



An  
Bord  
Pleanála

## Inspector's Report ABP-320262-24

### Question

Whether the construction of wastewater/sewage tanks within the grounds of the equestrian shed (granted under permission P97/396) allowed without planning permission noting these are now complete, is or is not development and is or is not exempted development.

### Location

Wallslough Equestrian Facility,  
Wallslough, Co. Kilkenny

### Declaration

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

DEC808

Applicant for Declaration

Aidan Kelly.

Planning Authority Decision

Is exempted development

### Referral

Referred by

Aidan Kelly.

Owner/ Occupier

Jim & Tommy Hughes.

**Observer(s)**

Mark & Mary T Hennessy.

**Date of Site Inspection**

7<sup>th</sup> October 2024.

**Inspector**

Jennifer McQuaid

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## **1.0 Site Location and Description**

- 1.1. This application should be read in conjunction with adjoining referral planning reference ABP-319805-24 which asked the question whether the construction of circa 40 no. self-contained units/apartments within the equestrian shed (granted under permission P97/396) exempt or not? Noting the works are well underway.
- 1.2. The subject site is located in the rural area of Kilkenny County and approximately 5km south of the centre of Kilkenny City. The nearest Village is Bennettsbridge, located approximately 3km southeast of the proposed site. The site is accessed via a local road LS 6700 off the R700.
- 1.3. There is a former equestrian centre building on site with associated outbuildings. The site is currently under renovation and upgrade works for the proposed temporary emergency accommodation for displaced persons or persons seeking international protection are well underway. There are a number of holiday homes at the entrance to the site known as Wallslough Village. And there is an operating furniture store on site.

## **2.0 The Question**

- 2.1. The question before the Board relates to one question:  
  
Whether the construction of wastewater/sewage tanks within the grounds of the equestrian shed (granted under permission P97/396) allowed without planning permission noting these are now complete, is or is not development and is or is not exempted development?
- 2.2. A neighbour of the landowner has requested a determination from the Board.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The Planning Authority declared that the construction of waste water/sewage tanks within the grounds of the equestrian shed (granted under permission P97/397) allowed without planning permission noting these are now complete is exempt

development by the virtue of S.I 306 of 2022 – European Union (Planning and Development) (Displaced persons from Ukraine temporary protection) Regulations 2022.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Planning Report dated 21st June 2024 outlines the relevant legislation, the planning history, impact on Natura 2000 sites, EIA screening and assessment which declares the works are development and fall within the exemption criteria. The assessment also notes that the landowner has received a letter of intent from the Department of Children, Equality, Disability, Integration and Youth dated 12<sup>th</sup> January 2024 in order to provide residential accommodation.

#### **3.2.2. Other Technical Reports**

- None

## **4.0 Planning History**

**ABP-391805-24** (Kilkenny Reference DEC791): Awaiting decision as to whether the construction of c.40 no. self-contained units/apartments within the equestrian shed (granted under permission P97/396) is exempt development.

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

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

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

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

## **5.0 Policy Context**

### **5.1. Development Plan**

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

### **5.2. Natural Heritage Designations**

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

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

## **6.0 The Referral**

### **6.1. Referrer's Case**

A referral has been received from a local resident Aidan Kelly seeking a declaration as to whether the construction of wastewater/sewage tanks within the grounds of the equestrian shed (granted under permission P97/396) allowed without planning permission noting these are not complete. The issues raised are:

- The wastewater/sewage tanks for intended for use for the proposed accommodation for 299 persons within the Wallslough Equestrian Facility. The wastewater and effluent will be routinely removed from the site by a mobile tanking system. The tanks were installed by the landowner. Kilkenny County Council were not notified of their installation and no technical assessment regarding their compliance has been made. In addition, no completion certificate has been submitted for the change of use to determine compliance with Building Control Regulations.
- Rural Water Section of Kilkenny County Council have not received any details in relation to the potable water storage facilities to be provided on the site.

Therefore, Kilkenny County Council has not yet determined whether the facility meets all of the appropriate technical requirements but nevertheless KCC deemed the installation compliant with SI 306/2022, despite the lack of detail.

- No appropriate assessment screening was carried out prior to the works commencing. The planning assessment carried out a screening and determined no AA issues.
- Environment Section have requested further information in relation to wastewater proposal for referral DEC808 dated 21<sup>st</sup> June 2024, this information has not been received yet.
- The planning report noted no evidence of any hydrological pathway or ecological stepping stones between the site and the SPA & SAC, although it did not note the high groundwater vulnerability in the location.
- In the absence of wastewater proposal, it remains unclear what mitigation measures were or could have been required during the works, particularly concerning the deep excavations for the wastewater holding tanks and bunding measures to capture spillage during emptying. Subsurface groundwater connections were not examined and cannot be ruled out.
- No evidence of an appropriately qualified ecologist/ornithologist was engaged in the assessment carried out by KCC. There's no ecologist's report or a standalone Appropriate Assessment Screening report.
- The developer should have been requested to submit details outlining if the proposed development would likely have significant effects on a European site. The planning Authority should be asked to explain their basis for stating the proposal would not have a significant impact on the European site.
- SI 306/2022 states that work must be completed "by or on behalf of a State Authority, i.e. a Minister of the Government or the Commissioners of Public Works in Ireland". An email from the Department of Children, Equality, Disability, Integration and Youth's Community engagement team to several local representatives state the building is currently under the Departments refurbishment programme, but significant issues remain to be examined and



dealt with before construction can begin. A further letter from the Department dated 26<sup>th</sup> April 2024 further noted that:

“There are regulatory issues which remain to be resolved before the Department can contract for the accommodation at the former Equestrian and Conference Centre, Wallslough Village, Wallslough, Co. Kilkenny”.

The letter of intent from the Department does not authorise the commencement of works; rather, it indicates that the property is under consideration and there are still several regulatory issues that have to be resolved.

Consequently, the building owner cannot invoke SI 306/2022 for this property, as SI 306/2022 cannot be applied retrospectively after a contract is signed. Therefore, SI 306/2022 is not applicable or valid for this building and all works carried out are done so without any planning permission in place nor are exempted development.

- An opinion should only be considered after the property owner has satisfactorily demonstrated their ability to meet these statutory obligations. Currently, the inability to sign a contract persists, as evidenced by Kilkenny County Council's ongoing wait for several proposals, indicating non-compliance with planning exemptions.
- Westmeath and Wicklow County Council maintain that securing a contract with the state should precede any commitment from a planning exemption. A pertinent example is the Coole Court case, wherein works commenced without a signed contract, prompting Westmeath County Council to issue an enforcement notice. (This case related to the installation of modular homes on site).

## **6.2. Planning Authority Response**

- None received.

## **6.3. Owner/ occupier's response**

- None received.

#### 6.4. Further Responses

An observation has been received from a neighbour of the subject site, Mark and Mary T Hennessy. The concerns raised were:

- Residents sought access to information on the Environment (AIE) pertaining to the proposed development at Wallslough Equestrian Centre.
- Specifically requested the assessment report that formed the basis for the conclusion that the proposed development would not be likely to have a significant effect on any Natura 2000 designated site as the reasoning remains unclear. Also noted the letter dated 22<sup>nd</sup> April 2024, mentioned that Kilkenny County Council has also requested additional information from the developer concerning water supply and wastewater sewerage proposals for further consideration.
- No records indicating that the following documents have been completed by KCC:
  - Appropriate Assessment Screening
  - EIA Screening, despite wastewater treatment plants being a project type covered by category 11(c) of Part 2.
  - Ecologist's report
  - wastewater processes for determining suitability.
  - water supply for determining suitability.
  - fire water supply for determining suitability.
- it is questioned how the development, including its already constructed foul water waste holding tank, can be considered an exempt development without these required screening of AA and EIA under section 3(1) and 3(2) of SI 306/2022 (i.e. Section 181A to 181C of the Planning & Development Act 2000 apply)

## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000**

#### **7.1.1. Section 2(1) – Interpretation**

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

Exempted development has the meaning specified in section 4.

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

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

#### **7.1.2. Section 3(1) – Development**

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

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

#### **7.1.3. Section 4 – Exempted Development**

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

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

#### **7.1.4. Section 181 – Works on or behalf of the State.**

Sections 181(1) (a) The Minister may, by regulations, provide that, except for this section, the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or

order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

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

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

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

## **7.2. Planning and Development Regulations, 2001**

### **7.2.1. Article 6 (1) –**

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

### **7.2.2. Article 9 (1) –**

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

### **7.2.3. Class 20F –**

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

Restriction/Criteria

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

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

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

### 7.3. Statutory Instruments 2022 & 2023

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

##### Citation and Construction

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

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

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

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

##### Citation and Construction

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

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

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

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

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

“Act of 2000” means the Planning and Development Act 2000 (No. 30 of 2000).

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

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

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

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

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

“State Authority” means –

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

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

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.
- (2) A reference to “proposed development” in sections 181A to 181C of the Act of 2000 shall include a reference to development of a class specified in the Schedule to which section 181A(1) of the Act of 2000 would apply if it was

development of a class specified in regulations made under section 181(1)(a) of the Act of 2000.

#### Schedule

#### Article 3

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

#### 7.4. Other

- None

### 8.0 Assessment

#### 8.1. Is or is not development.

- 8.1.1. Section 3(1)(a) of the Act defines development as the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land and in effect it relates to both works and the material change in the use of land.
- 8.1.2. The carrying out of works and/or the making of any material change in the use of any land or structure applies in relation to structures whether they are temporary or other structures.



- 8.1.3. The existing structure was in use as an equestrian centre and has the benefit of planning permission under planning reference 97257. Under planning reference 031467, retention permission was sought for a number of elements including flood lighting, signage, service entrance, hay barn, sand arena, additional use for public events centre and permission for extension and outdoor public display area and parking.
- 8.1.4. The landowner is currently undertaking works to the former equestrian centre in order to provide temporary accommodation for displaced persons from Ukraine. The works are almost complete, the equestrian centre is completely refurbished with partitions, beds, toilet & kitchen facilities. As a result, additional ancillary infrastructure is required in the form of wastewater/sewage tanks in order to accommodate the proposed persons attending the facility. Note: the wastewater/sewage tanks are complete and in place. Based on information submitted in the referral, the tanks were under construction between the dates March 21<sup>st</sup> and April 3<sup>rd</sup>, 2024. From my site inspection, I am satisfied that the tanks were installed as a result of the proposed temporary use of the former equestrian centre and have not been used to date.
- 8.1.5. Based on the definition of development as stated in Section 3(1)(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land and based on the information submitted and having regard to the intended use as temporary accommodation for displaced persons in self-contained apartments seeking international protection is development, the existing wastewater/sewage tanks are works.
- 8.1.6. In conclusion, based on this assessment the provision of wastewater/sewage tanks ancillary to the temporary accommodation for displaced persons seeking international protection constitutes development within the meanings described as in same in section 3 of the Planning and Development Act 2000 as amended.

**8.2. Is or is not exempted development.**

- 8.2.1. Based on the information submitted, the referral should be assessed in accordance with S.I. No. 306/2022 – European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022. The question put

forward in this referral relates to the construction of waste water/sewage tanks within the grounds of the equestrian centre. The building is no longer in use as an equestrian centre and has been converted to temporary change of use for the temporary protection to displaced persons from Ukraine in the form of a number of self-contained apartments including cooking and welfare facilities in order to provide emergency accommodation and support to these displaced persons.

8.2.2. S.I. No. 306/2022 Regulations allow for temporary change of use and repurposing of existing buildings and facilities including temporary new-build accommodation and structures to address this emergency which is outlined in the accompanying circular. The works must be carried out by or on behalf of the State. The class of development listed in the Schedule for the purposes of providing temporary protection to displaced persons comprise:

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

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

8.2.4. A letter of intent from the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) was issued landowner as part of Appendix G of the referral

submission. I am satisfied that this letter confirms the facility will be use by or on behalf of the Minister of Children, Equality, Disability, Integration and Youth.

8.2.5. The provisions of the Planning and Development Act 2000 (other than the environmental considerations in Sections 181A to 181C) will not apply to the specified classes of development in the Schedule only for so long as the Regulations are in force, which duration is linked to the duration of temporary protection activated by European Union Council Decision EU 2022/382 of 4<sup>th</sup> March 2022. At any time, the European Commission may propose to the Council to end the temporary protection, based on the fact that the situation in Ukraine is such as to permit the safe and durable return of those granted temporary protection, or propose that the Council extend the temporary protection by up to one further year. As such, the maximum extended period for the duration of Temporary Protection Decision EU 2022/383 may be for a total period of three years from 4<sup>th</sup> March 2022. (currently expires 3<sup>rd</sup> March 2025).

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

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

8.2.7. Having visited the site and observed the on-going works associated with the provision of temporary accommodation for displaced persons, I am satisfied that the existing wastewater/sewage tanks are ancillary to this development and shall be

assessed as such. SI No. 306/2022, Schedule, Article 3 refers to structures or facilities ancillary to development referred to in paragraphs 1 to 5 of Schedule, Article 3, including administration and storage facilities including infrastructure and other works ancillary to the development. Therefore, I have concluded that the wastewater/sewage tanks fall within the description of storage facilities and other works ancillary as the wastewater/sewage tanks are ancillary to the overall provision of temporary accommodation for displaced persons and as such the wastewater/sewage tanks can avail of the S.I. No. 306/2022.

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

### **8.3. Restrictions on exempted development**

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

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

would be likely to have a significant effect on the integrity of a European site,

- (vi) Consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- (vii) Consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

#### **8.4. Environmental Impact Assessment (EIA) Preliminary Examination**

- 8.4.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). The proposal relates to the connection of a wastewater or sewage holding tank facility which will be emptied on a regular basis by a licensed contractor, the tank is ancillary to the provision of temporary accommodation for displaced persons. Schedule 5 of Planning and Development Regulations 2001-2024 sets out the prescribed classes of development for the purposes of EIA. Part 1 of Schedule 5 provides a list of specified developments where an EIA is mandatory. The proposal does not fall into any of these categories. Part 2 of Schedule 5 identifies sub-threshold developments where if a development does not equal or exceed, a quantity, area or other limit specified in that Schedule in respect of the relevant class of development. Having regard to the categories as listed in Part 2, the proposal does not fall into any of these categories.
- 8.4.2. I note the observation received states the proposal should be considered under Part 2, Category 11 Other Projects (c) which states; “wastewater treatment plants with a capacity greater than 10,000 population equivalents as defined in Article 2, point (6), of Directive 91/271/EEC not included in Part 1 of this Schedule”. It is in my opinion that the proposal does not fall within this category, the proposal is to store waste and for its removal by a licensed contractor. The waste will not be treated or disposed of on-site and in addition the wastewater/storage tanks will cater for appropriately 299 persons. Therefore, the proposal does not fall within category 11(c), Part 2, Schedule 5 of the PDR.

8.4.3. Having regard to the limited nature and scale of the development and the absence of any significant environmental sensitivities in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Please refer to Form 1 as per Appendix 1 below.

#### 8.5. **Appropriate Assessment**

- 8.5.1. Having regard to proposal for construction of a wastewater or sewage holding tank facility which will be emptied on a regular basis by a licensed contractor and the collection of surface water from the site, roofs and hard standing areas to an onsite soakaway, which are ancillary to the provision of temporary accommodation for displaced persons. The nearest European site is River Barrow and River Nore SAC (Site code: 002162) and River Nore SPA (Site code: 004233) located 1.1km and 1.2km respectively from the subject site. Wallslough Lake is located directly across the road from the site entrance and approximately 80 metres from the subject building and is currently used as amenity by the landowner and the residents of Wallslough holiday homes. There is no evidence of open drainage inflow or outflow from the lake. There is no evidence of an open water hydrological link between the site and Wallslough Lake. There is no evidence of a direct hydrological pathway or ecological stepping stone to the River Nore SAC from the subject site.
- 8.5.2. I note the concerns raised in the referral and by the observation in relation to the lack of an ecology report, however, having regard to the location of the site which is outside of any designated protected area and the nature of the site within an existing complex and the absence of any protected species in the area. I do not consider that an ecological report is required to make a determination.
- 8.5.3. Having regard to the separation distance, the use of a wastewater storage tank on site and where the waste will be removed by a licenced contractor, the use of a soakway on site for surface water and no evidence of direct open water pathways to the River Nore SAC, it is considered that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant impact individually or in combination with other plans or projects on a European Site.

## 9.6 Recommendation

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

**WHEREAS** a question has arisen as to whether the construction of wastewater/sewage tanks within the grounds of the equestrian shed (noting these are complete) is or is not development or is or is not exempted development:

**AND WHEREAS** Aidan Kelly requested a declaration on this question from Council and the Council issued a declaration on the 24<sup>th</sup> day of July 2024 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 22<sup>nd</sup> day of July 2024:

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

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

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

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The construction of wastewater/sewage tanks within the grounds of the temporary accommodation for displaced persons as assessed in Section 5, An Bord Pleanála reference 319805-24 constitutes development as defined under Section 3(1)(a) of the Planning and Development Act 2000 (as amended).
- (b) The construction of wastewater/sewage tanks within the grounds of the temporary accommodation for displaced persons as assessed in Section 5, An Bord Pleanála reference 319805-24 is exempted development as it comes within the scope of S.I. 306/2022 European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (1) (a) of the 2000 Act, hereby decides that the construction of wastewater/sewage tanks within the grounds of the temporary accommodation for displaced persons as assessed in Section 5, An Bord Pleanála reference 319805-24 is development and is exempted development.



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

  
\_\_\_\_\_  
Jennifer McQuaid  
Planning Inspector

21<sup>st</sup> October 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

|                                                                                                                                                                                                                                                       |                                                                                                                 |                  |                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|------------------|----------------------------------|
| <b>An Bord Pleanála<br/>Case Reference</b>                                                                                                                                                                                                            | <b>ABP-320262-24</b>                                                                                            |                  |                                  |
| <b>Proposed Development<br/>Summary</b>                                                                                                                                                                                                               | The development consists of wastewater/storage tanks for c.299 persons for temporary use for displaced persons. |                  |                                  |
| <b>Development Address</b>                                                                                                                                                                                                                            | Wallslough Equestrian Facility, Wallslough, Co. Kilkenny.                                                       |                  |                                  |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings)                                        |                                                                                                                 | <b>Yes</b>       | X                                |
|                                                                                                                                                                                                                                                       |                                                                                                                 | <b>No</b>        |                                  |
| <b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>   |                                                                                                                 |                  |                                  |
| Yes                                                                                                                                                                                                                                                   |                                                                                                                 |                  | EIA Mandatory<br>EIAR required   |
| No                                                                                                                                                                                                                                                    | X                                                                                                               |                  | Proceed to Q.3                   |
| <b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b> |                                                                                                                 |                  |                                  |
|                                                                                                                                                                                                                                                       |                                                                                                                 | <b>Threshold</b> | <b>Comment<br/>(if relevant)</b> |
| No                                                                                                                                                                                                                                                    | X                                                                                                               |                  |                                  |
| Yes                                                                                                                                                                                                                                                   |                                                                                                                 |                  |                                  |

**4. Has Schedule 7A information been submitted?**

|     |   |                                  |
|-----|---|----------------------------------|
| No  | X | Preliminary Examination required |
| Yes |   | Screening Determination required |

Inspector: *Jean McQuaid*

Date: *21<sup>st</sup> October 2024*

