



An
Bord
Pleanála

Inspectorate Report ABP-304994-19

Development	Proposed demolition of the Maturation Building-former Smithwicks Brewery site (Abbey Quarter)
Location	Former Smithwicks Brewery site (Abbey Quarter), townland of Gardens, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	19026.P8.R1
Submissions/Observers	Christopher O’Keeffe Enya Kennedy
Type of Application	Appropriate Assessment Direction (under article 250(3) of Planning and Development Regulations 2001-2018)
Date of Site Inspection	11.09.2019
Inspectorate Ecologist	Dr Maeve Flynn

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1.0 Introduction

- 1.1. Two separate requests under Article 250(3)(A) of the Planning and Development Regulations 2001 (as amended) have been made by Mr Christopher O’Keeffe and Ms Enya Kennedy. It is noted that both third parties also requested a screening determination on the need for Environmental Impact Assessment (EIA) under Article 120 (3). However, both requests related to screening for the need for EIA were deemed invalid (ABP 304989-19). This report is therefore limited to the consideration of potential significant impacts on European sites arising from this project and the preparation of a Natura Impact Statement (NIS) by Kilkenny County Council should the need for Appropriate Assessment (AA) be identified.

2.0 Site Location and Description

- 2.1. The Maturation Building which is the subject of this direction is located in the south eastern section of what was the Smithwicks Brewery site, now known as the Abbey Quarter in the Townland of Garden, Kilkenny City. The building is located to the south of St Francis Abbey (National Monument). Permission was previously granted for the demolition/removal of extensive plant and structures at this site including the removal of 22 no. maturation vessels whilst retaining the single-story structure that supported them (Planning ref:13/45).
- 2.2. The Maturation Building is a single storey in-situ concrete structure consisting of concrete walls with a brick façade, columns, roof slab and glazed curtain walling. The Maturation Building is located circa 65m from the site boundary which runs along the riparian zone of the River Nore. The intervening area is paved in concrete with discrete areas of hardstand being used to store rubble and crushed concrete. Besides some ruderal/ colonising plants such as *Buddleia (Buddleja davidii)* there is no natural vegetation on the site.
- 2.3. The demolition of this building forms part of the overall Masterplan for the redevelopment of the area. Much of the Abbey Quarter site has been substantially cleared and the site is an active construction site with works ongoing. There have been a number of similar NIS Direction requests in relation to the Abbey Quarter. These are summarised in Section 5 of this report.

3.0 Proposed Development

3.1. The proposed development consists of the demolition of a single-storey concrete framed building (approx., 1000m³) which was previously used to support the maturation vessels used in the brewing process when this was an active brewery. The maturation vessels were removed from the building by Diageo Ireland under a previous planning permission (Reg P13/45). The works will involve the demolition of the building to the level of the adjoining concrete slab. The demolition will involve the following:

- Strip out and removal of non-structural elements
- Removal of materials offsite using small to medium sized trucks
- Demolition of structures using standard large plant and equipment. Roof slab to be demolished by cutting or breaking, and concrete walls will be mechanically crushed.

3.2. The area will be temporarily reinstated as a hard-standing area pending the future development of the buildings and urban street as per the provisions of the Abbey Quarter Master plan.

4.0 Requesters Submission

4.1. The issues raised in the submission by Mr. O’Keeffe can be summarised as follows:

- The development/demolition could have an effect on the River Nore which is adjacent to the site and part of the River Barrow, River Nore Special Area of Conservation (SAC).
- Development on the masterplan site has already lead to damage to the River Nore SAC.
- Instream works associated with the Kilkenny Central Access scheme (CAS) have resulted in adverse effects on macroinvertebrate habitat at this

location and siltation of the substrate (Report prepared by ECOFACT, October 2014).

- In-combination effects associated with the construction of the CAS bridge (St. Francis Bridge) including siltation and deposition of aggregate not taken into account in the Screening Report for Appropriate Assessment (Moore Group).

Note that submissions regarding EIA screening, access to scientific environmental information, the tender process, planning retention and the proposed urban street or spur road (from CAS) have also been made, however these issues are not relevant to the NIS Direction and are not considered further in this report.

4.2. The issues raised in the submission by Ms Kennedy can be summarised as follows:

- The need for (screening) for Appropriate Assessment
- In-combination effects with the Central Access Scheme/ Old Mart Road Scheme

Note that submissions regarding EIA screening, the proposed urban street or spur road (from CAS), retention of the building and traffic management have also been made, however these issues are not relevant to the NIS Direction and are not considered further in this report.

5.0 Planning Authority Response

5.1. The response of the Planning authority can be summarised as follows:

- Noted that many of the issues raised by Mr O'Keeffe and Ms Kennedy do not relate to the reasons why either consider that the proposed demolition of the Maturation Building requires the preparation of a Natura Impact

Report. (However, Kilkenny County Council provided a comprehensive response to all issues raised to assist the Board in making their decision).

- Screening for Appropriate Assessment was undertaken by Kilkenny County Council, informed by a Screening Report prepared by the Moore Group-Environmental Services (25th June 2019).
- Screening for Appropriate Assessment concluded: *Having regard to the nature and scale of the proposed demolition works and the fact that any surface water will be directed to the foul sewer network via existing connectivity to same, effects on the European Sites considered are unlikely and significant effects can be ruled out.*
- Appropriate Assessment Screening report and the Environmental Impact Assessment Screening Statement have been made available as part of the public consultation process for the proposed development.
- Clarification of the context of the proposed development comprising the demolition of the Maturation Building and the wider Abbey Quarter Masterplan.
- Each of the individual projects associated with the implementation of the Masterplan have been screened for Appropriate Assessment which includes consideration of the possible in-combination effects with other plans and projects.
- Not accepted that the River Nore has been adversely affected by the instream works associated with the construction of St Francis Bridge (part of the project formally referred to as the Central Access Scheme-CAS/ part of the Old Mart Street Road Scheme). Ecological and water quality assessments of the river before and after having found no such affect. (Note, no report referenced to substantiate monitoring).
- Aggregate deposited in the area of St Francis Bridge for the purpose of facilitating the construction of the bridge were removed upon completion of the bridge (Note: timeline not specified in relation to when this occurred).

The following documents were supplied by Kilkenny County Council for the purpose of this NIS Direction:

- Explanatory document (part 8 display document, Abbey Quarter Maturation Building demolition, June 2019)
- Drawings
- Appropriate Assessment Screening Report (Moore Group)
- Appropriate Assessment Determination
- EIA Screening Determination
- Archaeological Impact Assessment (AMS)
- Buildings Assessment (Courtney Deery Heritage consultancy)

6.0 Planning History

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

Planning Applications

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

ABP EIA / AA Determinations

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

ABP 10.JD0024 – referral by Peter Sweetman and Associates regarding the necessity to prepare an EIS in respect of the proposed redevelopment of the

Mayfair Ballroom located on former Diageo Ireland lands at Irishtown Kilkenny. The Board determined that the preparation of an EIS was not required.

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

ABP300610-18, referral by Christopher O’Keeffe regarding the necessity to prepare an Appropriate Assessment in respect of the proposed development of the Brewhouse Buildings located on the former Diageo Ireland lands at Gardens Kilkenny. The Board determined that appropriate assessment was not required.

Kilkenny County Council Part VIII Applications

Part VIII procedure for the demolition of the Maturation Building (ongoing).

Revised Part VIII procedure for the redevelopment of the Brewhouse Building was approved by the Council in December, 2017.

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

Part VIII procedure for the redevelopment of the former Mayfair Ballroom building granted by the council in 2015.

Part VIII procedure for the development of the River Garden project. This project was approved by the Council in February 2016 and to date no works for its implementation have been commenced.

7.0 Policy and Context

7.1. Development Plan

The site is located within the area covered by the Kilkenny City and Environs Development Plan, 2014-2020. The site and adjacent lands on the former St

Francis Abbey Brewery site are zoned 'General Business' under the provisions of the Kilkenny City and Environs Development Plan, 2014-2020. The proposed uses on the site, educational and office are permitted under the General Business land use zoning objective. The site and the adjoining lands are also located within the City Centre Architectural Conservation Area.

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

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

The Plan has also been the subject of Variation No.5 which expanded on objectives 3H and 3L in terms of ensuring compliance with the Habitats and Birds Directives and the provisions of the Abbey Creative Quarter Masterplan. This Variation also provides for the following objectives:

- 3O To provide for housing within the Masterplan in the area north of the Central Access Scheme as identified on fig 3.4

- 3P To provide for an urban street of pedestrian and cyclist priority between the Central Access Scheme and Bateman Quay crossing the River Breaghagh at the existing bridge crossing. To provide for traffic management measures on the street such as to inhibit the flow of through traffic and heavy goods vehicles.

7.2. Urban Design Framework Masterplan for the Abbey Creative Quarter

The Plan, which has a total stated area of 8.25 ha. provides for a number of individual projects of which the current proposed demolition is just one part. The Plan also identifies a riverside walkway / landscaped area along the eastern boundary of the site adjoining the River Nore and connecting with existing riverside access to the south of the Masterplan lands. The Masterplan indicates a number of blocks for the east and south of the site stated to be primarily 3 and 4 storeys in height. Residential development is envisaged to the north of the site, north of the Central Access scheme (between CAS and Green Bridge). Access to the Masterplan lands is indicated as being available via a connection from St Francis Bridge which would run north south through the site.

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

7.3. Natural Heritage Designations

The Maturation Building within the Abbey Quarter site is not located within the boundary of any European Site. The site is adjacent to the River Nore which is part of the River Barrow River Nore Special Conservation Area (SAC) and the River Nore Special Protection Area (SPA). The qualifying interest features and conservation objectives of these sites are presented in Table 1, Section 8.3 of this report.

7.4. EIA Screening

In accordance with the requirements of Article 120(1)(a) of the Planning and Development Regulations 2001(as amended) the Planning Authority, Kilkenny County Council, examined the nature, size and location of the development and concluded that there is no real likelihood of significant effects on the environment arising from the development in question and that an EIA is not required.

8.0 Screening for Appropriate Assessment

8.1. Introduction

The following are considered in this screening for Appropriate Assessment:

- Report for the purpose of Appropriate Assessment Screening (Moore Group- Environmental Services, 25th June 2019)
- Appropriate Assessment Screening Determination (Kilkenny County Council, 25th June 2019)
- Submission made by Christopher O’Keeffe (26th July 2019)
- Site visit 11th September 2019

This screening exercise and determination has been prepared in accordance with the following guidance:

- Appropriate Assessment of Plans and Projects in Ireland- Guidance for Planning Authorities. (Department of Environment, Heritage and Local Government, 2010 rev.)
- Assessment of Plans and Project Significantly Affecting Natura 2000 sites: Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. (European Commission, 2001)
- Managing Natura 2000 sites: The Provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EEC (European Commission, 2018).

Taking the above into account, I am satisfied that there is adequate information to allow for a complete, precise and definitive determination as to whether AA is required for the proposed demolition of the maturation building.

8.2. **Key elements of the project**

The proposed works comprise the demolition of an approx. 1000sq.m. single story concrete shell building on the Abbey Quarter site, Kilkenny. This large site is currently an active construction site with demolition works of other buildings ongoing. The demolition of the Maturation Building will be carried out by a professional demolition contractor in accordance with a management plan and will comprise the following:

- Strip out and removal of non-structural elements using small plant.
- Removal of materials off site using small to medium sized trucks.
- Demolition of structures using larger plant, cutting/breaking of the roof slab, mechanical crushing of concrete supports.
- The area will be temporarily reinstated as a hardstanding area.

The following is of note:

- Small amounts of water will be used for dust suppression. The amounts used will not be sufficient to create surface water runoff.
- No excavations or soil stripping are required as part of the demolition.
- Any rain water during the works would be conveyed to the foul sewer system.
- The active works area will be approximately 60m from the SAC and SPA boundary.
- There is no connectivity between site drainage and the River Nore.
- The levelling of the building is to the existing concrete slab that covers much of the site.

8.3. Identification of European Sites

The River Nore, which is part of the River Barrow and River Nore SAC (site code 002132) and the River Nore SPA (site code 004233), runs along the boundary of the Abbey Quarter site. Considering the size, scale and location of the proposed development, and lack of meaningful ecological connections to a wider catchment, it is reasonable to confine the examination of potential impacts to the River Barrow and River Nore SAC and the River Nore SPA. The qualifying interests of the European Sites and their conservation objectives are provided in Table 1.

Table 1. European sites within a potential zone of influence of the project

River Barrow River Nore Special Area of Conservation (site code 002162)	
Link: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.pdf	
To maintain M or restore R favourable conservation status	
Qualifying Interest habitats	Qualifying Interest species
Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) R	<i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) M
Estuaries M	<i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) In review
Mudflats and sandflats not covered by seawater at low tide M	<i>Austropotamobius pallipes</i> (White-clawed Crayfish) M
<i>Salicornia</i> and other annuals colonizing mud and sand M	<i>Petromyzon marinus</i> (Sea Lamprey) R
Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) M	<i>Lampetra planeri</i> (Brook Lamprey) R
Mediterranean salt meadows (<i>Juncetalia maritimi</i>) R	<i>Lampetra fluviatilis</i> (River Lamprey) R
Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation M	<i>Alosa fallax fallax</i> (Twaite Shad) R
European dry heaths M	<i>Salmo salar</i> (Salmon) R
Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels M	<i>Lutra lutra</i> (Otter) R
Petrifying springs with tufa formation (Cratoneurion) M	<i>Trichomanes speciosum</i> (Killarney Fern) M
Old sessile oak woods with Ilex and Blechnum in the British Isles R	<i>Margaritifera durrovensis</i> (Nore Pearl Mussel) R

River Nore Special Protection Area (SPA) 004233		
Link: https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004233.pdf		
Special Conservation Interest	NPWS 2018	
<i>Alcedi atthis</i> (Kingfisher)	(Generic) M/R	

8.4. Identification of potential impacts

Examination of the information provided on the proposed development shows that all works associated with the demolition of the maturation building are confined to the enclosed site at the Abbey Quarter. As this area is outside of the SAC and SPA boundary, no direct impacts on any habitats or species for which the River Nore is designated as SAC or SPA will occur and there is no requirement for any form of bankside or instream works. There will be no direct discharge of water into the River Nore at this location and no requirement for water abstraction. Direct impacts on the River Barrow River Nore SAC and River Nore SPA can therefore be screened out.

The proposed area of the demolition and wider Abbey Quarter site does not contain ex-situ habitat for any qualifying interest/special conservation interest species as it is predominantly buildings and artificial surfaces.

The potential for indirect effects that may arise due to the demolition of the Maturation building is therefore the focus of the screening exercise. The proposed demolition is within 100m of the River Nore and therefore the possibility of construction related pollutants reaching the watercourse must be examined. Potential effects that could arise in such a scenario would be related to changes in water quality and affects to aquatic species and habitats for which the site is designated SAC. The potential for disturbance of key species due to increased human disturbance at the site is also considered.

This approach based on the precautionary principle, was followed in the screening report prepared by Moore Group on behalf of Kilkenny County Council where a worst-case scenario was considered assessing the potential for the project (alone and in-combination with other plans and projects) to be a source of construction related pollution with ingress to the River Nore.

Examination of the proposed works together with the nature of the site shows that no surface water or foul water discharges will occur as any surface water will be captured through the existing foul water sewer system. Thus, there is no direct hydrological connectivity to the adjacent River Nore.

River Nore, River Barrow SAC

An examination of the potential for indirect effects on the qualifying interest features (from the project alone) shows that of the ten habitats for the which the SAC is designated, nine occur outside of any possible zone of influence of the proposed project and will not be affected due to distance and lack of ecological connection. Direct impacts are excluded for floating river vegetation (*Watercourses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation*), a habitat type widespread in the river channel of the River Nore. Potential indirect impacts to this habitat are unlikely given the enclosed nature and small scale of the project with no discharges to the River Nore.

This rationale can also be applied to exclude the potential for impacts on aquatic species that have a distribution throughout the River Nore (Table 2).

Table 2. Aquatic species that are qualifying interests of the River Barrow, River Nore SAC.

Qualifying interest species	Key environmental conditions	Potential impacts
Freshwater pearl mussel	Water quality, highly sensitive to hydrological change, sensitive to pollution.	There will be no instream works and no direct impacts on these species. Potential indirect effects due to changes in water quality are unlikely due to the small scale of the project with no discharges predicted to the River Nore.
White-clawed crayfish		
Sea Lamprey		
Brook Lamprey		
River Lamprey		
Twaite Shad		
Salmon		
Otter		As above. Due to the short duration of the demolition works and distance from the river bank, any disturbance from increased noise and human activity would be temporary and would not affect the movements of Otter along this stretch of river.

The distribution of the Nore freshwater pearl mussel, a particular feature of the SAC, is outside a possible zone of influence of the proposed project and thus there is no potential for any impact on this qualifying interest species. The population stretches from Poorman's Bridge to Lismaine Bridge with most of the population found between Poorman's Bridge and the Avonmore Creamery above Ballyragget, greater than 20 kms upstream of Kilkenny City and the Abbey quarter.

River Nore SPA

The potential for direct impacts on the River Nore SPA have also been excluded for Kingfisher (breeding) as there is no threat of disturbance from riverside works, no potential loss of nest sites due to riverbank interference and no loss of riparian habitat. The potential for indirect impacts from increased disturbance from human activity and construction noise is a consideration for Kingfisher. However, due to the localised and temporary nature of the works, the contained nature of the construction site and the buffering distance between the building and the River Nore (over 60m) the potential for any effect on the movement of Kingfisher along this stretch of River is very low and would not be significant.

In-combination effects

The project was examined in- combination with 12 planning permissions for local developments, the Abbey Quarter Master Plan and component part VIII projects, Mart Street Road Scheme (Central Access Scheme) and the Kilkenny Development Plan. The assessments of the individual projects and plans do not predict any residual impacts that could act in combination with the proposed demolition of the Maturation building.

The examination of the project alone shows clearly that there is no likelihood of impacts, direct or indirect and therefore, there can be no possibility of an additive effect to other plans and projects.

I note the submission regarding negative effects to the instream habitat attributed to the construction of the St Francis Bridge and the deposition of aggregate material also related to the bridge construction process. The report referred to was prepared by EcoFact in 2014 immediately post construction of the Bridge.

Kilkenny County Council contend that post construction monitoring did not show adverse effects to the River Nore, however I have not had access to this data for the purpose of this determination.

The examination of the Maturation building demolition project clearly shows that there will be no requirement for instream works and no likelihood of discharges to the River Nore and therefore no potential for ingress of siltation that could add to the current (undefined) slit load of the river bed. Thus, the screening report prepared by Moore Group did not need to examine in combination effects related to these issues in more detail as there could not be any additive effect. The fact that the report prepared by EcoFact was not referenced in the Screening report does not affect the overall determination or undermine the conclusions reached.

8.5. Test of likely significant effects

The potential for indirect impacts on any qualifying interest habitat or species of the River Barrow River Nore SAC is highly unlikely given the enclosed nature of the wider development site, the small scale of the demolition works with no discharges of silt or other construction related material.

This was validated by a site visit which confirmed the enclosed nature of the site and the lack of pathways to the River Nore. The ground cover at the site is primarily concrete with a low wall and metal mesh fence acting as the boundary to the Rivers edge. This low wall/footing structure would further reduce the potential for any ingress of surface water to the Riparian area by acting as a low bund.

The distance of over 60m from the works area and the buffering capacity of the existing riparian vegetation along the site boundary support the conclusion that indirect impacts on Kingfisher are unlikely.

Having regard to the nature and scale of the proposed demolition works, the fact that any surface water will be directed to the foul sewer network, effects on the European sites are unlikely to occur and therefore significant effects can be ruled out. The exclusion of likely significant effects is based wholly on objective

information and there is no reliance on any measures intended to reduce or avoid impacts on the River Barrow River Nore SAC or the River Nore SPA.

8.6. Conclusion on Screening for Appropriate Assessment

The proposed demolition of the maturation building on the former Smithwicks Brewery site (Abbey Quarter), Kilkenny will not result in likely significant effects on the River Barrow, River Nore SAC or the River Nore SPA, in view of the conservation objectives of these sites, alone or in combination with any other plans or projects. Appropriate Assessment (stage 2) is not required.

This determination has been reached based on the following:

- a) The location of the proposed development outside of any Natura 2000 site,
- b) The nature and scale of the proposed development including the limited extent of the demolition works, the lack of any likely construction related emissions and the fact that any surface/rain water will be conveyed to the existing foul sewer system.
- c) The lack of direct hydrological connections to the River Nore
- d) The separation distance between the proposed development and the European sites at the closest points,
- e) The intervening ground conditions comprised of concrete that characterises the development site
- f) The lack of in-combination effects arising from other proposed and permitted development in the vicinity,
- g) the submissions made to the Board,

Note that measures intended to avoid or reduce negative effects on the European sites have not been relied upon in reaching this determination.

9.0 Recommendation

- 9.1. The proposed development, either individually or in combination with other plans or projects, will not give rise to likely significant effects on the River Barrow and River Nore Special Area of Conservation (Site code: 002162) or the River Nore Special Protection Area (Site code: 004233), or any other European site, in view of the sites' conservation objectives and, therefore, the submission of a Natura impact statement for the proposed development is not required.



Dr Maeve Flynn
Inspectorate Ecologist

31st October 2019