

# MANAHAN PLANNERS

Town Planning Consultants

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Tel: 01-6799094. Vat No: 2850391E. Tony Manahan B.A.(Hons), M.Phil (Edin.), M.T.P.L.A.

15<sup>th</sup> April 2019

The Planning Officer,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.

AN BORD PLEANALA	
LDG-	015167-19
ABP-	
16 APR 2019	
Fee: €	220 Type: C110
Time:	13:06 By: hand

**Re: Referral of Decision by Wicklow County Council re Section 5 Declaration re lands at Killegar, Enniskerry, County Wicklow Nijinsky Property Company Reg. Ref. 11/19**

Dear Sir/Madam,

We wish to refer a Decision of Wicklow County Council under Section 5 of the Planning and Development Act 2000, as amended, in respect of the development of a Gallops for the training of horses on lands at Killegar, Enniskerry, County Wicklow. The lands adjoin the artificial ski slope at Kiltiernan and are adjacent to the former Kiltiernan Sports Hotel, currently vacant.

In accordance with the Regulations, we enclose the appropriate Fee of €220.

## Background

The majority of the training Gallops is in the functional area of Dun Laoghaire Rathdown County Council. A small portion of the Gallops is within Wicklow. An Bord Pleanála have already determined that the track within the DLR functional area is Exempted Development, following a determination by the Planning Authority that it was not exempt. See Reg. Ref. 06D.RL. 3363

Subsequent to that decision there was correspondence that two public rights of way crossing the lands in an east-west line may be restricted by the track. The more northerly was and remains passable. The more southerly route was never fully accessible or usable. The owners of the land facilitated and assisted the Dublin Mountain Partnership to construct a proper walkway parallel to the Southern right of way. This is now in use.

## Wicklow Warning Letter

Wicklow County Council issued a Warning Letter on 13<sup>th</sup> December 2018 in respect of that section of the Gallops within Wicklow. The Warning Letter claimed that Planning permission was needed based on the following considerations.

*"The construction of an unroofed fenced area (a gallops track) for the exercising of equestrian animals constitute works. Such works come within the meaning of development.... and are considered not to be exempted development."*

The Council sought to justify such an opinion as follows,

*"The former use of the said area of lands in Killegar ... was as golf fairways as part the former Kiltiernan golf and country club. The current use of that area of land for equestrian purposes is*

considered to come within the scope of the definition of "agriculture" in section 2(1) of the said Planning Act. The change of use of that area of land from use as golf fairways as part of a golf course for the provision of a gallops for the training- exercising of equine animals is deemed to constitute a material change of use. This is because golf course lands do not fall within the scope of the said statutory planning definition of agriculture. No exemptions from the requirement to obtain planning permission for such a form of material change of use is provided in the current planning and development legislation."

The Warning Letter went on to state;

*In circumstances that the material change of use reason outlined in point 2 is deemed to be incorrect, .... the proposal is still considered to constitute unauthorised development for the following reasons.*

*It is considered that the northern part of the subject gallop track which is located in the townland of Kiltarnan creates an obstruction by means of the presence of railings along its two site boundaries of two respective public rights of way at points where the route of the track traverses across those public right-of-way. Those two respective public right-of-way are listed in the current Dun Laoghaire Rathdown County Development Plan.*

*As a consequence the development of the part of the subject gallops track within the townland of Kiltarnan is considered to come within the scope of the restrictions on exemptions under article 9 (1) (a) (x1) of the said planning regulations.*

*Due to the fact that a section of the overall gallops track, located within the townland of Killegar, constitutes a physical extension of part of this equestrian facility, located in the adjoining townland of Kiltarnan means that it comes within the scope of the restrictions on exemption under article 9 (1) (a) (viii) of the planning regulations.*

The Warning Letter concluded,

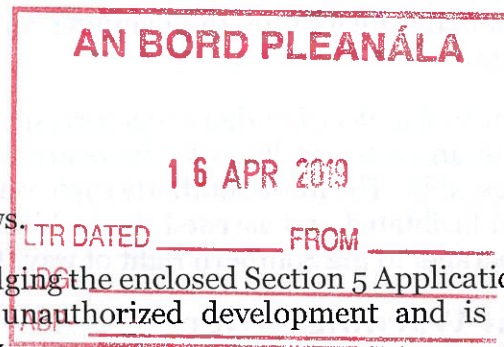
*"In the absence of appropriate grants of planning permission for the respective purported non-exempted developments outlined above, it is the position the planning authority that such forms of development, come within the scope of the definition of "unauthorised development" in section 2(1) of the 2000 planning act.*

See Appendix A for copy of Warning Letter

## **Response to Warning Letter**

We responded to the Warning letter as follows.

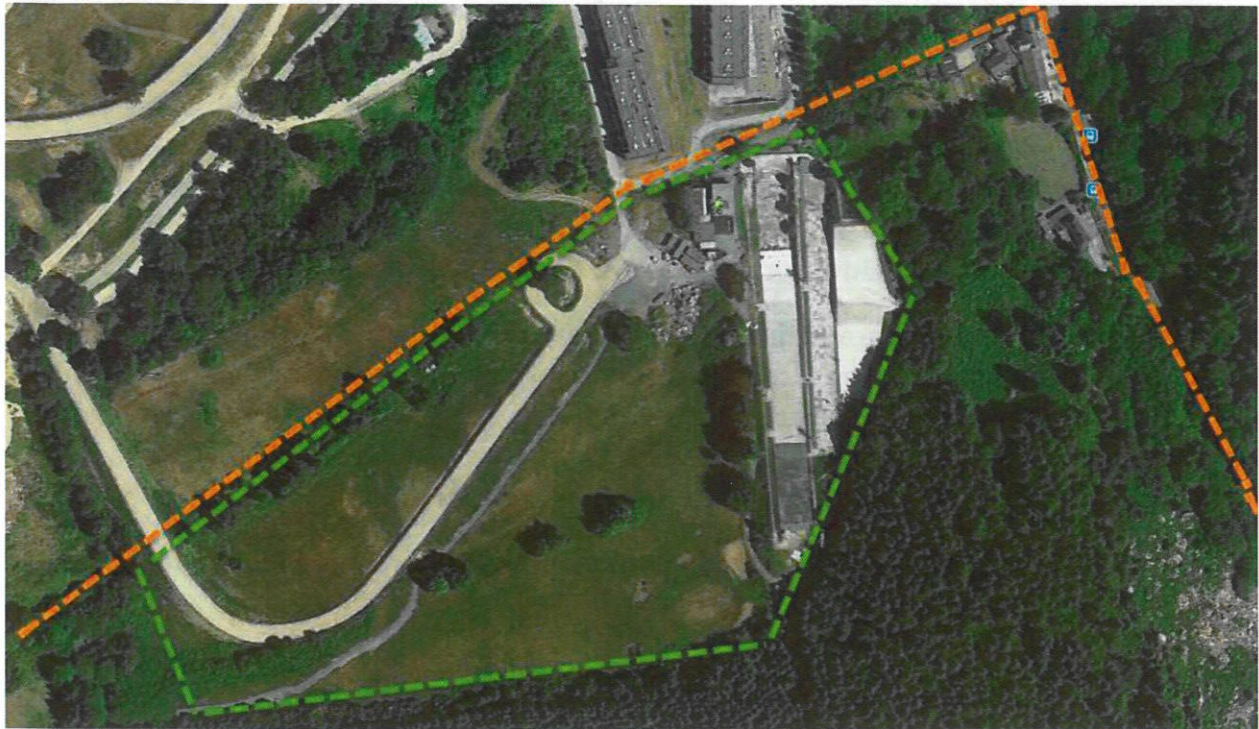
In response to this, Warning Letter we are lodging the enclosed Section 5 Application seeking a determination that the proposal is not unauthorised development and is Exempted Development for the reasons set out in below.



## **Change of use**

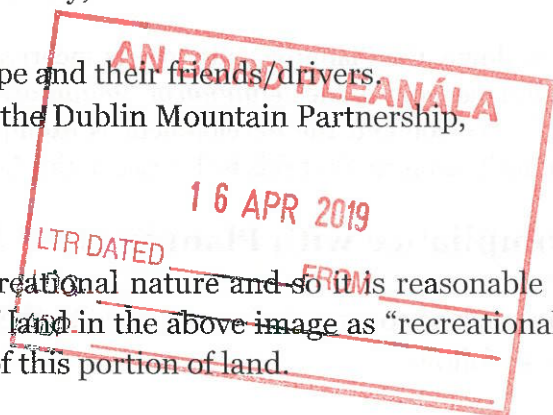
In relation to the claimed change of use of an area of land within the functional area of Wicklow County Council, it is necessary to first define the extent of the area in question so as to establish the "planning unit". It is submitted that the most logical area is that within the green dotted line in the Google Earth image below. This is an open area enclosed by forest. The boundary of Wicklow County is shown by orange dotted lines. The location and extent of the Gallops and its turning circle is clearly visible.





This area contains:

- an artificial ski slope, the only one in the country,
- A changing room for users of the slope.
- A coffee shop/tea room for users of the slope and their friends/drivers.
- A walkers pathway constructed in 2018 by the Dublin Mountain Partnership,
- A very small section of the Gallops,
- Grassed open space.



It is submitted that these structures are of a recreational nature and so it is reasonable to classify the primary / principal use of the area of land in the above image as “recreational”. There is therefore no material change in the use of this portion of land.

The Ski slope is a significant structure as is the adjoining vacant hotel structures. Together they create a significant recreational footprint. In this context it is submitted that it would not be reasonable to classify this or the immediately adjoining area of land as agricultural in nature or use. Accordingly, no material change of use from recreational to agriculture has occurred as claimed.

### **Rights of Way in the Development Plan of a Neighbouring County**

The Warning Letter further refers to an issue which is located in the functional area of another local authority. It is submitted this is of no relevance to this section 5 and in fact cannot and should not, form part of the adjudication process of this Section 5 Application. It should not be a matter for the Planning Authority.

However for the information of Wicklow County Council, the two rights of way in the Dun Laoghaire Rathdown County Plan were largely impassable and unusable as they followed the routes of two east west hedge rows over, in parts, rough terrain. However being within a golf course, they were not obviously unusable. Once the gallops with its surrounding railings crossed those hedge rows, some people were of the view they had become impassable. This was not the case. In practice it was easy for walkers to duck under the railings and pass through while no horses were passing. This would have been similar to walking through while no golfers were passing by. However sections still remained impassable.

The position has been improved however during 2018 in that the owners facilitated the Dublin Mountain Partnership in constructing a walkway just south of the gallops (in the Wicklow area) to facilitate walkers crossing from the Enniskerry Road to the road on the west of these lands. This provides a safe and easily walked route through these lands and has been welcomed by walkers. It can be seen on the image above.

In conclusion in relation to this issue, this item has been resolved on the ground, but either way, is not a matter for Wicklow County Council.

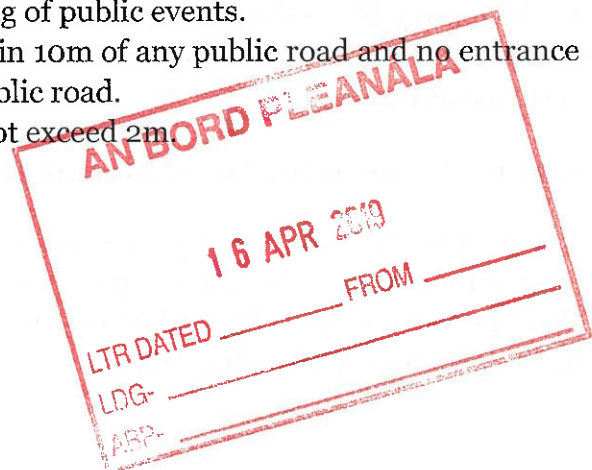
The Council claims, *“Due to the fact that a section of the overall gallops track, located within the townland of Killegar, constitutes a physical extension of part of this equestrian facility, located in the adjoining townland of Kilternan, means that it comes within the scope of the restrictions on exemption under article 9 (1) (a) (viii) of the planning regulations”*. It is submitted that Wicklow County Council is in error in holding this to be correct.

Accordingly the Planning Authority is incorrect in holding that *“such forms of development, come within the scope of the definition of “unauthorised development” in section 2(1) of the 2000 planning act”*. We contend the development is exempted development and we request that the Planning Authority confirm that this is the case in this Section 5 application.

## **Compliance with Planning and Development Regulations**

The track as constructed complies with the requirements of the Planning Regulations which are as follows.

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





## Restrictions on Exemption

In determining this application, we invite the Planning Authority to consider the following additional considerations in relation to potential restrictions on exempted development.

- The proposal does not contravene a condition of a previous permission (Article 9(1)(a)(i)).
- The proposal does not relate to development which would comprise alterations to an entrance to public road (Article 9(1)(a)(ii)) or endanger public safety by reason of traffic hazard (Article 9(1)(a)(iii)).
- The track does not relate to development comprising alterations to a building (Article 9(1)(a)(iv)) or works under a public road (Article 9(1)(a)(v)).
- The land use zoning and views and prospects designations of the current County Development Plan are not materially changed.
- The exercise track will not impact on places, caves, sites or features of other objects of archaeological, geological, historical, scientific or ecological interest referred to in the County Development Plan or draft County Development Plan and therefore is not de-exempted by article 9(1)(a)(vii).
- The track does not impact on any national monument to which article 9(1)(a)(viiA) might apply.
- The track does not impact on a NHA to which article 9(1)(a)(viiC) would apply.
- The track does not comprise works to an unauthorised structure to which article 9(1)(a)(viii) would apply.
- The track does not comprise works to a building or structure to which to which article 9(1)(a)(ix) would apply.
- The track does not comprise fencing or enclosure of land habitually open to the public to which article 9(1)(a)(x) would apply.
- The track within Wicklow does not obstruct a right of way to which article 9(1)(a)(xi) would apply.
- The track does not comprise works to a structure within an ACA to which article 9(1)(a)(xii) would apply.
- The track is not within the area of a Special Amenity Area Order to which article 9(1)(b) would apply and the circumstances (electricity undertakings or Ministerial consents under the Habitats Directive) provided for in article 9(2) and 9(3).

In view of the above, we requested that the Planning Authority determine that the track within the functional area of Wicklow County Council is exempted development.

AN BORD PLEANÁLA

16 APR 2013

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

## Declaration by the Planning Authority

Wicklow County Council decided that the track was not Exempted Development based on the following considerations.

- (4) **The subject construction works would generally come within the scope of the exempted provisions of Class 10 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001 (as amended) but does not comply with Condition and Limitation number 4 of this Class because:**

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

In addition, they considered the railings around the track not to be exempt.

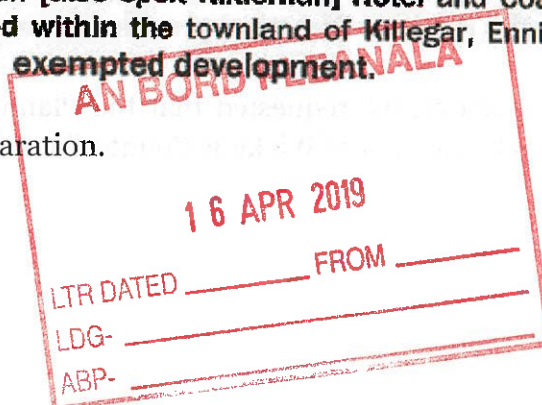
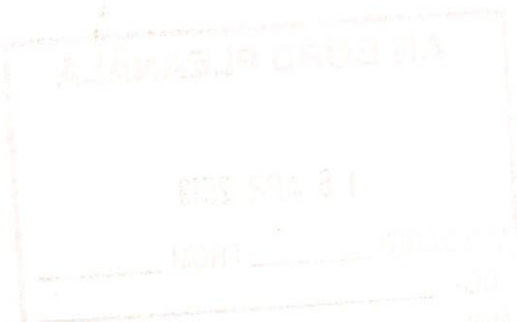
- (5) (a) **The erection (works) of the respective boundary fences (structures) on this track/gallops do not come within the scope of the exempted provisions of Class 4 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001 (as amended), because the parts of these structure referred to in (4) above, when measured from the lowest level of the adjacent ground levels in accordance with the provisions of Article 5(2) of these regulations, exceed the exempted height threshold of 2 metres provided in Condition and Limitation number 1 of this Class. Therefore those parts of the subject respective fence structures do not comply with that Condition and Limitation.**

(b) **As a consequence of 5(a), the erection of the entire length of boundary fences on each side of the subject track/gallops come within the scope of the restrictions on exemption under Article 9(1)(viii) of the said planning regulations because it constitutes the extension of sections of these fences that are deemed to constitute unauthorised developments, in the absence of grants of planning permissions for such forms of non-exempted developments.**

In view of this they concluded as follows,

**The Planning Authority considers that the construction and operation of a track/gallops for the exercising of equine animals as constructed on the southern part of the grounds of the former Kiltiernan [also spelt Kiltiernan] Hotel and Country Club, Kiltiernan, Co. Dublin, which is located within the townland of Killegar, Enniskerry Co. Wicklow is development but is not exempted development.**

See Appendix B for copy of Council Declaration.



## Response to Declaration

The relevant provisions are Class 10 and Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended. These are as follows:

### CLASS 10

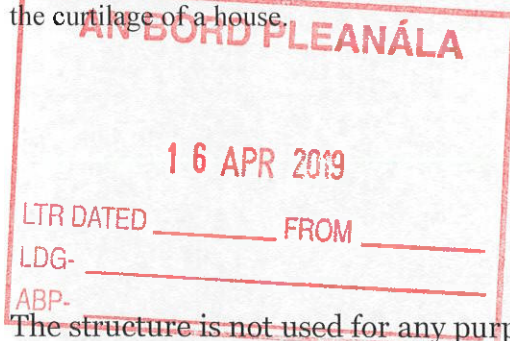
The erection of an unroofed fenced area for the exercising or training of horses or ponies, together with a drainage bed or soft surface material to provide an all-weather surface.

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

### CLASS 4

The construction, erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.

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



The structure is not used for any purpose other than the exercising and training of horses. It has not and will not be used for the staging of public events. The track is a considerable distance from a public road. Finally the track is not generally higher than 2 metres above the surrounding ground level. In view of this it is submitted that the track is exempted development.

The Planning Authority initially raised a number of reasons as to why the proposal was not exempt, but now have narrowed their submission down to one issue only, namely that the track is higher than 2 metres and the surrounding railings are greater than 2 metres.

It is the position that the track is generally at ground level. The land to the south is higher and slopes down to the track and the ground on the north side continues to fall away. See photo below.

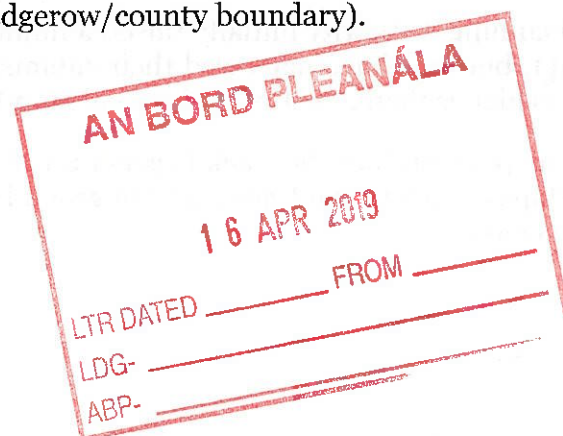




The track is marginally above surrounding ground level for most of its route. See below.



Where the track turns to head north, the ground level to the south is appreciably higher than the track and the ground falls sharply toward the hedgerow which is the County Boundary (see dotted vertical line on image below for hedgerow/county boundary).







In seeking to keep a reasonable level on the track, between the higher ground to the south and the sharp fall into the hedgerow to the north, the track is higher than the immediate adjoining ground level adjoining the hedgerow, but lower than the ground to the south. The Council have seized on this point to claim that the entire track is not exempt. This lower distance is less than the 80 metres claimed by the Council.

It is submitted that the track complies generally, as a whole, with the requirement to not be more than 2m higher than the surrounding land as the photographs above indicate.

It is submitted that this condition stems from the need to ensure that a gallops/track is not to any noticeable extent significantly higher than the ground level in the adjoining landscape, thereby injuring the visual amenity of the area. This would be particularly important in a flat plain type of landscape.

In this case the topography is that of a mountain slope with repeated inclines and declines in which it is necessary for the track to smooth out these extremes in level change. In this case there a sharp fall to the county boundary which the track had to react to. It is our view that it would be unreasonable to decide on the exemption based on this small section of the track alone rather than looking at how the track, as a whole, complies with the exemption for the majority of its distance within Wicklow. Where the surrounding ground level is higher than the track in parts, it is submitted this balances the declines.

The wording does not say that a track “shall not at any point” be higher than 2m. The draughtsman could have done so but did not. It would be absurd in the interest of animal safety if a track was required to hug the surrounding ground level, thus creating abrupt changes in level. A degree of “smoothing out” in level is required where the topography demands it, as in this case.

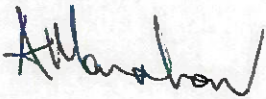
AN BORD PLEANALA  
16 APR 2019  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
/ABP \_\_\_\_\_

The council also refer to Class 4 of Part 3 of schedule requiring a railing to be no more than 2m high. The railings around the track are in fact 1.35m high.

This training track for the exercising of horses was built in late 2015, early 2016. We are not sure why the Planning Authority feels the need to raise this matter at this time.

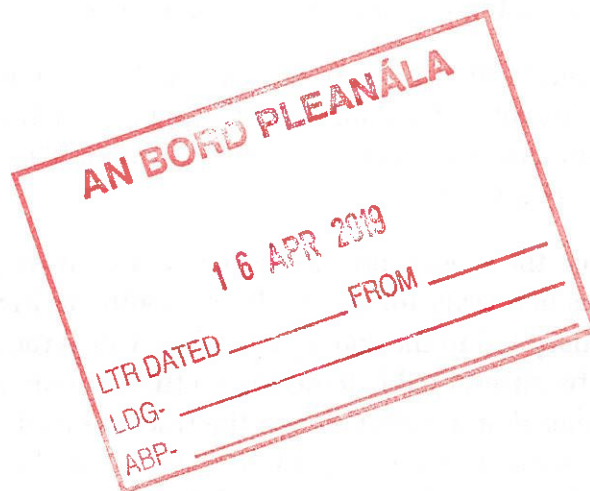
In conclusion, we believe the track within Wicklow, taken as a whole, can be considered to fall within the terms of Class 10 and its qualifying conditions. Similarly the railings fall within the terms of Class 4 and its qualifying conditions. In view of this we ask An Bord Pleanála to determine that this development is considered to be Exempted Development.

Yours faithfully



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**Tony Manahan**  
**Manahan Planners**





# Appendix A

## Copy of Warning Letter

**AN BORD PLEANÁLA**

**16 APR 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_







# COMHAIRLE CONTAE CHILL Mhantáin Wicklow County Council

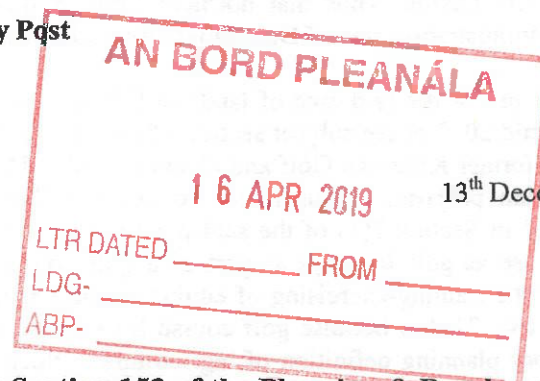
Forbairt Pleanála agus Comhshaol  
Planning Development and Environment

Áras An Chontae / County Buildings  
Cill Mhantáin / Wicklow  
Guthán / Tel: (0404) 20148  
Faics / Fax: (0404) 69462  
Rphost / Email: plandev@wicklowcoco.ie  
Suíomh / Website: www.wicklow.ie

By **Registered Post** & Ordinary Post

TW/PC

The Secretary,  
NIJINSKY Property Company,  
Leixlip Centre,  
Leixlip,  
Co. Kildare.



## Warning Letter as per Section 152 of the Planning & Development Act 2000 (as amended)

**UD4840 - Alleged unauthorised development, consisting of the carrying out of the following development on the southern part of the grounds of the former Kilternan [also spelt Kiltiernan] Hotel and Golf and Country Club, Kilternan, Co. Dublin. The area of land that is the subject of this file is located within the townland of Killegar, Enniskerry, Co. Wicklow [Folio WW11018]:**

**The construction of an un-roofed fence enclosed equestrian training gallops on a soft sandy surface [circa 440 metres in length] which constitutes the southern section of a longer gallops track of the same character the bulk of which is located within the adjoining townland of Kilternan, located within the plan functional administration area of Dún Laoghaire Rathdown County Council. [Overall length of gallops track-way deemed to be circa 2 kms].**

A Chara,

### Section A:

It has come to the attention of Wicklow County Council (the planning authority) that the developments outlined in the above heading have been carried out/are on-going.

It is the opinion of the planning authority that the subject 'gallops development' constitutes non-exempted development(s) for the reasons outlined hereunder. This means this development [in its entirety] does not come within the meaning of 'exempted development' as set out in Section 4(3) of the Planning and Development Act 2000 [as amended]. Such development(s) constitute 'development' within the context of current planning and development legislation and secondly they do not benefit from any of the exempted development provisions there-under. Consequently, in accordance with the requirements of Section 32 (b) of the said act; it is deemed that the types of development referenced herein, require(s) the benefit of an appropriate grant(s) of planning permission in order to attain authorisation under current land-use planning legislation.

### Reasons:

1. The construction of an unroofed fenced area [a gallops track] for the exercising of equestrian animals, constitutes works. Such works come within the meaning of development as set out in Section 3(1) of the Planning and Development Act 2000 (as

*Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.*

*This document is available in alternative formats on request.*

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Forbairt Pleanála agus Comhshaol.  
All correspondence should be addressed to the Director of Services, Planning Development & Environment.



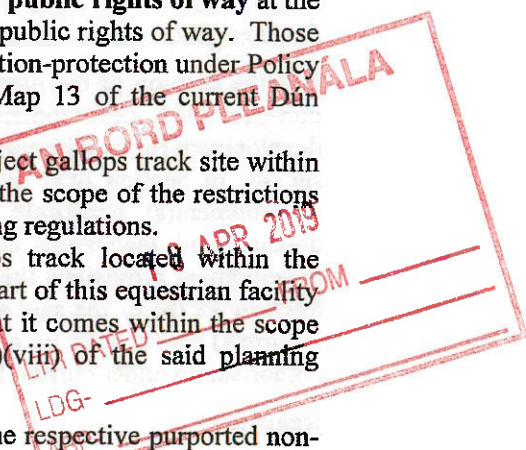
amended). The part of this 'gallops track' sited within the townland of Killegar, Co. Wicklow of circa 410 metres forms an integral part of a more extensive recreational facility of this nature, of which circa 1.6 kms is located in the adjoining townland of Kilternan, Co. Dublin. Thus that northern limb of these gallops is located within the statutory administration area of Dún Laoghaire Rathdown County Council.

2. The former use of the said area of lands in Killegar preceding the development between mid 2016-mid 2017 of the subject section of gallops track therein, was as golf fairways as part of the former Kilternan Golf and Country Club. The current use of that area of land for equestrian purposes is considered to come within the scope of the definition of 'agriculture' in Section 2(1) of the said planning act. The change of use of that area of land from use as golf fairways as part of a golf course land-use for the provision of a gallops for the training-exercising of equine animals is deemed to **constitute a material change of use**. That is because golf course land uses do not fall within the scope of the said statutory planning definition of 'agriculture'. Such a material change of use comes within the meaning of 'development' set out in Section 3(1) of the 2000 planning act. No exemptions from the requirement to obtain planning permission for such a form of material change of use is provided under current planning and development legislation.
3. As a consequence, of reason number 2, none of the exempted provisions of current planning and development provisions of current planning and development legislation are considered to be applicable.

In circumstances that the material change of use reason outlined in point 2, is deemed to be incorrect, under any future assessment of the planning status of the subject gallops track by a planning authority [under Section 5 of the said act for example] or a Court of law; Wicklow County Council considers that this development would still constitute an unauthorised development for the following reasons:

4. Whilst the development of unroofed fenced areas for the exercising-training of equestrian animals on a soft all weather surface, normally falls within the scope of the exemption provisions of Class 10, of Part 3 of Schedule 2 of the Planning and Development Act Development Regulations 2001 (as amended); such an exemption is considered not to apply in this instance, because:
  - (a) It is considered that the northern part of subject gallop-track which is located in the townland of Kilternan Co. Dublin, creates an **obstruction** by means of the presence of railings along its two side boundaries of two respective **public rights of way** at the points where the route of this track traverses across those public rights of way. Those two respective public rights of way are listed for preservation-protection under Policy LHB14 of Section 4 in conjunction with Appendix 8/Map 13 of the current Dún Laoghaire Rathdown County Development Plan 2016-22.
  - (b) As a consequence, the development of the part of the subject gallops track site within the townland of Kilternan, is considered to come within the scope of the restrictions on exemption under Article 9(1) (a)(xi) of the said planning regulations.
  - (c) Due to the fact that the section of the overall gallops track located within the townland of Killegar constitutes a physical extension of part of this equestrian facility located in the adjoining townland of Kilternan means that it comes within the scope of the restrictions on exemption under Article 9(1) (a)(viii) of the said planning regulations.

In the absence of appropriate grants of planning permission for the respective purported non-exempted developments outlined above, it is the position of the planning authority that such forms of development come within the scope of the definition of 'unauthorised development in Section 2(1) of the 2000 planning act which in summary states:





- *The carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure),*
- *Or the making of any unauthorised material change of use, either without the benefit of planning permission, or not in accordance with a relevant grant(s) of planning permission(s).*

It is the position of the planning authority that the said developments are of material significance in the context of the proper planning and sustainable development of this trans-county border upland area in accordance with policies of the current applicable statutory land-use development plans. Consequently, the service of this Section 152 Warning Letter is considered both warranted and proportionate.

#### Section B:

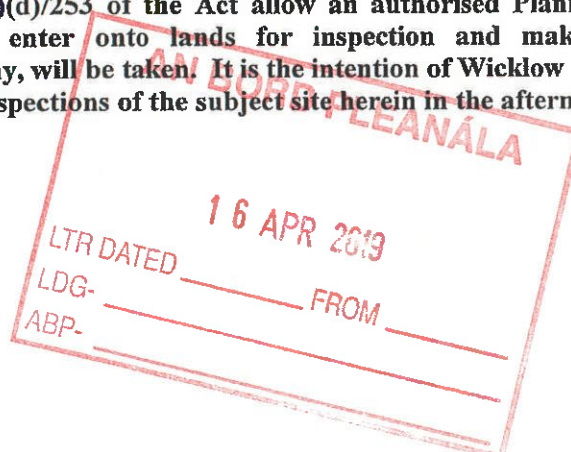
**You are invited in accordance with the provisions of Section 152 (4) (b) of the Planning and Development Act 2000 (as amended), to make a written submission or written observation outlining how you intend to address the matters of alleged unauthorised development referred to herein, within 4 weeks from the date of this letter.**

As part of this submission, you are requested to include respective responses to the following questions along with any other items of information that you consider to be of relevance.

1. Please confirm that the company of which you are the Secretary/Director of, is (a) the party responsible for carrying out the matters of alleged unauthorised development outlined above and (b) are the current owners of the overall site of the entire land-holding referenced in the above heading.
2. In circumstances that you intend to submit to Wicklow County Council a planning application for the retention-completion of the alleged unauthorised development features referred to above, please indicate an envisaged timeframe for the submitting of such an application. Please note that the planning authority can provide no guarantees regarding the outcome of any such planning application. Due to the fact that the remit of the subject gallops-track encompasses adjoining parcels of land in the local authority administrative areas of Wicklow County Council and Dún Laoghaire Rathdown County Council; a response to this question needs to include reference to any planning application you intend to submit to DLRCC, with respect to the retention/completion of the northern part of this gallops-track.
3. If it is your intention to submit a Section 5 declaration request to the planning authority [forms available on <http://www.wicklow.ie/planning>] regarding the planning status of the subject alleged unauthorised developments referenced herein; please indicate an envisaged timeframe for the making of such a submission.

Please note that while submissions relating to alleged unauthorised development are generally treated as confidential, any submission relating to non-compliance with the conditions of a planning permission will also be placed on the relevant planning file, which is open for public viewing.

**You are advised that Sections 152 (4)(d)/253 of the Act allow an authorised Planning Official at all reasonable times to enter onto lands for inspection and make a recommendation as to what action if any, will be taken. It is the intention of Wicklow County Council to carry out further inspections of the subject site herein in the aftermath of the issue of this Warning Letter.**



A decision on whether to issue an Enforcement Notice (under Section 154 of the Act) shall be taken by the Planning Authority on foot of this Warning Letter. In the making of this decision, the Planning Authority shall consider any representations in written submissions/observations made to it under Section 152(1)(a) and 152(4)(b) of the Act respectively and the outcome of its own investigations regarding the alleged unauthorised development(s) referred to in the above heading.

The possible penalties involved where there is an offence are outlined on attached sheet.

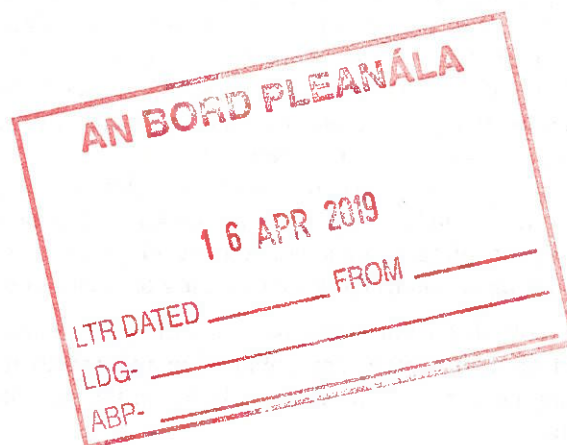
In accordance with the provisions of section 162(3) of the Planning Act, the Planning Authority are not required to place a stay or withdraw enforcement action under Part VIII of the Act by reason of a submission to it of any planning application for retention of permission under Section 34(12C) of the same Act pertaining to the subject alleged unauthorised development(s) in this Warning Letter.

I look forward to your submissions/observations.

Mise le meas,

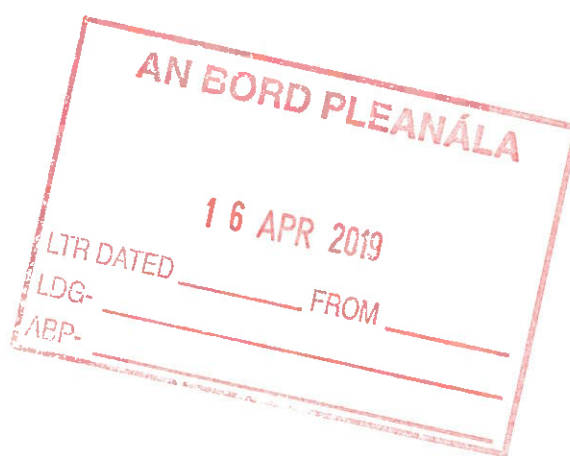
*R. Demison*

**ADMINISTRATIVE OFFICER  
PLANNING ENFORCEMENT**



# Appendix B

## Copy of Council Declaration









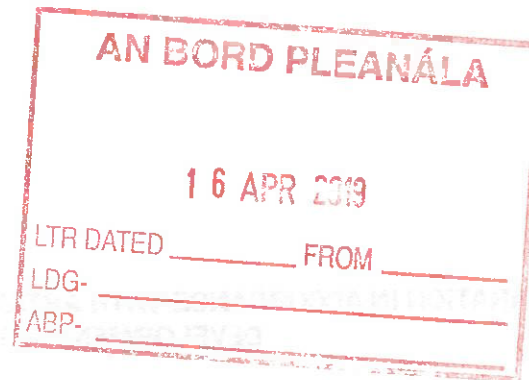
# Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol  
Planning Development and Environment

Áras An Chontae / County Buildings  
Cill Mhantáin / Wicklow  
Guthán / Tel: (0404) 20148  
Faics / Fax: (0404) 69462  
Rphost / Email: [plandev@wicklowcoco.ie](mailto:plandev@wicklowcoco.ie)  
Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

20<sup>th</sup> March 2019

Tony Manahan  
Manahan Planners,  
38 Dawson Street  
Dublin 2.



**RE: Declaration in accordance with Section 5  
of the Planning & Development Acts 2000 – 2011**

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the  
Planning & Development Act 2000 In respect of the following:

**Exemption Ref. No:** EX 11/19

**Applicant:** Nijinsky Property Company

**Nature of Application:** the construction and operation of a track/gallops for the  
exercising of equine animals as constructed is exempted development on the southern  
part of the grounds of the former Kiltiernan [also spelt Kiltiernan] Hotel and Country  
Club, Kiltiernan, Co. Dublin, which is located within the townland of Kilegear, Enniskerry  
Co. Wicklow

**Location:** Kilegear Enniskerry

Where a Declaration is used under this Section any person issued with a Declaration  
under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be  
prescribed, refer a declaration for review by the Board within four weeks of the date of  
the issuing of the declaration by the Local Authority.

Is mise, le meas,

**ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT**

Encl.

REG POST

Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.  
This document is available in alternative formats on request.

Ba chóir gach comhfhreagras a sheoladh chug an Stiúrthóir Seirbhíse, Forbairt Pleanála agus Comhshaol.  
All correspondence should be addressed to the Director of Services, Planning Development & Environment.





# Comhairle Contae Chill Mhantáin Wicklow County Council

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## DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000.

Applicant: Nijinsky Property Company  
Location: Killegar Enniskerry

DIRECTOR OF SERVICES ORDER NO. 457/19

A question has arisen as to whether or not the construction and operation of a track/gallops for the exercising of equine animals as constructed is exempted development on the southern part of the grounds of the former Kilternan [also spelt Kiltiernan] Hotel and Country Club, Kilternan, Co. Dublin, which is located within the townland of Killegar, Enniskerry Co. Wicklow is or is not exempted development.

Having regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).
- (b) Articles 5, 6, 9, 10 of Schedule 2 of PART 2 of the Planning and Development Regulations 2001 (as amended).
- (c) Parts 1, 3 and 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- (d) The Local Government (Planning and Development) Act 1963, (Exempted Development) Regulations 1967.
- (e) The requester's submission of the 21<sup>st</sup> of February 2019.
- (f) The planning application and enforcement file history of the subject site of this referral and that of the adjoining site which constitutes the grounds of the former Kilternan Golf and Country Club, located in the Ballybetagh in the Administrative County of Dun Laoghaire Rathdown County Council.
- (g) The relevant provisions of the current Wicklow County Development Plan 2016-2022.
- (h) The relevant provisions of the current Dún Laoghaire Rathdown County 2016-2022.
- (i) The respective decisions of An Bord Pleanála under the following Section 5 (3)(a) referral declaration decisions: 06D.RL.3363 of the 11<sup>th</sup> of April and RL09.RL3812 of the 3<sup>rd</sup> of May 2018.
- (j) Bland, P. (2009), Easements, Second Edition, Thompson Reuters (Professional) Ireland Limited: Dublin 2.
- (k) The Judgment of the Supreme Court in of the 11<sup>th</sup> of November in: Walsh and others v Sligo County Council, [2013] IESC 48.

Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.

This document is available in alternative formats on request.

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhíse, Forbairt Pleanála agus Comhshaol.  
All correspondence should be addressed to the Director of Services, Planning Development & Environment.

AN BORD PLEANÁLA

16 APR 2019

FROM

LDG-

ABP-





**Main Reasons with respect to Section 5 Declaration:**

- (1) The construction of a track/gallops for the exercising of equine animals as constructed, constitutes works for the purpose of the development of a structure and these works constitute development within the meaning of Section 3(1) of the Planning and Development Act 2000 (as amended). This development forms an integral part of a larger equestrian gallops exercising track, the bulk of which is located within the adjoining townland of Ballybetagh situated in the administrative County of Dún Laoghaire Rathdown County Council.
- (2) The 'operation' [use] of this track/gallops, for the training of horses, is a land use that comes within the scope of the meaning of 'agriculture' set out in Section 2(1) of the Planning and Development Act 2000 (as amended).
- (3) Such a form of agricultural land-use comes within the exempted development provisions of Section 4(1) (a) of the Planning and Development Act 2000 (as amended).
- (4) The subject construction works would generally come within the scope of the exempted provisions of Class 10 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001 (as amended) but does not comply with Condition and Limitation number 4 of this Class because:

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

- (5) (a) The erection (works) of the respective boundary fences (structures) on this track/gallops do not come within the scope of the exempted provisions of Class 4 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001 (as amended), because the parts of these structure referred to in (4) above, when measured from the lowest level of the adjacent ground levels in accordance with the provisions of Article 5(2) of these regulations, exceed the exempted height threshold of 2 metres provided in Condition and Limitation number 1 of this Class. Therefore those parts of the subject respective fence structures do not comply with that Condition and Limitation.
- (b) As a consequence of 5(a), the erection of the entire length of boundary fences on each side of the subject track/gallops come within the scope of the restrictions on exemption under Article 9(1)(viii) of the said planning regulations because it constitutes the extension of sections of these fences that are deemed to constitute unauthorised developments, in the absence of grants of planning permissions for such forms of non-exempted developments.

The Planning Authority considers that the construction and operation of a track/gallops for the exercising of equine animals as constructed on the southern part of the grounds of the former Kiltiernan [also spelt Kiltiernan] Hotel and Country Club, Kiltiernan, Co. Dublin, which is located within the townland of Killegar, Enniskerry Co. Wicklow is development but is not exempted development.

Signed: Siobhán O'Brien  
ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 20<sup>th</sup> day of March 2019

