



An  
Bord  
Pleanála

## Inspector's Report ABP-300956-18

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|-------------------------------------|---|
| <b>Development</b>                  | Single storey boathouse with associated training and changing rooms, waste water treatment system and associated siteworks. |
| <b>Location</b>                     | Lough Sheelin, Tonagh, Mountnugent, Co. Cavan.  |
| <b>Planning Authority</b>           | Cavan County Council.   |
| <b>Planning Authority Reg. Ref.</b> | 17/112.   |
| <b>Applicant(s)</b>                 | The Cavan Centre.   |
| <b>Type of Application</b>          | Permission.   |
| <b>Planning Authority Decision</b>  | To grant with conditions.   |
| <b>Type of Appeal</b>               | Third Party.  |
| <b>Appellant(s)</b>                 | <ul style="list-style-type: none"><li>• Joseph Moynagh and Bernard McCabe.</li><li>• John Lovatt.</li></ul>                 |
| <b>Observer(s)</b>                  | None.   |
| <b>Date of Site Inspection</b>      | 15 <sup>th</sup> May 2018.  |
| <b>Inspector</b>                    | Deirdre MacGabhann  |

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## 1.0 Site Location and Description

- 1.1. The 0.28ha appeal site lies on the eastern shore of Lough Sheelin, in the townland of Tonagh, Co. Cavan. It lies c. 2.5km to the south west of Mount Nugent village. Access to the site is from a cul-de-sac off the county road (L-7081) which runs along the south of Lough Sheelin, between the R154 at Mount Nugent and the R394 at Finnea.
- 1.2. The site comprises part of a small public amenity area beside the shore. It includes part of the car park, the site of an existing shipping container and area of grass to the west of an existing building (not within the applicant's ownership) and slipway. To the north of the site is a gated access road to a small number of lakeside summer houses.

## 2.0 Proposed Development

- 2.1. The proposed development, as revised by way of further information and clarification of further information (re-advertised in November 2017), comprises:
  - A single storey boathouse building (146sqm, maximum roof height 4.6m), with boat storage area, male and female changing rooms and training room (10<sup>th</sup> November 2017), and
  - To the west of the boathouse, a proprietary waste water treatment system (Biological Aerated Filter system), with further treatment provided by a phosphorus dosing unit and ultraviolet germicidal irradiation unit, and a raised percolation area. The treatment unit will be housed in a sealed capsule and the percolation area will be constructed such that the filter bed is always 0.9m above the site's high-water mark.
- 2.2. Surface water from the structure will be directed to a soakaway, to the west of the boathouse, via an oil-water separator/interceptor.
- 2.3. The application states that the development will provide permanent storage for boats and equipment currently housed in the unsuitable temporary storage unit on site (to be removed) and that activities on the site shall not be intensified.

2.4. Accompanying the planning application are the following:

- A Design Statement – It acknowledges the sensitive location of the development and states that the linear building responds to the existing boundary lines of the site, will be sited in the south-east corner of the car park and comprise a single storey structure with roof types designed to reduce the impact of the development on the view from the lake itself and from the approach to the lake.
- Details on the proposed proprietary waste water treatment system which includes (a) an alarm system, fitted on the treatment plant, with remote telemetry that alerts a nominated maintenance/supervision person that there has been an electrical failure, and (b) a maintenance contract for WWTS and all percolation and drainage works.
- Details regarding the applicant, management and maintenance of the boathouse and nature and use of the site, including the following:
  - The Cavan Centre<sup>1</sup> is a residential facility on an extensive campus with accommodation for up to 60 people. Participants of water activities at Tonagh are under the constant supervision of professional staff. On completion of the boathouse the Cavan Centre's Maintenance Team will have responsibility for the public amenity area at Tonagh.
  - The main activities carried out on site are kayaking, Canadian canoeing, windsurfing and sailing. Usage comprises two, two-hour sessions per day (10.30am to 12.30pm and 2.30pm to 4.30pm), with a maximum of 8 two-hour sessions per week for June to August and 6 two-hour sessions per week in February to May, September and October (12 persons per session). A maximum of 96 people, use the facility per week between June and August and a maximum of 72 per week in the other months (above). No activities are carried out in January and December.
- A Natura Impact Statement. This acknowledges that there is potential (albeit low likelihood) in the absence of mitigation for the proposed development to have

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<sup>1</sup>The Cavan Centre is based in Kilnacrott, c.5km to the north east of the appeal site.

indirect and direct impacts on Lough Sheelin SPA. However, with the implementation of the mitigation measures identified in the NIS including the site-specific Outline Construction Management Plan, the report concludes that the integrity of Lough Sheelin SPA and the wintering species of conservation interest that it supports, shall not be adversely affected by the development.

- 2.5. On file is a letter from Cavan County Council confirming that they do not object to the application for planning permission on Council owned lands at Tonagh.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. On the 26<sup>th</sup> January 2018, the planning authority decided to grant permission for the development subject to 16 conditions, including the following:

- Nos. 2 and 3 – Restrict use of the boathouse facility to specific times and to the uses set out in the application.
- No. 4 – Requires implementation of all mitigation measures set out in the NIS.
- No. 5 – Requires removal of the existing shipping container.
- No. 7 – Requires implementation of all measures set out in the Outline Construction Management Plan and statement by contractor of how the measures will be complied with.
- No. 9 – Requires scheme of litter control to be submitted for agreement.
- Nos. 10 to 14 – Require details to be submitted to demonstrate correct installation and commissioning of the wastewater treatment system, phosphorus dosing unit, ultraviolet germicidal irradiation unit, oil separating filter and soil polishing filter.
- No. 15 – Requires annual maintenance and servicing contract for all aspects of the wastewater treatment facilities.
- No. 16 – Requires the appropriate disposal of asbestos from the site.

## 3.2. Planning Authority Reports

### Planning Reports

- 9<sup>th</sup> May 2017 – Refers to the planning history of the site, relevant Development Plan policy, submissions on file and technical reports made. Under appropriate assessment it considers, on the basis of the information contained in the NIS and the proximity of the development to the lake shore, that it cannot be ascertained that the development would not adversely affect the integrity of Lough Sheelin SPA) and it recommends refusing permission for this reason. In the event that the application is considered, the report recommends further information to address this and other matters.
- 24<sup>th</sup> January 2018 – Considers that the applicant has addressed the matters raised in the request for further information/clarification of further information and recommends granting permission subject to 16 conditions.

### Other Technical Reports

#### 3.2.1. On file are the following reports:

- Environment (2<sup>nd</sup> May 2017) – Refers to the inability of the wastewater treatment facility to achieve the minimum separation distance to the lake as set out in the EPA Code of Practice 2009 and to the applicant's proposals to provide an Oakstown BAF wastewater treatment unit with further treatment for P dosing and ultraviolet units. It states that if all of the wastewater treatment facilities are installed, constructed and commissioned as per the application documents and proper monitoring and maintenance is in place for all the wastewater system elements, then there should be a low risk to water quality. The report recommends approval subject to a minimum number of conditions.
- Environment (27<sup>th</sup> November 2017) – Refers to the further information submitted and recommends approval subject to a minimum number of conditions.

## 3.3. Prescribed Bodies

- 3.3.1. The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (24<sup>th</sup> April 2017) refer to the location of the development adjacent to Lough Sheelin SPA, a

nationally important site for four species of wintering waterfowl and one of the main midland lakes for wintering birds, and state, with regard to Section 6.2.2. of the NIS:

- i. There is insufficient detail presented to alleviate concerns regarding impact to water quality in Lough Sheelin, as a consequence of extreme or unusual events.
- ii. There is no robust case presented that there will be no adverse impact on water quality as a result of flooding or electrical power failure.
- iii. The maintenance contract for the proposed wastewater treatment system specifically excludes all percolation and drainage areas.

3.3.2. The submission also seeks clarification on the planning status of the existing development to be replaced. The Department states that further information is required to address these concerns, in order to fully comply with the appropriate assessment process.

3.3.3. A subsequent submission by the Department on the 10<sup>th</sup> January 2018 states the minimum site distances between the proposed polishing filter and lake are not achievable due to site restrictions. Any development of this kind, at this location, therefore poses significant risks to the Lough Sheelin site and will have a significant negative impact. The Department also states that no information has been supplied on the planning status of the existing development.

#### 3.4. **Third Party Observations**

3.4.1. A number of third party observations<sup>2</sup> were made on the planning application and on the submission of further information/clarification of further information. Matters are summarised below:

- Visual/natural heritage impact - The development, in an area of high landscape value and designated as a Special Protection Area and Natural Heritage Area is located only 5m from the lake shore, cannot be screened in views from the lake and would injure the visual amenity of the area. Trees and shrubbery would have to be removed to allow building. Compensatory planting (for removal of trees) will not work, due to flooding of the site.

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<sup>2</sup> By Bernard McCabe, Joseph Moynagh, John Lovatt and David Reilly.



- Impact on use of amenity area - The development would reduce the use and enjoyment of the facility by the public e.g. public parking for visiting anglers/tourists, for picnics (area of wastewater treatment works). Any development would lead to congestion. Question Cavan County Council's authority in allowing a private organisation to build on lands of public interest and objective perspective to adjudicate on the application.
- Access and impact on slipway – The car park provides access to dwellings. Development on it is unacceptable and would render the existing jetty/slipway useless (no space for a typical vehicle with boat trailer to reverse safely down the jetty/slipway and launch).
- Impact on water quality/public health - The development would be prejudicial to public health. It is located 5m away from the lakeshore, fails to meet EPA requirements, and where topography and soil characteristics (extremely vulnerable) would not allow for the adequate treatment of sewage effluent. The site is also flooded in winter. Test holes were dug in a mound of spoil clay and are inappropriate (size/shape). Test holes reflect water levels after an extremely dry period. An existing well on site must be decommissioned if any development is to take place.
- Need - Kayak training has successfully taken place at Lough Sheelin over the years and there is no reason why it cannot continue as it is. No need for training accommodation in boathouse – can be done at existing facility (10 minutes from site). A portaloo would be more appropriate on the site.
- Consultation - There has been no local consultation/engagement. The development would exclusively benefit youth groups located away from the site and would impact on the local community's access to and enjoyment of the Lough.
- Unauthorised development - The planning authority has already failed to address an unauthorised development on the site.
- Precedent - There have been two planning applications beside the proposed site over the years and both did not receive planning.

## 4.0 Planning History

4.1.1. The following cases are relevant to the appeal:

- PA ref. 07/1812 – Planning permission granted in **2008** for the development of a new boathouse on the appeal site. This has subsequently expired.
- PA ref. 14/270 – An application for the temporary retention of the steel container, granted under PA ref. 94/318, on the appeal site was withdrawn in **2015**.
- PA ref. 15/69 – An application for a boathouse facility, with changing and training rooms and wastewater treatment system was withdrawn in **2015**.
- PA ref. 16/4 – Retention was granted in **2016** for the temporary placement of a steel container on the site, with permission to cease 5 years from the date of the decision.

4.1.2. The applicant's NIS refers to two residential developments in Tonagh, PA ref. 98/873 and 95/326, which were refused permission on the grounds of visual impact and impact on public health (proximity to lakeshore and characteristics of the site which would not allow for the adequate treatment of sewage effluent).

## 5.0 Policy Context

### 5.1. Cavan Development Plan 2014-2020

- 5.1.1. Chapter 4 of the current County Development Plan deals with Physical Infrastructure. In Section 4.5.4, Individual Wastewater Treatment Systems, it states that these should be located, constructed and maintained to the highest standards to ensure minimal impacts on the environment and water quality. Policy PIO94 states such systems should comply with the EPA's Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses 2009 (and subsequent codes).
- 5.1.2. Chapter 8 of the Plan deals with Natural Heritage and the Environment. Section 8.4 of the Plan identifies sites of nature conservation interest, including Lough Sheelin Special Protection Area (site code 004065), a European site, and Lough Sheelin

proposed Natural Heritage Area (site code 000987), a national site. Policy NHEP9 and 10 afford protection to these sites.

**NHEP9** *Development on or adjacent to National or European designated sites or proposed designated sites during the lifetime of this plan will be permitted only where an assessment has been carried out to the satisfaction of Cavan County Council and in consultation with the NPWS and where overall integrity of the site will not be compromised or adversely affected.*

**NHEP10** *To have regard to the views of the NPWS in respect of proposed development where such development may have an impact on a designated National or European site or a site proposed for designation.*

- 5.1.3. Policy NHEO4 (and DMO12) requires appropriate assessment of any plan or project likely to have a significant effect on a European site, in view of the sites conservation objectives.
- 5.1.4. Section 8.7 of the Plan sets of policies and objectives for the county's landscape resource. The appeal site falls within landscape character area 3 'Lake Catchments of South Cavan' and Lough Sheelin is identified as one of the County's 'Major Lakes'. Policy NHEP19 seeks to protect landscape character and Policy NHEO33 seeks to maintain the amenity value of major lakes and their environs '*..within a landscape, recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the areas, give rise to adverse visual impacts or threaten habitats through disposal of effluents*'.
- 5.1.5. The lakeside at Tonagh is identified as a Lakeside Amenity Area in the Plan (Map 11) and Policy NHEO35 seeks to '*regulate development on adjoining lands, to ensure that public use is not prejudiced by incompatible uses or adverse visual impact*'.
- 5.1.6. Section 8.12 of the Plan deals with water resources and quality. Policy NHEP26 and NHEP27 protect water resources in the county and policy NHEP29 seeks to achieve good status in all water bodies and to prevent the deterioration of existing water quality in water bodies in accordance with the requirements of the Water Framework Directive.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. There are two third party appeals in respect of the proposed development, one made jointly by Joseph Moynagh and Bernard McCabe and one by John Lovatt. The appeals refer to concerns raised in submissions on the application (summarised above). Additional matters raised are summarised here:

- Conditions - There is no indication of how conditions of the permission will be adhered to (e.g. maximum hours per week). Planning condition no. 6 is not applicable to the site. The site slopes gently to the immediate lakeshore and there is no watercourse nearby or any paved area. Condition no. 13 refers to environmental sustainability and yet the development does not meet the EPA guidelines or the requirements of the WFD. Condition no. 16 refers to the removal and/or disturbance of asbestos which is not relevant to the steel container on site.
- Unauthorised development – Unauthorised development already exists on the site (use of boathouse as a private dwelling) and the planning authority has failed to take action.
- Need - Showering facilities are available at the applicant's base in Kilnacrott Abbey (ten minutes from the site). Other facilities (e.g. swimming classes at Crover shore, on the north of the lough) have no shower facilities and successfully use portaloos for the duration of activities.
- Public health/impact on water quality - The site of the proposed wastewater treatment plant is fully submerged in winter (photographs attached). The condition which precludes use of the site in winter is preposterous and unenforceable. The outlet flow from Lough Sheelin is regulated (in order to prevent flooding of the lower Shannon region) and the high-water levels observed can occur at any time of the year as we are prone to more flash flooding. The prevailing winds in Ireland are westerly and the proposed site would be exposed to such climatic conditions, driving water into the shoreline and higher.

- Precedent – Previous applications have been refused for residential dwellings/guesthouses on the grounds of visual amenity and that it would not be possible to provide adequate treatment of sewage.
- Inadequate access – Access to the appeal site and shore at Tonagh is via a very narrow lane, c.1km in length. There are four summer homes further along the shoreline and occupants use the lane and pass by the appeal site to access their properties.

## 6.2. Applicant Response

- None.

## 6.3. Planning Authority Response

### 6.3.1. The planning authority respond as follows:

- Impact on water quality - Environment Section assessed the application and further information submitted and found that there would be a low risk to water quality given the existing system in place and the volumes of effluent associated with the use of the facility. The mitigation measures submitted by the applicant in relation to potential flooding or adverse weather conditions are considered acceptable.
- Visual amenity - The replacement of the shipping container with a contemporary single storey building that has been designed to respect its sensitive location will not result in a significant negative visual impact. The site has been heavily littered in the past and the application has stated that on completion of the development the site will have a full-time maintenance team. This will be positive in the visual amenity of the site and lake.
- Conflict of interest – The planning application has been determined on the basis of the policies and objectives of the Cavan County Development Plan 2014 to 2020 and in the interest of proper planning and development.
- The issues raised by third parties have been given due consideration.
- Condition no. 6 is a standard condition to ensure that no water from the development enters the public road that could result in flooding.

#### 6.4. **Observations/Further Responses**

- None.

### 7.0 **Assessment**

7.1. Having regard to the appeal file my inspection of the site, key issues for this appeal are confined to those raised in submission on the application and in the appeals made, namely the potential impact of the development on:

- Need and precedent.
- Impact on visual amenity and public amenity area.
- Public health and water quality.
- Nature conservation.
- Access.
- Conditions of the permission.

7.2. Third parties also raise a small number of other matters, which I also deal with briefly below.

#### 7.3. **Need and Precedent**

7.3.1. The current County Development Plan identifies Lough Sheelin and its environs as a Major Lake of amenity value and the lakeshore at Tonagh as a Lakeside Amenity Area. Policy NHEO33 and NHEO35 of the Plan seek to protect the amenity value of the lake and its environs, by restricting development that would prejudice the public use and enjoyment of the areas. The proposed development seeks to provide additional facilities for a long established recreational use on the site. It is, therefore, consistent in principle with identified public amenity use of the site and it is entirely reasonable that the applicant brings forward the application for development.

7.3.2. As a recreational use, I do not consider that the applications for residential development near the site, referred to by third parties, form a relevant precedent for the determination of the proposed development.

#### **7.4. Impact on Visual Amenity and Public Amenity Area**

- 7.4.1. The appeal site lies in an attractive lough side environment. The current steel container is well screened from the lake and to some extent from the Lakeside Amenity Area itself. The proposed development is substantially larger than the existing container and would necessitate the loss of some existing trees. However, it would provide an attractive and contemporary building which, from the lake, would be seen against a rising topography. I do not consider that it would, therefore, detract from the visual amenity of the area. Further, I do not accept that replacement planting would not thrive, as ground conditions currently support mature vegetation.
- 7.4.2. With regard to the impact of the development on the public amenity area, I would accept the arguments put forward by the appellants that the development would reduce the area of car park associated with the amenity space and introduce a wastewater treatment facility to a lakeside area that contributes to the setting and use of the Lakeside Amenity Area. Whilst I do not consider this arrangement to be ideal, this impact has to be balanced with the positive benefits for recreation and visual amenity that the development would also bring.

#### **7.5. Public Health and Water Quality**

- 7.5.1. The applicant's Site Characterisation Form is included in Appendix B of the NIS. It identifies the aquifer underlying the site as Locally Important and of Extreme vulnerability. It also identifies the proximity of Lake Sheelin to the polishing filter (5m), the consequential risk to this waterbody from the proposed development and the inability to comply with minimum separation distances set out in the EPA's Code of Practice. Trial holes indicate water ingress at 1.9m below ground level and percolation tests indicate that the site is suitable for use a secondary treatment system with polishing filter.
- 7.5.2. I note the appellants concerns regarding the shape, size and material of trial holes. However, the photographs attached to the Site Characterisation Form, consistent with the EPA guidelines, are of the percolation tests (T tests and P tests), within and adjacent to the trial hole. Further, the report acknowledges that the tests were carried out on imported and in-situ soils.

- 7.6. Having regard to the characteristics of the site, including its proximity to the Lough<sup>3</sup>, the report recommends a mechanical aeration system, with additional measures to reduce the level of phosphates discharged to ground and eradicate bacteriological discharges. It also recommends construction of a raised percolation area, situated to the west of the site where the Site Characterisation Form states '*which had firm, dry ground available*' (see Plate 1 of Site Characterisation Form).
- 7.6.1. The applicant acknowledges that, given the restrictions on site area, the effluent treatment system, cannot meet the minimum separation distances set out in Table 6.1 of the EPA's Code of Practice for Wastewater Treatment Systems for Single Houses i.e. 50m from a lake or foreshore. However, it is maintained that the proposed system provides the maximum treatment possible and will minimise impact on the lake.
- 7.6.2. Photographs provided by the appellants clearly indicate that at times the land immediately adjoining the appeal site i.e. part of the car park and land to the west of the slip and existing building, extending almost to the location of the proposed wastewater treatment plant and percolation area, floods. I do note the applicant's intention to provide the proposed wastewater treatment system in a sealed capsule and to provide the percolation area such that the filter bed is 0.9m above the high-water mark. However, location of the proposed wastewater treatment system and associated percolation area in this location seems inherently nonsensical, with a very real risk of flood water encroaching on the site (of the treatment system and filter bed) and creating a situation where the efficacy of the system is dependent on a high level of maintenance in perpetuity. I also draw the Board's attention to the following:
- (i) The submission on file from the Department of Culture, Heritage and the Gaeltacht which remains dissatisfied with the proximity of the system to the lough and to their conclusion that the development, at the location, poses a significant risk to the Lough Sheelin site (SPA), and
  - (ii) Section 6.2.1 of the EPA's Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. less than or equal to 10). It refers to the minimum separation distances set out in Table 6.1, (i.e. 50m separation distance between a packaged system/polishing filter and lake),

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<sup>3</sup> The well shown in the applicant's Site Plan is to be decommissioned.



and states '*These apply to all on-site domestic wastewater treatment systems. If any of these requirements cannot be met, on-site domestic wastewater systems cannot be developed on site. ...An on-site domestic wastewater treatment and disposal system should not be installed in a flood plain or in seasonally waterlogged, boggy or frequently wetted areas*'.

- 7.6.3. I understand that the applicant is seeking to provide a solution to the drainage of the development within a very constrained site. However, I do not consider that this therefore justifies the proposed sub-standard arrangement and I am of the view that the proposed means to discharge effluent from the site would give rise to a risk of water pollution, of both lake water and groundwater, with potential impacts on nature conservation (see below) and public health. Further, it would conflict with policies of the County Development Plan which, consistent with the requirements with the Water Framework Directive, seek to achieve good status in all waterbodies and prevent the deterioration of existing quality in all water bodies in the County (policy NHEP29).

## **7.7. Nature Conservation**

- 7.7.1. The appeal site directly adjoins Lough Sheelin. This Lough is designated as a Special Protection Area (site code 004065) and as a proposed Natural Heritage Area (site code 000987). Conservation objectives for the SPA seek to maintain or restore the favourable conservation condition of the bird species of Special Conservation Interest (SCI), Great Crested Grebe, Pochard, Tufted Duck and Goldeneye, and to maintain or restore the favourable conservation condition of the wetland habitat at Lough Sheelin SPA as a resource for the regularly occurring migratory waterbirds that use it. Details of the Lough Sheelin pNHA are not listed in the NPWS inventory of Natural Heritage Areas. However, the County Development Plan states that pNHAs are designated under the Wildlife (Amendment) Act, 2000, and encompass nationally important semi-natural and natural habitats, landforms and geomorphological features. I assume in this instance, it is the lake and lakeshore habitats which are of conservation interest.
- 7.7.2. The proposed development is sited outside of the Lough Sheelin SPA but within the boundary of the Natural Heritage Area (see attachments). From the information on

file, it is evident that the development will cater for existing groups using the site for water based activities i.e. there will be no intensification of activities from existing levels. Possible impacts on the SPA are therefore likely to be associated with the construction of the development, arising from noise and human activity and the risk of water pollution, and from its operation, arising from the risk of water pollution from operation of the wastewater treatment system and discharge of surface water from the site. Similar impacts may arise in respect of the NHA, in addition to land take.

7.7.3. Impact of the development on the SPA is assessed below. Having regard to the proposed mitigation measures, it is concluded that significant effects will not arise as a consequence of disturbance during construction or from the disposal of surface water. However, having regard to the location of the proposed wastewater treatment system in close proximity to the lake and in a location which is prone to flooding, it is considered that there is a serious risk of water pollution which could affect the integrity of the SPA.

7.7.4. For Lough Sheelin pNHA, similar conclusions can be drawn in respect of the risk of water pollution. On file, there is no assessment of the impact of the proposed development on the integrity of the pNHA as a consequence of land take or on species likely to be affected by disturbance. However, given the very modest size of the appeal site, availability of alternative habitat and the level of human activity currently associated with the site, impacts are unlikely to be significant.

## 7.8. Access

7.8.1. Access to the appeal site, and to a small number of properties to the north of the site, is via a narrow laneway from the public road. The applicant has indicated that the proposed development will not result in an intensification of use of the site from existing levels and there is no impact on access to the adjoining lands (see Site Layout Plan). However, having regard to the limited size of the appeal site and its linear configuration, I do accept that with the loss of some of the car park, the development could give rise to congestion on busier days, including ready access to the slip. If the Board are minded to grant permission for the development, they may wish to address this matter by condition i.e. to provide road markings to ensure maintenance of the right of way to nearby properties and access to the slipway.

## 7.9. **Conditions of the Permission**

7.10. The appellants raise issues with regard to a number of conditions. I comment on each below. In addition, they raise concerns regarding how the proposed conditions will be adhered to (e.g. usage). Whilst this is a matter for the planning authority, if the Board are minded to grant permission, they may wish to include a condition requiring an annual report to demonstrate compliance with conditions, including approved utilisation rates.

- Condition no. 6 – This is a standard condition to prevent flow of surface water from developments onto the public road.
- Condition no. 13 – This requires certification that the wastewater treatment system has been installed and commissioned correctly and is not unreasonable.
- Condition no. 16 – This refers to the removal of asbestos and, whilst a standard condition, is unlikely to be relevant to the proposed development.

## 7.11. **Other Matters**

- Consultation – There is no statutory requirement for the applicant to carry out pre-application consultations with the public. Further, statutory requirements for public notice have been complied with.
- Conflict of interest – The planning authority has indicated that the proposed development has been adjudicated on, on the basis of policies and objectives of the County Development Plan and in the interest of proper planning and sustainable development. The appeals process allows further scrutiny of the planning decision made.
- Unauthorised development – Matters of enforcement lie outside the appeal system and are a matter for the planning authority.

## 8.0 **Appropriate Assessment**

8.1. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive

requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

### **The Natura Impact Statement**

- 8.2. The application was accompanied by an NIS which described the proposed development, its receiving environment and relevant European Sites in the zone of influence of the development. The NIS contained a Stage 1 Screening Assessment which concluded that a Stage 2 Appropriate Assessment was required for one site, Lough Sheelin SPA. The NIS outlined the methodology used for assessing potential impacts of the development on the habitats and species within this SPA. It predicted the potential impacts for this site and its conservation objectives, set out proposed mitigation measures, assessed in-combination effects with other plans and projects and identified any residual effects on the European site and its conservation objectives. The NIS was informed by a desk top study, three site visits/winter bird surveys (in November 2013, January and March 2014), maps, ecological and water quality data from a range of sources (Section 2.2 of the NIS). The report concluded that, with the implementation of mitigation measures identified in the NIS, the integrity of Lough Sheelin SPA and the wintering SCI species that it supports would not be adversely affected by the proposed development.
- 8.3. Having reviewed the NIS and the supporting documentation, I am generally satisfied that it provides adequate information in respect of the baseline conditions, identifies the potential impacts, uses best scientific information and knowledge and provides details of mitigation measures. Whilst I have concerns that the NIS underestimates the potential risk to Lough Sheelin SPA from water pollution, as a consequence of the development, I am satisfied, that the information provided is generally sufficient to allow for appropriate assessment of the development (see further analysis below).

### **Screening**

- 8.4. The proposed development is not directly connected with or necessary to the management of any European site.

- 8.5. The proposed development comprises the construction of a boathouse and associated wastewater treatment system on the shore of Lough Sheelin. Use of the boathouse follows the existing pattern of use and is confined to a maximum of two, two-hour sessions per week day, between March and November, with 12 participants in each session. Land take is modest and comprises for the large part, the car park associated with the amenity area at Tonagh.
- 8.6. Impacts arising from the development are likely, therefore, arise from the construction phase of the development (i.e. noise, disruption, risk of water pollution) and from its operation (i.e. risk of water pollution from discharge of surface water and from the wastewater treatment plant).
- 8.7. European sites within 15km of the appeal site are shown in the attachments. Having regard to the relatively small scale of the development, likely effects and the source pathways receptor principle, and the conservation interests of the sites in the area, these are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 appropriate assessment. They comprise:

| European site (SAC/SPA)                   | Qualifying Interests  | Distance         |
|---|---|------------------|
| Lough Sheelin SPA (004065)                | Great Crested Grebe, Pochard, Tufted Duck, Goldeneye, Wetlands and Waterbirds   | Adjacent to site |
| Lough Kinale & Derragh Lough SPA (004061) | Pochard, Tufted Duck, Wetlands and Waterbirds   | c.8km to SW      |
| Moneybeg & Clarisland Bogs SAC (002340)   | Active raised bogs, degraded raised bogs still capable of natural regeneration, depressions on peat substrates of <i>Rhynchosporion</i> | c.2.2km to SW    |
| White Lough, Ben Loughs &                 | White-clawed crayfish,  | c.10km to NE     |

| European site (SAC/SPA)               | Qualifying Interests  | Distance       |
|---------------------------------------|---|----------------|
| Lough Doo SAC (001810)                | Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara spp.</i>                        |                |
| Lough Bane & Lough Glass SAC (002120) | White-clawed crayfish, Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara spp.</i> | c.12km to NE   |
| Lough Lene SAC (002121)               | White-clawed crayfish, Hard oligo-mesotrophic waters with benthic vegetation of <i>Chara spp.</i> | c. 14.5km to N |

- 8.8. The NIS screens out three of the above SACs, White Lough, Ben Loughs & Lough Doo SAC, Lough Bane & Lough Glass SAC and Lough Lene SAC, on the grounds that they are removed from the development, and will not be affected by disturbance, and lack any hydrological linkages (i.e. they are located in a different groundwater body), precluding any impacts on water quality. This approach seems reasonable and I would consider that AA is not required for these sites.
- 8.9. Moneybeg & Clareisland Bogs SAC, lies c.2.2km to the south west of the appeal site and no effects are likely on SCI due to disturbance. The site lies within the same groundwater body as the proposed development. The NIS screens out effects on the SAC on the grounds that the development is unlikely to impact on groundwater due to the implementation of a wastewater treatment system. As discussed above, I have concerns that the wastewater treatment system located in such close proximity to the Lough Sheelin and on a site which is affected by flooding, may give rise to water pollution. However, in the event of failure of the system, given the relatively small scale of the treatment system, the size of the groundwater body and the distance between the two European sites, it is unlikely that significant effects on Moneybeg & Clareisland Bogs SAC would arise.

- 8.10. Lough Kinale & Derragh Lough SPA lies c.8km to the south west of the appeal site. Again, direct effects associated with disturbance do not arise. The NIS states that there is potential for the bird species listed as SCI in this SPA to visit Lough Sheelin and for these birds, and therefore the conservation interest of this SPA to be affected by the development. The detailed assessment of the likely effects for the proposed development on the SCI of Lough Sheelin SPA are set out below. In effect, given the very small number of birds of SCI observed in the immediate vicinity of the appeal site (i.e. within 50m) and mitigation measures to avoid impacts on SCI species, including no construction during the overwintering bird season, significant effects on birds of SCI in Lough Sheelin (Great Crested Grebe, Pochard, Tufted Duck, Goldeneye, Wetland and Waterbirds) are considered to be unlikely. It follows, therefore, that significant effects on species of SCI in Lough Kinale & Derragh Lough SPA (Pochard, Tufted Duck, Wetlands and Waterbirds) are also, therefore, unlikely.
- 8.11. Lough Kinale & Derragh Lough also shares a groundwater body with the appeal site. Again, for the reasons stated above, any water pollution arising as a consequence of the development is unlikely to affect this SPA by virtue of its distance from the appeal site and the dilution effects of the large groundwater body.
- 8.12. Lough Sheelin SPA directly adjoins the appeal site. Species of special conservation interest may be affected by disturbance during construction of the proposed development and indirectly by impacts on water quality during construction and operation, e.g. from siltation or hydrocarbon spillages during construction, from the discharge of polluted surface water or foul water arising from the operation of the wastewater system. The NIS refers to the possibility of the introduction of invasive species to the site, with the introduction of soils/landscaping to the site but states no significant impacts are predicted as no invasive species were identified on site and none will be imported to the site.

### **Screening Conclusion**

- 8.13. Based on my examination of the NIS report and supporting information, the scale of the proposed development, its likely effects by way of disturbance and impacts on water quality, the very close proximity of the development to Lough Sheelin SPA and the specific conservation objectives of the SPA, I would conclude that a Stage 2 Appropriate Assessment is required for Lough Sheelin SPA.

8.14. For the remaining sites, I consider that these can be screened out from further assessment principally because of the scale of the proposed works, the nature of the conservation objectives of the European sites, the separation distances between the appeal site and the European sites and, for some of the sites referred to, the lack of a substantive linkage between the proposed works and the European sites. 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 Nos. 004061; 002340; 001810; 002120 and 002121, in view of the sites conservation objectives and a Stage 2 Appropriate Assessment is not therefore required for these sites.

### **Appropriate Assessment**

#### **Conservation Objectives**

8.14.1. Lough Sheelin SPA is described in the NPWS, Site Synopsis as a medium to large-sized, shallow alkaline lake with a maximum depth of 14m. The form states that despite variable water quality in recent decades, the Lough remains a nationally important site for wintering waterfowl, especially diving duck, and one of the main Midlands lakes sites for wintering birds. It supports nationally important populations of four species, Great Crested Grebe, Pochard, Tufted Duck and Goldeneye and a number of other species in relatively low numbers, Mute Swan, Mallard, Coot, Little Grebe, Cormorant and Black-headed Gull.

8.15. The generic conservation objectives for Lough Sheelin SPA are (a) to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interest for the SPA, Great Crested Grebe, Pochard, Tufted Duck and Goldeneye, and (b) to maintain or restore the favourable conservation condition of the wetland habitat at Lough Sheelin SPA as a resource for the regularly-occurring migratory wetland birds that utilise it.

8.16. The NPWS Standard Data Form states that fluctuating water quality since the 1970s is due to pollution mainly from agricultural sources. Threats and pressures on the site are indicated to be silviculture, forestry, animal breeding, leisure fishing and fertilisation and agricultural pollution (NIS).

#### **Bird Surveys**



8.17. The NIS provides the results of three bird surveys carried out in the winter of 2013/2014 (November 2013, January and March 2014). The survey concludes:

*‘Three of the four qualifying interest species were recorded near the site during the bird surveys. Of these, Great Crested Grebe was the only qualifying interest species that was recorded within 50m of the proposed development site.. During the dusk survey in March, Great Crested Grebe and Tufted Duck were noted within 200-350m from the proposed development site. Pochard were noted within 50m of the shoreline at Vantage Point 2 in November. However, the vast majority of the qualifying interest species were noted along the shoreline more than 350m from the proposed site, and outside of the likely zone of influence. No Goldeneye were recorded during the surveys. All species recorded were within the potential disturbance of motorised boats and boat-based angling, but the vast majority were recorded outside of the likely zone of influence of the proposed development’.*

8.18. The peak numbers of all four Special Conservation Interest Species recorded in all three surveys are compared, to the IWeBS data for the period 2008-2013 (page 15 of the NIS). Having regard to the location of species identified in the bird survey, the report concludes that there was no evidence for significant populations of the Special Conservation Interest species being recorded close to the proposed development.

Potential direct and indirect effects:

8.19. Potential direct and indirect effects which may arise as a consequence of the development are:

- Impacts on water quality arising during construction and operation of the development, and
- Disturbance impacts during construction.

8.20. Construction activities could give rise to accidental spillages of oils, cement or other potential pollutants and silt laden runoff, all of which could impact on water quality of the lough. As stated in the NIS, bird species observed in proximity to the development (Great Crested Grebe) and other bird species using the lake are vulnerable to accidental pollution, directly through contact with oil/other chemicals or indirectly by affecting habitats and food supplies. Given the size of the proposed

development, impacts are likely to be localised and short term (in the absence of mitigation)

- 8.21. Operation of the wastewater treatment facility, which lies in close proximity to the lake shore and to land which is vulnerable to flooding, gives rise to an increased risk of water pollution, for example, resulting in increased phosphorus loading, biological oxygen demand, with indirect impacts on species of conservation interest by virtue of impacts on habitats and food supplies. Given the relatively modest scale of the development (i.e. 12 participants in any two-hour session, with a maximum of 8 two-hour sessions per week, over 10 months of the year), impacts are likely to be most significant in the immediate vicinity of the development, dissipating with distance and be short term.
- 8.22. To a lesser extent surface water runoff from the roof and paved areas associated with the development could also give rise to water pollution with consequential effects on water quality and species of conservation interest.
- 8.23. Construction of the proposed development could give rise to adverse effects on birds of conservation interest within Lough Sheelin SPA due to disturbance, if carried out during the winter season (September to March). As stated in the NIS, only one species of SCI, Great Crested Grebe, was recorded within 50m of the proposed development during the winter bird surveys (with the majority of species of SCI observed 200-350m from the proposed development). As this species, and other birds using the lake, are vulnerable to disturbance, the development may result in the short-term loss of feeding and roosting habitat during the winter.

Potential in-combination effects:

- 8.24. In combination effects are likely to arise if the proposed development is constructed in conjunction with other developments, giving rise to greater levels of disturbance, and if the potential failure of the wastewater treatment plant (e.g. in the event of flooding) occurs simultaneously with other pollution events. (Potential in-combination effects arising from the operation of the boathouse are not considered as the applicant has demonstrated that current levels of activity will not increase).
- 8.25. The NIS identifies no other proposed development near the lake which would give rise to in-combination disturbance effects. Further, polices of the County Development Plan are restrictive near the Lough and require appropriate

assessment of any developments likely to impact on the special conservation interests of the SPA. Within this context, in-combination disturbance impacts seem unlikely.

- 8.26. The NPWS description of Lough Sheelin refers to the fluctuating quality of water in the lake over decades and to threats, including from agricultural activities. On page 25, the NIS refers to other development which impacts on water quality in Lough Sheelin, including WWTPs in Ballyjamesduff and Oldcastle, both upstream of the Lough. EPA water quality data for the lake indicates that the lake had good chemical surface water status for the period 2010-2015 and moderate ecological status for the same period. The waterbody is also identified as being at risk of not meeting WFD objectives (e.g. 'good status' for all waters).
- 8.27. As stated previously, I have concerns that the location of the proposed waste water treatment system in close proximity to the lake, and in a location where flooding appears to extend almost to the location of the waste water treatment system itself, gives rise to a serious risk of pollution of water in the lake. Such an event could lead to in-combination impacts with other existing sources of water pollution affecting lake water quality.

Mitigation measures:

- 8.28. Key mitigation measures include the following (set out in the NIS and application documentation):
- No construction works to take place during the overwintering bird season, September to March, inclusive. Secure and robust hoarding around the site to reduce impacts on birds using this part of the Lough during April to August. No works to occur outside of daylight hours. No nighttime lighting of site.
  - Provision of a detailed Outline Construction Management Plan for the construction phase of the development, with standard measures to protect water quality during construction.
  - Detailed design of the proposed wastewater treatment system to include a phosphorus pump, to reduce the level of phosphates discharged to ground, an ultraviolet germicidal irradiation unit to eradicate bacteriological discharges

to ground, and an alarm system in the event of an electrical failure, for the operational phase of the development.

- Construction of a sealed capsule to hold the WWTP.
- Provision of an oil water separator to remove hydrocarbons from surface water, again for the operation of the development.

Residual effects/Further analysis:

8.29. Having regard to the above, I am satisfied that the mitigation measures, would adequately prevent any adverse effects on water quality during the construction of the development and from surface water during operation. However, I remain concerned that the location of the waste water treatment plant, despite the proposed additional treatment measures and proposals to house the system in a sealed capsule, lies in such close proximity to the lough and on land which is affected by flooding, that it gives rise to a significant risk in perpetuity of water pollution, for example, in the event of system failure or higher flood waters arising. In view of this, I consider that there remains the risk that the development would adversely affect the integrity of the European site, in light of its conservation objectives.

Appropriate Assessment Conclusions

8.30. Having regard to the above, notably the location of the proposed waste water treatment plant on a site in close proximity to Lough Sheelin, on land that is at risk of flooding, I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans and projects would adversely affect the integrity of the European site no. 004065 in view of the site's Conservation Objectives.

## 9.0 Recommendation

9.1. Having regard to the above, I recommend that permission for the development be refused for the following reasons.

## 10.0 Reasons and Considerations

Having regard to the location of the site, adjoining the Lough Sheelin Special Protection Area (site code 004065), and to the location of the proposed waste water treatment system within close proximity to the lake shore and within a location which is prone to flooding, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and appeal, that effluent from the development can be satisfactorily treated on site. The proposed development would, therefore, be prejudicial to public health and likely to have a significant effect, individually and in combination with other plans or projects on the conservation objectives of the Lough Sheelin Special Protection Area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Deirdre MacGabhann  
Senior Planning Inspector

28<sup>th</sup> May 2018