h) of the PDA provides an exemption for development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. It does not provide an exemption for new structures. Therefore, these structures do not fall within the scope of Section 4(1)(h).
- 10.5.47. There are no other exemptions available for these structures.
- 10.5.48. Having regard to the above, it is my opinion that Structure No. 7 and Structure No. 8 **are development and are not exempted development.**

Structure No. 10: former 'Belfry' Building

- 10.5.49. Structure No. 10 is referred to as the former 'Belfry' building. It is a 2-storey building with a total floor area of c. 416sqm. The ground floor accommodates a restaurant area (c. 88sqm) with associated kitchen (c. 50.5m) and toilets and circulation areas. The first floor accommodates 4 no. offices, a reception, a gift shop and store. Due to the level differences this is a split-level building, with access to the ground floor level from the northern elevation of the building and access to the first-floor level from the southern elevation of the building.

- 10.5.50. The information submitted with the referral indicates that this building was constructed in c. 1830 and has been upgraded and renovated over the years. Permission was granted in 2005 (Reg. Ref. 05/2792) for the refurbishment of the Belfry building (197sqm) for use as a backup for outdoor facilities.
- 10.5.51. Having regard to the history drawings submitted with Reg. Ref. 05/2792, which are publicly available on the planning authority website and attached to the file, it would appear that there have been significant alterations to the original structure and the structure approved under Reg. Ref. 05/2792. The dimensions of the building approved under Reg. Ref. 05/2792 were 18.1m in length by 6.6m in width with a maximum height of 8.1m. The drawings submitted with the referral indicate that the dimensions of the existing building on site are 27.3m in length by 8.7m in width with a maximum height of 9.1m. The existing structure also includes additional and relocated windows and doors, a new roof and external cladding. Having regard to Section 2(1) and Section 3(1) of the PDA the works carried out to the structure constitute development.
- 10.5.52. Section 4(1)(h) of the PDA provides an exemption for development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. Having regard to the significant nature and scale of the alteration works carried out to the original 'Belfry' building and the development approved under Reg. Ref. 05/2792 and as the works materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure it is my opinion that Section 4(1)(h) does not apply in this instance.
- 10.5.53. There are no other exemptions available for these structures.
- 10.5.54. Having regard to the above it is my opinion the works to Structure No. 10 the former 'Belfry' building **are development and are not exempted development.**

Structure No. 11: Concrete Paved Area

- 10.5.55. Structure No. 11 relates to an existing concrete paved area adjacent to Structure No. 10 former 'Belfry' Building and Structure No. 12 accommodation block, with an area of c. 925sqm. The laying out and paving of an area with concrete comes within the

meaning of works as provided for in Section 2(1) of the PDA and would, therefore, constitutes development as provided for in Section 3(1) of the PDA.

- 10.5.56. During my site visit this area was a concrete paved area in use for recreation with a number of exercise machines. It also provides access to own door units in Structure no. 12. It is noted that the paved area extends to the front (western elevation) of Structure No.13. However, this area of concrete paving does not form part of the referral question. Therefore, the area of my assessment relates to the area between Structure No. 10 and No. 12 only.
- 10.5.57. Aerial photography submitted with the referral indicates that this area was previously an access road with landscaping / vegetation. The planning authority and the referrer have both made reference to the area being levelled to facilitate the paved area. However, no details of the original levels of the area have been provided with the referral.
- 10.5.58. Class 33(a) provides an exemption for the laying out and use of land as a park, private open space or ornamental garden. From the information submitted and having carried out a site visit it is my view that this area is not a park, private open space or an ornamental garden. It is my opinion that this area could be considered as communal open space to serve the residents of the facility. However, there is no exemption provided in Class 33 for communal open space.
- 10.5.59. With regard to the laying out of the land the Board concluded in ABP 28. RL.3423 that the works comprised significant raising and lowering of pre-existing ground levels and in these circumstances, the works did not come within the scope of the “laying out and use of land” as set out in this Class 33. In making this decision, the Board had regard to precedent referral cases where this issue was previously considered, including 06D.RL.2069, 11.RL.2071 and 06D.RL.2076. Therefore, it is my opinion that the layout of the land does not provide an exemption for the significant raising and lower of land. However, as the original levels of the site have not been provided the scale of the works carried out is unclear.
- 10.5.60. In addition, Class 13 provides an exemption for the construction of any private footpath or paving. However, the Conditions and Limitations require that the width of any such

private footpath or paving shall not exceed 3 metres. The subject area has a minimum width of c. 6m and, therefore, does not come within the scope of Class 13.

10.5.61. There are no other exemptions available for this area (Structure No. 11).

10.5.62. Therefore, it is my opinion Structure No. 11 **is development** and **is not exempted development**.

Structure No. 12: Accommodation Block

10.5.63. Structure No. 12 is a linear, 2-storey storey accommodation block. It is c. 63m in length by c. 5.8m in width with a height of c. 8.5m. The structure accommodates 26 no. own door bedrooms with en-suite. Due to the level differences on site this is a split-level building with access to the ground floor units from the northern elevation of the building and access to the first-floor units from the southern elevation.

10.5.64. The information submitted with the referral indicates that this building was constructed in c. 1830 and is sometimes labelled the Long Barn. Retention permission was granted under Reg. Ref. 99/1150 to convert a farm building to a 2-storey recreation building. The planning authority note that it would appear from drawings submitted with Reg. Ref. 99/1150, aerial photography and photographs from 2011 / 2012 that the Long Barn is not Structure No. 12.

10.5.65. The drawings submitted with Reg. Ref. 99/1150 relate to a building that was c. 18m in length by 6m in width. The planners report for Reg. Ref. 99/1150 states that the *building formerly to be used as a recreation building is now to be used as a conference centre*. The drawings submitted with Reg. Ref. 99/1150, and attached to the file with the history drawings, indicate that the approved conference centre building is located adjacent to Structure 13 – Art O'Neill's building.

10.5.66. Having regard to the information submitted with the referral and the planning history documents I agree with the planning authority that Structure No. 12 is a new structure and is not the Long Barn or the building approved under Reg. Ref. 99/1150.

10.5.67. Having regard to Section 2(1) and Section 3(1) of the PDA the construction of this structure constitutes works, and, therefore, constitutes development.

- 10.5.68. As noted above Section 4(1)(h) of the PDA it does not provide an exemption to new structures. Therefore, Structure No. 12 does not come within the scope of Section 4(1)(h). Therefore, the Regulations will be considered in relation to these works.
- 10.5.69. As noted above, Class 14 (h), (i) and (j) and Class 20F provide an exemption for the change of use of existing structures and do not provide an exemption for new structures. In my opinion Structure 12 does not come within the scope of either Class 14 (h), (i) and (j) or Class 20F.
- 10.5.70. The European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022) 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. The referrer has not demonstrated that Structure No. 12 was constructed on behalf of a state authority and no evidence that the structure provides accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.
- 10.5.71. Having regard to the above it is my opinion that Structure No. 12 **is development and is not exempted development.**

Structure No. 13: Art O'Neill's Building

- 10.5.72. Structure No. 13 relates to an existing 2-storey detached building with a stated area of 346sqm. The ground floor level accommodates a bar / lounge and toilets. The first floor accommodates 6 no. bedrooms and an office. Although not indicated on the submitted drawings, during my site visit on the 6th May 2025 there was a covered area to the front (western elevation) of the building. It was also noted that the building was finished in render and was not clad, as referenced in the planner's report.
- 10.5.73. Information submitted with the referral indicates that this building was constructed in c. 1830 and is sometimes labelled the Art O'Neill's Building. Planning history for this building indicates that permission was granted under Reg. Ref. 94/1113 for a

replacement building. Therefore, I agree with the planning authority that the existing building on site is not the original pre-63 building.

- 10.5.74. As noted above, retention permission was granted under Reg. Ref. 99/1150 for the conversion of a farm building to a 2-storey recreation centre / conference building. The referrer states that this was Structure No. 12. However, the drawings submitted with the application indicate that the recreation centre / conference building adjoins Structure No. 13 (Art O'Neill's Building).
- 10.5.75. The planning authority and the referrer note that Structure No. 13 (Art O'Neill's building) was damaged by fire in June 2016. Permission was granted under Reg. Ref. 17/352 for a replacement dormer style building in place of a section of the building that burnt down and alterations to the original layout and design.
- 10.5.76. Although it is unclear from the information submitted, it is my opinion that the existing building (referred to as Art O'Neill's Building) relates to the building approved under Reg. Ref. 94/1113 and amended by Reg. Ref. 05/2468. The development approved under Reg. Ref. 99/1150 and extended under Reg. Ref. 12/671 are the sections of the building that burnt down in 2016. Having regard to the drawings submitted with the referral the planning history and having carried out a site visit, it is my view that the replacement building approved under Reg. Ref. 17/352 has not been constructed and the alterations to original layout and design of the building have been carried out to the Art O'Neill's Building / Structure No. 12. It is noted that the planning authority consider that these works were carried out after planning permission has expired.
- 10.5.77. Having regard to the above, it is my opinion that the existing building on site is not a pre-63 building. However, it does have the benefit of planning permission (Reg. Ref. 94/1113 and Reg. Ref. 12/671). The question relates to whether upgrade works to this building are exempted development or not.
- 10.5.78. It is noted from the photographs taken by the planning authority, and on the file, that the building was previously finished in a timber cladding. The planning authority considered that the re-cladding of this structure with timber was development and was not exempted development. During my site visit the building was not clad in timber and had a render finish. As the referrer has not specifically asked the question

regarding if a timber finish would or would not be exempted development this element of the building does not form part of my assessment.

10.5.79. Having regard to Section 2(1) and Section 3(1) of the PDA it is considered that the covered structure to the front of building and some upgrade works to this building, that may potentially have been carried out when the planning permission had expired, constitute works and would, therefore, constitute development.

10.5.80. The referrer considers Structure No. 13 to be exempted development with regard to Section 4(1)(h) of the PDA. Section 4(1)(h) of the PDA provides an exemption for development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. In my opinion any works to the interior of the structure would be exempted development under Section 4(1)(h).

10.5.81. With regard to the covered area to the front (western elevation) of the building, it is the full width of the structure, c. 24m by c. 3.5m in depth with a height of c. 3m. It is generally open to the front with timber cladding at the side elevations. The covered area alters the front elevation and extends the size of the authorised structure (346sqm) by c. 84sqm. It is my opinion that this is an alteration to the approved structure (Reg. Ref. 94/1113) that materially affects the external appearance of the structure so as to render its appearance inconsistent with the character of the structure. Therefore, the covered area to the front of the building is not in accordance with the provisions of Section 4(1)(h) of the PDA.

10.5.82. There are no other exemptions available for this structure.

10.5.83. Having regard to the above it is my opinion that the covered structure to the front of Structure No. 13 **is development** and **is not exempted development**.

10.5.84. The information submitted states that this referral does not invite the Board to give a declaration regarding use. While this is noted, Section 2(1) of the PDA defines works as any *act or operation of construction, excavation, demolition, extension, alteration, repair or renewal* and Section 3(1) of the PDA defines development as *'the*

carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'. The question asked by the referrer is whether Structure No. 13 is or is not development and is or is not exempted development. Therefore, to ensure a full determine of the question the use is considered relevant.

10.5.85. As noted above, Class 14 (h), (i) and (j) provides an exemption to allow a change of use of certain class / use including holiday home to a building for protected persons. Class 14(h) allows for the change of use from holiday accommodation to use as accommodation for protected persons and Class 20F allows for the change of use from holiday accommodation to use as an emergency reception and orientation centre for protected persons. It is my opinion that the use of this structure for the accommodation for protected persons is exempted development under Class 14 and Class 20.

Structure No. 14: Car Park

10.5.86. Structure No. 14 relates to a concrete area containing 6 no. delineated car parking spaces and associated circulation areas adjacent to Structure No. 10 former 'Belfry' building. The laying out and paving of an area with concrete to provide a car park comes within the meaning of works as provided for in Section 2(1) of the PDA and, therefore, constitutes development as provided for in Section 3(1) of the PDA.

10.5.87. Aerial photography indicates that this car park is located in an area that was previously in use as an access road with landscaping / vegetation. It is my opinion that any car parking that occurred in this area of the overall site would have been very limited in nature.

10.5.88. The referrer considers that the provision of a car park is exempted development under Class 16 of the PDR. Class 16 provides an exemption for the erection, construction or placing of structures, works, plant or machinery needed temporarily in connection with a development that has permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development. The existing car park is being used during the operational phase by staff of the facility. The Conditions and Limitations of Class 16 requires that such structures, works, plant or machinery be removed and the land reinstated once the carrying out of the development has

occurred. It does not provide for staff and / or visitor car parking during the operational phase of a development. In my opinion this car parking area does not come within the scope of Class 16.

10.5.89. There are no other exemptions available for this structure.

10.5.90. Having regard to the above, it is my opinion that Structure no. 14 **is development and is not exempted development.**

Structure No. 15 large, gravelled area

10.5.91. Structure No. 15 relates to a large, gravelled area (c. 9,600sqm) to the north-east portion of the site. The drawings submitted show this area as a delineated car park in an area c. 120m by c. 80m. During my site visit this area was gravelled and unmarked and storing what appeared to be building materials and a damaged van. Aerial photography submitted with the referral indicates that this area was previously in use as open space / grassland.

10.5.92. The information submitted states that this referral does not invite the Board to give a declaration regarding use. While this is noted, Section 2(1) of the PDA defines works as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal' and Section 3(1) of the PDA defines development as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'. The question asked by the referrer is whether Structure No. 15 is or is not development and is or is not exempted development. Therefore, to ensure a full determine of the question the use is considered relevant. It is my opinion that a material change of use has occurred on this portion of the site as it has changed from open space / grassland to gravel which is indicated on the submitted drawings as a car park.

10.5.93. The laying of an area with gravel to provide a car park comes within the meaning of works as provided for in Section 2(1) of the PDA and would, therefore, constitute development as provided for in Section 3(1) of the PDA.

10.5.94. The referrer considers that this is a temporary car park to facilitate construction personnel and is exempted development under Class 16 of the PDR. Class 16 provides an exemption for the erection, construction or placing of structures, works,

plant or machinery needed temporarily in connection with a development that has permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development. The Conditions and Limitations of Class 16 requires that such structures, works, plant or machinery be removed and the land reinstated once the carrying out of the development has occurred. It does not provide for car parking and or the storage of materials during the operational phase of a development. In my opinion this large, gravelled area (Structure No. 15) does not come within the scope of Class 16.

10.5.95. There are no other exemptions available for this development.

10.5.96. Having regard to the above, it is my opinion that Structure No. 15 **is development and is not exempted development.**

Structure No. 16: Accommodation Block

10.5.97. Structure No. 16 relates to a 2-storey accommodation block. The drawings submitted indicated that this structure comprises 47 no. bedrooms with en-suite and 5 no. suites. During my site visit on the 6th May 2025 an element of this structure was still under construction. From the drawings submitted it appears that Suite E is currently under construction.

10.5.98. This information submitted with the referral states that this structure was constructed in c. 1830 and is also referred to as The Stables and Grain Stores. The information provided also states that Structure No. 16 is a modular building, and its principal components were manufactured off site, with the building assembled on site and fixed with bolts to a pre-constructed reinforced concrete retaining wall. Photographs of the building being constructed on site have been submitted with the referral. Therefore, it is my opinion that this is not a pre- '63 building and is a new structure, still partly under construction.

10.5.99. Having regard to Section 2(1) and Section 3(1) of the PDA the construction of this structure constitutes works, and, therefore, constitutes development.

10.5.100. Section 4(1)(h) of the PDA does not provide an exemption to new structures and, therefore, Structure No. 16 does not come within the scope of Section 4(1)(h). Therefore, the Regulations will be considered in relation to these works.

10.5.101. The referrer considers that the development is exempted under Class 14 of the PDA. As noted above, Class 14 (h), (i) and (j) and Class 20F relate to the change of use of existing structures and do not provide an exemption for new and or unauthorised structures. In my opinion Structure 16 does not come within the scope of either Class 14 (h), (i) and (j) or Class 20F.

10.5.102. The European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022) 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. The referrer has not demonstrated that Structure No. 16 was constructed on behalf of a state authority and no evidence that the structure provides accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

10.5.103. Having regard to the above, it is my opinion that Structure No. 16 **is development and is not exempted development.**

On-site storage of materials

10.5.104. The information submitted does not indicate the location of this on-site storage soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure and would appear to relate to the general question within the site.

10.5.105. During my site visit there was a large, gravelled area to the south of Structure 15 which appeared to be used for on-site storage of stone / boulders. Drawings submitted with Reg. Ref. 24/60587, which are publicly available on the planning authority's website, label this area to the south of Structure No. 15 as 'temporary

storage of extensive mounds of stones and boulders'. Therefore, it is my opinion that this referral relates to this section of the site. The drawings and aerial photography submitted with the referral indicate that this area was previously in use as grassland.

10.5.106. As noted above, the information submitted states that this referral does not invite the Board to give a declaration regarding use. While this is noted, Section 2(1) of the PDA defines works as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal' and Section 3(1) of the PDA defines development as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'. The question asked by the referrer is whether the storage of material is or is not development and is or is not exempted development. Therefore, to ensure a full determine of the question the use is considered relevant. It is my opinion that a material change of use has occurred on lands to the south of Structure No. 15.

10.5.107. Having regard to Section 2(1) and Section 3(1) of the PDA this the storage of soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure constitutes works, and, therefore, constitutes development.

10.5.108. The referrer states that storage of soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure is exempted development under Class 16 of the PDR. Class 16 provides an exemption for the erection, construction or placing of structures, works, plant or machinery needed temporarily in connection with a development that has permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development. The Conditions and Limitations of Class 16 requires that such structures, works, plant or machinery be removed and the land reinstated once the carrying out of the development has occurred. It does not provide for or the storage of materials during the operational phase of a development. In my opinion the storage of soil / stone, boulders, machinery and building materials does not come within the scope of Class 16.

10.5.109. Having regard to the above, it is my opinion that on-site storage soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure **is development** and **is not exempted development**.

10.6. ***Restrictions on exempted development***

10.6.1. Restrictions on exempted development are only relevant where a development is considered to be exempted development. It is my opinion that the items referred to are development and are not exempted development. However, in the interest of clarity the following restrictions on exempted development should be noted.

10.6.2. **Article 9(1)(a)(vi)** of the PDA states that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.

10.6.3. Map no. 17.09B of the development plan identifies the subject site as being located in an 'Area of Outstanding Natural Beauty'. In my opinion, the works, in particular Structure No. 15 and the on-site storage of materials, have negatively impact on the character of the landscape. However, as the development plan does not provide a specific objective for the preservation of the landscape, I agree with the planning authority that Article 9(1)(a)(vi) is not relevant in this instance.

10.6.4. **Article 9(1)(a)(viii)** of the PDA states that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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.

10.6.5. As noted above, information publicly available on the planning authority's website indicates that there are on-going enforcement proceedings (UD5239) relating to a number of structures within the site. In accordance with Part 8 of the Planning and Development Act planning authorities are responsible for the enforcement relating to

breaches of the planning system. The Board has no role in enforcement and this assessment does not consider any allegations of unauthorised development.

- 10.6.6. **Article 9(1)(a) (viiB)** of the PDA states that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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.
- 10.6.7. **Section 4** of the PDA states that a development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.
- 10.6.8. Given the proximity of the site to the Wicklow Mountains SAC and the Wicklow Mountains SPA and hydrological connection to the Poulaphouca Reservoir SPA I have concerns that the construction works carried out and the additional loading on the existing wastewater treatment and disposal system would likely individually, or in combination with other plans or projects, have a significant effect on these designated sites. Therefore, it is my opinion that there is a requirement for Appropriate Assessment.
- 10.6.9. Class 12(c) Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended and section 172(1)(a) of the Planning and Development Act 2000, as amended provides that an Environmental Impact Assessment (EIA) is required for) holiday villages which would consist of more than 100 holiday homes outside built-up areas; hotel complexes outside built-up areas which would have an area of 20 hectares or more or an accommodation capacity exceeding 300 bedrooms.
- 10.6.10. Having regard to the information submitted on file and to the planning history, it would appear that the accommodation does not exceed 300 no. bedrooms. Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

10.7. ***Appropriate Assessment***

10.7.1. Section 177U (9) of the PDA states that in deciding upon a declaration the Board, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

10.7.2. An Appropriate Assessment Screening (Stage 1) is attached to this report as Appendix 1. This AA Screening concludes that the development listed in the referral could result in significant effects on the Wicklow Mountains SAC and the Poulaphouca Reservoir SPA, in view of the conservation objectives of a number of qualifying interest features of those sites. It is, therefore, determined that Appropriate Assessment (stage 2) Natura Impact Statement (NIS) under Section 177V of the Planning and Development Act 2000 of the proposed development is required.

10.7.3. This determination is based on:

- The nature and scale of the development listed in the referral.
- The direct physical connection of the subject site to the Wicklow Mountains SAC and direct hydrological connection to the Poulaphouca Reservoir SPA.
- The planning history of the subject site.

10.7.4. It is noted that the planning authority also considered that a NIS is required.

10.7.5. A NIS has not been provided. In such circumstances the Board is precluded from granting approval under the provisions of Article 6(3) of the Habitats Directive (92/43/EEC).

11.0 **Recommendation**

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

WHEREAS questions have arisen as to whether the following are or are not development and are or are not exempted development.

- Structure No 1: Gate Lodge A and Gate Lodge B.
- Structure No. 2: Semi-detached agricultural storage facility.

- Structure No. 3: Detached agricultural maintenance storage facility.
- Structure No. 4: Electricity distribution building.
- Structure No. 5: Open fronted agricultural shed.
- Structure No. 6: Former agricultural building, now used to accommodate protected persons.
- Structure No. 7 and Structure No. 8: Pavillion and kitchen building.
- Structure No. 10: Former Belfry Building.
- Structure No. 11: Concrete paved area.
- Structure No. 12: Accommodation block (Amendment)(No.4) Regulations. 2015.
- Structure No. 13: Art O'Neill's building.
- Structure No. 14: Car park.
- Structure No. 15: Large, gravelled area.
- Structure No. 16: Accommodation block.
- On-site storage of soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure.

at Kippure Lodge and Holiday Village, Kippure Estate, Manor Kilbride, Blessington, County Wicklow is or is not development or is or is not exempted development.

AND WHEREAS Seefin Events Unlimited Company requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 4th day of July, 2024 stating that the matters were development and were not exempted development.

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 31st day of July, 2024.

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

- a) Section 2(1), 3(1), 4(1)(h), 177U and 181(1)(a) of the Planning and Development Act, 2000, as amended,
- b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- c) Schedule 2, Part 1 – Exempted Development – General and Schedule 2, Part 3 – Exempted Development – Rural of the Planning and Development Regulations, 2001, as amended,
- d) The European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022),
- e) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that all the items involved works or a material change of use and, therefore, constitute development.

In relation to whether the development is or is not exempted development: -

- a) Structure No 1: Gate Lodge A and Gate Lodge B do not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 (as amended) as they are new structures.

These structures do not fall within the scope of Class 17 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as they are to provide accommodation for security staff for persons occupying the facility during its operational phase and do not relate to accommodation for persons employed or otherwise during construction works.

Therefore, these structures do not constitute exempted development.

- b) Structure No. 2: Semi-detached agricultural storage facility does not fall within the scope of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as the use of the structure for agriculture or forestry has not been adequately demonstrated. The structure has a gross floor area that exceeds the 300sqm limitation and the aggregate gross floor space of the structure, with other such structures within 100m, exceeds the 900sqm limitation. Therefore, this structure does not constitute exempted development.
- c) Structure No. 3: Detached agricultural maintenance storage facility does not fall within the scope of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as the use of the structure for agriculture or forestry has not been adequately demonstrated. In addition, the aggregate gross floor space of the structure, with other such structures within 100m, exceeds the 900sqm limitation. Therefore, this structure does not constitute exempted development.
- d) Structure No. 4: Electricity distribution building does not fall within the scope of Class 29 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as the refer is the final customer and not a person engaged in the supply or generation of electricity and is not a licenced or authorised operator. In addition, it does not comply with the Conditions and Limitations as the structure exceeds 11 cubic meters. Therefore, this structure does not constitute exempted development.
- e) Structure No. 5: Open fronted agricultural shed does not fall within the scope of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as the use of the structure for agriculture or forestry has not been adequately demonstrated. In addition, the aggregate gross floor space of the structure, with other such structures within 100m, exceeds the 900sqm limitation. Therefore, this structure does not constitute exempted development.
- f) Structure No. 6: Former agricultural building, now used to accommodate protected persons does not fall within the scope of Class 9 of Part 3 of Schedule

2 of the Planning and Development Regulations, 2001 (as amended) as it has a gross floor area that exceeds the 300sqm limitation. In addition, the aggregate gross floor space of the structure, with other such structures within 100m, exceeds the 900sqm limitation. Therefore, this structure does not constitute exempted development.

This structure does not fall within the scope of Class 14(h), (i) or (j), or Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as there is no exemption for a change of use from agriculture to accommodation or an emergency reception and orientation centre for protected persons. In addition, the referrer has not demonstrated that this structure was constructed on behalf of the Minister for Children, Equality, Disability, Integration and Youth

No evidence that Structure No. 6 was carried out in accordance with the provisions of the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022). No evidence that the structure is related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

Therefore, this structure does not constitute exempted development.

- g) Structure No. 7 and Structure No. 8: The construction of the pavilion and kitchen buildings do not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as they are new structures.

Therefore, these structures do not constitute exempted development.

- h) Structure No. 10: Having regard to the significant nature and scale of the works to the original structure 'Belfry' and the development approved under Reg. Ref. 05/2792 the works do come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as the works materially affects the external appearance of the structure so as to render its appearance inconsistent with the character of the structure.

Therefore, the works do not constitute exempted development.

- i) Structure No. 11: The provision of a concrete paved area does not fall within the scope of Class 13 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as the width of the paving exceeds 3 metres.

The works do not fall within the scope Class 33(a) of Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as they do not comprise a park, private open space or ornamental garden.

Therefore, the works do not constitute exempted development.

- j) Structure No. 12: Accommodation block does not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as it is a new structure.

The construction of Structure No. 12 does not fall within the scope of Class 14(h), (i) or (j), of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), as the development does not comprise a change of use.

The construction of Structure No. 12 does not fall within the scope of Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), as the development does not comprise a change of use.

No evidence that Structure No. 12 was carried out in accordance with the provisions of the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

No evidence that the structure is related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

Therefore, the works do not constitute exempted development.

- k) Structure No. 13: The provision of a covered structure to the front of the Art O'Neill's building does not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as the covered structure materially affects the external appearance of the structure so as to render its appearance inconsistent with the character of the structure.

Therefore, the works do not constitute exempted development.

- l) Structure No. 14: The car park does not fall within the scope of Class 16 of the Planning and Development Regulations, 2001 (as amended) as it does not relate to the placing of plant or machinery needed temporarily in connection with a development that has permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development

Therefore, the works do not constitute exempted development.

- m) Structure No. 15: The large, gravelled area does not fall within the scope of Class 16 of the Planning and Development Regulations, 2001 (as amended) as it does not relate to the placing of plant or machinery needed temporarily in connection with a development that has permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development

Therefore, the development does not constitute exempted development.

Structure No. 16: The accommodation block does not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 as it is a new structure.

The construction of Structure No. 16 does not fall within the scope of Class 14(h), (i) or (j) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), as the development does not comprise a change of use.

The construction of Structure No. 16 does not fall within the scope of Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), as the development does not comprise a change of use.

No evidence that Structure No. 16 was carried out in accordance with the provisions of the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

No evidence that the structure is related to accommodation for displaced persons, given the definition of such persons set out in Annex 2 of the Council Implementing Decision (EU) 2022/382.

Therefore, the development does not constitute exempted development.

- n) On-site storage of soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure does not fall within the scope of Class 16 of the Planning and Development Regulations, 2001 (as amended) as it does not relate to the placing of plant or machinery needed temporarily in connection with a development that has permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development

Therefore, the development does not constitute exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said works:

- Structure No 1: Gate Lodge A and Gate Lodge B
- Structure No. 2: Semi-detached agricultural storage facility
- Structure No. 3: Detached agricultural maintenance storage facility.
- Structure No. 4: Electricity distribution building
- Structure No. 5: Open fronted agricultural shed pursuant to Class 9 of Part 3 of Schedule 2 of the PDR.

- Structure No. 6: Former agricultural building, now used to accommodate protected persons.
- Structure No. 7 and Structure No. 8: Pavillion and kitchen building
- Structure No. 10: Former Belfry Building
- Structure No. 11: Concrete paved area adjacent to structure no. 10 and 12 pursuant
- Structure No. 12: Accommodation block
- Structure No. 13: Art O'Neill's building
- Structure No. 14: Car park adjacent to the former Belfry Building
- Structure No. 15: Large, gravelled area to the north-east of the holiday village
- Structure No. 16: Accommodation block no. 2
- On-site storage of soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure.

At Kippure Lodge and Holiday Village, Kippure Estate, Manor Kilbride, Blessington, County Wicklow **are development** and **are not 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.

Inspectorate

20th October 2025

Appendix 1:

Appropriate Assessment Screening (Stage 1)

Screening for Appropriate Assessment Test for likely significant effects

Brief description of project

Whether or not the following are or are not development, and are or are not exempted development:

- ***Structure No. 1:*** Gate Lodge A and Gate Lodge B
- ***Structure No. 2:*** Semi-detached agricultural storage facility
- ***Structure No. 3:*** Detached agricultural maintenance storage facility
- ***Structure No. 4:*** Electricity distribution building
- ***Structure No. 5:*** Open fronted agricultural shed
- ***Structure No. 6:*** Former agricultural building, now used to accommodate protected persons
- ***Structure No. 7 and Structure No. 8:*** Pavillion and kitchen building
- ***Structure No. 10:*** Former Belfry Building
- ***Structure No. 11:*** Concrete paved area adjacent to structure no. 10 and 12
- ***Structure No. 12:*** Accommodation block.
- ***Structure No. 13:*** Art O'Neill's building
- ***Structure No. 14:*** Car park adjacent to the former Belfry Building
- ***Structure No. 15:*** Large, gravelled area to the north-east of the holiday village
- ***Structure No. 16:*** Accommodation block
- ***On-site storage of soil / stone, boulders, machinery and building materials as necessary and incidental to the development of Kippure***

Brief description of development site characteristics and potential impact mechanisms

The subject site is located in the rural townland of Kippure, Co. Wicklow. The overall lands associated with Kippure Estate are irregular in shape and have an area of c. 96 ha. The site slopes down from its northern boundary with the R759 to the site's southern boundary with the River Liffey.

The site is generally bound to the east by the Cransillagh Brook and the south by the River Liffey. The Cransillagh Brook flows in a north to south / southwest direction towards the River Liffey. The Cransillagh Brook and the River Liffey form the boundary of the Wicklow Mountains SAC (002122).

The Wicklow Mountains SPA (004040) partially overlaps with the Wicklow Mountains SAC (002122) and bounds the site to the south.

The Poulaphouca Reservoir SPA (004063) is located c. 7.8km south west of the subject site and hydrologically connected to the site via the River Liffey.

Screening Report / Natura Impact Statement

An Appropriate Assessment Screening and Natura Impact Statement have not been provided by the referrer.

Relevant Submissions

The observation from Peter O'Sullivan raised concerns regarding the impact of the development on the environment and natura 2000 sites.

Identification of relevant European sites using the Source-pathway-receptor model

The sites detailed in Table 1 below are considered to be within a potential zone of influence of the development listed in the referral.

Site synopsis and conservation objectives can be found on the NPWS website (www.npws.ie)

Table 1: European Sites within the Zone of Influence.

European Site (code)	Summary of Qualifying Interests	Distance from the development	Ecological connections (source, pathway, receptor)	Consider further in screening Y/N
Wicklow Mountains SAC 002122	Oligotrophic waters containing very few minerals of sandy plains Natural dystrophic lakes and ponds Northern Atlantic wet heaths with Erica tetralix	The site is bound to the south and east by the SAC.	Yes, direct physical connection to the SAC via the Cransillagh brook at the sites eastern boundary and is within the SAC. Direct hydrological connection via surface water runoff and	YES

	<p>European dry heaths</p> <p>Alpine and Boreal heaths</p> <p>Calaminarian grasslands of the Violetalia calaminariae</p> <p>Species-rich Nardus grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe)</p> <p>Blanket bogs (* if active bog)</p> <p>Siliceous scree of the montane to snow levels (Androsacetalia alpinae and Galeopsietalia ladani)</p> <p>Calcareous rocky slopes with chasmophytic vegetation</p> <p>Siliceous rocky slopes with chasmophytic vegetation</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Otter</p>		<p>groundwater to the River Liffey, which bounds the site to the south and is within the SAC.</p>	
Wicklow Mountains SPA	<p>Merlin</p> <p>Peregrine</p>	<p>The site is bound to the south by the SPA.</p>	<p>Yes, direct physical connection to the SPA via the River Liffey</p>	<p>YES</p>

004040			which bounds the site to the south and is within the SPA. Direct hydrological connection via surface water runoff and groundwater to the River Liffey.	
Poulaphouca Reservoir SPA 004063	Greylag Goose Lesser Black-backed Gull	c. 7.8km south west of the subject site.	Yes, hydrologically connected via surface water runoff and groundwater to the Cransillagh brook at the sites eastern boundary and the River Liffey at the sites southern boundary.	YES

Likely effects of the project, alone or in combination on European Sites

The development is not located within a designated sites and, therefore, does not result in any direct effects on the site. However, due to the direct physical connection of the proposed development to both the Wicklow Mountains SAC and the Wicklow Mountains SPA and its hydrological connection to the Poulaphouca Reservoir SPA via the River Liffey impacts generated by the construction and operational phases of the development requires consideration.

Sources of impact and likely significant effects are detailed in Table 2 below.

Table 2: Screening Matrix

Site Name / Site Code	Possibility of significant effects (alone) in view of the conservation objectives of the site	
	Impact	Effects
Wicklow Mountains SAC 002122	<u>Construction Phase:</u> Indirect impacts include the potential release of silt and sediment during site works	Potential damage to riparian and river habitats associated with inadvertent spillages of hydrocarbons and /or other chemicals during construction phase.

	<p>and potential release of construction related compounds including hydrocarbons to surface water.</p> <p><u>Operational Phase:</u></p> <p>Indirect impacts on groundwater quality due to the limited capacity of the existing wastewater treatment on site, as noted in the sites planning history.</p> <p>Indirect impacts from surface water run-off.</p> <p>Increased human disturbance.</p>	<p>Potential disturbance risks to Otter, a qualifying interest species for the SAC, which could be associated with increased noise, additional lighting and increased human activity at both construction and post construction phases.</p> <p>Water quality impact on availability of fish (prey) of otter.</p> <p>Potential damage to the habitats and qualifying interest species dependent on water quality during the operational phase from surface water run-off and ground water pollution, due to the limited capacity of the existing on-site wastewater treatment system. An impact of sufficient magnitude could undermine the sites conservation objectives.</p>
	Yes: Likelihood of significant effects from proposed development alone	
	No: Likelihood of significant effects occurring in combination with other plans or projects	
<p>Comment:</p> <p>Insufficient information has been submitted to demonstrate that the development subject to this referral would not significantly impact on water quality in the River Liffey and Cransillagh brook.</p> <p>Given the nature and scale of the developments listed in the referral, I consider that in the absence of mitigation measures beyond best practice construction methods, the developments listed in the referral have the potential to result significant effects on Otter, which is a qualifying interest of the Wicklow Mountains SAC and that such impacts could be significant in terms of the stated conservation objectives of the designated sites.</p>		

	Impacts	Effects
Wicklow Mountains SPA 004040	<p><u>Construction Phase:</u></p> <p>Indirect impacts include the potential release of silt and sediment during site works and potential release of construction related compounds including hydrocarbons to surface water.</p> <p><u>Operational Phase:</u></p> <p>Indirect impacts on groundwater quality due to the limited capacity of the existing wastewater treatment on site, as noted in the sites planning history.</p> <p>Indirect impacts from surface water run-off.</p> <p>Increased human disturbance.</p>	No significant effects are envisioned.
	Yes: Likelihood of significant effects from proposed development alone	
	No: Likelihood of significant effects occurring in combination with other plans or projects.	
<p>Comment:</p> <p>The SPA provides important habitat for both Merlin and Peregrine. The site is not identified as an ex-situ site for the qualifying interests of the SPA.</p> <p>The main potential for impact on Merlin is due to disturbance of conifer plantations, copses / shelter belts or the open peatlands of the Wicklow Mountains which provide important habitat</p>		

for the species. I am satisfied that the development subject of this referral would not have an impact on Merlin, which is a qualifying interest of the SPA.

The main potential for impact on Peregrin is due to disturbance of crags and cliffs that the species use for nesting. I am satisfied that the development the subject of this referral would not have an impact on Peregrines, which is a qualifying interest of the SPA.

Therefore, I consider that significant disturbance effects on the qualifying interests of the Wicklow Mountains SPA can be excluded.

	Impacts	Effects
Poulaphouca Reservoir SPA 004063	<p><u>Construction Phase:</u></p> <p>Indirect impacts include the potential release of silt and sediment during site works and potential release of construction related compounds including hydrocarbons to surface water.</p> <p><u>Operational Phase:</u></p> <p>Indirect impacts on groundwater quality due to the limited capacity of the existing wastewater treatment on site, as noted in the sites planning history.</p> <p>Indirect impacts from surface water run-off.</p>	<p>Potential damage to riparian and river habitats associated with inadvertent spillages of hydrocarbons and/or other chemicals during construction phase which could negatively impact on foraging habitat for qualifying interest of the SPA.</p> <p>Potential damage to the habitats and qualifying interest species dependent on water quality during the operational phase from surface water run-off and ground water pollution, due to the limited capacity of the existing on-site wastewater treatment system. An impact of sufficient magnitude could undermine the sites conservation objectives.</p> <p>A decline in water quality could undermine prey availability.</p>
	No: Likelihood of significant effects from proposed development alone	

	No: Likelihood of significant effects occurring in combination with other plans or projects
<p>Comment:</p> <p>The site is not identified as an ex-situ site for the qualifying interests of the SPA.</p> <p>Both the greylag goose and the lesser black gull use aquatic habitat for foraging. Insufficient information has been submitted to demonstrate that the development subject to this referral would not significantly impact on water quality in the River Liffey and Cransillagh brook which are upstream of the Poulaphouca Reservoir SPA.</p> <p>Given the nature and scale of the developments listed in the referral, I consider that in the absence of mitigation measures beyond best practice construction methods, the developments listed in the referral have the potential to result significant effects on Otter, which is a qualifying interest of the Wicklow Mountains SAC and that such impacts could be significant in terms of the stated conservation objectives of the designated sites.</p>	
Screening Determination	
<p>In accordance with Section 177U of the Planning and Development Act 2000 (as amended), I conclude that the proposed development could result in significant effects on the Wicklow Mountains SAC and the Poulaphouca Reservoir SPA, in view of the conservation objectives of a number of qualifying interest features of those sites. It is therefore determined that Appropriate Assessment (stage 2) under Section 177U of the Planning and Development Act 2000 of the proposed development is required.</p> <p>This determination is based on:</p> <ul style="list-style-type: none"> • The nature and scale of the development listed in the referral. • The direct physical connection of the subject site to the Wicklow Mountains SAC and the direct hydrological connection to the Poulaphouca Reservoir SPA. • The planning history of the subject site. 	