



An  
Bord  
Pleanála

## Inspector's Report ABP-300610-18

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<b>Development</b>	Proposed development of Brewhouse Building
<b>Location</b>	Brewhouse Building, Gardens, Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Applicant(s)</b>	Christopher O'Keeffe
<b>Type of Application</b>	Appropriate Assessment Direction.
<b>Date of Site Inspection</b>	8 <sup>th</sup> March, 2018
<b>Inspector</b>	Stephen Kay

## **1.0 Introduction**

- 1.1. I have read the contents of file ABP-300610-18 and inspected the site on 8th March, 2018. The purpose of this report is to advise the Board on whether it should issue a direction to Kilkenny County Council that the proposed redevelopment of the Brewhouse Building on the site of the former Smethwick's Brewery (St Francis Abbey Brewery) should be subject to Appropriate Assessment (AA). The request for a direction has been made by Mr Christopher O'Keeffe under Art. 250(3)(A) of the Planning and Development Regulations 2001 (as amended).
- 1.2. I note that the submission received from Mr O'Keeffe makes reference to the potential requirement for both an Environmental Impact Assessment Report and to the potential for impacts on the River Barrow and River Nore SAC. Under Ref. JD0025, the Board made a determination on the requirement for the submission of an Environmental Impact Statement (now EIAR) in respect of the proposed redevelopment works at the Brewhouse Building. In that case, the Board determined that the submission of an EIS was not required. Given that the Board has previously made a determination as to the requirement for an EIS, and that the current submission relates to essentially the same project, subject to some minor amendments as set out in section 3.8 of this report below, which is the redevelopment of the Brewhouse Building. For this reason, this assessment has been limited to consideration of the potential impacts of the project on European sites and the requirement for Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement.

## **2.0 Site Location and Description**

- 2.1. The site which is the subject of this direction is located in the central part of what was the Smithwick's brewery site and adjacent to the main entrance to the site from Watergate Street. The site is located to the west and south west of St Francis Abbey which is a national monument and comprises what was the former Brewhouse building, an area to the immediate south east of and partially enclosed by the

Brewhouse building, Horse Barrack Lane to the west of the site and the area around the entrance to the brewery lands at Watergate Street.

- 2.2. To the east, the site is adjoined by the wider brewery lands, the majority of which have now been cleared of structures. To the east of the site there is one remaining structure, the maturation building, which partially encloses an area to the east and south of the Brewhouse building. Further to the east, beyond the Maturation Building, the site is characterised by a concrete slab which was associated with the former brewery use of the lands. This slab covers the bulk of this part of the former brewery lands and extends all the way to the east to the eastern side of the site where the site adjoins the River Nore.
- 2.3. To the north east and north of the site the former Diageo lands have been substantially cleared with the keggings store that was located to the north east of St. Francis Abbey now demolished and the keggings yard located on the northern side of the Breagh River now cleared of structures. The area to the north of the Breagh River is now also characterised by the completed section of the Kilkenny Central Access Scheme with a new bridge over the River Nore.
- 2.4. To the north west of the site, close to the entrance to the site from Watergate Street is located the Mayfair Ballroom. This structure is located on the same overall landholding as the Brewhouse Building and has been the subject of Part VIII application for redevelopment. This redevelopment proposal was also the subject of EIS and NIS Direction decisions by An Bord Pleanála with it being determined that the submission of NIS and EIS documents was not required (ABP Refs. 10.JD0024 and 10.JN0011).
- 2.5. The Brewhouse building is proposed to be substantially retained on the site with a number of previous elements and extensions of the building located on the eastern and south eastern side having been demolished. It is noted that the elements which have been demolished have been the subject of a separate grant of planning permission, (Kilkenny County Council Ref. 13/990045). The remaining building extends over essentially three levels with additional small third floor and basement areas and has an L shaped footprint. The stated floor area of the building in its existing form is approximately 4,500 sq metres.

- 2.6. The site the subject of the Brewhouse development comprises a total site area of 0.56 ha. inclusive of the footprint of the Brewhouse building and the areas of open space located to the immediate south east and to the west on Horse Barrack Lane which are stated to have a combined area of 3,400 sq. metres.
- 2.7. The site forms part of an overall Masterplan site for the redevelopment of the area, details of which are given in this report below. The bulk of this Masterplan site comprises the former brewery lands. It is notable that the bulk of the brewery lands is characterised by a concrete slab beneath which the existing services serving the former brewery are located.

### **3.0 Proposed Development**

- 3.1. The proposed development comprises the redevelopment of the Brewhouse building to provide for what is described in the Part VIII notices as a range of uses to include potentially educational, research and development and office. No use mix is stated and a final end user of the building is not identified.
- 3.2. The existing floor area of the Brewhouse building in the form which it is proposed to be retained on the site was stated in the documentation submitted with Ref. 10.JD0025 to be 4,530 sq. metres. This area is proposed to be increased by the insertion of additional floors at the existing first and second floor and an extension at roof level that would provide a additional accommodation. The total floor area of the building post re development would be approximately 6,390 sq. metres with the additional elements completed.
- 3.3. Additional works proposed to the building comprise the replacement of the existing windows with new double glazed aluminium and steel windows. It is also proposed that the existing flat roof to the building which is in poor condition would be replaced with a new flat roof. Photovoltaic panels are proposed to be installed on the new roof.

- 3.4. Insulation to the building is proposed to be improved by the use of internal insulation where there is existing brick elevations which are to be kept. In other areas, including where abutting buildings have been removed, the development proposes the use of external rendered insulation. The new external elevations created by the demolition of contiguous structures are located on the east and south facing elevations. New signage to the west facing elevation is proposed.
- 3.5. Beyond the footprint of the building it is proposed that the existing low wall to the west of the site would be removed and that the existing boundary fencing on this side of the site separating the former brewery site from Horse Barrack Lane would also be removed.
- 3.6. Landscaping of the area which currently comprises Horse Barrack Lane is proposed as part of the development. The creation of a new landscaped open space area is also proposed to the south east of the retained Brewhouse building. This landscaped area is enclosed to the north and west by the Brewhouse building and a connection through the building at ground floor level is proposed to connect the landscaped Horse Barrack Lane with the proposed courtyard space to the east and south of the building. The landscaped area to the south east of the building and the areas around Horse Barrack Lane are proposed to be the subject of infilling to raise the existing ground levels. The level of infilling proposed is not completely apparent from the drawings submitted, however it would appear to be approximately 0.5 metres.
- 3.7. A new, alternative foul drainage network will be developed to accommodate the development which will connect to the existing foul drainage on Horse Barrack Lane. Storm water currently discharges to the River Breagagh and to the River Nore, and it is proposed that a new network would be developed that would also discharge to these rivers. Water supply is proposed to be via a new connection from an existing main on Watergate Street.
- 3.8. It is noted that the current Part VIII proposal contains a number of amendments to the design from that which was previously approved under Part VIII and which was the subject of an EIS Direction from the Board (ABP Ref. 10.JD0025). These amendments are detailed at Appendix E of the submitted report to elected members on the Part VIII dated 12<sup>th</sup> December, 2017. The extent of these alterations are

relatively limited, relate largely to internal alterations to the previously permitted layout and can be summarised as follows:

- Revisions to the location of the lift cores with the aim of minimising the potential impact on archaeology. Main stair case relocated.
- Provision of additional toilet and sanitary facilities. The increased service core required resulted in slight changes to the southern elevation.
- Additional surveys of the building facilitated by completed demolitions and removal of all equipment resulted in revisions to accommodate existing grid (supporting columns), clarification of parapet heights and revisions to the balcony structure overlooking St. Francis Abbey.
- Minor modifications to the extension at roof level on the Horse Barrack Lane elevation with the previously overhanging element omitted.
- Further amendments at roof level to tidy the roofline and where possible put plant and equipment screened from view within the building.

#### **4.0 Request for Direction and Submitted Documents**

4.1. By letter dated 8th December, 2017 Mr Christopher O’Keeffe submitted a request for a determination by the Board as to whether a Natura Impact Statement should be required for the proposed development. The following is a summary of the main points raised in the submission received as they relate to appropriate assessment issued:

- That an appropriate assessment screening report was prepared by the Moore Group (dated 22<sup>nd</sup> October, 2015) and was submitted with the original Part VIII application made by the council for the Brewhouse development in 2016.
- That there are now amendments proposed to the original Part VIII development.
- That the 2015 screening report is now accompanied by a letter from Ger O’Donoghue (principal ecologist Moore Group) stating that the original screening assessment includes details of a construction and environmental

management Plan (CEMP) to ensure that best construction practices are adhered to in the development.

- That no details of the CEMP has been submitted and no updated screening assessment has been undertaken. These documents should have been prepared and made the subject of public display for 6 weeks.
- That by not including details of a CEMP that significant impacts on the conservation objectives of the River Barrow and River Nore European sites. Specifically, given the environmental sensitivity of the river and the large amounts of PCBs in the area that the proposed water system could potentially disturb these contaminants and have an adverse effect on the SAC.
- That the Part VIII process used is not appropriate as the site is outside of the functional area of Kilkenny County Council.

By letter dated 2nd January, 2018 the Planning Authority, Kilkenny County Council was requested to submit details of the 'new amended' Part VIII process referred to in the submission received from the applicant, Mr O'Keeffe. The following is a summary of the main points raised and information provided in the responses received as they relate to the issue of Appropriate Assessment:

- That the current status of the project is that the elected members approved the proposed development in December, 2017 and that it is intended that construction would commence in June, 2018.
- Cover letter dated 31<sup>st</sup> January, 2018 signed by Senior Planner Kilkenny County Council setting out the Part VIII history of the site and stating that during the detailed design process it was found that a number of revisions to the original Part VIII proposals were required. These were minor however due to the cumulative impact it was decided to revisit the Part VIII process.

The following specific points are raised in the letter:

- That Moore Group who had prepared the original screening assessment undertook a review of the document in the context of the revisions proposed to the design. It is concluded that subject to a

CEMP there would be no significant impacts on the conservation objectives of the River Nore and River Barrow Natura 2000 sites.

- A revised AA screening was also undertaken by the Planning Authority that confirmed the findings of the Moore Group.
  - That the Part VIII process is applicable to developments by or on behalf of a local authority and is therefore appropriate in this case. The Brewhouse development is to be undertaken by Kilkenny Abbey Quarter Development Limited which is a partnership between the council and the Ireland Strategic Investment Fund. The public realm works proposed are to be undertaken directly by Kilkenny County Council.
  - That it is unclear what aspect of the 'proposed water system' could potentially disturb the large amount of PCB's in the area as is contended by the Mr O'Keeffe. The issue of PCB contamination relates to a historical spillage of the substance into the River Breagagh. The location of this historical spillage is however remote from the site of the Brewhouse development with no hydrological pathways connecting them.
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- An Archaeology Impact Assessment Report – Report notes that the proposed redevelopment work to the Brewhouse will involve substantial internal works with limited localised new foundations. Services will be via new connections that will require works to the concrete yard to the west and south of the building. Report concludes that the proposed redevelopment will have an uncertain impact on the architectural heritage within the development area and mitigation measures are proposed.
  - Appropriate Assessment Screening Report – Report dated October, 2015 identifies two European sites as being potentially affected by the proposed re development, these being the River Barrow and River Nore SAC and the River Nore SPA sites. The conservation objectives and qualifying interests for these sites are identified. The assessment concludes that there would be no direct impacts arising on the identified sites. Indirect impacts that would



impact on water quality are identified as a potential issue for examination however it is concluded that standard best practice construction measures will be employed which would ensure that no polluting materials would enter the river Nore during the construction phase. These measure will be set out in a CEMP. Cumulative impacts of the project with the Abbey Creative Quarter Masterplan and with the central access scheme are considered. Stated that Moore Group undertook an AA screening in respect of the demolition works that have already been undertaken on the site and that with best practice construction measures there would be no adverse impacts on European sites arising.

- Brewhouse Part VIII Amendments – Document prepared by Reddy Architecture and Urbanism dated October 2017 which sets out the amendments to the previously permitted Part VIII proposed and details the revisions to the internal layout.
- Conservation Inspection and Assessment Report - prepared by Roisin Hanley Architects dated October, 2015. Report sets out the phasing and background to the development of the building and assesses the implications of the design proposed on the structure.
- Drawings Booklet – prepared by Reddy Architecture and Urbanism and includes the existing plans as well as proposed layout.
- Habitats Directive Project Screening Exercise – Screening assessment for appropriate assessment undertaken by the Planning Department of Kilkenny County Council. Concludes that significant impacts on the identified European sites arising from the proposed amendments to the design can be ruled out.
- Landscape Report – Report prepared by Mitchell and Associates Landscape Architects and Urban Designers dated October, 2015 which sets out the landscape approach to be followed in the main areas of the proposed development. Includes a landscape Masterplan drawing and cross sections through proposed landscape areas.

- Kilkenny County Council Part VIII Report dated 12<sup>th</sup> December, 2017- Report sets out the proposed project including amendments (Amendments detailed in Appendix E to report) sets out the reasons for the scheme and summarises and responds to the submissions received.
- Brewhouse Water Infrastructure Design report prepared by Martin Peters Consulting Engineers – Report dated October, 2017 is an update of the original 2015 report reflecting the proposed amendments to the previously approved scheme. Stated that a new, alternative foul drainage network will require to be developed to accommodate the development which will connect to the existing foul drainage on Horse Barrack Lane. Storm water currently discharges to the River Breagagh and to the River Nore. Proposed that new network would also discharge to these rivers. Water supply is proposed to be via a new connection from an existing main on Watergate Street.

## 5.0 Planning and Other Policy

### 5.1 General Context

The site is located within the area covered by the *Kilkenny City and Environs Development Plan, 2014-2020*. The site and adjacent lands on the former St Francis Abbey Brewery site are zoned ‘*General Business*’ under the provisions of the *Kilkenny City and Environs Development Plan, 2014-2020*. The proposed uses on the site, educational and office are permitted under the General Business land use zoning objective.

The existing building on the site (the Brewhouse Building) is not included on the Record of Protected Structures.

The site and the adjoining lands are located within the City Centre Architectural Conservation Area. The extent of the ACA takes in all of the Abbey Quarter Masterplan lands located to the south of the River Breagagh.

The Plan has been the subject **of Variation No. 1** (July, 2015) which had the stated purpose *'to ensure a statutory basis for high level principles which are required to underpin the future development of the Bateman Quay / Market Yard and surrounding area which will consolidate the city centre and contribute towards its vitality and viability'*. This variation was the subject of SEA and AA and it is on foot of this Variation that the Abbey Creative Quarter Masterplan was prepared. Nine new development objectives were inserted into the CDP on foot of Variation No.1 including:

- To provide for a riverside linear park (Objective 3H)
- To provide for an urban park in the vicinity of St Francis Abbey (Objective 3L)
- To provide for park and walk facilities for car and bus / coach parking at a site or sites in close proximity to the ACQM area.
- To finalise and adopt the Abbey Creative Quarter Masterplan and to incorporate it into the *Kilkenny City and Environs Development Plan, 2014-2020* as a separate future variation (Objective 3L).

The Plan has also been the subject of **Variation No.5** which states that it would be an objective of the Council:

*'to provide the necessary overarching policy framework to allow for temporary car parking in the Abbey Quarter Masterplan area notwithstanding the text of the Masterplan in section 4.1.6'*

The Variation (No.5) also provides for the following additional objectives to be added to section 3.4.3 of Kilkenny City & Environs Development Plan:

- **3H** To provide for a linear park along the western bank of the River Nore connecting to the existing River Nore linear park north of Green's Bridge and the existing River Nore linear park south of the Masterplan area (Canal Walk) (as indicated on Fig 3.4) subject to compliance with the Habitats and Birds Directives and the provisions of the Abbey Creative Quarter Masterplan.

- **3I** To provide for an urban park in the vicinity of St. Francis Abbey (National Monument) incorporating the City Walls, Evan's Turret and St. Francis' Well taking into account the recommendations of the archaeological strategy developed in the preparation of the Abbey Creative Quarter Masterplan (as indicated on Fig 3.4) and subject to compliance with the Habitats and Birds Directives and the provisions of the Abbey Creative Quarter Masterplan.
- **3L** To finalise and adopt the Abbey Creative Quarter Masterplan and to incorporate it into the Kilkenny City & Environs Development Plan 2014-2020 as a separate future Variation.
- **3N** To provide for park and walk facilities for car and bus/coach parking at a site or sites in close proximity to the Abbey Creative Quarter Masterplan area to service both the Masterplan area and the city centre generally taking into account the mobility management plan for the city.
- **3O** To provide for housing within the Masterplan in the area north of the Central Access Scheme as identified on fig 3.4
- **3P** To provide for an urban street of pedestrian and cyclist priority between the Central Access Scheme and Bateman Quay crossing the River Breagagh at the existing bridge crossing. To provide for traffic management measures on the street such as to inhibit the flow of through traffic and heavy goods vehicles.

### 5.1. **Urban Design Framework Masterplan for the Abbey Creative Quarter**

The Plan, which has a total stated area of 8.25 ha., provides for a number of individual projects of which the current proposed redevelopment of the Brewhouse building is one element and the redevelopment of the Mayfair Ballroom another. The Plan also identifies a riverside walkway / landscaped area along the eastern boundary of the site adjoining the River Nore and connecting with existing riverside access to the south of the Masterplan lands. To the south and east of the Brewhouse building, the Masterplan indicates a number of blocks stated to be primarily 3 and 4 storey in height. Residential development is envisaged to the north

of the site, north of the Central Access scheme (between CAS and Green Bridge). Access to the Masterplan lands is indicated as being available via a connection from the CAS which would run north south through the site.

Overall development of the Masterplan lands is indicated in the Plan as being developed over 9 phases of which Phase 1 is site clearance and Stage 2 incorporates the works to the Brewhouse Building and associated landscaped spaces, the Mayfair Building and the Riverside Linear park. Phase 2 is also stated to include drainage, water, district heating and other services across the site.

In information submitted with ABP Ref. 10.JD0025, the Masterplan (the Abbey Cultural Quarter Masterplan) is stated by the council to have been the subject of public consultation and to have been presented to the elected members who voted to accept its contents. The Plan is not however a statutory document. It is stated that it is proposed that the content of the Master Plan would be incorporated into the Kilkenny City and Environs Development Plan by way of variation. At the date of this report the Masterplan has not been adopted by way of variation into the development plan. .

The Abbey Cultural Quarter Masterplan has been the subject of SEA and screening for Appropriate Assessment.

## **5.2. Natural Heritage Designations**

The site is located such that it is not within any European site. The closest European sites to the site of the proposed redevelopment are located around the adjacent River Nore, the bank of which is located approximately 45 metres away at the closest point.

The sites centred on the River Nore are the River Barrow and River Nore SAC and the River Nore SPA. Details of these sites in terms of qualifying interests and conservation objectives are set out in the assessment below (section 7.0).

## 6.0 Planning History

There is an extensive planning history relating to the site and environs primarily connected with the use of the site and adjoining lands as a brewery. There are no recent planning applications for the development of adjoining lands to the site.

### ***Planning Applications***

Kilkenny County Council Ref. 13/990045 – Permission granted to Diageo Ireland for demolition of structures on the current site and adjoining lands which include the removal of equipment and structures that were contiguous to the Brewhouse Building. It also provided for the demolition of the bottling plant located to the east of the current site.

### ***ABP EIA / AA Determinations***

An Bord Pleanála Ref. 10.JD0025 – Referral by SA O'Brien and Katharine Larkin regarding the necessity to prepare an EIS in respect of the proposed redevelopment of the Brewhouse Building. The Board determined that the preparation of an EIS was not required.

An Bord Pleanála Ref. 10.JD0024 – referral by Peter Sweetman and Associates regarding the necessity to prepare an EIS in respect of the proposed redevelopment of the Mayfair Ballroom located on former Diageo Ireland lands at Irishtown Kilkenny. The Board determined that the preparation of an EIS was not required.

An Bord Pleanála Ref. 10.JN0011 – referral by Peter Sweetman and Associates regarding the necessity to prepare an Appropriate Assessment in respect of the proposed redevelopment of the Mayfair Ballroom located on former Diageo Ireland lands at Irishtown Kilkenny. The Board determined that appropriate assessment was not required.

### ***Kilkenny County Council Part VIII Applications***

Revised Part VIII procedure for the redevelopment of the Brewhouse Building was approved by the Council in December, 2017. The development approved in this application incorporated the revisions detailed in section 3.8 of this report above.

Part VIII procedure for the redevelopment of the Brewhouse building was approved by the Council in February 2016.

Part VIII procedure for the redevelopment of the former Mayfair Ballroom building granted by the council.

Part VIII procedure for the development of the River Garden project which comprises the removal of the existing concrete slab, the raising of the existing ground levels and the construction of a 3 metre wide shared pedestrian / cycle way along a landscaped strip of c. 15 metres in width and 600 metres in length. The approved project also provides for a skate park and the section of walkway in the vicinity of St Francis Abbey and Evans Tower would be temporary pending the outcome of future archaeological investigations of this area. This project was approved by the Council in February 2016 and to date no works for its implementation have been commenced.

## 7.0 **Assessment**

### *Introduction*

- 7.1. In this assessment I will have regard to the submissions by the referrer, by Kilkenny County Council including the screening assessments undertaken by the Moore Group Environmental Services on behalf of the council and the screening assessment undertaken by the local authority staff, my site inspection, the applicable legislative provisions, and the guidance issued by the Department of the Environment, namely Appropriate Assessment of Plans and Projects in Ireland: Guidelines for Planning Authorities published in 2009.
- 7.2. I note that the referrer contends that the nature of the ownership of the site is such that it is not appropriate that it be the subject of the Part VIII procedure used by the council. While this is not directly relevant to the appropriate assessment determination and is an issue between the Council and the referrer in the first instance, I note and would generally agree with the submission of the council that the Part VIII process is applicable to developments by or on behalf of a local authority and is therefore appropriate in this case.

### ***Key Features of the Proposed Development***

- 7.3. The nature and location of the proposed redevelopment of the Brewhouse building is such that there would be no works that would be located such that they would be within the SPA site. I note that the proposals for surface water drainage state that surface water would from the development site would continue to be disposed of to the Rivers Breagh and Nore. The Water Infrastructure Design Report submitted by the Council states at section 3 that a new surface water drainage system will be constructed and that this surface water drainage system will connect to the existing outfall. There will not therefore be any new drainage outfall works within the SPA.
- 7.4. Based on the plans submitted, it appears that the external open space areas proposed to the west of the site centred on Horse Barrack Lane and particularly that located to the south east of the building are proposed to be developed such that ground levels would be raised in these areas. From Drg. P03.01 it would appear that the extent of these raised levels are in the order of 300-500mm. The proposed development will therefore require the importation of material into these areas.
- 7.5. Drainage and surface water connections proposed will run within the site and connect to existing infrastructure. The level of these connections and the implications in terms of requirement to disturb the existing concrete slab are not clear from the drawings and information submitted. It would however appear that new service connections would require excavation within the site.
- 7.6. The footprint of the existing building will not be significantly altered on foot of the proposed development and no new foundations outside of the existing building footprint are proposed.

### ***Relevant European Sites***

- 7.7. The only European sites located within 15km of the site of the proposed redevelopment of the Brewhouse building are as follows:
- The River Barrow and River Nore SAC (site code 002162)
  - River Nore SPA (site code 004233)



The following is an outline of the conservation objectives, potential likely significant effects of the project and evaluation of the effects arising.

***River Nore SPA (site code 004233)***

- 7.8. The conservation objective for the River Nore SPA site relates to a single species, the Kingfisher and states that the objective is to maintain or restore to favourable conservation condition of the bird species listed as Special Conservation interests for this SPA. The site supports a nationally important population of Kingfisher and the site synopsis states that a survey in 2010 recorded 22 pair of Kingfisher within the SPA. The conservation objectives for the site are generic and there is no specific information available regarding the specific locations where Kingfisher have been recently observed within the site.
- 7.9. As set out at 7.2 – 7.5 above, there would not be any direct impacts on the River Nore SPA site arising as a result of the proposed project.
- 7.10. The main potentially significant effects arising from the proposed re development that would potentially impact on the qualifying interests are disturbance arising from noise and construction activity and potential changes to water quality and contamination of the River Nore arising from construction activities such as may impact on the conservation objectives for the site. Water quality is of importance as a significant impact would result in fish food sources for the Kingfisher species being adversely impacted with resulting impacts on the species.
- 7.11. In terms of noise, the separation between the construction site and the closest part of the SPA site is c. 45 metres and there is a significant change (drop) in levels between the St Francis Abbey site and the river habitat of the Kingfisher that would reduce any noise impacts arising. Subject to normal mitigation in the form of maintenance of plant and machinery I consider that the separation between the site and the SPA is such that there would not be significant adverse impacts arising in terms of noise such as would lead to a reduction in the use of the site by Kingfisher or an adverse impact on the favourable conservation condition of the site.

- 7.12. With regard to water quality, the proposed development proposes the utilisation of the existing surface water drainage outfalls and there is proposed to be new foul drainage and water connections constructed. Surface water run off or discharge from the site is not predicted to be increased as a result of the proposed development. Operational phase impacts on water quality are not therefore considered to be such that there would be any impact on water quality.
- 7.13. With regard to the construction phase, the separation distance between the development site and the SPA is such that there would not be significant construction activity undertaken in close proximity to the river. Standard construction phase mitigation measures in terms of the storage of materials and equipment and the storage of fuels and other contaminants on the site would, in my opinion be such as to ensure that there would not be any significant adverse impacts on water quality that would have an adverse impact on the conservation objectives of the SPA site. Details of the location of storage areas or construction compound are not set out in the information contained on file however there is in my opinion more than adequate space adjoining the construction area for material stockpiling and equipment storage to occur while retaining a very significant set back from the European sites.
- 7.14. The Council state that construction methodology will be set out in a construction and environmental management plan (CEMP) to be prepared by the contractor. I note the comments of Mr O’Keeffe with regard to the adequacy of this arrangement and the contention that such a plan detailing all construction methods should be set out in advance of a determination on the need for appropriate assessment being undertaken. I do not agree that this is necessary. The preparation of a CEMP is document detailing the construction method and it is normal practice that such a document would be prepared post consent and prior to the commencement of construction. In the circumstances of the current proposal, I do not consider that the construction methods which would be employed and which would be detailed within the CEMP would incorporate any non-standard construction methodologies or techniques. No reference to the reliance on any such methods or techniques have been referenced by the Council in their submissions and have not therefore been taken into account in this assessment. It is therefore considered that the impact of the construction method can be assessed in advance of the finalisation of the CEMP

and that adequate information to enable a full assessment of the likely significant effects on European sites is available.

***River Barrow and River Nore SAC (site code 002162)***

7.15. The following are the qualifying interests for the River Barrow and River Nore SAC site.

- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- Reefs
- Salicornia and other annuals colonising mud and sand
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
- European dry heaths
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
- Petrifying springs with tufa formation (*Cratoneurion*)
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- *Vertigo moulinsiana* (Desmoulin's Whorl Snail)
- *Margaritifera margaritifera* (Freshwater Pearl Mussel)
- *Austropotamobius pallipes* (White-clawed Crayfish)
- *Petromyzon marinus* (Sea Lamprey)
- *Lampetra planeri* (Brook Lamprey)
- *Lampetra fluviatilis* (River Lamprey)

- *Alosa fallax fallax* (Twaiite Shad)
- *Salmo salar* (Salmon)
- *Lutra lutra* (Otter)
- *Trichomanes speciosum* (Killarney Fern)
- *Margaritifera durrovensis* (Nore Pearl Mussel)

The conservation objectives are the maintenance and / or restoration to favourable conservation status of the relevant species and habitats having regard to the attributes and targets set out in the site specific conservation objectives dated July 2011, a copy of which is attached with this report.

- 7.16. As set out at 7.2 – 7.5 above, there would not be any direct impacts on the River Barrow and River Nore SAC site arising as a result of the proposed project.
- 7.17. The main potentially significant effects arising from the proposed re development that would potentially impact on the qualifying interests are disturbance arising from noise and construction activity and, most significantly, potential changes to water quality and contamination of the River Nore arising from construction activities. The qualifying interests of most potential sensitivity comprise the pearl mussel, salmon, otter, shad and crayfish as all of these species are potentially significantly impacted by a deterioration in water quality and / or sedimentation of the watercourse.
- 7.18. It is noted that the freshwater pearl mussel is currently under review as a qualifying interest for the site and that the outcome of the review will determine whether a site specific objective is developed for this species. The River Nore Freshwater Pearl Mussel remains a qualifying interest.
- 7.19. In terms of noise and disturbance impacts, the separation between the construction site and the closest part of the SAC site is c. 45 metres and there is a significant change (drop) in levels between the St Francis Abbey site and the river habitat of the Kingfisher that would reduce any noise impacts arising. Subject to normal mitigation in the form of maintenance of plant and machinery, I consider that the separation between the site and the SPA is such that there would not be significant adverse impacts arising in terms of noise such as would lead to a reduction in the use of the

site by species for which conservation objectives are identified or an adverse impact on the favourable conservation condition of the site.

- 7.20. I note from the mapping contained in the Conservation Objectives document that the site of the proposed development is located a significant distance upstream of salt meadow, estuarine and mudflat habitats which are in the lower reaches of the river in the Waterford and New Ross areas.
- 7.21. With regard to water quality, the proposed development proposes the utilisation of the existing surface water drainage outfalls and there is proposed to be new foul drainage and water connections constructed. Surface water run off or discharge from the site is not predicted to be increased as a result of the proposed development. Operational phase impacts on water quality are not therefore considered to be such that there would be any impact on water quality. With regard to the construction phase, the separation distance between the development site and the SPA is such that there would not be significant construction activity undertaken in close proximity to the river. I note that the screening report prepared by the Moore Group Environmental Services states that standard best practice construction methods will be employed in the development to ensure that no construction material such as concrete or waste water would end up in the River Nore. It is further stated that these best practice measures would be set out in a Construction and Environmental Management Plan (CEMP) to be prepared by the contractor. Standard construction phase mitigation measures in terms of the storage of materials and equipment and the storage of fuels and other contaminants on the site would, in my opinion be such as to ensure that there would not be any significant adverse impacts on water quality that would have an adverse impact on the conservation objectives of the SAC site. As discussed in section 7.14 above I do not consider that any non-standard construction techniques or methods are proposed are required as part of the proposed project and no such non-standard techniques or methods have been taken into account in the assessment. It is therefore in my opinion acceptable that a determination on the need for appropriate assessment be undertaken prior to the preparation of a CEMP for the project.
- 7.22. I note the comments made by Mr O’Keeffe with regard to the presence of PCB’s on the St. Francis Abbey site and the potential for contaminants to be mobilised as a result of construction activity. I also note the response of the Council which states

that PCB contamination relates to a historical spillage of the substance into the River Breagh and that the location of this historical spillage is remote from the site of the Brewhouse development with no hydrological pathways connecting them. Given the separation of the subject development from the areas of historical spillages on the brewery site and the limited extent of ground disturbance and new foundations required as part of the proposed development I do not consider that there would be any likelihood of the release of PCB's that would potentially impact on any European sites.

### ***In Combination Effects***

- 7.23. I note that there has been a significant extent of **demolitions** undertaken on the former St. Francis Abbey Brewery lands. In particular, there has been significant demolition of structures that were formerly connected with the Brewhouse building which have been undertaken in advance of the request for a determination on the need for appropriate assessment being made to the Board. Significant demolitions were also undertaken to demolish large structures located closer to the river on foot of Kilkenny County Council Ref. 13/990045. This permission also provided for the demolition of the bottling plant located to the east of the current site. On the basis of the information available it is not clear that these works had any significant effect on the conservation objectives for the River Barrow and River Nore SAC or the River Nore SPA sites.
- 7.24. Other projects of relevance with regard to in combination effects are the proposed the Kilkenny Central Access Scheme, the development of the balance of the former Brewery lands that have been included in the Abbey Quarter Masterplan as well as specific individual projects identified for within the brewery lands, these being the following:
- The riverside walk / Linear Garden (which is now included as Objective 3H in Section 3.4.3 of the Development Plan as inserted by Variation No.5.)
  - The redevelopment of the Mayfair Ballroom,

- 7.25. Section 6.2 of the assessment undertaken by the Moore Group where the assessment of potential cumulative effects makes specific reference to the **Kilkenny Central Access Scheme**. This scheme crosses the River Nore via a new bridge located immediately to the north of the confluence of the Breagagh River and the River Nore and running to the east through the former mart site to connect with the Castlecomer Road. The scheme was been approved by An Bord Pleanala, under Ref. 10.HA0014 and construction has been completed. The development was the subject of Appropriate Assessment and EIA and no significant adverse impacts on water quality or adverse effects on the integrity of any European sites were identified. It is therefore not considered that there are potential in combination adverse impacts likely to arise regarding water quality that would give rise to a requirement for appropriate assessment of the current proposed works at the Brewhouse site.
- 7.26. From the information presented, the **Riverside walk / Linear Garden** project has not progressed to Part VIII and no appropriate assessment screening has been undertaken by or on behalf of the council relating to this project. No detailed plans relating to this project are presented. The riverside walk does, however form part of the Masterplan for the brewery lands which has been prepared on behalf of the council. As set out at 7.28 below, this plan has been the subject of appropriate assessment screening and Stage 2 AA as well as Strategic Environmental Assessment (SEA). The Appropriate Assessment concluded that the Masterplan would not have a significant effect on the integrity of the Natura 2000 network. It is not therefore considered that the Brewhouse development in combination with the Riverside walk / linear garden project would be likely to have significant effects on any European sites.
- 7.27. The redevelopment of the **Mayfair Ballroom** building was the subject of an appropriate assessment direction from An Bord Pleanala (ABP Ref. 10.JN0011) and it was determined that appropriate assessment was not required in respect of this project. Subject to good construction practices in the undertaking of this project I do not consider that it has the potential to have significant effects on any European site in combination with the Brewhouse development.

7.28. The other potential significant in combination effect relates to the future redevelopment of the adjoining lands which formerly comprised St Francis Abbey Brewery and which have now been acquired for redevelopment by the county council. These lands have been the subject of a **Masterplan** which it would appear from the Kilkenny County Council website, was approved by the Council in July, 2015. The plan was the subject of screening for appropriate assessment and a NIS was prepared which concluded that subject to mitigation measures the Masterplan would not have a significant effect on the integrity of the Natura 2000 network. I would also note that the development of the Masterplan lands is likely to be a long term project and as such it is unlikely that these works would be undertaken concurrently with any of the individual projects identified above namely the Brewhouse building, Mayfair Ballroom, or the Riverside walk / linear garden. Having regard to this, to the conclusion of the NIS and to the location of the Masterplan site relative to the adjacent European sites and the nature of the development proposed on the Masterplan lands it is not considered that the proposed Brewhouse development would result in significant in combination effects that would have significant effects on any European site.

### ***Conclusion on Screening for Appropriate Assessment***

7.29. In view of the above factors regarding direct, indirect and potential cumulative impacts, and having regard to the nature and extent of the proposed development, it is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002162 (River Barrow and River Nore SAC) or European site No.004233 (River Nore SPA) or any other European Site in light of their conservation objectives and that a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.



## 8.0 Recommendation

8.1 Having regard to the above assessment, I recommend that the Board determines that Kilkenny County Council would not be subject to the requirement to prepare a Natura Impact Statement in this instance for the following reasons and considerations:

### Reasons and Considerations

Having regard to:

- (a) the nature and scale of the proposed development including the limited additional footprint of the proposed new development and extent of additional overall floorspace, and the fact that the development is connected to the public foul drainage network,
- (b) the location of the proposed development outside of any Natura 2000 site,
- (c) the separation distance between the proposed development and the European sites at the closest points,
- (d) The impervious concrete slab that characterises the development site and adjoining lands and the absence of any pathway to the European sites other than overland or by way of service connections,
- (e) the proposed construction management approach, including the use of best practice construction methods and the preparation of a construction and environmental management plan (CEMP) and measures to ensure that contaminated surface water and construction materials are not discharged to the River Nore during either the construction or operational phases of the project,
- (f) the lack of significant in combination effects arising from other proposed and permitted development in the vicinity,
- (g) the submissions made to the Board, and
- (h) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter,

it is considered reasonable to conclude that, on the basis of the information available which is considered adequate to issue a screening determination, the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European sites, in particular the River Barrow and River Nore SAC (site code 002162) or the River Nore SPA (site code 004233), in view of the sites' conservation objectives and, therefore, the submission of a Natura impact statement for the proposed development is not required.

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Stephen Kay  
Planning Inspector

9th May 2018