



An  
Bord  
Pleanála

## Inspector's Report ABP-315496-23

<b>Development</b>	Change of use from garage to microbrewery for manufacturing and distribution/sales and all other site development works.
<b>Location</b>	Rockhill, Portnablagh, Letterkenny PO, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2250540
<b>Applicant(s)</b>	Anna McElhinney.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Kenneth Bond.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> March 2023.
<b>Inspector</b>	Barry O'Donnell

## **1.0 Site Location and Description**

- 1.1. The subject site has a stated area of 0.28ha and is located at Rockhill, Portnablagh, in north-west County Donegal. It is located within the built-up area of Portnablagh and is within the 60km/h speed limit zone for the village..
- 1.2. The site comprises a former petrol filling station and forecourt area, accessed off the N56. It is currently unoccupied and the building on the site is in a derelict condition. The derelict building is set back from the roadside, with the former forecourt area in the intervening space. At the time of my inspection the roadside area appeared to be used as informal car parking.
- 1.3. Access to the rear of the site is provided at the north end of the derelict building. This access also provides access to a detached house to the south.
- 1.4. Sessiagh Lake lies to the west of the site and its shore encroaches up to within c.15m of the rear of the site. The boundary is effectively open, separated as it is by a timber post and wire fence. The intervening area between the site and the lake comprises unimproved grassland, which at the time of my site visit was in use for animal grazing.

## **2.0 Proposed Development**

- 2.1. The proposed development entailed within the public notices comprises change of use from a garage to a microbrewery for manufacturing and distribution/sales, including demolishing and rebuilding lean-to element to rear, provision of staff welfare facilities, on-site pre-treatment of effluent and all associated site works.
- 2.2. The development included the submission of a Natura Impact Statement.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority granted permission on 15<sup>th</sup> December 2022, subject to 19 No. conditions.

- Condition 3 required provision of visibility splays of 4.5m x 90m in both directions from the site access.
- Condition 5(a) required implementation of recommendations of the Stage 2 Road Safety Audit.
- Condition 5(b) required completion of a Stage 3 road safety audit prior to first occupation of the development, with recommendations to be implemented prior to first occupation.
- Condition 6(ii) required provision of a 2m wide footpath along the road frontage of the site.
- Condition 11(i) required implementation of mitigation measures contained within the NIS.

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

3.2.1. Planning Reports dated 17<sup>th</sup> May 2022 and 13<sup>th</sup> December 2022 have been provided. The first report requested additional information as follows: -

- Applicant to submit proposed elevations of the building,
- Applicant to submit a Stage 2 Road Safety Audit, together with additional drawings depicting recommendations.
- Applicant to demonstrate sightlines of 90m x 4.5m in both directions from the access.
- Applicant to submit details of footpaths and to clarify compliance with Design Manual for Urban Roads and Streets
- Applicant to submit autotrack analysis.
- Applicant to submit details of public lighting proposed.
- Applicant to clarify the nature of the use proposed.
- Applicant to submit revised site layout drawing depicting boundary treatments and surface materials.
- Applicant to submit details regarding the proposed drainage system.

- Applicant to submit details of waste/by-product disposal.
- Applicant to clarify car parking proposals,
- Applicant to clarify projected output for first 5 years of operation.

3.2.2. The report includes a separate appropriate assessment report, wherein it was determined that subject to implementation of mitigation measures contained within the NIS, the development will not have a significant adverse impact on Sessiagh Lough SAC (Site Code 000185).

3.2.3. The second report followed receipt of the AI response. It summarises the individual response items and recommends that permission be granted subject to 19 No. conditions, which are consistent with those attached to the Planning Authority's decision.

#### 3.2.4. Other Technical Reports

A **Roads Department** report dated 26<sup>th</sup> April 2022 has been provided, which requested a traffic and transport assessment, stage 2 road safety audit, autotrack analysis, public lighting proposals, sightlines in accordance with the development plan requirement and demonstration of compliance with the DMURS.

An email from the **National Roads Office** dated 5<sup>th</sup> May 2022 has been provided, which advises that the proposal does affect progression of any current national road projects.

A **Building Control** report dated 9<sup>th</sup> May 2022 has been provided, which recommends conditions.

A **Waste Enforcement Officer** Report dated 7<sup>th</sup> November 2022 has been provided, which recommends conditions.

### 3.3. Prescribed Bodies

3.3.1. Inland Fisheries Ireland made a submission on 13<sup>th</sup> April 2022, which recommends conditions as part of a grant of permission.

3.3.2. Transport Infrastructure Ireland made submissions on 20<sup>th</sup> April 2022, 26<sup>th</sup> October 2022 and 15<sup>th</sup> November. The first submission advised that the development is at variance with the *Spatial Planning and National Roads Guidelines for Planning*

*Authorities* (2012) guidelines as it would create an adverse impact on the National Road and would endanger public safety by reason of traffic hazard. The second submission requested the Planning Authority to have regard to Chapter 3 of the aforementioned guidelines. The third submission reiterated TII's position.

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

3.4.1. 1 No. third party submission was received, the contents of which can be summarised as follows: -

- Nature of the proposed use.

## **4.0 Planning History**

4.1.1. The Planning Authority's planning register indicates that there were 2 recent applications on the site (Reg. Refs. 2150523 and 2050430) both of which proposed a change of use to a microbrewery. Both of the applications are shown by the register as having been deemed withdrawn.

## **5.0 Policy Context**

### **5.1. Donegal County Development Plan 2018 - 2024**

5.1.1. The subject site lies primarily within the Settlement Framework Boundary for Portnablagh. The southern-most part of the site lies outside the settlement boundary.

5.1.2. Chapter 15 of Part C contains objectives and policies for the settlement frameworks, including Portnablagh. It sets a number of overarching objectives, including the following of relevance to the proposal: -

- Create compact urban forms,
- Create vibrant, consolidated, and accessible town centres which are the core of retail, commercial, cultural and community life within the settlements,
- Reserve sufficient land for educational, community and tourism purposes in appropriate locations.

5.1.3. As the development plan does not contain land-use zonings, the Chapter states that applications will be considered on a case-by-case basis and may be granted where proposals would otherwise comply with the policies of the Plan and would be in accordance with the proper planning and sustainable development of the area.

5.1.4. Other relevant policies include: -

**ED-P-2:** It is a policy of the Council that any economic development proposal that meets the locational policies set out hereunder (Policies ED-P-3 – ED-P-13) must also comply with the criteria set out in Policy ED-P-14 and be consistent with the proper planning and sustainable development of the area.

**ED-P-4:** Within designated Settlement Framework areas it is a policy of the Council to consider economic development proposals involving a light industrial building (as defined in Article 5 of the Planning and Development Regulations 2001, as amended) in the following circumstances and subject to the provisions of Policy ED-P-2 and ED-P-14:

(a) On land zoned for such use in this Plan or future Local Area Plans or on an existing industrial/employment area, provided the proposal is of a scale, nature and form appropriate to the location.

(b) Elsewhere within settlement framework areas, proposals for light industrial use will be determined on their individual merits having regard to the scale and character of the settlement, environmental considerations, the availability of necessary infrastructure, compliance with policy ED-P-14, and compatibility with the locality.

(c) Development involving light industrial buildings will not be permitted outside of settlements in the open countryside unless related directly to a site specific product resource or a project under the terms of any of the policies ED-P-8 to ED-P 13.

**ED-P-14:** It is a policy of the Council that any proposal for economic development use, in addition to other policy provisions of this Plan, will be required to meet all the following criteria;

(a) It is compatible with surrounding land uses existing or approved;

(b) It would not be detrimental to the character of any area designated as being of especially high scenic amenity (ehsa);

(c) It does not harm the amenities of nearby residents;

- (d) There is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified and delivered;
- (e) The existing road network can safely handle any extra vehicular traffic generated by the proposed development or suitable developer-led improvements are identified and delivered to overcome any road problems;
- (f) Adequate access arrangements, parking, manoeuvring and servicing areas are provided in line with the development and technical standards set out in this plan or as otherwise agreed in writing with the planning authority;
- (g) It does not create a noise nuisance;
- (h) It is capable of dealing satisfactorily with any emission(s);
- (i) It does not adversely affect important features of the built heritage or natural heritage including natura 2000 sites;
- (j) It is not located in an area at flood risk and/or will not cause or exacerbate flooding;
- (k) The site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity;
- (l) Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;
- (m) In the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape;
- (n) It does not compromise water quality nor conflict with the programme of measures contained within the current north western river basin (nwirbd) management plan.

## **5.2. National Planning Framework**

**NPO11:** In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

**NPO18a:** To support the proportionate growth of and appropriately designed development in rural towns that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.

### **5.3. Natural Heritage Designations**

- 5.3.1. The site lies partly within Sessiagh Lough SAC (Site Code 000185). Sessiagh Lough is also designated as a proposed Natural Heritage Area (Site Code 000185) and its designation encroaches further onto the site.

### **5.4. EIA Screening**

- 5.4.1. The proposed development comprises a change of use of an existing commercial building, from use as a garage to a microbrewery for manufacturing and distribution/sales. This is not a class of development for which EIA is required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. The grounds of appeal can be summarised as follows: -
- The basis for a change of use application is questioned, where there is no known planning approval for a garage use.
  - A newly proposed microbrewery or garage would not be favourably considered on the site. The existence of a building on the site should not weigh in favour of the proposed change of use.
  - The development does not comply with policy ED-P-14 of the development plan.
  - It is questioned whether the long-term ambition is to create a more intensive use of the site, with reference to possible café, shop and public house type elements being incorporated in the future.
  - The subject site is unsuited to this development, which would be better located within the urban fabric.



- There are other more suitable options available.
- The development will result in noise and nuisance issues and will affect residential amenity.
- It is questioned whether the existing building fabric is adequate for the proposed use or will require substantial reconstruction.
- The proposed bar and seating area are excessive for a tasting area.
- It is unclear if there is adequate potable water to serve the development. Commentary provided as part of the application is contested.
- Details of the proposed sewerage connection have not been provided and it is questioned whether the development can be accommodated.
  - Brewery foul water discharge can have a high COD demand and may require mitigation.
- Run-off, light, noise and odour will affect wildlife within the adjacent Sessiagh Lake SAC

## 6.2. Applicant Response

6.2.1. The applicant responded to the appeal in a submission dated 1<sup>st</sup> February 2023, the contents of which can be summarised as follows: -

- Portnablagh is a Layer 3 settlement under the development plan. The village has suffered from business closures in recent years and the proposal seeks to revitalise the building.
  - There are benefits associated with the urban location, including footpaths, lighting, public sewers, etc.
  - The proposal seeks to repurpose an existing building and will provide employment.
  - Portnablagh is located on the Wild Atlantic Way and a microbrewery will add to the village.
- The existing building is structurally sound and is capable of conversion. Works have been undertaken to preserve the building.

- The floor is uncontaminated and the fuel tanks were drained, cleaned and sealed. They will be decommissioned by being filled with sand.
- The microbrewery will initially open to visitors for pre-booked tours and events. At some point in the future the applicant hopes to apply for café, taproom and arts centre. There is no proposal to open a public house.
- The development will not harm the amenity of nearby residents.
- Sessiagh Lake SAC is considered by the NIS and mitigation measures are proposed to protect its integrity.
- The brewing process is silent with noise only arising from packaging, which will take place 1 day per week.
- 9% of CO<sub>2</sub> emissions in the lifecycle of beer are associated with manufacturing. Renewable energy can help to offset this.
- Odour during the brewing process is a pleasant, organic smell. The prevailing wind is from the west, such that smell should not offend the appellant.
- There are no grounds for the appellant to question the quality, promotion of sustainability and biodiversity.
- Concerns relating to traffic and transportation have been addressed by two road safety audits, the recommendations of which will be adopted as part of the development.
- Spent grain will be collected by a local farmer for feedstuff and fertiliser.
- Proposed boundary treatments are detailed on the application drawings and are adequate to screen the development.
- Irish Water has confirmed that the potable water demand can be accommodated and the sewerage load can be accommodated with pre-treatment.

### **6.3. Planning Authority Response**

- 6.3.1. The Planning Authority made a submission on 31<sup>st</sup> January 2023, the contents of which can be summarised as follows: -

- Consideration was given to the site's urban location, brownfield status and the nature of the use proposed.
- Underground tanks remain in place at the site and have been conditioned to be decommissioned, emptied and depolluted.
- The proposed use is controlled by condition, to use solely for manufacturing and distribution/sale of product made on site and an advice note was provided to the application that the visitor centre/tasting element was not included within the development description and thus did not form part of the proposal.
- Irish Water has confirmed via pre-connection enquiry that a connection is feasible.
- Dunfanaghy/Portnablagh wastewater treatment plant is overloaded and unable to accept new connections without upgrade. An upgrade is planned but no date is confirmed.
- A connection is proposed via on-site pre-treatment to ensure the development does not affect the biological load at the treatment plant.
- Subject to adherence to conditions, in particular the requirement to implement mitigation measures proposed by the NIS, the development will not have any significant adverse impacts on European sites.
- The Board is requested to uphold the decision to grant permission.

#### **6.4. Observations**

- 6.4.1. None.

#### **6.5. Prescribed Bodies**

- 6.5.1. The appeal was circulated to the Minister for Culture, Heritage and the Gaeltacht, An Taisce and The Heritage Council. No responding submissions were received.

## **7.0 Assessment**

7.1. Having inspected the site and considered the contents of the third-party appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- External and internal layout
- Impact on residential amenity;
- Wastewater treatment;
- Access;
- Other issues; and
- Appropriate Assessment.

### **7.2. Principle of Development**

7.2.1. The proposed development comprises a change of use from a garage to a microbrewery, together with associated site works. The associated site works include customer parking, landscaping, footpath extension and the provision of a new access to a residential property to the south, where that property is currently accessed from the rear of the subject site.

7.2.2. The subject site lies primarily within the Settlement Framework Boundary for Portnablagh. The southern-most part of the site, where some customer parking and the proposed residential access are located, lies outside the settlement boundary.

7.2.3. Policy ED-P-4 of the development plan applies to proposals within the settlement framework, stating that proposals will be considered on an existing industrial or employment site, provided the proposal is of a scale, nature and form appropriate to the location. I am satisfied that the proposal is consistent with this policy, subject to consideration of other factors below.

7.2.4. The appellant makes the case that the planning history of the site is unclear and thus questions the basis of an application for a change of use. I did not encounter any planning record related to the construction of the garage but I note from the applicant's submission that it predates 1932, when it was refurbished. It has also

been described as a garage on a number of previous applications at the site and I noted on my site visit that there are underground fuel tanks in front of the building, which the applicant indicates have been drained at some point. It has evidently been unoccupied for a period of time, but I do not consider this has any bearing on the application.

### **7.3. External and Internal Layout**

- 7.3.1. The appellant questions whether the existing building fabric is adequate for the proposed use or will require substantial reconstruction. He further argues that the proposed bar and seating areas are excessive for a tasting area and that the applicant may have an intention to create a more intensive use of the site.
- 7.3.2. In responding to the appeal, the applicant states that the building is structurally sound and is capable of conversion. Regarding the internal layout, the applicant states that there is no proposal to open a public house. She further outlines that the development will initially open to visitors for pre-booked tours and events and that, at some point in the future, there may be an intention to apply for a café, taproom and arts centre type use.
- 7.3.3. The floor plan and elevation drawings submitted with the application indicate that the existing building will be largely retained intact, with small extensions on the north (side) and west (rear) elevations as part of the provision of visitor facilities.
- 7.3.4. Regarding the adequacy of the existing building to support the proposed use, whilst no structural survey was submitted with the application the applicant has asserted that it is capable of conversion and this has not been undermined by the appellant's submission. With particular reference to the absence of any evidence to support the claim that the building is incapable of conversion, I consider it would be unjustified to refuse permission on this basis.
- 7.3.5. Regarding the proposed layout, I am inclined to agree with the appellant that it occupies a large proportion of the building, measuring c.80sqm or c.29% of the total floor area of the building. But, having said this, the customer area is contained within the building and, in the context of the applicant's stated intention to host visitors solely via pre-booked tours and events, I do not consider it is likely to give rise to any noise issue for nearby residential occupiers. Should the Board decide to grant permission, I recommend conditions be attached requiring (a) that the customer area

shall be as identified on floor plan drawing No. 04A and that consumption of alcohol by visitors to the site shall be confined to this area and (b) that the premises shall only be opened to visitors between the hours of 09.00-22.00 daily.

- 7.3.6. Regarding the appellant's concerns over the potential for more intensive uses arising on the site, the Board will note that use of the premises as a public house or café or other use that would be open to the general public would require a further grant of planning permission. The applicant acknowledged this requirement in the AI response.

#### **7.4. Impact on Residential Amenity**

- 7.4.1. The appellant argues that the development does not comply with policy ED-P-14 of the development plan and, in particular, that the development will result in noise and nuisance issues and will affect residential amenity.
- 7.4.2. Policy ED-P-14 of the development plan contains criteria that economic development proposals are required to comply with and, of relevance to the appeal, it requires that proposals should not harm the amenities of nearby residents and does not create a noise nuisance.
- 7.4.3. In responding to the appeal, the applicant states that the development will not harm the amenity of nearby residents. They also state that the brewing process is silent with noise only arising from packaging, which will take place 1 day per week.
- 7.4.4. As I have already outlined, the application drawings indicate that the existing building will be largely retained intact, with small extensions on the north (side) and west (rear) elevations as part of the provision of visitor facilities. The site layout drawing identifies that loading areas are provided to the north and east of the building.
- 7.4.5. The brewing process is contained within the building and I note the applicant's submission that it is silent.
- 7.4.6. The loading/unloading process is likely to give rise to some external noise, associated with the movement of goods within the site and the loading/unloading of vehicles. In my view this type of noise is normal as part of a commercial brewery operation and, in this urban location, I am satisfied that it will not have undue or unacceptable impact on nearby residents. Should the Board decide to grant permission, I recommend a condition be attached requiring that deliveries to and

from the site shall take place within the hours of 08.00-18.00 daily, in order to ensure such works take place within normal working hours.

7.4.7. Some level of noise is likely to arise associated with the arrival/departure of vehicles and visitors but, again, I am satisfied that, in this urban location, it will not have any undue or unacceptable impact on nearby residents.

7.4.8. External lighting proposals have not been provided, but I am satisfied that this can be controlled by condition. External lighting will not affect adjacent property and, subject to appropriate orientation and hooding, will not have any effect on wildlife in the area of Sessiagh Lake.

## **7.5. Wastewater treatment**

7.5.1. The appellant questions whether there is adequate space in the public wastewater network to accommodate the development. In particular he submits that brewery foul water discharge can have a high COD demand and may require mitigation.

7.5.2. The application documents outline that greywater from the brewing process, together with toilet water, will be discharged to the public network and that a Trade Effluent Discharge licence will be required from Irish Water. According to the application documents, by-product (i.e., spent grain, hops and yeast) will be captured within a bulk container and made available to local farmers as feed or organic fertiliser. Regarding the volume of greywater to be discharged, the AI response submission states that the brewing process will require usage of 1,325l of water per week, to produce 500l of beer, resulting in approx. 825l of wastewater to be discharged to the public network.

7.5.3. Irish Water did not comment on the application but the applicant provided a pre-connection enquiry response dated 30<sup>th</sup> November 2021, which indicates that the Dunfanaghy/Portnablagh WWTP is overloaded and cannot accept new connections without an upgrade. The submission goes on to state that an upgrade is included in the IW Capital Investment Plan, but that a timeframe for completion is unknown, and in the interim, connection via an on-site pre-treatment system may be feasible.

7.5.4. In line with the Irish Water pre-connection comments, site layout drawing No. 02B dated 29<sup>th</sup> March 2022 identifies the provision of a Klargester biodisc treatment system to the south-east of the brewery building, with treated wastewater identified

as discharging to the public network on the N56. The system is not identified on the AI site layout drawing No. 02B and no further details of the system have been provided. The Board will note that the location of the WWTP appears to lie within Sessiagh Lough SAC (Site Code 000185).

- 7.5.5. Regarding the current status of the Dunfanaghy/Portnablagh WWTP, the most recent available Annual Report<sup>1</sup> (dated 4<sup>th</sup> May 2022) identifies that the facility remains overloaded. Further, Section 4.2.2 of the Report states that there are ‘no additional improvements planned at this time.’ In this respect I note that the list of capital projects contained at Appendix 3 of the Irish Water Capital Investment Plan 2020-2024 does not identify any capital investment in the Dunfanaghy/Portnablagh WWTP over its lifetime.
- 7.5.6. Whilst I do not object outright to the provision of an on-site WWTP as a temporary measure, I am concerned that inadequate information has been provided to demonstrate that the proposed Klargester biodisc treatment system is adequate or appropriate to serve the development. For example, there is no indication of chemical or nutrient concentrations in greywater, measures to be deployed to contain by-product from entering the WWTP or the ability of the system to treat wastewater to the level required by Irish Water before acceptance at the municipal WWTP. Further, there is no clear timeframe for the upgrade of the municipal WWTP and, thus, it is unclear how long the temporary on-site WWTP will be required.
- 7.5.7. The treatment of wastewater in the proposed manner also gives rise to issues in respect of Appropriate Assessment as is discussed elsewhere in this report.
- 7.5.8. In the absence of adequate details regarding the treatment/capture of by-product and treatment of effluent within the on-site WWTP I am not satisfied that the applicant has adequately demonstrated that wastewater can be treated on the site. I thus recommend that permission be refused on this basis.

## **7.6. Access**

- 7.6.1. The site is located on the west side of the N56 and is located within the 60km/h speed zone for Portnablagh. The garage building is set back from the roadside and the area adjacent to the roadside contains a number of underground fuel tanks.

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<sup>1</sup> [https://www.water.ie/docs/aers/2021/D0211-01\\_2021\\_AER.pdf](https://www.water.ie/docs/aers/2021/D0211-01_2021_AER.pdf)



There is a gated access to the north of the garage building, which also provides access to a detached house to the south.

- 7.6.2. The proposed development incorporates separate access and exit points to/from the N56, a rear staff parking area, accessed through the existing gated access, customer parking to the front of the building and a footpath extension across the road frontage. The development also includes a new, private access to the detached house to the south. Sightlines of 90m are identified in both directions from the point of the site egress onto the N56.
- 7.6.3. In its submissions on the application, Transport Infrastructure Ireland advised that the development is at variance with the *Spatial Planning and National Roads Guidelines for Planning Authorities* (2012) guidelines as it would create an adverse impact on the National Road and would endanger public safety by reason of traffic hazard.
- 7.6.4. Section 2.5 of the *Spatial Planning and National Roads Guidelines for Planning Authorities* states that on sections of national roads on the approaches to or exit from urban centres that are subject to a speed limit of 60 km/h speed limit, a limited level of direct access may be provided for, to facilitate orderly urban development. The Section goes on to state that such proposals must be subject to a Road Safety Audit and a proliferation of such entrances should be avoided.
- 7.6.5. In line with these requirements, a Stage 1 Road Safety Audit was submitted with the application and a Stage 2 RSA was submitted as part of the AI response, following a request for same from the Planning Authority. I note that following submission of the Audits, the Planning Authority did not express any concern regarding this aspect of the development.
- 7.6.6. In view of the fact that the development will not be open to the public, I am satisfied that the development would not have any effect on the safe and efficient operation of the N56 and that the development accords with the provisions of the *Spatial Planning and National Roads Guidelines for Planning Authorities*. I note that the Planning Authority expressed a similar view and attached conditions 5(a) and 5(b) to its decision, which required implementation of the recommendations of the Stage 2 RSA and the preparation and implementation of a Stage 3 RSA

7.6.7. Regarding sightlines, the proposed 90m sightlines accord with the Planning Authority's requirements for same but, the site is located adjacent to the interface of the 60km/h and 100km/h speed zones and there is a likelihood of traffic speeds in excess of 60km/h on the approach to the site from the east. The site location drawing identifies that the applicant owns additional lands to the east and it appears to me that the eastward sightline can be extended, to increase visibility in this direction. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to submit and agree proposals for the maximum achievable eastward sightline.

#### **7.7. Other Issues**

7.7.1. The appellant also questions whether there is adequate space in the public potable network to accommodate the development.

7.7.2. The Irish Water pre-connection enquiry response states that there is capacity within the network to accommodate the development and there is nothing within the application or appeal documents which undermines this position. From the information available to me, I am satisfied that the public system can accommodate the development.

#### **7.8. Appropriate Assessment**

##### Appropriate Assessment Screening

##### *Compliance with Article 6(3) of the Habitats Directive*

7.8.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

##### *Background on the Application*

7.8.2. The applicant submitted a Natura Impact Statement as part of the application, prepared by DSM Consulting Engineers. It provides a description of the proposed development, identifies European sites within a potential zone of influence and identifies potential impacts in relation to Sessiagh Lough SAC.

7.8.3. Having reviewed the appeal documents provided and submissions, I am satisfied that there is adequate information in relation to the European sites to allow for a complete examination and identification of any potential significant effects of the

development, alone, or in combination with other plans and projects on European sites.

*Screening for Appropriate Assessment- Test of likely significant effects*

- 7.8.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.8.5. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

*Brief description of the development*

- 7.8.6. The development is described at Section 2 of this Report. In summary, permission is sought for change of use from a garage to a microbrewery for manufacturing and distribution/sales, including demolishing and rebuilding lean-to element to rear, provision of staff welfare facilities, on-site pre-treatment of effluent and all associated site works. The site layout drawing identifies that foul and grey water will be pre-treated within a temporary on-site WWTP, prior to discharge to the public network, and surface water is proposed to discharge to the public network on the N56.
- 7.8.7. Taking account of the characteristics of the proposed development, in terms of its location and the scale of works, I consider the following aspects of the development require examination:

Construction Phase

- Loss of or fragmentation of qualifying habitat within Sessiagh Lough SAC,
- The potential impact of surface water discharges from the site on water quality within Sessiagh Lough SAC.

Operational Phase

- The potential impact on water quality within Sessiagh Lough SAC arising from the treatment of foul and grey water on the site.

Submissions and Observations

7.8.8. The submissions from the appellants, applicant, observers, prescribed bodies and Planning Authority are summarised as Section 6 of my Report.

7.8.9. The Planning Authority's report also contains a separate appropriate assessment report.

#### European Sites

7.8.10. The site lies partly within Sessiagh Lough SAC (Site Code 000185). In addition to this, the NIS identifies the following additional sites as being located within a potential zone of influence: -

- Horn Head to Rinclevan SAC (Site Code 000147), c.1.2km north-west;
- Horn Head to Fanad Head SPA (Site Code 004194), c.0.85km north-west;
- Sheephaven SAC (Site Code 001190), 1.2km north-east.

7.8.11. For each of Horn Head to Rinclevan SAC, Horn Head to Fanad Head SPA and Sheephaven SAC, the NIS excludes the possibility of significant effects on the basis that each site is upstream of the subject site. I would concur with this determination and am satisfied that these sites can be excluded at this stage.

7.8.12. In addition to the above, there are a number of other European sites within a 15km search zone but, in view of the smallscale nature of the development and the absence of hydrological connectivity to any European site other than Sessiagh Lough SAC, I am satisfied that there is no possibility of significant effects arising from the proposed development.

7.8.13. A summary of Sessiagh Lough SAC is outlined in the table below: -

<b>European Site (code)</b>	<b>List of Qualifying interest /Special conservation Interest</b>
Sessiagh Lough SAC (Site Code 000185)	<ul style="list-style-type: none"><li>• Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea</li><li>• Slender Naiad</li></ul>

7.8.14. In respect of Screening, Section 3 of the NIS concludes as follows: -

*'As the eastern boundary of the proposed development abuts the boundaries of the Sessiagh Lough SAC (Code: 000185) and lies approximately 30m from the edge of the Lough and has no direct or indirect contact with any other protected sites then the possible effect the development will have on the Sessiagh Lough SAC will now be looked at in more detail.'*

#### Evaluation of Potential Significant Effects

- 7.8.15. As I have outlined previously, I consider (1) Potential loss of or fragmentation of qualifying habitat within Sessiagh Lough SAC, (2) The potential impact of surface water discharges from the site during construction on water quality within Sessiagh Lough and (3) The potential impact on water quality within Sessiagh Lough arising from the treatment of foul and grey water on the site for the require consideration.
- 7.8.16. Regarding potential loss of or fragmentation of qualifying habitat, available NPWS data regarding Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea<sup>2</sup> indicates that it comprises low-nutrient waters found in catchments of mixed geology. Slender Naiad is identified as a character species of this habitat and is itself identified as a rare water plant that grows on the bottom of lakes. Whilst the SAC designation encroaches onto the site, the development is set back from the water and I am satisfied that the development will not give rise to loss of or fragmentation of qualifying habitat.
- 7.8.17. The development involves demolition of a lean-to extension to the rear of the garage and construction of a number of smallscale extensions to the rear-most part of the building, together with groundworks and hard and soft landscaping throughout the site, including on the part of the site that lies within the SAC. Construction work will take place adjacent to and within the SAC and there is an open boundary between the main body of the lake and the site. There is a possibility of suspended solids and/or pollutants being discharged to the SAC from the site via, surface waters. I therefore consider the potential for significant effects arising from surface water discharges during construction cannot be excluded at this stage.

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<sup>2</sup>

[https://www.npws.ie/sites/default/files/publications/pdf/Lake\\_habitats\\_supporting\\_document\\_Nov\\_2015\\_V1.1\\_FINAL.pdf](https://www.npws.ie/sites/default/files/publications/pdf/Lake_habitats_supporting_document_Nov_2015_V1.1_FINAL.pdf)

7.8.18. Foul water and grey water are proposed to be treated in a temporary on-site WWTP, prior to discharge to the public network. The system is identified on site layout drawing No. 02B dated 29<sup>th</sup> March 2022 as a Klargestar biodisc treatment system but no other details of the system have been provided. The system appears to be located within the SAC. The Natura 2000 form for the European site identifies that it is at 'medium' risk from diffuse pollution to surface waters due to household sewage and waste waters (threat code H01.08) and, in this context, I consider the potential for significant effects arising from treatment of foul and grey water on the site cannot be excluded at this stage.

#### Screening Determination

7.8.19. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites.

- Sessiagh Lough SAC (Site Code 000185).

#### Stage 2 Appropriate Assessment

7.8.20. The NIS examines and assesses potential adverse effects of the proposed development on the SAC and, whilst it is unstated within the document, appears to have been prepared based on a desk study and site walkover. It concludes as follows: -

*'If the construction proceeds [sic] and mitigation measures outlined in Section 5.0 above are adhered to and if the property is managed post construction then the development should have no effect on any of the qualifying interests of the protected sites.'*

#### Appropriate Assessment of Implications of Proposed Development

7.8.21. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of Sessiagh Lough SAC, using the best scientific knowledge in the field. All aspects of the project which could result in

significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

- 7.8.22. This Stage 2 assessment will consider whether or not the project would adversely affect the integrity of this European site, either individually or in combination with other plans and projects, in view of the site's conservation objectives.

#### Evaluation of Effects

- 7.8.23. The conservation objectives for Sessiagh Lough Bay SAC are: (1) *To restore the favourable conservation condition of Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoëto-Nanojuncetea* and (2) *To restore the favourable conservation condition of Slender Naiad*.
- 7.8.24. As has been set out, the potential impact of surface water discharges from the site during construction on water quality within Sessiagh Lough and the potential impact on water quality within Sessiagh Lough arising from the treatment of foul and grey water on the site for the require further consideration.
- 7.8.25. The NIS identifies that the Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea habitat type is associated with high water quality, with naturally low dissolved nutrients. It states that the hydrological regime must be maintained so that the area, distribution and depth of the lake habitat and its constituent/characteristic vegetation zones and communities are not reduced.
- 7.8.26. Regarding Slender Naiad, the NIS states that the main threats are from farm run-off and poorly managed wastewater treatment facilities, which can cause eutrophication.
- 7.8.27. The NIS identifies that high levels of suspended solid can affect the ecological functioning of the lake and also give rise to high levels of nutrients, which can cause eutrophication.

#### Proposed mitigation

- 7.8.28. Section 5.0 of the NIS contains proposed mitigation measures, which can be summarised as follows: -
- Construction management

- Designated compound to be provided, provided with bunded refuelling space and welfare facilities.
  - Demolition works to be carried out as per Code of Practice for Demolition BS 6187.
  - Site preparation and construction should adhere to best practice and confirm to Inland Fisheries Ireland guidance.
  - Demolition materials to be segregated into containers/skips and removed for recycling or landfill.
  - Excavated material not to be immediately reused shall be removed to a registered landfill. No spoil heaps to be created/maintained on the site.
  - No excavation to take place on days of predicted high rainfall.
  - Vehicles/machinery not to be washed out on site or access road.
  - Land drains to be installed below the stone layer of the car park, to remove excess waters during heavy rainfall. Such drains to be connected to the public sewer.
- 2-layer silt fence system to be erected along south boundary of the site
  - Drainage ditch to be installed and connected to a silt lagoon.
  - Surface waters from impermeable areas should be directed to the public storm drain.
  - Cooking waste to be suitable stored and grease traps installed in sinks/wash areas.
  - Products used in brewing and by-products to be stored internally and removed from the site for reuse or recycling.
  - Area of land between the site and lake to remain untouched, to act as a buffer.
  - Contractor to provide full construction management plan prior to commencement of construction.

7.8.29. For the construction phase, I am satisfied that the proposed mitigation is likely to ensure that no suspended solids or other pollutants will be discharged to Sessiagh



Lake SAC. The detailed design of the silt fence system and the location of the construction compound can be agreed with the Planning Authority.

- 7.8.30. For the operational phase, the NIS does not address the proposal to temporarily treat foul and grey water in an on-site WWTP. I have previously outlined that the SAC is identified as being at 'medium' risk from diffuse pollution to surface waters due to household sewage and waste waters. In the absence of details of the proposed system and its adequacy to serve the proposed development, particularly with reference to the necessity to also treat grey water from the brewing process, I am unable to ascertain whether the development would adversely affect water quality within the European site and/or the integrity of the site, in view of its Conservation Objectives.

#### Appropriate Assessment Conclusion

- 7.8.31. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.
- 7.8.32. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Sessiagh Lough SAC (Site Code 000185). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites, in light of their conservation objectives.
- 7.8.33. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site No 000185, in view of the site's Conservation Objectives. This conclusion is based on: -
- A lack of information on the possible effects on the temporary treatment of foul and grey water in an on-site WWTP on the European site. This aspect of the proposed development was not examined for potential effects on the European site.
- 7.8.34. Appropriate assessment identified that the treatment of foul and grey water on the site has the potential for significant effects on the European site, which is identified as being at medium risk from diffuse pollution to surface waters due to household

sewage and waste waters. In the absence of an assessment of the adequacy of the proposed WWTP to serve the development, the likelihood and/or extent of such effects cannot be determined. This is considered a gap in the overall assessment and therefore in the absence of such information, adverse effects on integrity of the European sites cannot be excluded.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission is refused in accordance with the following reasons and considerations.

## **9.0 Reasons and Considerations**

The proposed development includes a temporary on-site wastewater treatment plant, which is proposed to treat foul and grey water prior to discharge to the public network. Insufficient information is provided as part of the application in relation to the proposed works and such works are not identified or assessed within the Natura Impact Statement provided as part of the application. The Board is therefore not satisfied, on the basis of the information provided with the application, including the Natura Impact Statement, that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Sessiagh Lough SAC (Site Code 000185). In such circumstances the Board is precluded from granting approval/permission.

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Barry O'Donnell  
Planning Inspector

12<sup>th</sup> May 2023.