



An
Bord
Pleanála

Inspector's Report ABP-301078-18

Development

The construction of a maturation warehouse facility consisting of 12 no. maturation warehouses (each 1,570 sq.m in gross floor area) and other ancillary buildings and the facility is intended to be used for the maturation stage of whiskey production. The development relates to an establishment for which the Major Accident Directive applies. (A ten-year permission period is sought).

Location

Moyvore, Co. Westmeath.

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

17/7177

Applicant and Appellant

Vault Storage Limited.

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party.

Observers

David Ham

Thomas P. and Mary Keane

Gretta Scally & Others

Ellen Scally & Dave O Rourke

Carmel & John Burke

Residents of Baltaken & Moyvore

Enda & Cathy Scally

George Tracey

An Taisce

Irish Whiskey Association

Date of Site Inspection

25th June 2018

Inspector

Patricia Calleary

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	7
4.0 Planning History.....	9
5.0 Policy Context.....	10
6.0 The Appeal	15
7.0 Assessment.....	17
7.1. Introduction	17
7.2. Principle and Site Suitability	19
7.3. Directive 2012/18 EU (Seveso III) Considerations	22
7.4. Landscape and Visual Impact.....	24
7.5. Residential Amenity	25
7.6. Ecology	27
7.7. Archaeology.....	28
7.8. Water and Drainage.....	29
7.9. Other Matters	33
7.10. Requirement for Environmental Impact Assessment (EIA).....	36
7.11. Appropriate Assessment.....	37
8.0 Recommendation.....	39
9.0 Reasons and Considerations.....	39
10.0 Conditions	40

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 16 ha comprises part of an agricultural field and is located c.1km east of Moyvore village in County Westmeath and between the towns of Ballymahon and Mullingar. The field is bounded on the north, east and west by mature hedgerows. The R392 regional road marks the northern boundary, outside of the hedgerow. A local road, L-5344, is located along the boundary to the west and another local road, L-5244, is located to the east. The boundary to the south is not physically marked on the ground.
- 1.2. Access is currently available via an agricultural entrance on the west side off the L-5344. Two areas of wet grassland measuring c. 2 ha, interspersed with gorse and blackthorn scrub, are located at the northeast corner of the site.
- 1.3. There are three residential dwellings located proximate to the site, the closest which adjoins the appeal site to the south, along the L-5244. There are four dwellings on the opposite side of the R392.

2.0 Proposed Development

- 2.1. The proposed development would comprise a facility for the maturation stage of whiskey, together with a cask filling facility. It is stated that it would serve the needs of smaller new distilleries.
- 2.2. The proposed infrastructure would comprise 12 maturation warehouses, a filling hall, ancillary buildings and all ancillary site development works. The collective GFA of all proposed buildings is stated to be 22,297 sq.m. Each warehouse would have a GFA of approximately 1,570 sq.m and a typical roof ridge height of approximately c.11m. The proposed filling hall, with a GFA of c. 3,150 sq.m and an overall height of c.10.5m would have an associated water storage tank, eight spirit storage vats, a purified water treatment plant and a loading dock. Ancillary buildings and structures would include a single storey facilities building, single storey fork lift charging shed, single storey sprinkler pump-house, water sprinkler tank and ESB substation. Ancillary landscaping and site development works would include a proprietary on-site wastewater treatment unit and soil polishing filter, a sprinkler water retention pond, a

surface water attenuation pond, 10 no. CCTV surveillance cameras, berms, landscaping, perimeter fencing and gates.

- 2.3. Access to the proposed facility would be located off the L-5344 along the west of the site with provision for an emergency egress from the R392 to the north.
- 2.4. The purpose of the facility would be to allow immature whiskey (spirit) to mature to whiskey over a minimum three-year period and for an average of five years. Immature whiskey would be transported from various distilleries elsewhere to the maturation facility by tankers and unloaded into spirit vats adjacent to the filling hall. It is stated that raw spirit must be reduced from distillation strength of c.95% v/v to 60-65% v/v for maturation which is achieved through the addition of purified water. The water required would be taken from the public mains, purified in the treatment system and stored in the water storage tank. Once diluted, the spirit from the spirit vats would be filled into wooden casks by hand lances and the casks would be transferred to the warehouses by conveyor trucks and filled and emptied by a forklift. Each warehouse would have a capacity to hold c.16,800 casks. When mature, casks would be transferred to the filling hall by a conveyor truck where they would be emptied to one of the spirit vats using a spirit lance. Mature spirit would be pumped from the spirit vat to a collecting tanker and transported onwards for bottling.
- 2.5. The proposal relates to an establishment to which the Major Accident Directive applies. Specifically, the proposed development is stated as being classified as a 'lower tier establishment' under the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations, 2015, hereinafter referred to as the COMAH regulations.
- 2.6. Permission is sought for a ten-year period.
- 2.7. **The planning application** was accompanied by the drawings and details including, among others, the following of note:
 - Planning Statement by HW Planning. This includes chapters that addressed matters regarding the need for the scheme, site selection, compliance with planning policy and environmental topics (human beings, ecological assessment, archaeological assessment and hydrology). It also contained appendices (landscape assessment, surface water drainage data and ecological assessment scientific names).

- Letter to the Planning Authority containing information specified in Schedule 3 of the 2006 COMAH regulations (S.I. No. 74 of 2006), prepared by Allen Barber Engineers.¹
- Construction and Demolition Waste Management Plan prepared by Allen Barber Engineers.
- Construction Stage Environmental Management Plan prepared by Allen Barber Engineers.
- Site Suitability Report and Wastewater Treatment Plant Design for warehouses prepared by J.A. Gorman Consulting Engineers including proposal for wastewater treatment system using Sequencing Batch Reactor (SBR) technology.
- Appropriate Assessment Screening report by Blackthorn Ecology (dated 21st September 2017).

2.8. **Further information** was received by the Planning Authority during their consideration of the application. The information was accompanied by drawings and documents, among which included the following:

- Stormwater layout drawings and details prepared by Allen Barber Consulting Engineers.
- Proposed Site Layout and East Boundary Section drawings prepared by Fosterbird Design.
- Site Selection Addendum prepared by HW Planning.
- Revised Visual Impact Assessment prepared by Fosterbird Design.
- Photomontages prepared by Pedersen Focus Limited.
- Revised Appropriate Assessment Screening report prepared by Blackthorn Ecology (dated 20th December 2017).
- Response to ecological concerns by prepared Blackthorn Ecology.

¹ **Note:** Art 135 of the Planning and Development Regulations 2001-2018 include a requirement for four copies of the information specified in the Third Schedule of the Major Accident Regulations. The Third Schedule applied to the 2006 COMAH regulations (S.I. No. 74 of 2006), however the 2015 COMAH regulations (S.I. No. 209 of 2015), which revoked the 2006 COMAH regulations do not contain a third schedule and it appears that the Planning Regulations have not been updated to reflect this change.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a decision to refuse permission for two stated reasons, which can be summarised as follows:

- **R1:** Proposed development would be significant in scale and would require significant manipulation of the site, resulting in unacceptable visual scarring of the rural landscape and detract from its scenic amenities. It would materially contravene policies P-CS2, P-RE10 and P-LLM1 of the Westmeath County Development Plan 2014-2020 and would set an undesirable precedent.
- **R2:** Proposed development would result in a serious reduction in residential amenity of the existing dwelling by reason of it being visually dominant and overbearing and consequent devaluation of the property.

3.2. Planning Authority Reports

3.2.1. Initial Planning Report (14th November 2017)

- Limited and poor assessment of alternative sites and inadequate visual impact assessment were presented.
- Receiving environment is not capable of absorbing the proposed development.
- Would result in ad-hoc unintegrated and unsustainable form of development and would set an undesirable precedent.
- Requested further information on drainage, visual impact, residential amenity, Appropriate Assessment, assessment of alternative sites, invited comments on third party submissions.

3.2.2. Final Planning Report (5th February 2018)

- Visual Assessment is inadequate.
- Site assessment is retrospective and fails to give a detailed assessment of alternative sites including available zoned sites over 12 hectares.
- Proposed site is wholly inappropriate and would require significant physical manipulation of the site to accommodate the large industrial scale

development that will result in significant visual scarring of the rural landscape.

- Development would negatively impact adjoining residential amenity having regard to proximity of the development and earthen berms adjacent to the residential curtilage.
- Development would be ad-hoc, unintegrated and an unsustainable form of development and would set an undesirable precedent.
- Recommends a refusal.

3.2.3. Technical reports

- District Engineer (Inspection date: 25/10/18, Report not dated) – Conditions recommended.
- Environment Section (Report date: 30/01/18) - No objection subject to conditions.
- Fire (Report date:19/10/17) – No objection subject to conditions.
- Director of Services (Report date: 14/11/17) – Notes initial recommendation to refuse permission, recommends seeking further information.
- HSE / EHO (20/10/17) – No objection subject to conditions.

3.3. Prescribed Bodies

- Health & Safety Authority (HSA) (Report date:14/11/2017) – Does not advise against the granting of planning permission in the context of major accident hazards.
- Reference was made in the Planners report to a report received from the Department of Culture, Heritage and the Gaeltacht (Report date: 24/01/18) which stated – ‘Condition archaeological monitoring’. A copy of the report referenced was requested by the Board but to date, no copy of the referenced report has been furnished.

3.4. Third Party Observations

- 3.4.1. The following is a summary of the principal planning points contained in the collective submissions received by the Planning Authority.

- Concern that the attenuation and sprinkler system would upset the ecological environment, including Tonlemony Wood.
- Risk of public safety due to fallen trees.
- Noise issues.
- Traffic safety along the R392 would be compromised.
- Health & Safety risks due to nature of storage of flammable liquids.
- Concerns regarding venting of ethanol and 'black fungus' on adjoining property and on woodland, wildlife, protected species and livestock.
- Risk of flooding, noise and fire hazard.
- Not appropriate for a rural area and no locational justification has been provided.
- Would be contrary to policies including P-RE2 (diversification of the rural economy) and P-CS9 (facilitate sustainable development).
- Level of separation distances from distilleries would result in the development being unsustainable.
- Would generate unacceptable visual impacts and impact on residential amenity of adjoining residents.
- Is a class of development for the purpose of 176 of the Planning and Development Act 2000, as amended and therefore requires EIA.
- Local GAA club seeks that the developer contributes to improving facilities for the community's benefit.

4.0 Planning History

4.1. Appeal site

- **Pre-planning** meeting notes relating to meetings between the applicant / appellant and Westmeath County Council in relation to the current proposal are included as an attachment to the appeal documentation.

4.2. Other

- **ABP-300429-17:** Meath County Council (2017) issued a decision to grant permission for a maturation facility comprising five bonded warehouses and ancillary infrastructure, proposed to be located in Cloncowan, Longwood, Co. Meath. The proposed development relates to a similar project type to the proposal which is the subject matter of this appeal and would also be an establishment to which the Directive 2012/18 EU (Seveso III) applies. Following an appeal against the Planning Authority's decision to grant of permission, the Board **granted permission** for the development in June 2018. The site is located within a mature forested area.
- **ABP-302032-18** (current appeal) – The Board received a first party appeal (9th July 2018) against a decision by Louth County Council to refuse permission for a whiskey maturation facility consisting of 13 no. maturation warehouses and ancillary structures on a site within an area of 45 hectares. The application was accompanied by an Environmental Impact Assessment Report.

5.0 Policy Context

5.1. Legislative Context

- 5.1.1. Directive 2012/18 EU (Seveso III) replaced Directive 2003/105/EC (Seveso II) and was transposed into Irish law on 1 June 2015 under the Chemicals Act (Control of major accident hazards involving dangerous substances) regulations 2015 (S.I. No. 209 of 2015), hereinafter referred to as the COMAH Regulations. The Directive aims at preventing major accident hazards involving dangerous substances and chemicals and the limitation of their consequences for both people and the environment.
- 5.1.2. Part 7 of the COMAH regulations sets out requirements for Land-use Planning.
- 5.1.3. Article 24(2) of the Regulations provides that the Central Competent Authority shall provide technical advice in response to a notice sent by a planning authority requesting technical advice on the effects of a proposed development on the risk or consequences of a major accident in relation to the siting and development of new

establishments. In this regard, the HSA provides such advice on planning applications.

5.2. Policy Context

5.2.1. **National Planning Framework (NPF)** was prepared by the Government under Project 2040 and represents the overarching national planning policy document.

- National Policy Objective 23 seeks to facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.
- National Strategic Outcome 3 (Strengthened Rural Economies and Communities) includes: 'Continued investment in the agri-food sector will underpin sustainable growth as set out in Food Wise 2025.'

5.2.2. **Food Wise 2025** – A 10-year vision for the Irish agri-food industry – Department of Agriculture, Food and the Marine. This document notes that exports of Irish Whiskey have increased by 60% between 2009 and 2014. It states that there are huge operations for growth in the whiskey sector and notes that one challenge that must be met is the significant working capital finance needed to fund the minimum three-year maturation process in the whiskey sector. An objective of Food Wise 2025 is to: 'Develop fiscal and other revenue generating initiatives which will enable the Irish Whiskey industry to fund the minimum three-year maturation process'.

5.2.3. **Policy & Approach of the Health & Safety Authority to COMAH Risk-based Land-use Planning** (March 2010) including the following:

- Section 1.2 - New establishments
- Part 7 – Land use planning
- Regulation 24 - Technical advice on land-use planning

5.2.4. The **Westmeath County Development Plan 2014-2020** is the applicable plan for the area within which the appeal site is located. Sections of the Plan that are considered relevant include the following:

- 2.17 Core Strategy including Policy P-CS2 : In the assessment of development proposals, it is a requirement to take account of transport corridors, environmental carrying capacity, availability and/or capacity to provide waste water and water supply services, potential to conflict with WFD objectives, potential to impact on the integrity of European sites and Annexed Habitats and species, features of biodiversity value including ecological networks, impact on landscape and visual characteristics, education and other socio-economic objectives.
- 3.5.5 Rural Centres: Within the rural areas of the county there are many rural settlements and rural nodes which provide clear locational advantages for employment generating uses including green energy projects, food production, forestry and agri-business, bloodstock, horticulture, rural based tourism and resource based enterprises.
- P-EC3 – To foster and support industry and enterprise in Westmeath, in particular indigenous businesses in appropriate locations in the county.
- P-EC4 – To strictly control development, outside the development boundaries of Mullingar and Athlone, with the exception of development on zoned lands or development of strategic or regional importance on other lands that are served by the national road network, which could generate significant additional traffic, thereby potentially compromising the capacity and efficiency of the national road/associated interchanges and possibly leading to the premature and unacceptable reduction in the level of service available to road users.
- Section 3.9 – Prevention of Major Accidents. Notes that there are currently no Seveso sites within the functional area of Westmeath County Council.
- Section 3.9.1 – Prevention of Major Accidents Policies including P-MA1 and P-MA2.
- 3.35 General Agricultural policies and objectives including the following policy:
- P-GA7 – To promote the continued development and expansion of the Agri-Food Sector.
- 3.37 Rural Enterprise Policies including:

- P-RE1 – To promote the growth of rural enterprises.
- P-RE2 -To promote the diversification of the rural economy and the growth of rural indigenous industry.
- P-RE9 - The Council will favourably consider proposals for enterprise and employment uses on their merits in rural locations and where their specific location offers amenity, environmental and economic advantage. Such enterprises or considered industrial projects, new or expanded, may sometimes require sites outside settlements because of their size or other specific site requirements. Such projects will be assessed taking account of:
 - The contribution of the proposed development to the county's economy;
 - The contribution of the proposed development to the county's environment and the principles of sustainable development;
 - The full assessment of any potential environmental effects;
 - The economic viability and availability of alternative sites and
 - National planning policy;
 - It will be the responsibility of the developer to explore all environmental impacts, both local and of wider consequence. The Council will consider not only the immediate needs and benefits, but the wider long-term environmental effects of the proposal.
- P-RE10 - To ensure that rural enterprises do not undermine rural ecosystems, landscapes and Conservation Areas and are conducted in a manner consistent with the protection of the local environment and in line with the requirements of national legislation.
- P-RE11 - To support the continued vitality and viability of rural areas, environmentally, socially and commercially by promoting sustainable social and economic development.
- Section 6.21 - Landscape Management Policies including: P-LLM1: To require that development is sensitively designed, so as to minimise its visual impact

on the landscape, nature conservation, archaeology and groundwater quality.

- 5.2.5. **Westmeath Biodiversity Action Plan (2014-2020)** - Rathskeagh Fen / Kilarecastle, a fen site listed in this plan, is located c.4.8 km to the south of the appeal site.

5.3. Natural Heritage Designations

- 5.3.1. The following designated sites are located within a 15km radius of the appeal site:

- Ballymore Fen Special Area of Conservation (SAC) (Site Code 002313) c.4.0km to the south
- Lough Iron Special Protection Area (SPA) (Site Code 004046) c.10km to the northeast
- Glen Lough SPA (004045) c.13km to the north
- Lough Ennell cSAC (Site Code 00685) c.13km to the southwest
- Lough Ennell SPA (Site Code 004040) c.13km to the southwest
- Lough Ree cSAC (Site Code 000440) c.14km to the west
- Lough Ree SPA (Site Code 004060) c.14km to the west
- Lough Owel cSAC (Site Code 000688) c.14km to the northeast
- Lough Owel SPA (Site Code 000407) c.14km to the northeast

- 5.3.1. The following proposed Natural Heritage Areas (pNHAs) / Natural Heritage Areas (NHAs) are located within a 15km radius of the appeal site:

- Royal Canal pNHA (Site Code: 002103) c.6km to the north
- Lough Sewdy pNHA (Site Code 000689) c. 4.0km to the southwest
- Glen Lough pNHA (Site Code 001687) c.13km to the north
- Lough Iron pNHA (Site Code 000687) c.10km to the northeast
- Lough Owel pNHA (Site Code 000688) c.14km to the northeast
- Lough Ennell pNHA (Site Code 000685) c.13km to the southwest
- Walshestown Fen pNHA (Site Code 001731) c 13km to the east
- Lough Ree pNHA (Site Code 000440) c.14.6km to the west
- Nure Bog NHA (Site Code 001725) c.13km to the southeast

- Ballynagrenia And Ballinderry Bog NHA (Site Code 000674) c.12km to the south.
- Lough Garr NHA (Site Code 001812) c.14.5km to the northeast

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal was received from HW Planning, representing the applicant. It was accompanied by a number of attachments including pre-planning notes, copy of the HSA report received by the Planning Authority, a letter from Michael Creed TD (Minister for Agriculture, Food and the Marine), Planning & Design Statement, Site Selection Addendum, Landscape Visual Impact Assessment (LVIA) & Photomontages submitted in response to the Planning Authority's request for further information and Drawing L107_revision A (Eastern Boundary Section). The appeal initially sets out the applicant's concerns relating to procedures around how the application was dealt with by the Planning Authority. Thereafter, the principal points put forward in the grounds of appeal are summarised as follows:

- As any maturation warehouse facility will be a development to which the Major Accident Directive applies, it is desirable that these are not located close to existing settlements, areas zoned for residential/institutional development or areas that could be potentially zoned for these purposes.
- At present, there is just one purpose built maturation warehouse facility in Ireland (Irish Distillers Limited facility), located in a rural area in County Cork.
- Given the nature and extent of the maturation warehousing, locating it on industrial zoned lands would not be appropriate, and a rural site is considered more suitable and sustainable.
- The Moyvore site is strategically located within a three-hour drive of most new and planned distilleries and is suitable from a logistical and strategic perspective to provide maturation and cask filling needs of smaller distilleries.
- Development can be successfully integrated into the existing landscape and is suitable in providing key infrastructure to support the expanding whiskey industry.

- Proposal is compliant with national and local policy, including P-RE9 of the Westmeath Development Plan (enterprise and employment in rural locations) in particular.
- Area has a low degree of visual sensitivity and the development would have no significant visual impact from any nearby sensitive viewpoints.
- The proposed berm would not result in negative impacts on the residential amenities of the nearby property.
- Micro flora growth on dwellings would not be an issue. Applicant would have no objection to a condition requesting the annual monitoring of the impact of same in an area immediately adjacent to the development site.
- Construction Environmental Management Plan (CEMP) furnished includes measures that can ensure residential amenity of nearby dwellings will not be affected during the construction phase (or when the facility is fully operational).
- HSA have been furnished with a Seveso Land Use Planning Quantified Risk Assessment (QRA). The HSA have stated that they do not advise against the granting of permission.

6.2. Planning Authority Response

- 6.2.1. The planning authority's response submits that their report dated 5th February 2018 addresses all the pertinent planning issues. In addition, comments and clarifications were provided concerning procedural aspects raised by the appellant in their appeal.

6.3. Observations

- 6.3.1. Ten observations were received, eight which state their objection to the proposal. The following provides a summary of the issues raised.

- Proposed development would be in a rural location (zoned agricultural) and is not supported by any national policy.
- Proposal is speculative in nature and no credible site specific selection justification or need for the development has been provided.
- Proposal for maturation has no relationship with the agri-food sector.

- Development should be subject to EIA.
- Visual impact assessment not complete and landscape proposals are inadequate.
- Detrimental impact on residential amenity (including noise) would result.
- Proximity to houses and devaluation of property would result and raises question about accuracy of location of houses relative to the site.
- Harmful effects which would arise from *Baudoinia comniacensis* (Black Fungus).
- Health & Safety risks due to nature of storage of flammable liquids including risk of fire outbreak (Seveso site).
- Concerns re venting of ethanol and black fungus on adjoining property and on woodland, wildlife, protected species and livestock.
- Risk to ecological habitats including those located within Tonlemony Wood.
- Transport and road safety impacts.
- Flood risk.
- Loss of heritage / heritage impacts.

6.3.2. An observation received from the Irish Whiskey Association sets out its support for the proposal in the context of the need for development of such facilities to support the projected level of export growth of Irish Whiskey.

6.3.3. An observation was also received with a large number of signatures expressing support for the project in the local area.

6.4. **Further Responses**

- None

7.0 **Assessment**

7.1. **Introduction**

7.1.1. Irish whiskey is made from water and whole cereal (typically, but not exclusively, barley or maize) which is fermented by yeast before distillation and final maturation

in oak casks. The proposed development would primarily comprise 12 maturation warehouses each with a gross floor area (GFA) of 1,570 sq.m and a ridge height of c.11m. A proposed filling hall, with a GFA of c. 3150 sq.m and an overall height of c. 10.5 m is also proposed as are other ancillary structures. The collective GFA of all buildings on site is stated as being 22,297 sq.m.

7.1.2. Maturation is an inherent part of whiskey production and occurs after and separate to the distillation process. Produce from distilleries cannot be branded as Irish Whiskey by law unless it has been matured for at least three years.

7.1.3. It is stated that the maturation proposal would serve multiple and typically smaller distilleries. A cask filling service is also proposed as part of the application. Potable water sourced from the mains supply would pass through a 'Reverse Osmosis' water treatment system and in turn purified water would be used to dilute the young whiskey produce prior to maturation.

7.1.4. Refusal reason No.1 attached to the Planning Authority's decision provided that the proposed development would require significant physical manipulation of the site, resulting in unacceptable visual scarring of the rural landscape and detracting significantly from its scenic amenities. Refusal reason No.1 also sets out that the development would materially contravene policies P-CS2, P-RE10 and P-LLM1 of the Westmeath County Development Plan 2014-2020 and that it would set an undesirable precedent. Refusal reason No.2 sets out that the proposed development would give rise to a serious reduction in the residential amenities of a neighbouring dwelling, as it would be visually dominant and overbearing and would consequently result in devaluation of the property.

7.1.5. I consider that the key issues in determining the appeal now before the Board and in carrying out a *de novo* assessment of the application include the following:

- Principle and Site Suitability
- Directive 2012/18 EU (Seveso III) Considerations
- Landscape and Visual Impacts
- Residential Amenity
- Ecology

- Archaeology
- Water and Drainage
- Other Matters (Access and Traffic, Earthworks, Micro-flora growth, Property Devaluation, Decommissioning and Restoration, Community Gain, Material Contravention)
- Requirement for Environmental Impact Assessment
- Appropriate Assessment

7.2. Principle and Site Suitability

- 7.2.1. It is well understood that the Irish Whiskey sector is experiencing phenomenal growth. In a report 'Vision for Irish Whiskey – A strategy to underpin the sustainable growth of the sector in Ireland' prepared by the Irish Whiskey Association and IBEC, it is recorded in this report that in the decade prior to 2014, the sector grew by almost 200%. In 2014, more than 6.7 million nine litre cases of Irish whiskey were exported to over 100 countries around the world. This export figure is expected to exceed 12 million cases by 2020 and 24 million cases by 2030. The number of distilleries are also expected to grow. The report identifies maturation capacity as a challenge to the whiskey industry fulfilling its potential. It is stated in the appeal that there is only one purpose built maturation warehouse facility in Ireland, located in a rural area outside of Dungourney in Co. Cork. This would appear to serve as a satellite maturation facility for the Irish Distillers' distillery in Middleton, Co. Cork.
- 7.2.2. Within the recently published NPF, National Policy Objective 23 seeks to facilitate the development of the rural economy by supporting a sustainable and economically efficient agricultural and food sector and by supporting diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage, which are vital to rural tourism. National Strategic Outcome 3 of the NPF (Strengthened Rural Economies and Communities) aims to promote ongoing investment in the agri-food sector to underpin the growth of the sector as outlined in Food Wise 2025. The Government's Food Wise 2025 strategy (a 10-year vision for the Irish agri-food industry) identifies the funding of whiskey maturation as a challenge to the industry

and includes a stated action to develop fiscal and other revenue initiatives in response to this challenge.

- 7.2.3. The development is proposed to be sited in a rural area on unzoned lands and it is therefore a reasonable concern raised by third parties during the application and observers at appeal stage that such a rural location would not normally lend itself to large-scale warehouse type development.
- 7.2.4. However, the proposed development is a relatively unique proposal which would represent a considerable investment into the region. It is evident that a large parcel of land is required, that limited levels of economic activity or employment would result and given the nature of the development for long-term storage, demand for services and traffic generation would be low. It represents a development type which is different to standard warehousing and I am of the view that directing it into zoned lands would result in an inefficient and unsustainable use of serviced zoned lands which could prejudice delivery of other employment and enterprise policies and objectives envisaged in the Westmeath County Development Plan.
- 7.2.5. Policy P-RE9 of the current Westmeath County Development Plan is particularly relevant in this regard. It recognises that enterprise and employment uses can be considered on their merits in rural locations where certain criteria are met including the contribution of the proposed development to the county's economy, environment, principles of sustainable development, assessment of environmental effects, economic viability and availability of alternative sites and national planning policy. The development is also supported by Policy P-GA7 of the current Westmeath County Development Plan which seeks to promote the continued development and expansion of the agri-food sector. Policy P-RE11 seeks to support the continued vitality and viability of rural areas and is therefore also supportive of the development.
- 7.2.6. It is submitted in the appeal that the midlands region offers a sustainable location for the whiskey maturation facility as it would be within a three-hour drivetime of feeder distilleries. Sites were initially examined by the applicant in Counties Kildare, Laois, Offaly and Westmeath based on a range of criteria. At further information stage, the assessment was widened to consider existing available zoned lands within County Westmeath's main towns. A total of 37 potential sites were identified, but it is stated

that only six were of sufficient size and this included three sites in Athlone, two in Mullingar and one in Moate. It is submitted that on further assessment, only one site (identified as 'Athlone B1') with sufficient area to support the development remained available. This site is zoned as a strategic gateway and identified as an area of key employment in the Athlone Town Plan 2014-2020 and as a strategic gateway in the Creggan Local Area Plan 2010-2025 to facilitate flagship enterprise, including international trading with potential for major employment creation. Given the nature of the development proposed, I am of the view that the proposal would not be compatible with the zoning objectives for the 'Athlone B1' site, as it envisages a flagship enterprise unlike the current proposal which would generate a low intensity of activity / employment.

- 7.2.7. The applicant also carried out a review of available sites in County Longford and submits that of the 80 parcels of zoned land examined, 14 met the minimum required site area of 12 hectares. Following further assessment, one site in Edgeworthstown in Co. Longford was deemed to have potential. However, it is zoned as 'Strategic Industrial Reserve' to meet longer term industrial needs, beyond the current Plan period. This zoning category provides that new industrial development of a substantial nature (beyond those live permissions which may be extended) is not considered appropriate. In this regard, similar to the reasons outlined above, the development of a new whiskey maturation facility would not align with the intention of this 'strategic industrial reserve' zoning category.
- 7.2.8. It may well be the case that, in addition to the rural /unzoned sites considered, there may be other sites which are suitable, however, I am satisfied that the site selection study of zoned and unzoned sites presented a satisfactory assessment of the economic viability and availability of an adequate number of alternative sites. It is therefore appropriate to consider the current proposal on the site selected based on its planning and environmental merits.
- 7.2.9. On balance, I am satisfied that there are specific locational requirements for the proposal such that would warrant siting in a rural location. The Board recently granted permission for a similar type development on unzoned rural lands at Cloncowan, Longwood, Co. Meath (Ref: ABP-300429-17). The development permitted related to a maturation facility which included a total GFA of 17,010 sq.m.

The Board considered that the development had locational requirements which were compatible with a rural location.

- 7.2.10. The current proposal would contribute significantly to the economy of Westmeath and to the region, and in supporting whiskey-producers nationally. The location of the development in a rural area is broadly acceptable subject to consideration of relevant planning, environmental and related matters included in Policy P-RE9 of the Development Plan. I deal with these and other relevant matters throughout the remainder of my assessment below.

7.3. **Directive 2012/18 EU (Seveso III) Considerations**

- 7.3.1. Directive 2012/18 EU (“Seveso III”) was transposed into Irish law on the 1st June 2015 under the COMAH Regulations. The regulations set out the requirements to prevent major accidents involving dangerous substances and to limit the consequences of such accidents on human health and the environment. Seveso/COMAH apply to industrial sites where dangerous substances are used or stored in large quantities, mainly in the chemicals, petrochemicals, storage, and metal refining sectors. The HSA is identified as the central competent authority under the regulations.
- 7.3.2. The proposed development would be categorised as a ‘lower tier’ establishment under these regulations. The COMAH regulations apply to the proposed development, as the inventory would exceed 5,000 tonnes of flammable liquid and as such, is considered a category of dangerous substance under Part 1 of Schedule 1 of Regulation 2. Specifically, it is stated in the information which accompanied the planning application that the site would have the capacity to store 195,536 tonnes of maturing spirit, which is a highly flammable material comprising 63% ethanol and 37% water.
- 7.3.3. The COMAH regulations provide for an integrated approach for planning decisions concerning such establishments. This includes the HSA giving technical advice to planning authorities, and where appropriate, An Bord Pleanála. Article 138 of the Planning and Development Regulations 2001-2018 requires the Planning Authority to furnish a copy of the technical advice received from the HSA to the Board in the case of an appeal.

- 7.3.4. The HSA set out their relevant policy on **land use planning** for COMAH establishments in their document 'Policy & Approach of the Health & Safety Authority to COMAH Risk-based Land-use Planning (March 2010)'. Section 1.2 (New establishments) require planning applicants to submit a Quantified Risk Assessment (QRA) to the HSA, who will in turn evaluate the submitted QRA before advising the Planning Authority. In relation to new establishments the policy document states that it will be necessary for applicants to demonstrate that they do not present a risk of fatality greater than 5×10^{-6} (per year) to their current non-residential type neighbours or a risk of fatality greater than 1×10^{-6} (per year) to the nearest residential type neighbour.
- 7.3.5. The appellant states that they commissioned a 'Seveso Land Use Planning QRA' for the proposed development which they submitted to the HSA. This report is not on the Board's file and I am satisfied that it is not required to be submitted to the Planning Authority or the Board, once it has been submitted to the HSA. The recommendations which are stated to be contained in the QRA are set out in the appellant's planning statement included with the application. Mitigation measures in this regard are outlined which include structural fire proofing of buildings, provision of emergency response and the automatic sprinkler system for suppression of fires in the maturation warehouses and the incorporation of a fire water retention system in compliance with EPA Guidance for industry for such retention systems. The retention system is stated as being sized at 4,580 sq.m to cater for the worst-case fire event, which is taken as a fire involving the entire contents of a single warehouse. In that scenario, the collection system would take the flows from the release of product and would convey these to the retention pond. The system is designed so that it is self-contained and totally independent of the surface water system.
- 7.3.6. The Planning Authority consulted the HSA during their consideration of the application and the HSA responded stating that it **does not advise** against the granting of planning permission in the context of major accident hazards. The HSA also state that the siting criteria have been met. As the HSA are the competent authority for the implementation of the COMAH regulations, reliance can be placed on the HSA response to inform an assessment of this aspect of the proposal. It is of relevance to note that once operational the establishment would fall within the COMAH inspection regime and further engagement would follow between the HSA

and the operators of the development. Specifically, the operators of the facility would be required to provide evidence that all necessary measures have been taken to prevent major accidents and to limit their consequence on human health and the environment. If permitted, the site would be surrounded by a consultation zone within which the HSA must be consulted on any further development proposals. This would not necessarily prevent development but certain types of development may be restricted.

7.3.7. Currently, there are no other Seveso/COMAH establishments in the surrounding area or Westmeath county and accordingly the potential for 'domino effects', risks of an incident at one Seveso site to be spread to another site(s), as set out under 2015 COMAH Regulation 9 (1), do not arise.

7.3.8. Having regard to the above and particularly to the advice received from the HSA, I am satisfied that permission for the proposed development should not be withheld for reasons of Seveso/COMAH considerations, including risks to both human health and risk to the environment as a result of a major accident.

7.4. Landscape and Visual Impact

7.4.1. The site slopes gently downwards from southwest to northeast. It is located within a landscaped area categorised as 'Western Lowlands (Area 7)', which are lands that are stated to have 'minimal undulations, however lands are generally visually contained by species rich hedgerows that dominate field boundaries'. Policy LLM1 of the current Westmeath Development Plan requires development to be sensitively designed to minimise its visual impact on the landscape, nature conservation, archaeology and groundwater quality.

7.4.2. The Planning Authority were critical of the applicant's visual assessment and as part of reasons for refusal no.1 they set out that the development would result in unacceptable visual scarring of the rural landscape and would detract from its scenic amenities. The revised visual impact assessment furnished to the planning authority at further information stage was accompanied by nine photomontages. The assessment concludes that the site is located within a low-sensitivity landscape, beyond the boundaries of the most limiting designations. There are no designated scenic views within 5km of the site. The nearest protected structure is 3.5km to the

southwest. The Royal Canal is c.5km to the north and the Hill of Uisneach which is a UNESCO World heritage site is 5.5 km away in a south-easterly direction. Given these separation distances, the proposed development could not reasonably be considered to negatively impact on the landscape or visual character of any of the above.

- 7.4.3. The warehouses would not individually be unlike agricultural buildings in terms of their design, though there would be a collective number of 12 warehouses and a filling hall laid out in a formal arrangement, unlike most farm complexes which would normally comprise a smaller collection of farm buildings in a less formal arrangement. The buildings would be c.11m in height and would be finished in dark green façades and dark grey roofs, which I consider would assist in assimilating them into the receiving environment. The requirement to provide details of materials and specific colour can be strengthened by way of an appropriate planning condition. Landscape berms are proposed to provide screening and it is submitted that, with the berms in place, the warehouses would not be visible by road users along the R392.
- 7.4.4. Overall the scale of the development would be a departure from the existing landscape and would have some localised visual impacts on receptors close to the site but these would be mitigated by the design, finishes and colour associated with the buildings and by landscaping including landscaped berms. The buildings are not tall structures. As such, the siting and design of the proposal is not considered to be so harmful on the landscape or visual character of the area, such that would warrant a refusal of permission.

7.5. Residential Amenity

- 7.5.1. Concerns have been raised by observers and by the Planning Authority during its consideration of the application regarding the potential impact of the development on the houses close to the site, including the neighbouring house located along the L-5244 local road. This house and its curtilage are situated south of and directly adjoining the appeal site to its south east. No change would occur along the existing boundary between the house and the appeal site. A perimeter berm, c. 3.6m high is proposed to be constructed alongside the existing boundary of this house as presented in Drawing No. L101 Rev E Section B (submitted as part of the further

information response). The toe of the berm would be c.13m away from the site boundary and c.41m from the house, while the crown would be c.22m from the boundary and c.50m from the house. It is intended to grade the berm to a slope of 1:3 and to plant it with native trees in the vicinity of the house. It is submitted that based on the mathematical relationship between the residence, the berm and the warehouse, no visibility of the warehouse would result².

- 7.5.2. It is evident that there would be no loss of residential amenity in terms of overlooking or overshadowing having regard to the orientation of the proposed development north of the existing dwelling and to the separation distances which are proposed. While the development would be extensive in scale, the building heights at 11m, sited c.125m from the dwelling, would not be excessive. The screening berm would introduce a feature which would be closer to the curtilage of the closest adjoining dwelling, narrowing to a separation distance of 5.8m at one point. Such a feature would undoubtedly be visually dominant and a local departure when viewed from the dwelling. However, given its location c.41m from the rear building line of the house and the 13m separation distance between the boundary and the toe of the berm for the majority of its location (save where it narrows) and noting the planting proposed and scope for the landscaping to mature over time, the departure would not be so harmful as to warrant a refusal of permission.
- 7.5.3. In relation to noise concerns, I am satisfied that given the nature of the development and with standard construction safeguards in place, unacceptable noise levels would not arise. Noise could be regulated by the attachment of an appropriate planning condition. There are two other residential dwellings located proximate to the site and there are four dwellings on the opposite side of the R392. These are all sited further away and could not reasonably be considered to suffer any unacceptable loss of residential amenity.
- 7.5.4. Having regard to the above and subject to noise restrictions (for the construction stage) to be secured via conditions and noting the implementation of landscaping proposals, unacceptable impacts on residential amenity would not result and permission should not be refused for reasons related to residential amenity.

² It is stated in the appeal by the appellant that access to the private rear garden of the neighbouring property was not available on the day of taking the photographs and the photomontage at this location does not represent the view from the private amenity.

7.6. Ecology

- 7.6.1. The application was accompanied by an Ecological Impact Assessment. It noted that the appeal site was not located in or near any site designated for nature conservation. It identified the nearest regionally designated area as Lough Sewdy pNHA (Site Code 000689), located c.4km to the south-east and Ballymore Fen SAC (Site Code 002313), located c.4km to the south. The Royal Canal pNHA (Site code 2103) is located c.5km to the north.
- 7.6.2. Two areas of wet grassland measuring c. 2 ha in area, interspersed with gorse and blackthorn scrub, are located at the northeast corner of the site. A drainage ditch with some wetland vegetation is also located to the northeast of the site. No protected habitats or species occupy the site and overall the site is stated to be of local value for biodiversity.
- 7.6.3. The construction phase would inevitably result in the loss of local habitats. Construction would also have potential to disturb sensitive fauna on or close to the site, however, no species of conservation concern exist on or lie near the site. It is stated that there are no groundwater dependent ecosystems close to the proposed development. In addition, it is stated that interception of the water table is unlikely due to the low-water table encountered on site. During the earthworks phase, there is potential for sediments and/or pollutant entering watercourses, but this can be prevented by best practice construction methods and the implementation of a construction environment management plan (CEMP). The River Inny system is 8km distant to the north. Subject to best practice incorporated in the design, the river system would therefore not suffer ecological harm as a result of the construction or operational phases.
- 7.6.4. During the operational phase, the most significant risk that would arise is the breakout of a fire which could result in contaminants entering drains impacting water quality downstream. However, control measures are proposed including a firewater pond and sprinkler system. Surface water retention ponds are proposed to incorporate attenuation and settlement for sediment. Planting of the attenuation ponds with native wetland flora and planting of the berm with native trees would introduce semi-natural habits, thereby representing a positive contribution to local biodiversity. Safeguards are proposed to ensure removal of vegetation is carried

outside of the nesting period or where this is not possible, only after surveys are complete and it is established that impacts to fauna would not be significant.

- 7.6.5. Concerns have been raised in the course of the application and appeal regarding the potential impacts that might arise on Tonlemony Wood, which is located c.340m south of the appeal site. Based on the ecological assessment submitted, Tonlemony Wood is classified as a birch-purple moor-grass woodland, bramble-broad buckler fern type (4a) (based on categorisation in Perrin et al, 2008). It is not afforded any European or national designations and is not listed as a site of country conservation interest within the Westmeath Biodiversity Action Plan (2014-2020). Rathskeagh Fen / Kilarecastle, a fen site listed in this Plan is located c.4.8 km to the south. Given the separation distance and standard protective measures proposed during construction and operation which align with best practice, no impacts on Tonlemony Wood or Rathskeagh Fen / Kilarecastle could reasonably arise.
- 7.6.6. I am satisfied that with the safeguards proposed, which can be secured by planning condition, including the updating and implementation of a CEMP and the requirement for landscape and biodiversity details, no unacceptable residual impacts on the ecological environment would arise, such that would warrant refusal of permission.

7.7. **Archaeology**

- 7.7.1. The planning application documentation included an archaeological impact assessment which was stated to be based on a desktop study, a visual site inspection and consultation with a representative of the Department of Heritage, Culture and the Gaeltacht. There are no known archaeological monuments within the appeal site. The nearest sites listed in the Record of Monuments and Places (RMPs) and the Sites and Monuments Records (SMR) database are three ringforts, Ref. WM017-062, c.300m southeast, Ref. WM017-063 c.430m southeast and WM017-033, c.600m northeast. There are 33 SMR sites within the two kilometre radius which was taken to encompass the study area around the appeal site. The majority of these include ringforts and earthworks.
- 7.7.2. The proposed development would require stripping of topsoil and alteration to levels which has the potential to impact on any previously unrecorded development. It is

recommended in the archaeological assessment submitted as part of the application that archaeological investigations such as archaeological testing would be appropriate.

- 7.7.3. The final planning officers report (5th February 2018) referred to a report received by the Planning Authority from the DCHG³ in which it is inferred that the DCHG indicated a requirement for archaeological monitoring. There is no correspondence on file indicating that the planning application was referred to the DCHG by the Planning Authority and there is no response from the DCHG on the planning application file. The Board requested the report or clarification if any such report existed, however, at the time of writing my report, no report or clarification was received by the Board. It remains open to the Board to refer the file to the DCHG at this juncture. Alternatively, should the Board be minded to grant permission, noting the contents and conclusion of the applicant's archaeological assessment submitted with the application, a condition requiring the developer to facilitate the preservation, recording and protection of archaeological materials or features that may exist on site should be attached. With the attachment of a condition of this nature, I am satisfied that permission should not be refused for reasons of archaeological impacts.

7.8. **Water and Drainage**

7.8.1. Water Demand and Supply

- 7.8.2. It is stated that a maximum water demand of c. 90 cubic metres would be required per day and that this would be sourced from the public watermain and would be purified using a reverse osmosis (RO) water treatment system. The purified water would be used for reduction of whiskey strength prior to maturation. Other water requirements would be generated from staff use and it is stated that a domestic level water supply would suffice for this element which would be sourced from either the mains supply or from a deep bore private well.
- 7.8.3. Firefighting water supply of c.800 cubic metres to 1,000 cubic metres would be required and while this is significant, it would be designed so that it is contained and

³ The DCHG is referred to as DoAHG in the Planners report. Both relate to the same Government Department (Department of Culture, Heritage and the Gaeltacht).

is totally independent of the surface water system. It includes a pond which would be lined with a 2mm high-density polyethylene (HDPE). The pond is designed to hold the contents of a warehouse together with the sprinkler system and has an allowance built in for rainfall. Collectively it is designed to hold 4,580 cubic metres in volumetric terms.

7.8.4. The planning application does not appear to have been referred to Irish Water and given that a substantial volume of water would be required at a rural location, the Board may wish to consult with Irish Water at this juncture. In any case, it is of relevance to note that the provision of an adequate water supply from the public main is a matter required to be resolved between the applicant and Irish Water through the authority's connection process. In this regard, I do not recommend that permission be refused based on inadequate details on capacity of water supply.

7.8.5. Water Purification

7.8.6. As stated above, up to c. 90 cubic metres of water demand per day would be sourced from the public mains and passed through a water purification system prior to use for dilution of whiskey in advance of storage for maturation.

7.8.7. During the water purification process, c.15 cubic metres per day (at peak) of the incoming water is stated would likely be 'rejected' by the membranes in the purification process and that this 'rejected' water would not contain any organic contaminants and can be discharged to surface water. In addition, it is submitted that a water softener would be utilised and that some backwash water would contain elevated chlorine levels, however, it would be suitable for discharge to the surface water system.

7.8.8. While details of quality parameters for 'rejected' or 'backwash' waters are not outlined, I note that water purification proposed is standard technology where very pure water is produced from the initial potable water intake using reverse osmosis membranes. The discharge water from an RO system is stated by the appellant to be only slightly less pure than the potable source water entering the filter and with a higher level of minerals than normal potable water. The disposal of the rejected and backwash waters from the water treatment plant may require an effluent discharge licence from Westmeath County Council under the Local Government (Water Pollution) Act, 1977 & 1990 and the Water Services Act 2007 to 2013 if it is

considered by the Local Authority to constitute a trade effluent rather than surface water. In the context of such a discharge licence application, details of any pollution control measures are required and normally the applicant would be required to provide details of the assimilative capacity of the waterbody to ensure that water quality objectives would not be compromised.

7.8.9. No objections were raised from the Environmental Section, the HSE (Environmental Health office) or the District Engineer, and overall, I am satisfied that the development should not be refused because of proposals for water purification, including the discharge of rejected water and backwash to surface water.

7.8.10. Surface Water

7.8.11. The surface water generated on site would pass through an attenuation pond to ensure flows are restricted to 'green-field' levels after which it would discharge onwards to the drainage system linked with the River Inny north of the R392 via a new outfall and culvert.

7.8.12. The outfall is proposed to be protected by a shut-off valve which would be closed in the event of any contamination arising. A petrol interceptor is proposed to be installed on the inlet to the attenuation pond. The attenuation pond would be unlined and would be planted and used for aquatic life and birds.

7.8.13. Having regard to the information on file, I am satisfied that the surface water proposals including collection, attenuation and disposal have been adequately considered and the design is acceptable.

7.8.14. Wastewater

7.8.15. The effluent which would be generated from the office and facilities building would be treated using an on-site wastewater treatment system. A population equivalent (p.e.) of 8 is used in the design based on staff of 12 and an additional 4 visitors on site. Effluent volume and organic load generated would be low with a hydraulic load of 960 l/day and a BOD5 of 480g/day. I am satisfied by reference to Table 3 (Recommended Wastewater Loading Rates for Commercial Premises) in the EPA Wastewater Treatment Manual (Treatment Systems for Small Communities, Business, Leisure Centres and Hotels) that the p.e. selected as based on the BOD loading is representative. The site suitability report and details submitted with the

application revealed that no water was encountered in the Trial hole and a T-value of 12.72 min/25mm was obtained from the percolation testing.

7.8.16. The on-site treatment system proposed would comprise a tank to provide primary treatment, followed by a precast concrete reactor tank providing secondary treatment and a 100 sq.m soil polishing filter which would provide tertiary treatment prior to final disposal of treated effluent to ground. The packaged system is designed for a population equivalent (p.e.) of 20 persons which is greater than the 8 p.e. stated as being required.

7.8.17. I am satisfied based on the information on file and having regard to the requirements set out in the EPA Code of Practice: Wastewater Treatment and Disposal Systems serving single houses (p.e. ≤ 10) as published by the Environmental Protection Agency in 2009 (and updated), which is the appropriate guidance document for the system design, that the site is suitable for the on-site treatment of effluent likely to be generated and the safe disposal of treated effluent to ground in accordance with the design presented.

7.8.18. Washwaters

7.8.19. Washwaters would be generated from infrequent maintenance of the buildings on site and from cleaning of spirit vats. No details have been presented including projected volumes required or quality parameters or how the washwaters would be treated or disposed of. While the quantity of water required can be resolved directly with Irish Water, the disposal of washwaters remains unresolved. I am satisfied that nonetheless, the washwaters generated would likely be low and can be treated if so required prior to disposal to surface water and I recommend that a condition would attach requiring furnishing of such details to the planning authority.

7.8.20. Concluding remarks (water and drainage)

7.8.21. Subject to the considerations above, I recommend that permission should not be refused for reasons of water supply and drainage.

7.9. Other Matters

7.9.1. Access and Traffic

- 7.9.2. The site entrance is proposed to be located off the L-5344, which connects with the R392 regional road at a point c.100m to the north. Only emergency access is proposed along the R392.
- 7.9.3. Concerns have been raised by observers regarding the capacity of the local road network to accommodate the development. The documentation on file sets out that the facility is designed to cater for four bulk tankers and four trucks per day for the first three years for delivery of casks. Traffic associated with the delivery of casks would reduce thereafter as casks already on site would be re-filled with new spirit. Employment intensity during operation would be low. It is not considered that there would be a significant increase in traffic as the warehouses are for long term storage of whiskey produced at distilleries elsewhere, and as such the impact on the surrounding road network or traffic levels is considered to be minimal.
- 7.9.4. It is evident that the regional road network is designed and can cater for the traffic type (including HGVs) which would be generated. In addition, the traffic would pass through a 100m stretch of local road where there is adequate capacity, low traffic volumes presently and where sightlines of 90m in each direction are achievable. No houses are located along this 100m stretch of local road. However, there is one house sited c.70m further south of the proposed access, along this local road but given the short stretch of local road between the junction and the site access point, and subject to good traffic management during construction, this would not generate an unacceptable inconvenience as a result of traffic movements.
- 7.9.5. Overall, I am satisfied that the proposed development would not result in an unacceptable level of disturbance or adverse impact on the amenities of existing dwellings or to road users in the vicinity of the development as a result of traffic movements. The construction phase would generate the largest volumes of traffic to and from the site, but this would be short term in nature and it is proposed to manage construction traffic through best practice and the adherence to a construction traffic management plan, which I consider is acceptable. The District Engineer raised no objection to the development subject to conditions. In conclusion

on this matter, I hold the view that permission should not be refused for reasons of access and traffic.

7.9.6. Earthworks

7.9.7. The site falls gradually in a southwest to northeast direction with a contour line of 85m located at the existing and proposed access along the L-5344 local road to the west of the site, sloping downwards to 78m along the northeast of the site at the location where the R392 regional meets the L-5244.

7.9.8. The western boundary which marks the main part of the site (excluding the access road) has a contour line of 82.5m. The amount of cut and fill required is stated to be limited and earthworks would be aimed at levelling local undulations. It is submitted that there would be no requirement to import large volumes of quarried material for filling and that excavated soils on site would be reused to create perimeter berms. No material is stated would be stockpiled as instead it would be compacted in place.

7.9.9. I am satisfied based on a walkover of the site and a review of the drawings and documents submitted, that the construction phase of the development would not require significant earthworks or significant importation of quarry materials and I note the intention for the reuse of excavated soil for the formation of the earthen screening berms. I am satisfied that the development should not be refused for reasons of earthworks.

7.9.10. Micro-flora growth

7.9.11. Ethanol vapor has been reported to give rise to the growth of a black ascomycete fungus, *Baudoinia compniacensis*, also known as 'Whiskey Black fungus' and it is reported to have been observed on buildings and other artificial surfaces near whiskey distilleries and warehouses, as well as forming a coating layer on tree bark, branches and leaves. The subject of *Baudoinia compniacensis* (Whisky Black fungus) has not been highlighted by the Environmental Section or statutory agencies as a concern with the proposed development. I am satisfied that scientific evidence to date suggests that such effects are localised and that it does not cause anything other than cosmetic effects. The appellant has stated that they would not object to the attachment of a condition requiring the annual monitoring of the impact of micro-flora growth in an area immediately adjacent to the development site.

7.9.12. Subject to the attachment of a suitably worded condition in any grant of permission, the potential for the effects of ethanol vapour causing micro-flora resultant adverse impacts should therefore not form a reason for refusal of permission.

7.9.13. Property Devaluation

7.9.14. Having regard to the lack of a significant environmental impacts including impacts on the residential or visual amenities of property in the vicinity, as discussed above, there is no evidence to support the observers' contentions that the proposals would negatively affect property values in the area.

7.9.15. Decommissioning and Restoration

7.9.16. Should the Board be minded to grant permission in this instance, and given the location of the development on rural lands, I consider that it would be appropriate to require decommissioning and restoration proposals to be secured by way of a planning condition.

7.9.17. Community Gain

Milltown GAA's submission made to the Planning Authority seeks that the developer contributes to improving facilities for the community's benefit. While this request is acknowledged, there is no planning policy basis requiring an applicant to provide community gain and its absence is not a material consideration in the assessment of the application and appeal.

7.9.18. Material Contravention

7.9.19. The Planning Authority's first reason for refusal included concerns that the proposed development would materially contravene policies P-CS2, P-RE10 and P-LLM1 and that it would be an ad-hoc, unintegrated and unsustainable form of development, which would be contrary to the proper planning and sustainable development.

7.9.20. Having assessed the relevant planning and environmental merits of the application as set out above, and subject to appropriate planning conditions, I do not share the Planning Authority's opinion that the development would lie contrary to the three stated policies.

7.9.21. Notwithstanding my consideration of these policies referenced above, noting the provisions of Section 37(2) of the Planning and Development Act 2000, as amended, the matter of refusal on grounds of material contravention also needs consideration

in the legislative context. Section 37(2) requires that if the Planning Authority have decided to refuse permission on the grounds that a proposed development materially contravenes the Development Plan, the Board may only grant permission in certain circumstances.

7.9.22. However, the policies referenced are general policies rather than policies which are specific to the appeal site. Accordingly, I am satisfied that the development would not materially contravene the terms of the Development Plan for the area and Section 37(2) of the Act requires no further consideration.

7.10. Requirement for Environmental Impact Assessment (EIA)

7.10.1. The applicant considered that the application was not required to be accompanied by an EIA report. Points were made in the third-party submissions to the Planning Authority and in observations received by the Board at appeal stage, that the development was of a type for which EIA is required. My consideration on this matter follows.

7.10.2. Whiskey maturation warehouses are not listed as a development type in Part 1 of Schedule 5 of the Planning and Development Regulations 2001-2018 and accordingly a mandatory environmental impact assessment (EIA) is not required.

7.10.3. In consideration of the development listed under Part 2 of Schedule 5 of the Planning and Development Regulations, 2001-2018 including 7(d) of Part 2 of Schedule 5 (Installations for commercial brewing and distilling; installations for malting, where the production capacity would exceed 100,000 tonnes per annum), the project type, while ancillary to a distilling project, would not fall within an installation for commercial brewing and distilling or an installation for malting. Essentially, the current proposal would involve dilution of whiskey prior to maturation, the maturation stage and cask filling, all which occur post the distilling process. Accordingly, the proposal does not fall within this project category.

7.10.4. Part 10 of Schedule 5 outlines types of development with specified thresholds. While the closest category would be 10(b)(iv) – Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere, I am satisfied that given the rural location, the proposal cannot be reasonably considered an urban

development and consequently the development is not of a type which would fit within this category.

7.10.5. In also considering category 10(a) 'Industrial estate development projects, where the area would exceed 15 hectares', I am satisfied that the development of 12 warehouses in the rural area does not relate to an industrial estate and therefore is not a development type which would fit within this category.

7.10.6. I am also satisfied that the development would not come within any other category within Part 2 of Schedule 5 of the Regulations.

7.10.7. I conclude that the proposed development is not a prescribed class of development for the purpose of section 176 of the Planning and Development Act 2000, as amended, and the requirement for EIA and the preparation of an EIA report does not arise.

7.11. Appropriate Assessment

7.11.1. There are nine designated sites are located within a 15km radius of the appeal site. These are listed under Section 5.3 above.

7.11.2. An Appropriate Assessment Screening Report accompanied the planning application and an updated version was submitted at further information stage. The zone of influence of the development is identified as the site, its surrounding area and any downstream watercourses.

7.11.3. Ballymore Fen SAC (Site Code 002313) which is the closest European site is located c. 4km to the south of the appeal site. Its qualifying interests are 'transition mires and quaking bogs [7140]'. The general conservation objectives associated with Ballymore Fen SAC (Site Code 002313) comprise 'To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected'.

7.11.4. Due to the separation distance and that there are no ecological pathways or links between the remaining eight designated sites and the appeal site, the nature of the proposed development, the proposed development would not reasonably result in any loss of habitat or species that contributes to these European designated sites as a result of the proposed works.

- 7.11.5. In relation to potential impacts that could arise from the proposed development on Ballymore Fen SAC, this could include loss or degradation of habitats, disturbance to fauna and degradation of water quality, primarily during construction phase, but also to a lesser extent during operation. Ethanol deposition from whiskey casks, also known as the 'Angel's share', could also contribute to loss of habitats and species during operation phase. In the event of a fire outbreak, impacts on habitats and species could also be magnified.
- 7.11.6. There are no fauna in the Ballymore Fen that would make significant use of the appeal site and no long-term effects to habitat loss is likely to arise. The Ecological impact assessment on file recommends that scrub would be cleared during September to February, inclusive, to avoid the bird nesting period and that if scrub is to be cleared during the nesting period, a survey for nesting birds would be carried out in advance. This would therefore form an intrinsic part of the proposed development which would provide a safeguard to ensure that any disturbance to fauna would not be significant.
- 7.11.7. As the SAC is located within a different groundwater catchment (Inny 8) than the appeal site, indirect effects caused by impacts to groundwater sources are also not likely.
- 7.11.8. The European site feeds tributaries of the Rath and Dulgoman Rivers and is located in a different surface water catchment than the appeal site and its development. Accordingly, no significant effects to the Ballymore Fen SAC are therefore likely as a result of changes to surface water quality impacts.
- 7.11.9. The proposed development would provide for all firewater to be retained on site to prevent spillages off-site. It is submitted by the applicant that in the event of a fire, sprinkled water would be discharged to a sealed impermeable firewater attenuation pond and that the pond would provide storage until such time as the liquid could be pumped into a tanker for removal for appropriate disposal.
- 7.11.10. Given the separation distance between the appeal site and the SAC, significant effects would not likely occur as a result of ethanol evaporation or deposition of black ascomycete fungus, *Baudoinia compniacensis* based on scientific information that these effects, where they occur, would be localised.

- 7.11.11. No other plans or projects, existing or extant permissions or policies, programmes or proposals are proposed such as would result in significant in-combination effects when taken in conjunction with the current proposal, in view of the conservation objectives of the Ballymore Fen SAC. This is particularly so as I have concluded that there would be no potential impacts on this SAC as a result of the proposed development.
- 7.11.12. It is 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, Ballymore Fen SAC (Site Code No. 002313), or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required.

8.0 Recommendation

- 8.1. Further to the above assessment, it is recommended that permission is granted subject to the following conditions and for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. The type of development proposed is supported by the over-arching national policy as set out in National Policy Objective 23 of the National Planning Framework 2040 which seeks to facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector. Having regard to the nature and scale and the unique characteristics of the proposed development, the Board recognise that it is different to standard warehousing and that directing this type of development into zoned lands would result in an inefficient use of serviced zoned lands and could prejudice the delivery of employment/enterprise provisions of the Westmeath County Development Plan 2014-2020 and would therefore be unsustainable. The Board also noted that the development type can be accommodated in a rural location by reference to Policy P-RE9 which recognises that enterprise and employment uses can be considered on their merits in rural

locations where certain criteria are met. In this regard, the Board is satisfied that the criteria listed would be met and that the proposed development would contribute significantly to the rural economy of Westmeath County and the region and would support whiskey producers nationally. The Board is also satisfied that it is appropriate to locate whiskey maturation facilities on lands away from built up areas given that the development is a type to which Directive 2012/18 EU (“Seveso III”) applies. Noting the advice provided by the Health & Safety Authority to the Planning Authority, it is considered that the proposed development would be acceptable in terms of the management of risks to both human health and to the environment as a result of a major accident.

- 9.2. It is further considered that the development would not give rise to an unacceptable impact on the landscape or the visual character of the area, would not seriously injure the residential amenities of the area or property in the vicinity, would not give rise to an unacceptable traffic hazard and would not result in any unacceptable loss of or impact on ecological habitats or species, lead to pollution of the receiving waters or be harmful to the preservation of archaeology in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted the 21st day of September 2017 and the 10th day of January 2018, and by the further plans and particulars received by An Bord Pleanála on the 5th day of March 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be 10 years from the date of this order.

Reason: Having regard to the nature of the proposed development, the Board considered it reasonable and appropriate to specify a period of the permission in excess of five years.

3. The land and buildings to which this permission relates shall be utilised for purposes of dilution of spirit prior to maturation, maturation of spirit to whiskey and provision of cask filling services only, unless a further grant of permission has been applied for and granted.

Reason: To define the use permitted by this permission.

4. Detailed specification for all proposed external materials and finishes (including trade names) to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. External cladding shall be dark green in colour.

Reason: In the interest of visual amenity.

5. No development shall commence until a landscaping and biodiversity scheme has been submitted to and approved in writing by the planning authority to suitably screen the proposed development over the life of the facility. The scheme shall comprise a planting plan and schedule which shall include details of:
 - (i) Existing and proposed ground levels in relation to an identified fixed datum;
 - (ii) Existing area of tree cover, landscaping features and vegetation to be retained;
 - (iii) Location design and materials of proposed boundary treatment, fences and gates;
 - (iv) Proposed soft and hard landscaping works including the location, species and size of every tree/shrub to be planted;
 - (v) Details of the location of the perimeter berm and landscaping to include native species proximate to the closest house;

(vi) Biodiversity enhancement proposals;

(vii) A programme for the timing, method of implementation, completion and subsequent on-going maintenance;

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the planning authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise approved in writing by the planning authority.

Reason: In the interests of visual amenity and to integrate the development into its surroundings.

6. Removal of vegetation shall not occur during the bird-nesting season (1st March to 31st August). If this seasonal restriction cannot be accommodated, a suitably qualified ecologist with experience in nest-finding will be required to check all vegetation for nests (under licence from NPWS to permit potential disturbance to nesting birds) prior to removal or trimming.

Reason: In the interest of protecting bird species.

7. The proposed vehicular access arrangement to the site and proposed roadside boundary treatment at the access shall in accordance with the requirements of the Planning Authority.

Reason: In the interest of traffic safety and preservation of biodiversity.

8. (a) Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works. If a borehole is to be utilised, it shall serve as a drinking water supply only and the borehole shall be constructed in compliance with the EPA Drinking Water Advice Note No. 14: Borehole Construction and Wellhead Protection.

(b) Prior to commencement of development, the following details shall be submitted to, and agreed in writing with, the planning authority:

- (i) Projected volumes and quality parameters of rejected water and backwash water which would arise from the water purification process and details for the treatment or disposal of same
- (ii) Projected volumes and quality parameters of all washwaters used for cleaning of storage vats, buildings and any other facilities within the site and proposals for treatment or disposal of same

Reason: To ensure adequate servicing of the development, and to prevent pollution.

9. The on-site wastewater treatment plant and soil polishing filter shall be installed, operated and maintained in accordance with the Code of Practice: Wastewater Treatment and Disposal Systems serving single houses (p.e. ≤ 10) as published by the Environmental Protection Agency in 2009 and as updated since.

Reason: In the interest of public health and protection of the environment.

10. The construction of the development shall be managed in accordance with the Construction Environment Management Plan received by the planning authority on the 21st day of September 2017. This plan shall be updated as necessary to ensure compliance with statutory obligations and best construction practice.

Reason: In the interests of protection of the environment and to safeguard residential amenities.

11. Waste arising on site during the construction of the construction phase of the development shall be recycled, recovered and disposed of in accordance with the Construction and Demolition Waste Management Plan received by the planning authority on the 21st day of September 2017.

Reason: To ensure appropriate recycling, recovery and disposal of waste material which is generated on site.

12. Hours of construction and operation of the proposed facility shall be

between 0800 and 1900 Monday to Friday, 0800 and 1400 on a Saturday and not at all on Sundays or bank or public holidays.

Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

13. The noise level during construction shall not exceed 55 dBA (30 minute Leq) at any point along the boundary of the site between 0800 and 2000 hours, Monday to Friday, 0800 and 1400 on a Saturday and shall not exceed 45 dBA (15 minute Leq) at any other time.

Reason: To protect the amenities of property in the vicinity of the site.

14. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

15. Prior to commencement of development, proposals for the measurement and monitoring of any micro flora growth which arises at the site boundary of the overall landholding (outlined in a blue line boundary on the submitted landholding map) with neighbouring properties and suitable mitigation measures proposed to address same shall be submitted to, and agreed in writing with, the planning authority. Thereafter the proposals shall be

implemented on an annual basis and a record of findings and details of implementation of mitigation measures shall be forwarded to the planning authority.

Reason: To protect the amenities of property in the vicinity of the site.

16. Prior to commencement of development, a detailed closure decommissioning and site restoration plan, including a timescale for its implementation should the development cease to operate on a permanent basis, shall be submitted to, and agreed in writing with, the planning authority. The site shall be restored and structures removed in accordance with the said plan within three months of decommissioning/cessation, to the written satisfaction of the planning authority.

Reason: To ensure the satisfactory reinstatement of the site on cessation of the proposed development.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads that may be damaged by construction transport coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the reinstatement of public roads that may be damaged by construction transport.

18. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid

prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Patricia Calleary

Patricia Calleary
Senior Planning Inspector

21st August 2018