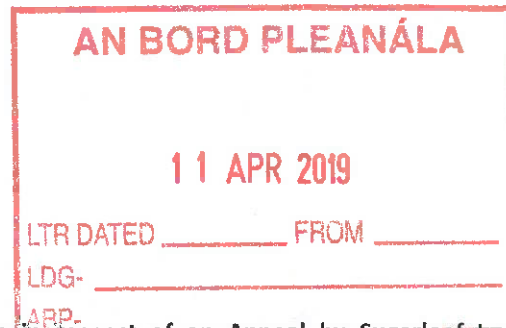


The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

11th April 2019



Re: Observation by Ken Rohan in respect of an Appeal by Sugarloaf Investment Property Holdings Ltd. Against the Section 5 Declaration by Wicklow County Council under Section 5 of the Planning and Development Acts 2000-2018 and Planning and Development Regulations 2001-2018 in relation to works to the Garden Area at Powerscourt Hotel, Powerscourt, Co. Wicklow.

Future Analytics Consulting Ltd.
23 Fitzwilliam Square (South)
Dublin 2, D02RV08, Ireland.

Company Registration Number
488739

Vat Number
9758939A

T +353 (0) 1 639 4836
E info@futureanalytics.ie
W futureanalytics.ie

DIRECTORS

Dr. William Hynes
Managing Director
BSc, MRUP, MSc, MSc (Econ), PhD,
MRICS, MSCSI, MRTPI, MIPI, CMILT
Adjunct Professor - UCC

Stephen M. Purcell
Director
BSc. (Hons), MRUP, MIPI, FSCSI, FRICS

Joan Hynes
Director
B. Comm, FCA

Michael O'Leary
Director
BA, MBA

Wicklow County Council Reg. Ref. UD4891
ABP Reg. Ref. ABP-303958-19
Date of Referral: 15th March 2019
Last day for Observations: 11th April 2019

Dear Sir/Madam,

This observation is made in respect of the Section 5 Referral by Sugarloaf Investment Property Holdings Ltd. (the applicant), to An Bord Pleanála which appeals the Declaration of Wicklow County Council of 21st February 2019 under reference 03/19 which considered development at the estate was not exempt.

This observation has been prepared by Future Analytics Consulting Limited (FAC) of 23 Fitzwilliam Square (South), Dublin 2 (Chartered Town Planners) on behalf of Ken Rohan who reside in Charleville, Enniskerry, Co. Wicklow, adjoining the subject site. We enclose the observation fee of €50 and a copy of the original referral to An Bord Pleanála as required.

This referral considers the declaration by Wicklow Co. Co. that the following is development and is not exempted development:

'Whether the provision of a landscaped amphitheatre space is or is not development or is or is not exempted development.'

This observation sets out the considered planning rationale for our clients' support of to the Council's Decision to declare the works are development and are not exempted development.

In preparing this submission we have reviewed the Section 5 package by Tom Phillips and Associates, Wicklow County Council's Declaration in accordance with Section 5 of the Planning and Development Acts 2000-2018 and the planning history of the site.

1. Site description and context

The subject site is located on the south eastern side of the Powerscourt Estate, just south of the water feature and hotel. Powerscourt Estate is a traditional large country estate which is noted for its house and landscaped gardens designed by Richard Castle and completed in 1741, in the Palladian style of architecture. The Ritz Carlton hotel was opened approximately 12 years ago in 2007.

According to the Wicklow County Council Development Plan 2016-2022, the Powerscourt hotel is not located within any zoned lands. From analysing older maps of the site area, the current unauthorised development is outside of the area set out in past permissions (as discussed in Section 5.2 below).

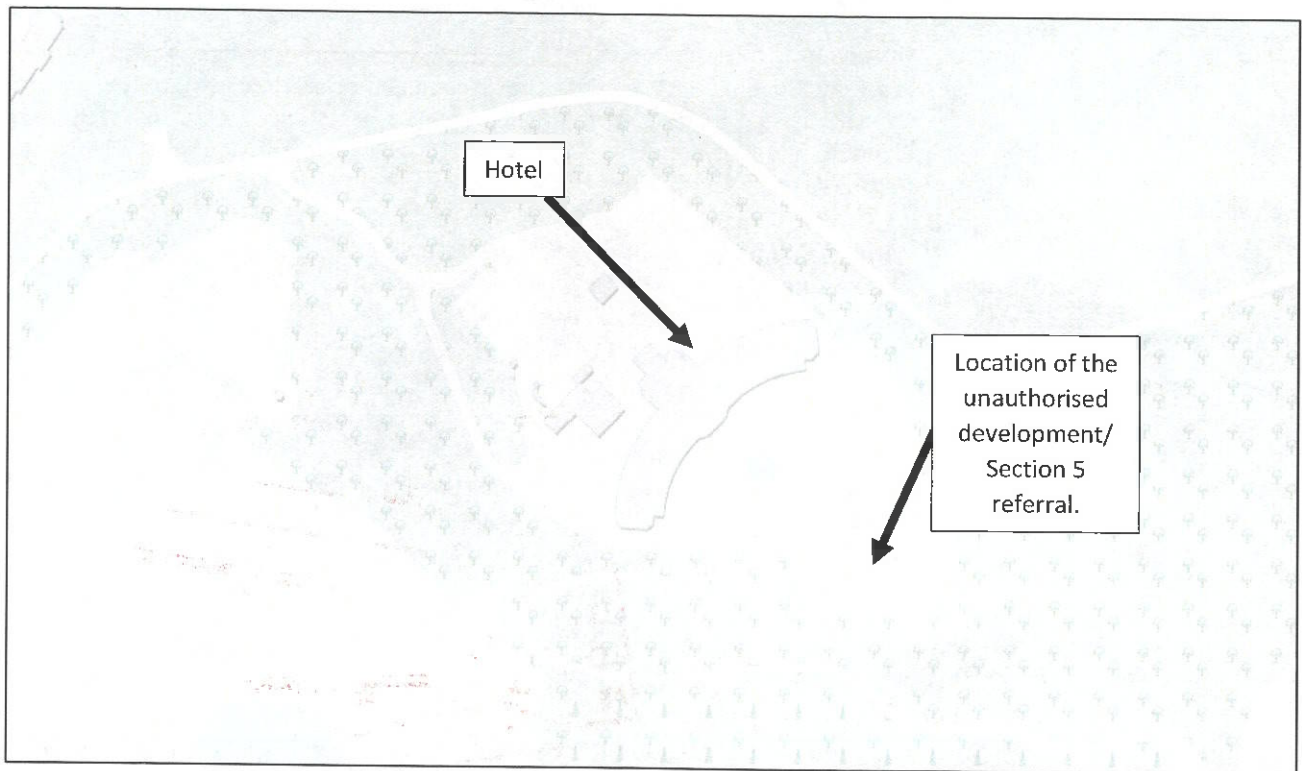


Figure 1 MyPlan map context for the subject site (Source: MyPlan.ie)

Figures 2 and 3 below illustrate the location of the works which are the subject of this Referral, with the new landscaped 'Amphitheatre', where a new path way was created descending to the area, with the creation of a stepped wall, lighting, power box and astro turf area. This context illustrates that any interventions in this context must be treated with the utmost care in order to protect and respect the amenity of neighbours in the surrounding area which will be affected by noise caused by this new 'Amphitheatre'.

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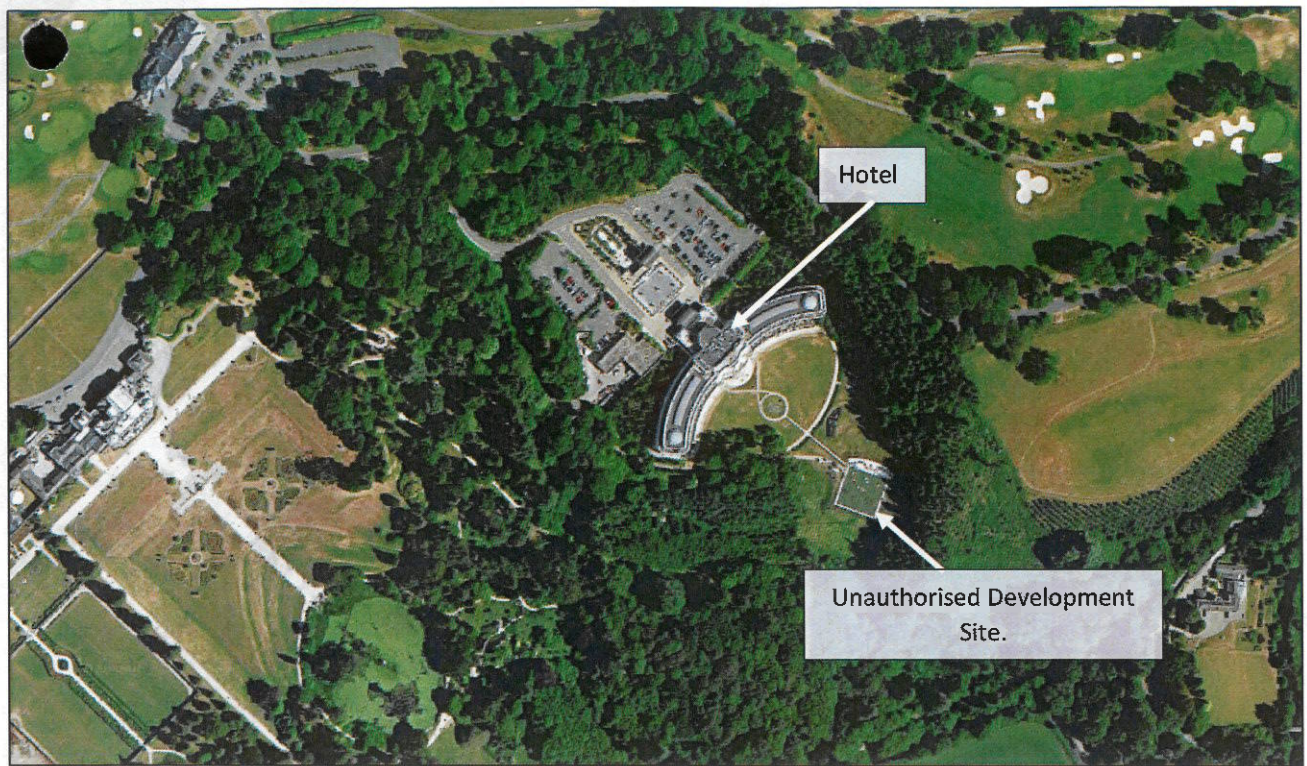


Figure 2 Aerial view of subject Appeal site (Source: Google maps).



Figure 3 Photograph of unauthorised development at Powerscourt Hotel with lighting on site and power box located in the background of the photo.

2. Section 5 Referral

The Section 5 Referral proposes the following works;

'Whether the provision of a landscaped amphitheatre space is or is not development or is or is not exempted development.'

The Section 5 referral comprises 0.85ha in total (according to WCC). Of this, 1250 sqm. of this 'extended open space garden area' for use as both a helicopter pad and 'amphitheatre' type facility, for the holding of functions such as weddings, team building events, concerts and outdoor cinema screenings (according to WCC). No drawing of the plans are available in relation to the construction of this development, though photos are provided in Figure 4, 5 and 6 below.



Figure 4 Stepped wall at the Amphitheatre location.

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Figure 5 Picture of the stepped wall facing south east with visible drainage works on site.



Figure 6 Slope to the area can be viewed from this photo, highlighting changes throughout the site.

3. Wicklow County Council Declaration

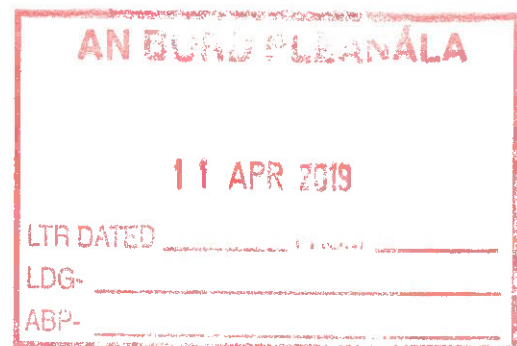
On 21st February 2019, WCC issued a Declaration that works carried out to provide a landscaped space is considered development and is not exempted development.

Of particular note is the main reason in the Section 5 Declaration which states:

The said development does not come within the scope of Section 4(1)(h) of the Planning and Development Act because the works have not been carried out to a structure. 4(1)(h) relates to the carrying out of works to a structure. In this instance the works involved the construction of a platform area, i.e. Raising of levels and creating a structure and did not involve the carrying out of works to a pre-existing structure. The provisions of 4(1)(h) do not apply.

This reason highlights that WCC recognised that the development which exists on site is not exempted development as it is not adding to a structure which already exists on site. The main reasons go on to state;

The helipad/amphitheatre structure has been constructed on lands that are outside of the permitted site boundary of the Powerscourt Hotel. There has been a material change of use of the lands from dense forest associated with the Powerscourt Estate to hotel use. This material change of use does not constitute exempted development.



4. Legislative Context

In preparing the assessment for this observation, we have had regard to the following acts and regulations;

Planning and Development Act, 2000

Section 2(1)

In this Act, except where the context otherwise requires-

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

'structure' as any buildings, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and -

(a) Where the context so admits, includes the land on, in or under which the structure is situate; and

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

Section 3(1)

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

Section 4(1)

The following shall be exempted developments for the purposes of this Act- (h) development consisting of the use 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; (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

Planning and Development Regulations, 2001

Part 2 deals with exempted development

Article 6, Schedule 2, Class 33

Development consisting of the laying out and use of land-

(a) As a park, private open space or ornamental garden,

(b) As a roadside shrine, or

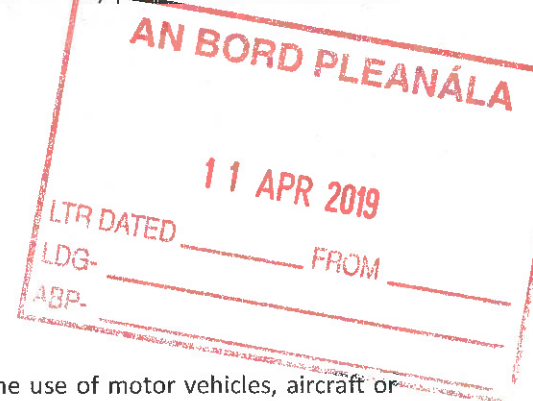
(c) For athletics or sports (other than golf or pitch and putt or sport involving the use of motor vehicles, aircraft or firearms) where no charge is made for admission of the public to the land.

Article 9 (1)(vi) Restrictions on Exemption

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.'



5. Observations on Appeal of Wicklow County Council Declaration

The following section summarises the rationale presented by the developer in their appeal against Wicklow County Council's declaration, with our considered analysis of the planning arguments presented

5.1 Material Change in Noise

With the change in use of the land from hard standing area to amphitheatre, excess noise will be caused throughout the neighbouring lands. Section 2.0 of the appeal states that the hardstanding area was *"renovated with good faith and did not consider that landscaping works carried out on private property, require planning permission."*

The appellant has misinterpreted this form of development as landscaping works having regard to Section 2(1), 3(1) and 4(1) of the Planning and Development Act. Though the unauthorised development may have been constructed in good faith, this form of development requires planning permission and should be deemed not exempted development as there will be an increase in noise levels throughout the valley. Both operational and unsociable noise (fireworks, wedding related entertainment and late-night revelling) will increase in the area and have an adverse effect on our client's property at Charleville house.

The appellant goes onto state;

'It is also noted that the previous hardstanding space has been used for events associated with the hotel and that there is no intensification of the use of the hotel as a result of the changes carried out.'

Though the hard-standing area may have been used for events in the past, with the recent construction on site, the intensification within this area and the capabilities of what can be provided will increase materially. Also, if the hard-standing area was an eyesore for the hotel in the past, was it used for events in the past? With increased use onsite, noise will be a growing factor for the local community and area.

5.2 Contrary to Lands outlined in Previous Planning Applications and Maps

Section 3.0 states that the hard-standing area was constructed at the time of the completion of the overall hotel development in 2007/2008. The hardstanding area was resurfaced to improve the overall look and quality of the space.

The report goes on to state no trees or planting were removed to facilitate these improvement works. This is untrue, as this area should have remained untouched with no trees removed from this area according to the original permission. From viewing the original site location map (see figure 7 and 8), the land where this hardstanding structure is located is outside the site location area highlighted on the map. Any development located outside this area is unauthorised and does not form a part of the hotel use on site.

Currently on site, there is no zoning set out due to the rural location on site. Any development on site must refer to what is located within a previous redline boundary provided on drawings to either WCC or ABP. **As stated above, this facility is located outside of the original hotel land stated on past drawings submitted to both Wicklow County Council and An Bord Pleanála.** With this development claiming to be ancillary to the hotel development, and it lying on lands outside the hotel's original redline boundary, this development should be declared not exempt development.

The appellant believes that the development corresponds with Section 4(1)(H) of the acts though the unauthorised development is not part of the original structure or lie within the lands of the original structure of the building.

Section 4(1)(H) states;

'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.'

Technically this development does not affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. Yet, this development in itself is a separate structure to the main building, due to it lying in lands outside of the original permission, thus will require planning permission deeming this unauthorised.

Below is figure 7 and 8, from the original permission submitted in 1999 highlighting the area for the hotel site which does not include the area where the current development lies on.

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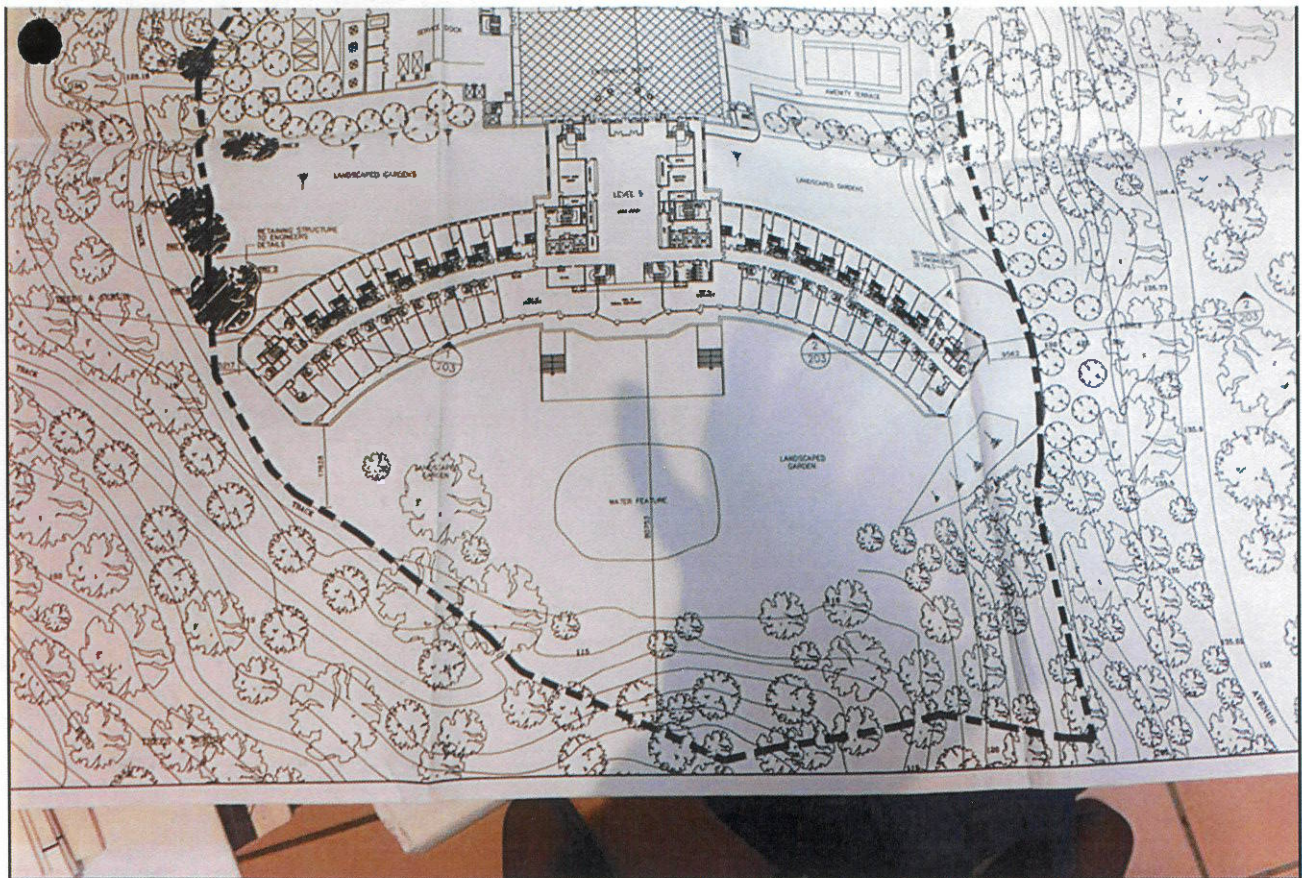


Figure 7 Photograph of the original scheme site with the boundary line not covering the area where the amphitheatre exists on site.

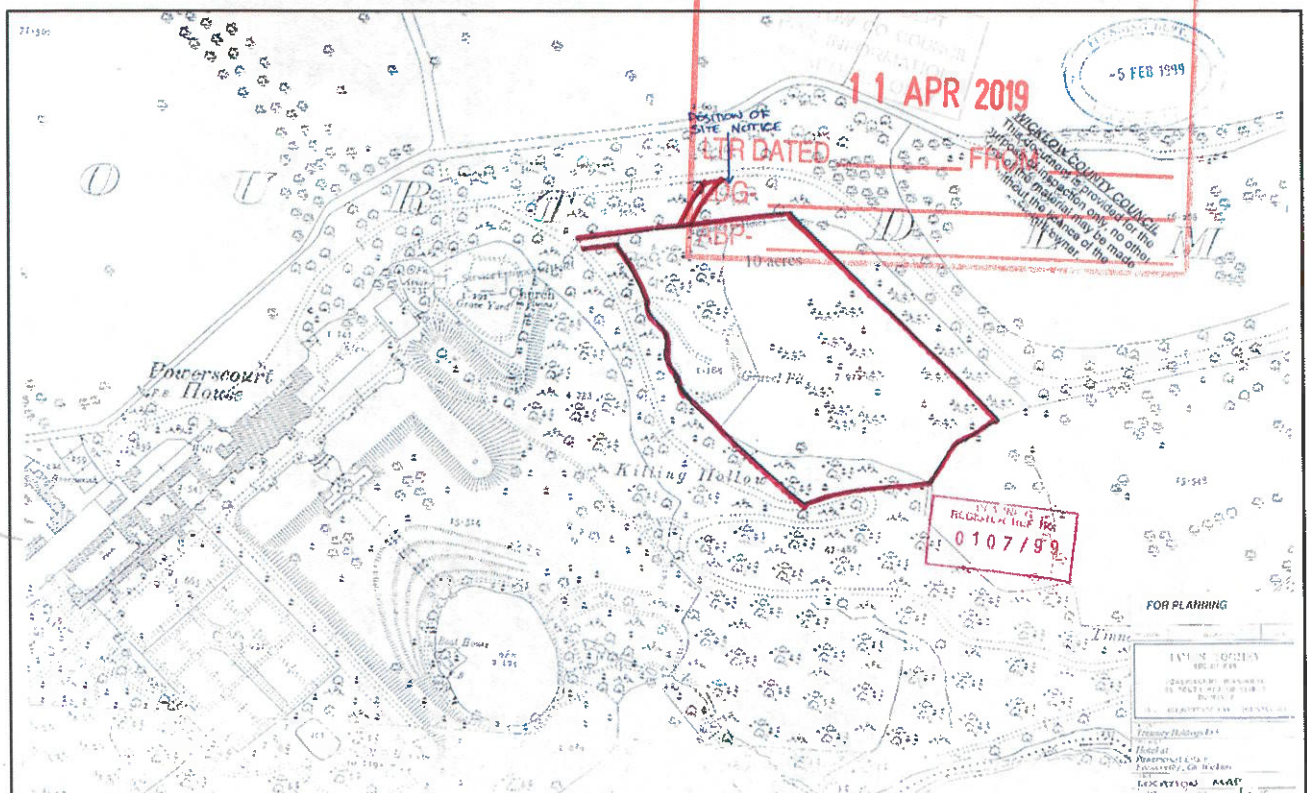


Figure 8 Map of the original red line boundary on site.

5.3 Visual Impact

In the interests of visual amenity, this area is located in a character area located beside Wicklow National Park, offering views to and from the overall landscape. According to Article 9 (1)(vi) Restrictions on Exemption, the following is said in relation to sensitive landscapes;

'Development to which article 6 relates shall not be exempted development for the purposes of the Act'

(b) *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.'

The area is part of the 'North Eastern Valley/Glencree-Mountain and Lakeshore Area of Outstanding Natural Beauty', with objective NH51 stating;

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

With this in mind, the overall development is located in an area of outstanding beauty, thus the development should not be deemed exempted development, as it affects both residents/visitors to the area and views into the site. With a historic property located next door to the development and our clients protected dwelling 'Charleville House' coming into view of the area as well, the visual impact on our client's property should be deemed unacceptable and not exempted development by ABP.

5.4 Intensity of Use

Section 4.1 states that 'works' are carried out on site, thus unauthorised development has happened at this location.

As stated in the appellants referral, works are defined in the Act as;

*'Works include any act or question of **construction**, excavation, demolition, extension, **alteration**, repair or renewal and, in relation to a protected structure or proposed protected structure, include 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.'*

Construction and alteration have all been used on site deeming this a 'development'.

Section 4.2 of the Referral states that the development is for amenity and recreation purposes on site.

With this in mind the 'amenity and recreational' nature of this development no longer stands, as the use of this area is for a wider range of uses on site including hotel business.

The appellant argues that under Schedule 2, Class 33(a) of the Regulations;

'Development consisting of the laying out and use of land-

- (a) *As a park, **private open space or ornamental garden**;*
- (b) *As a roadside shrine; or*
- (c) *For athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms) where no charge is made for admission of the public to the land.*

The appellant has highlighted that the area will be used as private open space or ornamental garden. Under the current uses of this area on site it **neither conforms to private open space or ornamental garden**. From the Irish Times article on the 1st February 2018¹ (Figure 9), the Amphitheatre will have the following uses;

¹ <https://www.irishtimes.com/business/commercial-property/powerscourt-hotel-gets-250-000-outdoor-wedding-venue-1.3376835>.

‘Measuring 1600 sqm the amphitheatre has been fitted with high-speed broadband and a modern sound system. It will also have direct car access and will be capable of hosting product launches, team building exercises, concerts and outdoor cinema screenings.’

Neither private open space or ornamental garden come under the specific development type of private open space or ornamental garden. Also, the area can be used to hold a 240-seater outdoor wedding that will have tiered seating according to the Irish Times. The appellant go on to claim that the ornamental garden has been used in conjunction with events associated with the hotel where required. **This is not an established use as there is an intensification of use associated with the works** due to the creation of a raised green amphitheatre.

Our client has found a tent/marque on site last summer (2018), with fears that this will provide more uses in the future. This will provide additional negative impacts on site including both operational noise and visual impact for our client and their dwelling. Also in regards to the unauthorised development providing a **modern sound system** as stated in the article, will cause excessive noise in the peaceful surrounding area with reference to section 5.1 above on noise.

Powerscourt Hotel gets €250,000 outdoor wedding venue

Couples will soon be able to say 'I do' in new 240-seat
amphitheatre at five-star resort in Enniskerry

□ Thu, Feb 1, 2018, 16:30

Ciarán Hancock

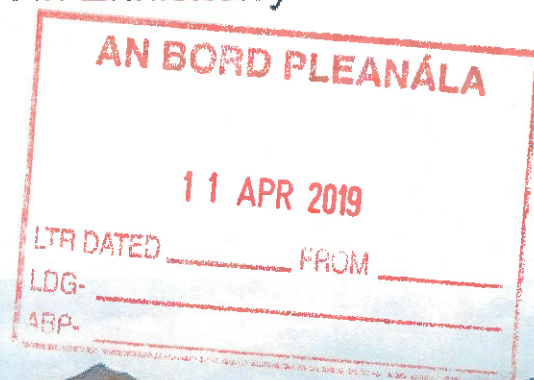


Figure 9 Photograph of the Irish Times headline with clear examples of major works and changes to levels on site.

5.5 Commentary on Appellants response to Wicklow County Council's Declaration

Section 5.0 'Commentary on Wicklow County Council Declaration (21st February 2019)' the appellant claim that 'works have been carried out to an existing hard landscaped area, and thus should qualify as a 'structure'. Previous to the construction of this unauthorised development, this part of the site lies outside the boundary of the hotel and acted as both an unauthorised and unused helipad. Thus, this is not a structure and would not qualify under section 4(1)(h) of the Planning and Development Act.

This section goes on to state that WCC claim that 'raising of levels and creating of a structure' is incorrect. The appellant claim this was created by reprofiling the area, yet this is similar to changing levels on site.

WCC mention in their declaration;

'the helipad/amphitheatre structure has been constructed on lands that are outside of the permitted boundary of the Powerscourt Hotel.'

The appellant claim that lands are within ownership of the Applicant and clearly associated with the hotel. They go on to state the referral relates to the relevant development of a landscaped space and the location of same or the 'permitted boundary' as discussed has no relevance to this determination. This is factually incorrect, as the original hotel development site is clearly marked in figure 7 and 8 above, any further development outside of these lands would require a new redline boundary and planning application. The map supplied by the appellant to Wicklow had no red line boundary.

The appellant make claim that no part of the works comprises a wall of 1.2m and each terraced step only relates to a structure of between c.o.4m-0.55m in height, which have been constructed further to the reprofiling of the garden area. Again as stated above, reprofiling technically constitutes as changing of levels. Also, in relation to the terraced steps, though the development is not a wall, it is still a form of development on site reaching height of 1.2m with drainage works, constituting planning permission on site.



Figure 10 Photograph of previous hard surfaced area highlighting there has been a change in level since the construction of the amphitheatre. (Source: TripAdvisor)

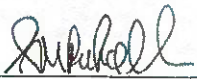
Conclusions

We invite An Bord Pleanála to find that the development at Powerscourt Hotel would have a significant negative impact on the amenities of surrounding properties and would give rise to excessive noise along the mutual boundaries, be contrary to the hotel area outlined in previous planning applications and maps, disrupt visual amenity and increase the intensity of use at this site.

As such, we seek that the Board will listen to our submission in relation to this Section 5 referral and agree with Wicklow County Council's decision and declare the Section 5 application not exempted development.

We trust the foregoing is in order and await a decision in due course.

Yours faithfully,



Stephen Purcell BSc. (Hons) MRUP PGDip IS MIPI FCSI FRICS
Director
Future Analytics Consulting Ltd.



Ben Duignan BA MRUP
Consultant Planner
Future Analytics Consulting Ltd.

Encl./

- Appeal fee cheque
- Appendix Map
- Section 5 Referral

