



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-322431-25

### Development

Retention of all structures as constructed on site. Permission for a new stores building to the rear, extension to front of main building comprising a new canteen and toilets, revised site boundary to the east resulting in an increased site size, new effluent treatment system and all associated site works.

### Location

Crosspatrick, Johnstown , Co.  
Kilkenny

### Planning Authority

Kilkenny County Council

### Planning Authority Reg. Ref.

2443

### Applicant(s)

Brennan Fencing Limited

### Type of Application

Retention and Permission

### Planning Authority Decision

Refusal

### Type of Appeal

First Party

### Appellant(s)

Brennan Fencing Limited

### Observer(s)

None

**Date of Site Inspection**

1<sup>st</sup> July 2025

**Inspector**

Frank O'Donnell

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## 1.0 Site Location and Description

- 1.1. The subject appeal site is located on the northern side of the R502 Regional Road, c. 3.3 km to the west of Johnstown Village. The site comprises an existing light industrial/ fencing manufacturing business. The existing site comprises a single light industrial building with a single storey lean to office/ retail space to the front (south), a prefabricated single storey office building to the front/ side southeast of the main building, open storage of fencing and various agricultural products (including precast animal drinking troughs, steel gates and circular steel cattle feeders) to the front, side and rear, car parking, circulation space, hardstanding yards and associated installations. The front roadside boundary is defined by high security/ industrial type fencing. The western site boundary is defined by mature trees and an earth bank alongside an open field drain which connects to the River Goul River, c. 540 metres to the south.
- 1.2. The subject appeal site, which includes a proposed extended area to the east to accommodate a new waste water treatment system, low pressure percolation bed and car parking area, has a stated area of 1.34 hectares. I note the site area permitted under planning reg. ref. no. 97/1023 is stated to be 0.73 hectares. I estimate the existing site size to be in the region of c. 0.8 hectares.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
- **Retention** (indefinitely) of the following structures as constructed on site:
    - Retention of an existing 4 Bay (357 sqm) extension to rear of the existing workshop and a 47 sqm rear canopy.
    - Retention of a single storey prefabricated office building (Roadmaster Ready-Built Unit) positioned to the front (east) of the main reception. This building provides 3 no. offices, a staff canteen, a small store and internal circulation space. The prefab has a stated overall floor area of 88 sqm.
    - Retention of a single storey/ flat roofed block built store extension to the east side of the existing workshop (stated floor area is 8.3 sqm).

- Retention of a sanding hut and shelter canopy to the west side of the workshop extension (stated floor area is 9.3 sqm). This is a sheet metal clad hut with an open sided roofed shelter canopy to the North.
  - Retention of cement store located along the western site boundary to the rear northwest of the workshop extension. This is a single storey/ block built/ open sided structure (estimated floor area of c. 9 sqm).
  - Retention of Power washer Store located along the western site boundary to the rear northwest of the workshop extension. This is a single storey/ block built/ flat roof structure located to the immediate south of and adjoining the Oil Store (approximate floor area 3.2 sqm).
  - Retention of Oil Store located to the immediate north of the abovementioned Power washer Store. This is a single storey/ block built/ flat roof structure (estimated floor area of c. 2.8 sqm). There are existing diesel tanks stored at roof level and enclosed within reinforced concrete walls.
  - Retention of shipping container positioned on the western elevation of the existing workshop (estimated floor area of 30 sqm). The interior of the steel container is shown to have steel racking on both sides.
- **Planning permission** for the following structures:
    - Proposed single storey extension to the front of the existing building on the western side of the existing reception area comprising a canteen, unisex toilet, an entrance lobby and circulation space (estimated floor area of c. 41 sqm).
    - Proposed detached 4 bay stores building located to the rear of the site and comprising 2 no. subdivided stores (stated floor areas - Store A (136 sqm), Store B (140 sqm). (Overall Height of 7 metres).
    - Proposed revision to the east site boundary, to include new on-site wastewater treatment system and a new car park. This will involve the relocation of the majority of the existing eastern site boundary further to the east by a maximum of c. 23 metres. The proposed new car park is shown to provide a total of 22 no. car parking spaces which is in

addition to 3 no. parking spaces to the front of the existing reception area and which includes 1 no. mobility impaired space. (25 no. car parking spaces proposed in total).

- All associated siteworks.
- The combined floor area of the existing buildings (stated to be 1,013 sqm) and proposed buildings (stated to be 311 sqm) measure 1,324 sqm. This includes the proposed retention of the rear extension (357 sqm) and other associated buildings around the site totalling 553 sqm.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. The Local Authority issued a decision to seek FURTHER INFORMATION on 6<sup>th</sup> June 2024, as follows:

1. *It is noted from the original permission on this site (P97/1023) that the permitted development involved the manufacture of 'post drivers' for the driving of posts and stakes associated with fencing. However, it was noted from site inspections that there was a significant amount of steel gates, concrete troughs and timber fencing materials stored on the site. The applicant is requested to clarify the exact nature and extent of the existing and proposed use/s on this site, to include a detailed description of same. The response shall include a revised and clearly labelled site layout and floor plan drawings identifying the uses of each area/building on site. Please note that where additional or alternative uses are being carried out on site, this may require to be re-advertised as significant further information to include for retention of these uses.*
2. *It is noted that a number of the conditions attached to the parent permission on site (P97/1023) have not been complied with, in particular Conditions 2, 3 and 4. The applicant is requested to submit proof of compliance with these conditions and submit details in relation to the storage of materials on the large hard surfaced yard area to the south west*

*of the site, the material finishes to the roadside boundary and provision for appropriate landscaping inside the roadside boundary of the site.*

- 3. The applicant is requested to clarify the exact nature of the intended use of the proposed new store building.*
- 4. The applicant is advised that the existing shipping container is considered inappropriate on this site which includes existing and proposed large storage sheds. The applicant is requested to submit revised proposals for the removal of this shipping container on completion of the proposed new store building.*
- 5. The applicant is requested to clarify the need for the small cement store, sanding hut and power washer store on site for which retention permission is sought.*
- 6. (a) The applicant is requested to submit a detailed description of the activities being carried out on site and proposed to be carried out on site and clarify what noise and dust control measures are currently in place on site, if any.*  
*(b) If it is proposed to treat timber as part of this development, the applicant is requested to submit a description of what methods and materials are to be used and what precautions are proposed to protect the surrounding environment from accidental spillages etc.*  
*(c) The applicant is requested to submit details on the existing & proposed employee numbers and confirm that the Baunmore Group Water Scheme has adequate capacity to cater for the existing and proposed development on site.*
- 7. The applicant is requested to submit proposals for the decommissioning and removal of the existing wastewater treatment system and percolation area on site.*
- 8. The applicant is requested to submit the following details:*
  - a) Number of Water Jet Cutters*
  - b) Flow rates in m<sup>3</sup>/day*

- c) Details of nature of their use e.g. materials being cut etc.*
- 9. The applicant is requested to submit a new design for the proposed Wastewater Treatment System in accordance with the EPA Code of Practice 2021, as the expected PE is 10+ (Excluding Water Jet Cutting) which is greater than the currently proposed design capacity of 6 PE. The proposed WWTS must include for the Water Jet Cutting Flows.*
- 10. The applicant is requested to submit an updated site characterisation form which shall be in accordance with the EPA Codes of Practice 2021.*
- 11. The applicant is requested to excavate a new trial hole closer to the proposed location of the WWTS and within the red line boundary of the site. Inspection of the trial hole should be arranged with the Environment section (email address provided).*
- 12. The applicant is requested to submit*
- a) Details of all wells and septic tanks within 250m of the proposed development.*
  - b) Proposals to ensure the wastewater treatment system and soil polishing filter is cordoned off and secured to ensure no vehicular traffic or livestock can enter this area in the future.*
  - c) Clarify if any screens will be installed to ensure material unsuitable for discharge to the wastewater treatment system will be captured and disposed of in the appropriate manner.*
  - d) Clarify the location of the existing wastewater treatment system & percolation area on the adjacent dwelling to the east of the proposed site (Eircode referenced).*
- 13. The applicant is advised that a discharge licence may be required for the existing and proposed development on site, as the development appears to be manufacturing products as part of an industrial process. The applicant is further advised that if a Discharge Licence is required, the applicant shall submit an application for same under Section 4 of the Local Government (Water Pollution) Acts 1977, as amended.*



14. *The applicant is requested to submit details of the existing surface water management system for the existing development. All surface water shall be infiltrated to groundwater via suitable sized soakaways in accordance with BRE-365 Soakaway design. Surface water run-off shall not be allowed to discharge onto the public road or to adjoining properties.*
15. *The applicant shall submit a detailed Waste Management Plan for the existing and proposed development, prepared by a suitably qualified professional. The report shall include all waste to be removed from the site including hazardous waste. The following information shall also be included in the Waste Management Plan;*
- a. LOW waste codes,*
  - b. Quantities of waste*
  - c. Authorised waste collector's details including MWCPO number*
  - d. Final destination for the recovery of the waste including the authorised waste facility MWCPO number.*
16. *The applicant is requested to submit details of the ongoing maintenance agreement for the servicing of the oil separator onsite and documentary evidence of the collection & maintenance of the Interceptor e.g. receipts for same for the past 2 years.*
17. *Having regards to the location of your site in close proximity to Galmoy Fen Special Area of Conservation a Natura 2000 site, you are required to submit, in accordance with Section 177(U)3 of the Planning and Development Act 2000 (as amended), such information to enable the Planning Authority to screen your proposed development for appropriate assessment on whether or not it is likely to affect the integrity of the Natura 2000 site. The screening should have regard to the conservation objectives for the qualifying interest (habitat and species) and consider any impact, alone or in combination with other proposed or actual developments or activities, on the targets for the habitats and species.*
18. *The applicant is requested to submit full details of existing and proposed signage to include details of material finishes.*

3.1.2. The Local Authority issued a decision to REFUSE planning permission on 8<sup>th</sup> April 2025 for the following reasons:

1. *Having regard to the screening for Appropriate Assessment and to statutory time constraints which precludes the Planning Authority from requesting clarification of further information, it is considered that the applicant has failed to demonstrate that the proposed development and the development to be retained would not have a significant impact on the River Goul as part of the River Nore/river Barrow Special Area of Conservation. In the absence of this information, the Planning Authority considers there is potential for unmitigated impact on a Natura 2000 site, which is contrary to the provisions of the Habitats Directive, the environment generally and the proper planning and development of this rural area.*
2. *Have regards to the statutory planning time constraints for clarifying any further information it is considered that the applicant has failed to adequately address the elements of the overall development which are considered unauthorised. Consequently, granting permission to retain and further develop the site as currently proposed would consolidate an existing unauthorised development contrary to the proper planning and development of the area. Furthermore, the applicant has failed to demonstrate that the proposed development and the development to be retained would not have a detrimental impact on the environment generally or the amenities of this rural area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The **Local Authority Planner** estimated the total floor area to be retained measures 553 sqm. In relation to the proposed new Wastewater Treatment System, the Local Authority Planner noted the subsurface value of 37.22, the recorded water table at 1m below ground level in the 2.3 metre trial hole and the proposed soil polishing filter. The Local Authority Planner noted the previous planning history on the site, as planning reg. ref. no. P97/1023

refers, and notes conditions 2, 3 & 4 of same were not complied with. The existing roadside palisade fencing along the site frontage, the lack of landscaping along the roadside boundary and the open storage area to the side and front of the existing building and its associated contents were also noted in addition to existing car parking. The Local Authority Planner recommended that a Request for Further Information be issued in relation to the large hard surfaced storage yard area to the west of the site which had not been included for retention and the fact that the usage of said area for the storage or otherwise of goods and materials did not form part of the original permission. The palisade fencing along the site frontage was not considered to comply with condition no. 4 of planning reg. ref. no. P97/1023.

- Following an appraisal of the Applicants' Response to Further Information, the Local Authority Planner concluded that having regard to the applicants failure to address the environmental concerns raised at further information stage and to the statutory time constraints, which preclude the Local Planning Authority from requesting any further information, the Applicant had failed to demonstrate to the satisfaction of the Planning Authority, that the development to be retained and the proposed development would not have a detrimental impact on the environment generally or on the conservation objectives of a Natura 2000 site. The Local Authority Planner recommended permission be REFUSED for 2 no. reasons.

### 3.2.2. Other Technical Reports

- The **Roads Department** raised no objection to the proposed development.
- The **Fire Officer** raised no objection to the proposed development but stated that a Regularisation Fire Safety Certificate would be required before works commence on site.
- The **Environment Department** recommended that Further Information be sought on a total of 9 no. items in relation to the Site Description, Wastewater, Trade Effluent, Surface Water, Waste, Dust, Oil Interceptor and Appropriate Assessment.

- Following receipt of the Response to Further Information, the Environment Department, raised concern in relation to numerous environmental issues including:
  - Noise,
  - Dust,
  - Clarity as to proposals for decommissioning and removal of existing wastewater treatment system (it appears this site has 2 no. septic tanks that must be decommissioned and removed from site).
  - Specification sheets for the Water Jet cutter/ discrepancy in the values submitted,
  - Inconsistency in the staff numbers provided in terms of the WWTS and water supply capacity,
  - Non-compliance with the EPA Code of Practice 2021 (30 metre long discharge pipes indicates/ max length can only be 10 metres),
  - No surface percolation tests were carried out,
  - No maps provided showing the location of any existing wells & septic tanks within 250 metres,
  - Insufficient information as to the installation of screens for the filtering of heavy metals from Water Jet cutter prior to entry to the Septic Tank/ Packaged Secondary Treatment System (depends on the response from manufacturers of the DWWTs),
  - The requirement for a discharge license due to run off from the Water Jet cutter (classed as liquid trade effluent) – all trade effluent discharging to groundwater or surface water require a Discharge License,
  - Blocked surface water management systems/ not functioning as intended/ oil present, drains at east side of the building were completely buried and not functional, drains to west contained what appeared to be oil and flowed to an attenuation tank/ washing bay

adjacent to the power washer store which was completely blocked on two separate occasions with deep grey coloured water,

- Additional details required as to the painting process on site, including
  - Confirmation as to whether the site falls under the E.U. (Paints, Varnishes, Vehicle Refinishing Products and Activities) Regulations 2012 (SI no. 564 of 2012)
  - Presence of solid and liquid waste drum/drums
  - Are all receptacles, i.e. drums and bins labelled accordingly
  - Solid/ liquid drum/ drums sealed and in good condition (no rust)
  - Are liquid waste drums banded
  - Are there general waste and recycling receptacles on site
  - Are there bags for Mesh filters on site
  - Evidence of paint contaminated products in general waste
  - Are there records for WTF and or TFS on site (take copies of same)
  - Are there spill kits on site
  - Types of paints being used
  - Is there a solvent recycling unit on site
  - Is the solvent recycling unit away from drains
  - Is there a spray booth at site
  - Is there a filter on the back wall/ extractor fan
  - Is there mesh on filter to trap the particles

### **3.3. Prescribed Bodies**

- None

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

3.4.1. 1 no. Third Party observation was received from the following:

- Wild Ireland Defence CLG, C/o Peter Sweetman

3.4.2. The main issues raised in the submission can be summarised as follows:

- The Planning Authority has four legal tasks when dealing with an application such as the subject application:
  - The planning merits of the proposed development must be assessed in accordance with the Planning and Development Act 2000, as amended. This is in order to ensure that the proposed development is in accordance with the proper planning and sustainable development of the area.
  - The Planning Authority is obliged to screen the development for Environmental Impact Assessment (EIA) and, in doing so, to form a view as to the environmental impacts of the proposed development having regard to the EIAR Report (EIAR) if furnished by the Applicant, the views of the public and the application of its own expertise.
  - The Planning Authority has responsibilities under the Habitats Directive. The Applicant refers to *Kelly v An Bord Pleanála* [2014] IEHC 400 (25 July 2014), CJEU decision (Case C-323/17, *People Over Wind and Peter Sweetman v Coillte Teoranta*) and CJEU Case 258/11. The Observer submits that the Planning Authority does not have legal jurisdiction to give permission if the standard set out in CJEU Case 258/11 is not met.
  - The proposed development must be assessed for compliance with the Water Framework Directive.
  - The Observer states that on those grounds, the Court (Second Chamber) hereby rules:
    - *‘1. Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a ‘project’ within the meaning of that provision,*

*even if those activities, in so far as they are not a physical intervention in the natural surroundings, do not constitute a 'project' within the meaning of Article 1(2)(a) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.'*

- The Observer refers to Case Number: ABP-316264-23 where the Board requested further information in relation to the requirement for a Natura Impact Statement (NIS).
- The Observer considers that as the development is within the Zone of Influence of Galmoy Fen SAC (Site Code 001858), Appropriate Assessment is required.

## 4.0 Planning History

### 4.1. Planning History on the subject appeal site:

- **971023:** Brennan Fencing Ltd. Permission to construct new workshop, store, office, canteen and toilet facilities, stake and wire compound, septic tank with puraflo liquid effluent treatment system & assoc. site works. Permission was GRANTED on 19<sup>th</sup> March 1998 subject to 12 no. conditions.
- Conditions 2, 3, 4, 6, 11 and 12 read as follows:
  - 2.
    - a) *The completed forecourt area, between the building line of the structure and the new roadside boundary, shall be reserved solely for access, car-parking and landscaping. Complete details, including layout drawing to appropriate scale, of the development of the forecourt area shall be submitted to and agreed with the Planning Authority within 1 month of commencement of development.*
    - b) *Off-loading and/ or loading of commercial vehicles, the storage of all materials and the carrying out of all operations associated with the development process shall*

*be confined within the structure and/ or behind screening to the rear of the building.*

*Reason: In the interests of visual amenity.*

3.

- a) *Complete details of external finishes (including materials, texture and colour) to the structure shall be submitted to and agreed with the Planning Authority prior to commencement of development.*
- b) *The external appearance of the pvc-coated, or similar, metal roof decking and wall cladding shall be maintained and renewed as necessary.*
- c) *Complete details of the access gate to the site shall be submitted to and agreed with the Planning Authority. Painting to the gate shall be maintained and renewed as necessary.*

*Reason: In the interests of visual amenity.*

4.

- a) *The existing roadside boundary shall be removed along the full length of the site with the new roadside boundary being set back not less than 3 metres. The new roadside boundary shall be constructed of natural materials indigenous to the locality, details of which shall be submitted to and agreed with the Planning Authority. A planting of hedgerow – trees, of species common to the locality being provided along and inside the new roadside boundary.*
- b) *The area between the new road boundary and the public carriageway shall be suitably structured, shall fall from the carriageway edge at a gradient of not less than 1:40 (i.e. 2.5%) and shall be black-top surfaced, with these works being designed and constructed in such a manner*



*as to ensure the existing road drainage system is not adversely affected.*

- c) The full area of the splayed recessed access shall be suitably structured, black-top surfaced and shall fall towards the site at a gradient of not less than 1:40 (i.e. 2.5%). Provision shall be made for drainage as necessary.*

*Reason: In the interests of traffic safety.*

- 6. a) The septic tank and puraflo pump shall be constructed so as to be watertight.*
- b) A minimum percolation area of 45 sq. metres shall be provided after the puraflo modules. The puraflo modules and percolation area shall be provided on a raised area, details of which shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development.*

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

- 11. a) Wastes shall not be disposed of by open burning.*
- b) The mode of storage, the storage area(s) and both the method and frequency of disposal of wastes associated with the development shall be submitted to and agreed with the Planning Authority.*
- c) Wastes preferably shall be collected for recycling/ re-use whenever feasible.*
- d) Non-reusable wastes shall be disposed of to a landfill site operated or licensed by the Local Authority and in accordance with the European Communities (Waste) Regulations S.I. 390, 1979.*

*Reason: In the interests of public health and the protection of the environment.*

12. *All surface water run-off from roofs and paved areas shall be collected and disposed of within the curtilage of the site. Surface water shall not discharge onto the public road or to adjoining properties.*

*Reason: In the interests of traffic safety and to protect the interests of other parties.*

4.2. Planning History on the adjacent site to the immediate west:

- **03454:** John Brennan. Permission to construct a new dwelling with septic tank & percolation area, and with new access entrance. Permission was REFUSED on 14<sup>th</sup> May 2003 for 2 no. reasons relating to Traffic Safety and Speculative Development.
- **041508:** Brendan Carroll. Permission to build dwellinghouse/garage, septic tank/effluent treatment system, site entrance and associated works. Permission was GRANTED on 15<sup>th</sup> December 2004 subject to 9 no. conditions.

## 5.0 Policy Context

### 5.1. Development Plan

- ***Kilkenny City and County Development Plan, 2021 to 2027***

- 5.1.1. Chapter 5 of Volume 1 of the Development Plan relates to Economic Development. Section 5.5.3 of Chapter 5 relates to Enterprise and Employment in Rural Areas and reads as follows:

*5.5.3 Rural areas have a vital contribution to make to the achievement of balanced regional development. This involves utilising and developing the economic resources of rural areas, particularly in agriculture and food, tourism, forestry, renewable energy, enterprise and local services, while at the same time capitalising on and drawing strength from vibrant neighbouring urban areas. In this way rural and urban areas are seen as working in partnership and complementing, rather than competing with each other. Rural development is addressed in*

*detail in Chapter 7 of this plan. Certain kinds of industry, especially those which involve natural resources and serve rural communities may, at an appropriate scale, have a role to play in rural development.*

5.1.2. Section 5.6 of Chapter 5 relates to Retail Strategy. Section 5.6.4 relates to the Retail Hierarchy where Level 5 relates to Small Towns/ Villages and the Rural Area, the centre of which is stated to be Smaller Towns and Villages and Nodes within the County. Retail Objectives are set out in Section 5.6.7. Retail Policies are set out in Section 5.6.8 and include the following:

- Policy 2: Retail Hierarchy:
  - *Development in the County's centres should be of a type, size and scale appropriate to the centre, having due regard for the retail hierarchy and the appropriate level of development at each tier. The appropriate level of development at each tier is defined at Table 5.4.*
- Policy 4: City/ Town Centre First:
  - *In addition to the sequential approach outlined in the Retail Planning Guidelines, Kilkenny County Council will adopt a City/Town centre first policy. Where the location of a proposed retail development is in an edge-of-centre or out-of-centre location, a sequential test must be applied in line with the Retail Planning Guidelines. The order of priority for the sequential approach is to locate retail development in Kilkenny City Centre CRA, the District Town Centre CRAs and village centres, and only to allow retail development in edge-of-centre or out-of-centre locations where all other options have been exhausted. The sequential test should be strictly applied and applicants will be required to consider altering their formats and considering smaller sites and multi-storey options. In accordance with RPO 151(f) and (g) of the Regional Spatial and Economic Strategy, adequacy of parking provision at non-residential sites will not be considered as a measure for site suitability in sequential tests.*
  - *Where retail development at an edge-of-centre site is being proposed, permission will only be granted where the applicant can demonstrate that there are no sites or potential sites including vacant units within the*

*city/town/village centres that are (a) suitable (b) available and (c) viable, as defined at Paragraph 4.4.2 of the Retail Planning Guidelines.*

- *Where no town centre or edge of centre sites are available, the Planning Authority must not approve development unless it is satisfied that there will be no negative impact on the viability or vitality of the city/town centre. Where retail development at an out-of-centre site is being proposed, the site will only be considered where the applicant can demonstrate that:*
  - *a) there are no sites or potential sites either within, or on the edge of, Kilkenny City Centre, the District Town Centres and village centres that are (a) suitable (b) available and (c) viable; and*
  - *b) they would contribute towards and support the achievement of compact growth and revitalisation/rejuvenation of city or town centre as envisaged in objectives 3c, 4 and 6 of the National Planning Framework in order to allow a positive presumption in favour of the application under NPO 11 of the NPF.*

5.1.3. Chapter 7.0 relates to Rural Development. Section 7.7 relates to Diversification and states, inter alia, that:

*‘...the Council will support the development of agriculturally related industries, which are environmentally sustainable and considered a suitable use, subject to the protection of heritage and amenities...*

*...It is an objective of the Council to enhance the competitiveness of rural areas by supporting innovation in rural economic development and enterprise through the diversification of the rural economy into new sectors and services, including ICT based industries and those addressing climate change and sustainability in line the NPF.*

*Industries that are not directly related to agriculture will however be encouraged to locate to settlements so as to support the creation of economies of scale which will underpin the vitality and vibrancy of these rural settlements.’*

5.1.4. Section 7.7.1 relates to Development Management Requirements for Diversification projects and reads as follows:

- *A high standard of design and maintenance will be required in all developments in rural areas.*
- *Agriculture developments will be constructed and located so as to ensure that there is no threat of pollution to ground or surface waters.*
- *Buildings and structures in visually sensitive areas will be required to:*
  - *Be sited as unobtrusively as possible;*
  - *Be clustered to form a distinct and unified feature in the landscape;*
  - *Utilised suitable materials and colours; and*
  - *Utilise native species in screen planting*
- *Fencing in upland or highly scenic areas (See Section 9.2.12 Landscape) will not normally be permitted unless such fencing is essential to the viability of the farm and that it conforms to the best agricultural practice. The nature of the material to be used, the height of the fence, and in the case of a wire fence the type of wire to be used will be taken into account. Barbed-wire will not be used for the top line of wire. Stiles or gates at appropriate places will be required.*

5.1.5. Chapter 10 of the Development Plan relates to Infrastructure & Environment.

5.1.6. Section 10.1 relates to Water Services. Section 10.1.8 relates to Water Quality and includes Section 10.1.8.1 (Water Framework Directive), Section 10.1.8.3 (Groundwater), Section 10.1.8.4 (Water Quality) and Section 10.1.8.5 (Water Quality Development Management Requirements).

5.1.7. Section 10.2 of Volume 1 of the Development Plan relates to Environment. Section 10.2.1 relates to Pollution Control and includes Section 10.2.1.1 Air Quality. Section 10.2.2 relates to Noise Mapping and includes Section 10.2.2.1 Noise Control. Section 10.2.3 relates to Pollution Control Objectives. Section 10.2.4 relates to Light Pollution. Section 10.2.5 relates to Pollution Control Development Management Requirements. Section 10.2.7 relates to Surface Water Drainage. Section 10.2.8 relates to Development Management Requirements for Surface Water. Section

10.2.9 relates to Waste Management and includes Section 10.2.9.1 Waste Management Development Management Requirements.

5.1.8. Chapter 12 relates to Movement and Mobility and includes Section 12.12 Car Parking. Car Parking Standards are set out in Table 12.3 where the following standards are of note:

- Shops: 1 space per 20 m<sup>2</sup> gross floor area
- Industry: 1 car space for every 60 m<sup>2</sup> of gross industrial floor area and operational space to be determined by the Planning Authority.

5.1.9. Chapter 13 relates to Requirements for Development and includes Section 13.23 General Standards and Section 13.24 Shopfronts.

## **5.2. Natural Heritage Designations**

5.2.1. The subject appeal site is not located within or adjacent to Natura 2000 site. The nearest Natura 2000 sites are as follows:

- The Loughans SAC (Site Code: 000407), c. 5.33 km to the southeast;
- Spahill and Clomantagh Hill SAC (Site Code: 000849), c. 5.98 km to the east;
- Galmoy Fen SAC (Site Code: 001858), c. 6.22 km to the northeast;
- Cullahill Mountain SAC (Site Code: 000831), c. 8.28 km to the northeast;
- River Barrow and River Nore SAC (Site Code: 002162), c. 12.2 km to the northeast.
- River Nore SPA (Site Code: 004233), c. 13.14 km to the northeast.

## **5.3. EIA Screening**

5.3.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of this report.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The proposed development is the subject of 1 no. First Party Appeal from the Applicant (Brennan Fencing Limited).
- 6.1.2. The main Grounds of Appeal can be summarised as follows:
- Reason for Refusal no. 1: The Local Authority is incorrect in its assumptions. The Third Party Submission concerns the Glenmoy Fen. The Local Authority should be more considerate in relation to the matter of Appropriate Assessment. An Appropriate Assessment Screening Report was provided by the Applicant. The Galmoy Fen SAC (Site Code 001858) is 6.4 km from the subject appeal site. The AA Screening Report concluded that the water flows out of this site rather than into it. There is no suggestion of any groundwater link between the site and the fen. The AA Screening Report concludes there is no likelihood of any significant negative effects on the integrity of the River Barrow and the River Nore SAC or any of the Natura 2000 network from the development site. Furthermore, the AA Screening Report has stated that due to the fact of there being no hydrological link between the site and any Natura 2000 site, it is concluded that no significant environmental impact is likely.
  - Reason for Refusal no. 2: Retention permission was sought for the unauthorised structures on site. The Applicant disagrees that they have failed to demonstrate that the proposed development and the development to be retained would not have a detrimental impact on the environment generally and the amenities of the area. All environmental issues raised in their Response to Further Information are considered to have been addressed.
  - The Applicant states that no further development will take place on site. The new store and the new front extension containing unisex toilets and canteen will not now be constructed. The Application will now be for retention of all unauthorised structures, and permission to upgrade the foul water system on site.

- One of the Directors of Brennan Fencing intends to apply for permission to upgrade the foul water system serving the dwelling located c. 100 metres to the east of the site which is in his ownership.
- The Applicants accept they have not complied with some of the conditions attached to planning reg. ref. no. 97/1023.
- The security fencing was erected for security purposes. It is proposed to plant a native hedge outside the fence.
- The forecourt will be cleared of all materials and solely used for site access and car parking. The new car park proposed under the planning application will therefore not be required. Detailed drawings of same will be submitted to the Planning Authority for their agreement, including landscaping screening and a formal car park. All items in this area will be stored to the rear. Loading and off-loading shall be to the side and rear of the site.
- As the Shipping container will not now be screened, the Applicant will move it to a new location to the rear of the site, away from public view. Detailed drawings of same will be submitted to the Planning Authority in advance of same.
- The Site Assessor has addressed all concerns of the Planning Authority, see Report. The proposed decommissioning of existing tanks is included in this Report.
- It is the Applicants intention to apply for a Discharge License.
- All existing surface water system shall be infiltrated to groundwater via suitably sized soak pits in accordance with BRE-365 design, with the agreement of the Local Authority.
- There are Noise and Dust measures already in place on site. A Report relating to Noise and Dust was submitted as part of the Response to Further Information. A smaller Report was sent to the Local Authority. The Full version will be forwarded to the Commission once received from the Consultant.
- It is intended to apply for Retention for the Display and Sale of all goods on site and for the Retention of the Retail Floor Area in the existing store.



- Signage details have already been submitted to the Local Authority, including a revised logo for the Company. Details were submitted to the Local Authority. A computer generated photograph of the logo is enclosed.
- A Request for Further Information was issued in June 2024. The Applicant responded to same and this was assessed by the Local Authority. The Applicant has now provided a revised Response to the issues raised in the Further Information Request.
- Other Matters:
  - Painting: The following documentation is included as part of the Appeal Submission: Copies of 2 no. Invoices from a Chemical Waste Reduction and Filtration Business for Water and Solvent Treatment Equipment, 1 no. copy of a Certificate of Destruction from a Hazardous Waste Treatment/ Disposal Company for Paint Related Material, 1 no. copy of a Waste Collection Permit issued to same Hazardous Waste Treatment/ Disposal Company and 1 no. copy of an EPA Waste Licence issued to a separate Hazardous Waste Treatment/ Disposal Company.
  - Waste Oil: 1 no. copy of a Waste Management Certificate and 3 no. Invoices issued to the Applicant/ Company by an Environmental Company/ Hazardous Waste Recovery Service.
  - Signage: 1 no. copy of an image of a revised Company Logo.
  - Water Jet Cutting Machine: 1 no. copy of an Invoice from an Abrasive Supply Company, 1 no. copy of 7 page Abrasive Specification Document from same Company, 1 no. copy of 7 page Safety Data Sheet from separate Abrasives Company and 1 no. copy of 12 pages Safety Data Sheet from separate Abrasives Company.
  - EPA Site Assessor Letter dated April 2025:
    - Reference is made to 3 no. trial holes as shown on the site layout map. The trial hole on the eastern boundary is stated to have been agreed with a Local Authority representative on site as the location for a new low pressure percolation bed.

- Regarding the decommissioning of the existing waste water treatment tank, it was agreed that if the tank was visually inspected and considered fit for purpose, it could be relocated to the rear of the dwelling to the east (Mr. Brennan's dwelling). If damaged, it would be disposed of to a licensed facility. The waste water from the second tank located to the west of the production warehouse, would be exported to a licensed site for disposal. The holding chamber would then be backfilled with on-site material and, following completion, images of said decommissioning would be presented.
- The Assessor states that on the attached EPA Loading form a staff number of 21 staff is applied and that 258 litres per day is applied for the Water Jet cutter and that the combined waste is anticipated to be 888 litres per day, which represents a population equivalent of 5.92 persons. The Assessor proposed to increase the Waste Water Treatment unit to a 12 person equivalent treatment tank and to increase the size of the low pressure bed from 90 sqm to 120 sqm.
- The Assessor states the Local Authority has advised the percolation pipes should be a maximum of 10 metres. The Assessor states this is relevant for gravity fed systems and that the integrated pump in the 12 PE waste water treatment unit is specifically designed to dose the 120 sqm low pressure bed.
- The Assessor has found there are no wells within 250 metres of the site and notes there is a water scheme on the local access road. An existing waste water treatment unit proposed 24 metres east from the Applicants' 120 sqm percolation bed is referenced. The Assessor refers to attached AutoCad (there is no AutoCad drawing attached to the Appeal).
- The Assessor states that both the waste water treatment tank and percolation bed will be cordoned off from the field with stock proof fencing, that an appropriate screen process will be implemented at the water jet cutting machine to eliminate suspended solids entering the

waste water treatment unit and that the Applicant will apply for a Discharge License if permission is approved.

- Proposed Screen Fencing:
  - 2 no. photographs of proposed timber screen fencing.
- Noise & Dust Assessments:
  - Noise Report: A total of 9 no. Noise Receptors were selected both on the subject property and adjacent to the subject property. The Noise Impact Assessment Report finds no abnormal noise levels at the site and that the development does not appear to be of the form which would increase noise levels to any significant extent. Noise Receptor no. 3 recorded a noise level of 59 dB which was 3 dB above road noise and would be normal for the commercial activities taking place on the site on the day of the assessment.
  - Dust Assessment Report: Dust levels are lower than average for Ireland and lower than the public road outside the property. No dust control measures are therefore necessary for this activity as no significant dust is created.

## **6.2. Applicant Response**

- N/A

## **6.3. Planning Authority Response**

6.3.1. The Local Planning Authority submitted a Response to the First Party Appeal. The main points of the Appeal Response can be summarised as follows:

- There are many outstanding issues and items of concern in relation to unauthorised uses and unauthorised development on site which have not been addressed by the Applicant.
- The Local Authority Environment Section were not satisfied with the Applicants' Response to Further Information. Photos of particular areas of concern were provided, such as surface water management arrangements

(see Environment Report). (Note: No photos attached to Local Authority Response or either of the 2 no. Environment Section Reports attached to the subject Appeal file).

- Owing to the above concerns and the general lack of clarity in relation to the existing and proposed developments on site, the Local Authority consider the granting of permission to retain and further develop the site, would consolidate an existing unauthorised development, contrary to the proper planning and sustainable development of the area.
- The Local Authority further considers the proposals presented by the Applicant as part of the First Party Appeal continue to be unclear and that a new planning application is warranted to allow for any potential third party input.

#### **6.4. Observations**

- None

#### **6.5. Further Responses**

- None

### **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal and the reports of the planning authority and having inspected the site, and having regard to relevant local/ regional and national policies and guidance, I consider the main issues in this appeal are as follows:

- Introduction and Background
- Principle of the Proposed Development (New Issue)
- Surface Water Management
- Wastewater Treatment
- Other matters

- *Noise and Dust*
- *Amended Proposal*

## 7.2. Introduction and Background

- 7.2.1. Planning permission was previously Granted to the Applicants in March 1998 for a single light industrial type building and single storey lean to at the front with a stated floor area of 470 sqm. The building was stated to comprise a workshop, store, office, canteen and toilet facilities, see planning reg. ref. no. 97/1023. The permitted building measures 15 metres in width and 32 metres in length (excluding a 3.2 metre canopy to the rear). The workshop element of the permitted building, as per the internal layout plan, measures 15 metres by c. 24 metres which equates to an internal workshop floor area of c. 360 sqm. The permitted site area is stated to measure 0.73 hectares. The permitted development also included a stake and wire compound, septic tank with puraflo liquid effluent treatment system & associated site works. The approved site plan under planning reg. ref. no. 97/1023 shows a percolation area to the northwest of the approved septic tank/ effluent treatment system. Stormwater from the building is shown to be piped to the existing open drain along the western site boundary. Permission was GRANTED on 19th March 1998 subject to 12 no. conditions. The Applicants acknowledge they have not complied with some of the conditions applied.
- 7.2.2. I note the elements of the proposed development which are proposed to be retained as summarised above in Section 2.0 of this Report. The combined floor area of the as built extensions proposed to be retained comprising workshop extension, rear canopy, store extensions, shipping container sanding hut, washer room, oil store, cement store and prefab offices equates to 553 sqm. The Application, as Refused by the Local Authority, also included an additional 311 sqm of proposed development in the form of a new detached storage building to the rear (276 sqm) and a new toilet block and canteen to the front (35 sqm). This means the combined floor area of the permitted floorspace and floorspace to be retained (1,013 sqm), together with the proposed structures (311 sqm) equates to a total floor area of c. 1,324 sqm. In other words, the proposed development, as presented to the Local Authority, sought retention and permission for a development which, in terms of floorspace, is almost 3 times the size of the floorspace permitted under planning reg. ref. no. 97/1023 (470

sqm). The increase in site size to 1.34 hectares sought under the subject application is close to twice the site size permitted under planning reg. ref. no. 97/1023 (0.73 hectares). I estimate the existing site size to be in the region of c. 0.8 hectares.

- 7.2.3. Other aspects of the existing site which do not appear to have the benefit of planning permission and are referenced in the Local Authority Planners Reports include the use of the open yard area to the southwest of the site for the storage, sale or display of goods, the introduction of retail floor space and the format of the existing palisade fencing along the site frontage, which is stated to not comply with condition no. 4 of planning reg. ref. no. 97/1023. The applicant has not proposed the retention of these elements as part of the proposed development presented to the Local Authority.

### 7.3. Principle of the Proposed Development (New Issue)

- 7.3.1. The use of the original permitted building (470 sqm) for the manufacture of 'post drivers' has the benefit of planning permission, as planning reg. ref. no. 97/1023 refers. In this regard I note the Applicants' response to item no. 1 of the Request for Further Information issued under that said planning permission (97/1023) wherein the Applicant states that *'the activities carried out in the proposed new workshop are the manufacturing of 'post drivers', which are a working machine attached to an agricultural tractor to drive posts and stakes into the ground during fencing work.'*
- 7.3.2. Point no. 1 of the Request for Further Information issued under the subject application, reg. ref. no. 24/43, sought clarity as to the nature of all uses on site. I note the Applicants' Response where it is stated that the building and workshop are used for the manufacture of post drivers, that the overall site is associated with fencing products and that the compounds store a large amount of fencing products, e.g. gate posts, stakes, rails, rolls of wire etc. I also note the Applicant provided a revised site layout drawing as part of the Response to point no. 1 of the Request for Further Information, which refers to the rear extension as a 'Steel Fabrication Area' and shows a compound to the front southwest of the site (for the storage of fencing materials) and a display area (finished goods) to the centre/ front of the site close to the main entrance.
- 7.3.3. In my opinion, the use of the subject site for the manufacture of post drivers (a light industrial process) has intensified over time as evidenced by the scale and size of the unauthorised rear extension (estimated to measure c. 357 sqm). In addition, a

new retail use in the form of new, albeit modest retail floor space (c. 37 sqm minimum) and the extensive display and storage of fencing related products and various agricultural products (including precast animal drinking troughs, steel gates and circular steel cattle feeders) has also been introduced. The said intensification of use, in my opinion, together with the new retail use, the scale and nature of which cannot be considered to be ancillary to the permitted 'manufacturing use', represents a change of use for which planning permission has neither been sought or indeed obtained.

- 7.3.4. I note Chapter 7 of the Development Plan relates to Rural Development and that Section 7.7 specifically relates to Rural Diversification. It is stated that '*Industries not directly related to agriculture will however be encouraged to locate to settlements so as to support the creation of economies of scale upon which will underpin the vitality and vibrancy of these rural settlements.*' Based on the information received and owing to the scale and nature of activities on site, it is my opinion that the existing business is not expressly one which can be considered to directly relate to agriculture. I also note Section 7.7.1 of the Development Plan, which relates to Development Management Requirements for rural diversification projects, is primarily concerned with a high standard design and the protection of ground and surface waters in terms of pollution.
- 7.3.5. In my opinion, the scale and nature of the existing buildings and activities on site, which it is proposed to retain, together with the proposed increase in site size by c. 0.61 hectares from the permitted site area of 0.73 hectares to 1.34 hectares, the increase in car parking to a total of 25 no. car parking spaces and the proposed additional increase in floorspace by 311 sqm (new build), has not been suitably justified at this rural location. Owing to the size, scale and nature of permitted development on site, the extent of unauthorised development, the intensification of the permitted use, the introduction of an additional unauthorised retail use, together with the proposed scale, nature and resultant further intensification proposed, it is my opinion that the proposed development, as presented to the Local Authority, has not been suitably justified in this rural location, is not therefore in accordance with the proper planning and sustainable development of the area and that permission should therefore be refused.

7.3.6. This is a new issue and the Commission may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out below, it may not be considered necessary to pursue the matter.

#### 7.4. Surface Water Management

- 7.4.1. I note, as per the submitted planning application form (see q. 19) that the Applicant proposes to dispose of surface water from the site to a watercourse and that the submitted proposed site layout drawing (no. 3) shows a total of 5 no. surface water/ stormwater discharge pipes from the existing building and proposed front extension to the same said open drain to the west. This is consistent with the approved plans submitted under the previous planning application, reg. ref. no. 97/1023 and the Applicants' Response to point no. 14 of the Request for Further Information.
- 7.4.2. I note the concerns of the Environment Section in relation to Surface Water Management as raised in the Report dated April 2025. In relation to Point no. 14 of the Request for Further Information, the Environment Section considered the current surface water management system is blocked and not functioning as intended. Drains to the east of the building are stated to have been completely buried and not functioning and drains to the west are stated to have contained oil and flowed to an attenuation tank/ washing bay adjacent to the power washer store that was completely blocked on two separate occasions months apart with deep/ grey coloured water. The Local Authority Planner considered, in agreement with the Environment Section, that the current Surface Water management on site is inadequate and that the Applicant had failed to address the issues raised under point no. 14 of the Request for Further Information.
- 7.4.3. At the time of my site inspection I noted the abovementioned attenuation tank, adjacent to the washing bay to the west of the site, was full with what appeared to be washdown waters.
- 7.4.4. Based on the information on file, the issues raised by the Local Authority in relation to Surface Water Management, the submissions and responses of the Applicant and my on-site observations, I am not satisfied that the surface water/ stormwater from the western side of the site discharges directly to the open drain to the west. I have no reason to dispute the opinion of the Local Authority that drains to the west of the building flow into the attenuation tank/ washing bay adjacent to the power washer



store. There is no information on file to confirm whether or not this attenuation tank then drains to the open drain to the west.

- 7.4.5. At the east of the site, I do not dispute the findings of the Local Authority that drains of the building were completely buried and not functional. At the time of my site inspection I noted what appeared to be buried gullies (2 no.) and that there was also oil present. I note the Applicant has not provided any relevant information which disputes the findings of the Local Authority in relation to the drains to the east of the site.
- 7.4.6. Point no. 16 of the Request for Further Information sought details of the ongoing maintenance agreement for the servicing of the oil separator on site and documentary evidence of the collection and maintenance of the interceptor e.g. receipts for same for the past 2 years. I note that although the assessment of the Local Authority Planner in relation to this point states that a copy of a maintenance agreement has been included, there is no 'maintenance agreement' attached to the appeal file. I do note however that, as part of the Appeal submission, the Applicant has provided a copy of a Waste Management Certificate/ Agreement from an Environmental Management Company to provide Hazardous Waste Recovery Services for Waste Oil (period January to December 2024) and copies of 3 no. invoices for dates in 2023 and 2024. I am therefore satisfied that at the time of the Local Authority decision there were recent measures in place for the management of waste oil at the facility.
- 7.4.7. Based on the response of the Applicant to this point (no. 16) of the Request for Further Information, as well as the plans and details submitted and the assessment of both the Local Authority Planner and the Environment Section of the Local Authority, it is my opinion that there is no evidence to suggest there is an existing underground oil or petrol interceptor which forms part of the surface water management system on site.
- 7.4.8. While I note the Applicants latest proposal, as stated in the appeal, to infiltrate the existing surface water management system to groundwater via suitably sized on site soakpits (BRE-365), no specific design measures or proposed new drainage layout is presented which includes said measures or indeed any design specifications. In addition, no measures have been proposed to address the potential for

hydrocarbons entering the groundwater from the washdown waters at the existing attenuation tank such as the installation of petrol interceptors. Similarly, no measures are presented to address existing blocked surface water drains on the site.

7.4.9. In summary, owing to the lack of detail presented, it is my opinion that it has not been clearly demonstrated that the existing surface water management system is operating to an acceptable standard for all surface water, stormwater and washdown waters on the subject appeal site. While the Applicants' proposal to install soakpits is noted, there is a distinct lack of clarity as to the location and design of such installations on the overall site. There is also a distinct lack of clarity as to the design and location of oil/ petrol interceptors on the site. It should be noted that Condition no. 12 of planning reg. ref. 97/1023, as quoted above in Section 4.0 of this Report, stipulated that all surface water run-off from roofs and paved areas shall be collected and disposed of within the curtilage of the site and that surface water shall not discharge onto the public road or to adjoining properties. See also Section 9.0 below – Water Framework Directive.

7.4.10. The Board could decide to seek Further Information from the Applicant in respect of the issue of Surface Water Management. However, having regard to the other substantive reasons for refusal, it may not be necessary to pursue the matter.

## 7.5. Wastewater Treatment

7.5.1. The site is currently served by an existing septic tank. The tank is located within c. 3 metres of the western site boundary, close to its midpoint. The said tank and an associated puraflo waste water treatment system and percolation area were approved at this general location under planning reg. ref. no. 97/1023. No percolation area is shown associated with this said septic tank and similarly no waste water treatment system is shown at this location, see submitted site layout plan. The existing septic tank is proposed to be decommissioned.

7.5.2. I note the initial Site Suitability Assessment Report lodged as part of the planning application documentation on 15<sup>th</sup> April 2024 which included an EPA Site Characterisation Form. I also note the comments of the Environment Section as per the Report dated June 2024 and, in particular, the observations made in relation to the location of the trial holes being outside the redline boundary, a considerable

distance from the proposed Wastewater Treatment System (WWTS) and the specific points raised under point no. 2 of the Report (Wastewater).

- 7.5.3. A Request for Further Information was issued in June 2024. I note point no's 9, 10, 11 and 12 of the Request for Further Information were specifically concerned with issues of Wastewater Treatment/ Disposal. Point no. 9 requested a new design proposal for the WWTS owing to an anticipated PE of over 10 persons (excluding the Water Jet Cutting) which is greater than the proposed PE of 6 persons. Point no. 9 also clearly stated that the proposed WWTS must include for the Water Jet Cutting Flows. Point no. 10 sought an updated site characterisation form as per the EPA Codes of Practice 2021 and point no. 11 sought the excavation of a new trial hole closer to the proposed location of the WWTS and within the redline boundary of the subject site.
- 7.5.4. I note the Applicants' Response to points 9, 10, 11 and 12 of the Request for Further Information and the assessment of same by the Local Authority Environment Section, as per the Report dated April 2025.
- 7.5.5. In Response to point no. 9, the Applicant refers to a completed EPA loading form for 21 staff on site which is stated to include for 258 litres per day (1.8 m<sup>3</sup> per week) for the cutting tool. The hydraulic loading is stated to be 888 litres per day which includes the aforementioned 258 litres plus 630 litres per day for a staff of 21 persons. The Applicant has therefore sized the WWTS for a 6 person PE. In relation to point no. 9, the Local Authority consider that the calculations provided by the Applicant do not align with the staff numbers presented under point no. 6 c) of the Request for Further Information which refers to 12 no. employees on site with the balance (12 no. employees) of 24 no. employees working off site. The Local Authority consider the Applicant must include for 24 no. staff members and the appropriate flow rates shown in the Water Jet Cutter Specification sheets. I note the proposed development as presented to the Local Authority includes the retention of an existing prefabricated building to the front southeast of the main building and that this said building includes a canteen. I also note the submitted proposals include an extension to the side/ west of the main building and that this also includes a canteen. As per the Applicants submitted calculation sheet, an industrial unit with a canteen has a hydraulic loading of 60 litres per person per day which at 21 no. employees equates to 1,260 litres per day. When added to the stated 258 litres per day for the

water jet cutting machine, this equates to a total of 1,518 litres per day and therefore a resultant PE of 10.12 persons. When the higher number of 24 no. employees is applied to a hydraulic loading of 60 litres per day, this equates to 1,440 litres per day. When added to the stated 258 litres per day for the water jet cutting machine, this equates to a total of 1,698 litres per day and therefore a resultant PE of 11.32 persons. In my opinion, the proposed new WWTS, as presented to the Local Authority under the subject application, is undersized for the scale of development proposed and exceeds the maximum population equivalent (PE) for the EPA Code of Practice (2021) for Domestic Waste Water Treatment Systems P.E.  $\leq 10$ . Where the maximum PE is exceeded, the relevant guidance document is the EPA Wastewater Treatment Manual (Treatment Systems for Small Communities, Business, Leisure and Hotels), 1999. This said manual caters for PE of between 10 and 500. I note the Applicant, as set out in the Site Assessors Letter submitted as part of the Appeal, proposes to increase the WWTS to a 12 person equivalent treatment tank and to increase the low-pressure percolation bed from 90 sqm to 120 sqm. The proposed increase in the proposed PE for the WWTS is, in my opinion, further confirmation that the proposed WWTS presented to the Local Authority is undersized at a PE of 6 and that a PE of 12 is applicable.

7.5.6. As part of the initial planning application documentation, the Applicant provided a Site Characterisation Form the respective dates for which the tests carried out were between 30<sup>th</sup> August 2024 and 1<sup>st</sup> September 2024. The said form relates to tests carried out further to the east of the application site. As part of the Response to Further Information, the Applicant provided 2 no. additional Site Characterisation Forms for tests carried out between 13<sup>th</sup> and 15<sup>th</sup> February 2025 (FI Test 1 – my reference) and 27<sup>th</sup> and 29<sup>th</sup> January 2025 (FI Test 2 – my reference). Based on the accompanying photographs submitted, FI Test 1 was similarly conducted outside the red line boundary of the site. FI Test 2 was carried out at the location of the proposed WWTS on the subject appeal site.

7.5.7. I note as per the Site Characterisation Form (FI Test 2 – carried out between 27<sup>th</sup> and 29<sup>th</sup> January 2025), the site is located within a Locally Important (Lm) Aquifer of Extreme Groundwater Vulnerability where a Groundwater Protection Response 'R2<sup>1</sup>' applies. A trial hole was excavated on 27<sup>th</sup> January 2025 to a depth of 2.2 metres. The date of trial hole examination is indicated to be 2 days later on 29<sup>th</sup> January

2025. The depth from the ground surface to the water table is indicated to be 1.0 metres whereas water ingress is indicated to be 800 mm above the depth of the trial hole (2.2 metres) or 1.4 metres. The soil profile shows topsoil between ground level and 600 mm, gravel clay from 600 mm to 1,400 mm and water ingress between 1,400 mm and the base of the trial hole at 2,200 mm (2.2 metres). The soil structure between ground level and 1,400 mm was found to be granular with a stiff density of grey colour between 600 mm and 1,400 mm.

- 7.5.8. A subsurface percolation (T) value of **35.61/25 mm** was recorded. The subsurface test is stated to have been completed at 900 mm below ground level in the Gravel Clay horizon. I note for Step 4 of the surface test the Applicant states *'there was no surface test completed as the waste water will be treated in the subsurface horizon'*. I note the comments presented in Section 5.0 of the Site Characterisation Report wherein a 90 sqm (0.3 metres deep) low pressure piping network is proposed. The existing topsoil is proposed to be excavated to a depth of 0.3 metres (300 mm) where it is proposed to place a new 300mm deep layer of washed 15-20 mm gravel (gravel bed) on the exposed bed. It is then proposed to install a new 32 mm pipe network on the gravel bed, the commissioning of which is proposed to be supervised by a trained operator. On top of the 300 mm gravel layer, it is proposed to install a 150 mm protective layer of stone. On top of this said protective layer it is proposed to install a geotextile tram layer at 150 mm above ground level and on top of this a 250 mm layer of topsoil will be placed on the gravel bed to complete the bed of 400 mm above existing ground level. The Applicant states that the wastewater will be pumped to the low pressure piping from the integrated pump in the wastewater tank. The applicant indicates in Section 4.0 of the Site Characterisation Form that a depth of 1.10 metres of unsaturated soil and/ or subsoil beneath the invert of gravel/ tubing is proposed to be observed. As per table 6.3 of the EPA Code of Practice (2021) the minimum unsaturated soil and/ or subsoil depth for *'polishing filters following secondary systems and infiltration areas following tertiary systems'* is 0.9 metres. As a distance of 1.1 metre of unsaturated soil and/ or subsoil is proposed to be observed, the system as proposed would, in my opinion, comply with this requirement. However, as noted further above, the proposed PE of 12 means the applicable standard in this case is the EPA Wastewater Treatment Manual (Treatment Systems for Small Communities, Business, Leisure and Hotels), 1999. I

note, as per table 4 of the said EPA Manual (1999), where a system is designed for a PE of between 10 and 40, a minimum separation distance of 28 metres is required between the treatment system and the existing development. Owing to the configuration of the subject site and the stated distance of 23 metres from the eastern side of the building to the proposed side eastern boundary there is insufficient space within which to observe the said recommended minimum separation distance of 28 metres.

7.5.9. The Board could decide to seek Further Information from the Applicant in respect of this matter. However, having regard to the other substantive reasons for refusal, it may not be necessary to pursue the matter.

7.5.10. I note Section 10.1.8.5 of the Development Plan relates to Water Quality Development Management Requirements and seeks, inter alia, *'to ensure that all industrial development is appropriately located, and to seek effluent reduction and 'clean production' where feasible, and require that waste water treatment facilities are adequate, and that all effluents are treated and discharged of in a satisfactory manner.'* The proposed development, as presented, which relates to an industrial type development, serves to increase as opposed to reduce the production of effluent.

## 7.6. Other Matters

- *Noise and Dust*

7.6.1. I note the Noise Assessment Report Summary submitted in Response to Further Information. A total of 9 no. noise sensitive receptors are identified, the majority of which (8 no.) are either located on the subject site, along its perimeter or within the site itself. Of the 9 no. receptors, 1 no. relates to the nearest residential receptor (NR9) located c. 100 metres to the east of the eastern side of the existing main building. The Applicant has only provided the results of the first 5 no. receptors and states *'a full detailed report including all measurements, at each of the 9 Noise Receptors is available in soft copy to save paper.'* With the exception of NR9, which relates to the said nearest residential receptor c. 100 metres to the east, the remaining 3 no. relate to the rear eastern site boundary to the rear of the existing light industrial building (NR6 & NR7) and the centre of the site to the west of the

main reception and front entrance (NR9). None of the selected noise sensitive receptors relate to the eastern site boundary adjacent to the existing building.

- 7.6.2. The average noise level results for each of the 5 no. receptors (NR1 to NR5) is indicated to be between 35 dB (NR4) and 41.4 dB (NR2) which is below typical noise limits for the existing permitted light industrial activity, i.e. (a) 55 dB(A) rated sound level between the hours of 0700 to 2300, and (b) 45 dB(A) 15min and 60 dB LAfmax, 15min at all other times.
- 7.6.3. I note the Environment Section raised a concern that the noise assessment is not complete and that it only included data on 55% of the identified noise receptors.
- 7.6.4. While I consider the nature of the existing and proposed activity on site, is not such that it would typically give rise to excessive noise level impacts, I share the same concern as raised by the Local Authority that the Noise Assessment Report Summary is incomplete and does not present a full and accurate portrayal of existing and proposed noise levels at the subject appeal site. It is therefore my opinion that the Applicant has not clearly and definitively demonstrated that the proposed development, as presented, is acceptable in terms of noise impact.
- 7.6.5. As part of Point no. 6 a) of the Request for Further Information, the Local Authority sought details as to the nature of activities on site and associated proposed dust control measures. In Response, the Applicant provided a Dust Assessment Report Summary wherein following Dust Data Collection Results the Applicant considers that dust levels on the site are lower than average for Ireland and are lower than the public road outside the property. The Applicant concludes that no dust control measures are necessary for this activity, as no significant dust is created.
- 7.6.6. I note the Environment Section question the findings of the Dust Assessment Report Summary that there was no trace of dust at various sample points to the naked eye as, based on their site inspection, significant cake dust is stated to have been found on the output of an extractor fan. At the time of my site inspection, I also noted the presence of caked dust at the same location. I therefore share the same concerns of the Local Authority in respect of the Dust Assessment Report Summary.
- 7.6.7. The Board could decide to seek Further Information from the Applicant in respect of the Noise and Dust Assessments. However, having regard to the other substantive reasons for refusal, it may not be necessary to pursue the matter.

- *Amended Proposal*

- 7.6.8. As part of the Appeal submission, the Applicant states that no further development will take place on site, that the new store and the new front extension will not now be constructed and that the application will now be for: *'Retention of all unauthorised structures and permission to upgrade the foul water system on site.'*
- 7.6.9. The proposed retention of all unauthorised structures on site equates to an approximate floor area of 553 sqm and includes, the unauthorised 357 sqm extension to the rear of the existing workshop, the retention of a 47 sqm rear canopy and various smaller buildings and extensions to the main structure. Other unauthorised development on the subject appeal site includes, but is not restricted to, the open storage and display of products, retail floorspace, the treatment of the roadside boundary, the installation of the power-washer attenuation tank and the apparent omission of a percolation area. As noted further above, and, by the Applicants own admission, they have not complied with some of the conditions attached to planning reg. ref. no. 97/1023. Based on the information on the appeal file, the Applicant would appear to be in breach of conditions 2, 3 a), 4 a), 6 b), 8 a) and 12 of planning reg. ref. no. 97/1023.
- 7.6.10. Having regard to the foregoing, it is my opinion that the applicant has not suitably justified the retention of existing structures on site, including the existing 357 sqm rear extension. The Applicant has similarly not justified the associated intensification of use/ resultant partial change of use and the proposed increase in site size to 1.34 hectares. The proposed development, as revised as part of the appeal submission for the consideration of the Commission, i.e. *'Retention of all unauthorised structures and permission to upgrade the foul water system on site'*, is therefore, in my opinion, not in accordance with the proper planning and sustainable development of the area.
- 7.6.11. The Commission will note the assessment set out above in Section 7.5 of this Report in relation to the proposed new wastewater system.
- 7.6.12. I note, as part of the Appeal submission, the Applicant has provided a revised written response to the Request for Further Information for the consideration of the Commission. In this latest response to point no. 2 of the Request for Further Information (Compliance with Conditions 2, 3 and 4 of planning reg. ref. no. 97/1023), the Applicant proposes a new whitethorn hedge along the site frontage



and a new tall wooden screen fence within the site. The Applicant also states separately that the forecourt will be cleared of all materials and solely used for site access and car parking and that therefore the new car park proposed under the planning application will not therefore be required. Other proposed amendments include landscape screening, a formal car park, the storage of all items to the rear, loading and off loading to the side and rear and the relocation of the shipping container to the rear. The Applicant intends to present same on drawings to be provided at a later stage, assumed to be as part of a formal compliance submission to the Local Authority under planning reg. ref. no. 97/1023.

- 7.6.13. While these said proposals may have some merit, no specific details or supporting plans or drawings have been submitted. In any case, compliance with planning conditions relating to a previous permission on the subject site, is a matter for the Applicant and the Local Authority, is outside the scope of this appeal and therefore not, in my opinion, a matter for the consideration of the Commission.
- 7.6.14. Should the Commission consider the applicants revised proposals to be acceptable an option remains to seek further information. This however, in my view, would represent a significantly different proposal to that considered and appraised by the Local Authority. However, having regard to the other substantive reasons for refusal, it may not be necessary to pursue the matter.

## **8.0 Appropriate Assessment Screening**

### **8.1. Appropriate Assessment Screening Determination**

#### **Finding of no likely significant effects**

- 8.1.1. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the River Barrow and River Nore (SAC) and River Nore (SPA) in view of the conservation objectives of this/ these sites and is therefore excluded from further consideration. Appropriate Assessment is not required.
- 8.1.2. This determination is based on:

- The nature and relatively modest scale of the proposed works and lack of mechanisms that could significantly affect a European site.
- The location/ distance from the nearest European Site and the weak nature of connections to same.

## 9.0 Water Framework Directive

- 9.1. The subject appeal site is located in the rural townland of Crosspatrick. The proposed development comprises retention of all structures constructed on site and permission for a new stores building to the rear, extension to the front of the main building comprising a new canteen and toilets, revised site boundary to the east resulting in an increased site size (from c. 0.99 hectares to 1.34 hectares), new effluent treatment system and all associated site works. The River Goul (River Waterbody Code: IE\_SE\_15G020200) is located c. 544 metres (channel distance) to the south of the subject appeal site, the WFD status of which is stated to be 'at risk'. The site is also straddles the Shanahoe Groundwater Body (Groundwater Body Code: IE\_SE\_G\_119) and the Rathdowney Groundwater Body (Groundwater Body Code: IE\_SE\_G\_114) which underlie the site and are both stated as being 'not at risk'.
- 9.2. The issue of assessment for compliance with the Water Framework Directive is raised in a submission to the planning application.
- 9.3. I have assessed the proposed light industrial development to be retained and extended, and I have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it cannot be eliminated from further assessment because there is a potential risk to surface and groundwater water bodies both qualitatively or quantitatively.
- 9.4. The reason for this conclusion is as follows:
- The size, scale and nature of the proposed development in an un-serviced rural area outside any defined settlement boundary.

- The location of the subject appeal site, distance to the nearest water bodies and potential for direct hydrological connections.

9.5. I conclude that, on the basis of objective information, the proposed development could potentially result in a risk of deterioration on nearby and underlying water bodies either qualitatively or quantitatively on a permanent basis which could serve to jeopardise said waterbodies in reaching their WFD objectives and consequently, the proposed development, as presented, warrants further assessment, as per the Water Framework Directive.

## 10.0 Recommendation

10.1. I recommend that permission be refused for the following reasons.

## 11.0 Reasons and Considerations

1. Having regard to the scale and nature of permitted development on the subject appeal site, the scale and nature of development proposed to be retained and the scale of further proposed development, which includes a proposed significant increase in site size, it is considered the proposed development, as presented, has not been suitably justified at this location and is excessive for this rural site. As per recommendations set out in Section 7.7 of Volume 1 of the Kilkenny County Development Plan, 2021 to 2027, *'industries that are not directly related to agriculture will however be encouraged to locate to settlements so as to support the creation of economies of scale which will underpin the vitality and vibrancy of these rural settlements'*. It is considered that the proposed development would be more appropriately located in an urban area or within a nearby rural settlement. The proposed development, as presented, is therefore not considered to be in accordance with the proper planning and sustainable development of the area.
2. Having regard to the stated anticipated population equivalent (PE) in excess of 10 persons for the proposed Waste Water Treatment System, the Commission is not satisfied, on the basis of the submissions made in

connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated or disposed of on site in accordance with recommendations set out in the EPA Wastewater Treatment Manual (Treatment Systems for Small Communities, Business, Leisure and Hotels), 1999 and, in particular, the recommended separation distances contained therein, notwithstanding the proposed use of a proprietary wastewater treatment system and associated low pressure percolation bed. The proposed development would, therefore, be prejudicial to public health.

3. The subject appeal site is located proximate to the River Goul\_30 which has a current 'at risk' status. It is considered that the proposed development, as presented, poses a significant risk to the ability of this waterbody to achieve the required Water Framework Directive quality status. In addition, the subject appeal site straddles both the Shanahoe Groundwater Body (Groundwater Body Code: IE\_SE\_G\_119) and the Rathdowney Groundwater Body (Groundwater Body Code: IE\_SE\_G\_114) which underlie the site and although both are stated as being 'not at risk', there is insufficient information presented as part of the application and appeal to definitively determine whether or not the proposed development will not result in a deterioration of the existing WFD quality status of these said sites. As such, the Commission is not satisfied that the proposed development will not impact negatively upon the ability of the aforementioned waterbodies to achieve the relevant water quality status required under the Water Framework Directive. The proposed development therefore, as presented, is not considered to be in accordance with the proper planning and sustainable development of the area.

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

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Frank O'Donnell  
Planning Inspector

13<sup>th</sup> August 2025

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	ABP-322431-25
<b>Proposed Development Summary</b>	Retention: Permission to retain indefinitely structures as constructed on site and all associated site works.
<b>Development Address</b>	Crosspatrick , Johnstown , Co. Kilkenny.
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.  <input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.  <b>No Screening required.</b>	

<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.  <b><del>EIA is Mandatory. No Screening Required</del></b>	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.  <b><del>Preliminary examination required. (Form 2)</del></b>  <b><del>OR</del></b>  <b><del>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</del></b>	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3) <i><del>[Delete if not relevant]</del></i>
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3) <i><del>[Delete if not relevant]</del></i>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## Template 2: Standard AA Screening Determination Template

### Test for likely significant effects

(For use in all cases beyond de minimis criteria)

#### Screening for Appropriate Assessment Test for likely significant effects

##### Step 1: Description of the project and local site characteristics

<b>Brief description of project</b>	Retention: Permission to retain indefinitely structures as constructed on site and all associated site works.
<b>Brief description of development site characteristics and potential impact mechanisms</b>	<p>The site has a stated area of 1.34 hectares and is generally flat. The site is in light industrial use and comprises an existing established hard surfaces, a light industrial building, open storage, car parking and circulation space. The nearest European site is estimated to be located c. 5.33 km to the southeast.</p> <p>Surface water currently discharges to groundwater. Under the Appeal submission, the Applicant proposes to install soakpits prior to discharge to groundwater.</p> <p>Wastewater effluent currently discharges to an existing septic tank. It is proposed to dispose of wastewater from the facility (including wastewater from the existing Water Jet Cutter) via a new wastewater treatment system and a low-pressure percolation bed.</p> <p>The Applicant seeks retention of the existing facility and permission to provide extensions to same. The duration of the proposed works is not expressly stated however owing to their nature and scale, it is considered that a construction period of 2 years would not be untypical.</p>
<b>Screening report</b>	Yes
<b>Natura Impact Statement</b>	No
<b>Relevant submissions</b>	1 no. Third Party Submission raised the issue of Appropriate Assessment as the proposed development site is within the Zone of Influence for Galmoy Fen SAC (The Loughans SAC (Site Code 000407).



<b>Step 2. Identification of relevant European sites using the Source-pathway-receptor model</b>				
<b>European Site (code)</b>	<b>Qualifying interests<sup>1</sup> Link to conservation objectives (NPWS, date)</b>	<b>Distance from proposed development (km)</b>	<b>Ecological connections<sup>2</sup></b>	<b>Consider further in screening<sup>3</sup> Y/N</b>
The Loughans SAC (Site Code 000407)	Turloughs [3180] <a href="https://www.npws.ie/protected-sites/sac/000407">https://www.npws.ie/protected-sites/sac/000407</a>	c. 5.33 km to the southeast	No direct connection  Natura 2000 site is uphill from the subject appeal site.	No
Spahill and Clonmantagh Hill SAC (Site Code: 000849)	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] <a href="https://www.npws.ie/protected-sites/sac/000849">https://www.npws.ie/protected-sites/sac/000849</a>	c. 5.98 km to the east	No direct connection  Natura 2000 site is uphill from the subject appeal site.	No
Galmoy Fen SAC (Site Code: 001858)	Alkaline fens [7230] <a href="https://www.npws.ie/protected-sites/sac/001858">https://www.npws.ie/protected-sites/sac/001858</a>	c. 6.22 km to the northeast	No direct connection  There is an existing dry open drain to the west of site which connects to the Goul River/ Stream (30) c. 542 metres to the south. The Goul (50) is located c. 587 metres to the east of the eastern boundary of the fen and flows away	No

			out of and not into the fen.	
Cullahill Mountain SAC (Site Code: 000831)	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]  <a href="https://www.npws.ie/protected-sites/sac/000831">https://www.npws.ie/protected-sites/sac/000831</a>	c. 8.28 km to the northeast	No direct connection  Natura 2000 site is uphill from the subject appeal site.	No
River Barrow and River Nore SAC (Site Code: 002162)	See QI List below (Step 3)  <a href="https://www.npws.ie/protected-sites/sac/002162">https://www.npws.ie/protected-sites/sac/002162</a>	c. 12.2 km to the northeast	Indirect connection to the SAC	Yes
River Nore SPA (Site Code: 004233)	Kingfisher (Alcedo atthis) [A229]  <a href="https://www.npws.ie/protected-sites/spa/004233">https://www.npws.ie/protected-sites/spa/004233</a>	c. 13.14 km to the northeast	Indirect connection to the SPA	Yes

<sup>1</sup> Summary description / **cross reference to NPWS website** is acceptable at this stage in the report

<sup>2</sup> Based on source-pathway-receptor: Direct/ indirect/ tentative/ none, via surface water/ ground water/ air/ use of habitats by mobile species

<sup>3</sup>if no connections: N

### Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

Site name Qualifying interests	Possibility of significant effects (alone) in view of the conservation objectives of the site*	
	Impacts	Effects
<b>Site 1:</b>  <b>River Barrow and River Nore SAC (Site Code: 002162)</b>  <u>QI List:</u>  Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Reefs [1170]	Direct: None  Indirect:  Negative impacts on surface water/water quality due to construction related emissions including increased sedimentation and construction related pollution.  Negative impacts on surface water/water quality due to operational related	Negative affect on habitat quality/ function/ undermine conservation objectives related to water quality

<p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculus fluitans</i> and <i>Callitriche-Batrachion</i> vegetation [3260]</p> <p>European dry heaths [4030]</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p> <p>Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220]</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p><i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish) [1092]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p> <p><i>Lampetra fluviatilis</i> (River Lamprey) [1099]</p> <p><i>Alosa fallax fallax</i> (Twait Shad) [1103]</p> <p><i>Salmo salar</i> (Salmon) [1106]</p> <p><i>Lutra lutra</i> (Otter) [1355]</p> <p><i>Vandenboschia speciosa</i> (Killarney Fern) [6985]</p>	<p>emissions including increased sedimentation/ pollution.</p>	
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	Likelihood of significant effects from proposed development (alone): <b>No</b>	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? <b>No</b>	
	<b>Impacts</b>	<b>Effects</b>
<b>Site 2:</b>  <b>River Nore SPA (Site Code: 004233)</b>  <u>QI list</u>  Kingfisher (Alcedo atthis) [A229]	As above	Negative affect on habitat quality/ function/ undermine conservation objectives related to water quality
	Likelihood of significant effects from proposed development (alone): <b>No</b>	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? <b>No</b>	
<b>Step 4 Conclude if the proposed development could result in likely significant effects on a European site</b>		
<p>I conclude that the proposed development (alone) would not result in likely significant effects on the River Barrow and River Nore (SAC) and River Nore (SPA). The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project.</p> <p>No mitigation measures are required to come to these conclusions.</p>		
<b>Screening Determination</b>		
<b>Finding of no likely significant effects</b> In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the River Barrow and River Nore (SAC) and River Nore (SPA) in view of the conservation objectives of this/ these sites and is therefore excluded from further consideration. Appropriate Assessment is not required.		
This determination is based on:		
<ul style="list-style-type: none"><li>The nature and relatively modest scale of the proposed works and lack of mechanisms that could significantly affect a European site.</li></ul>		

- The location/ distance from the nearest European Site and the weak nature of connections to same.

## WFD IMPACT ASSESSMENT STAGE 1: SCREENING

### Step 1: Nature of the Project, the Site and Locality

<b>An Bord Pleanála ref. no.</b>	<b>ABP-322431-25</b>	<b>Townland, address</b>	Crosspatrick, Johnstown, Co. Kilkenny
<b>Description of project</b>		Retention: Permission to retain indefinitely structures as constructed on site and all associated site works.	
<b>Brief site description, relevant to WFD Screening,</b>		The subject appeal site is located within a rural area on relatively flat ground with freely draining gravel/ clay earths. The site is surrounded by well drained grasslands. There is an existing open drain located along the western site boundary which was dry at the time of my site inspection. Surface water and rainwater from the site currently discharges to the said open drain. This open drain is connected to a known watercourse (Goul_030) c. 544 metres (channel distance) to the south. As part of the Appeal submission, the Applicant proposes to install soakpits, prior to discharge to groundwater.	

<b>Proposed surface water details</b>	<p>The proposed method of Surface Water Disposal is stated on the Application form (q. 19) to be via a Watercourse. The Site Layout Map, as initially presented to the Local Authority, shows existing and proposed surface water sewers/ pipes discharging to the existing open drain along the western site boundary. In response to point no. 14 of the Request for Further Information, the Applicant states all surface water and roof water is drained from the site in waving pipework, to the open drain at the western site boundary of the site. As part of the Appeal submission, the applicant now proposes that all surface water shall be infiltrated to groundwater via suitable sized soakaways in accordance with BRE-365 Soakaway design. It is stated that Surface water run off shall not be allowed to discharge onto the public road or to adjoining properties, subject to planning approval and that drawing will be provided later.</p>
<b>Proposed water supply source &amp; available capacity</b>	<p>The existing development is stated to be served with water from an existing Group Water Scheme. The Applicant has provided a Letter from Bawnmore GWS which states there is sufficient water supplied by the scheme for any additional work being carried out by the Applicant.</p>
<b>Proposed wastewater treatment system &amp; available capacity, other issues</b>	<p>The site is served by an existing Septic Tank which is proposed to be decommissioned. There does not appear to be any percolation area associated with this existing septic tank. It is proposed to install a new Wastewater Treatment System (WWTS) and Percolation Area. The proposed WWTS is considered to be undersized for the scale of development proposed to the Local Authority. The WWTS is designed for a PE of 6 yet the anticipated PE is 12. A revised system with a higher PE of 12 should be designed. As the anticipated PE is</p>

			over 10 the design and installation of the WWTP should be carried out in accordance with the EPA Wastewater Treatment Manual (Treatment Systems for Small Communities, Business, Leisure and Hotels), 1999. In such a scenario, increased separation distances are required which, owing to the current site configuration, will necessitate an increased site size.			
Others?			Not applicable			
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
River Waterbody	c.544 m (Channel Distance)	Goul_030 (IE_SE_15G020200)	Moderate	At risk	Agriculture	The existing open drain to the west of



							the site is connected to this River Waterbody (c. 544 metres to the south).
Groundwater waterbody	Underlying site	Shanahoe (IE_SE_G_119)	Good	Not at risk	No pressures identified		Free draining soil conditions.
Groundwater waterbody	Underlying site	Rathdowney (IE_SE_G_114)	Good	Not at risk	No pressures identified		Free draining soil conditions.
Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.							
CONSTRUCTION PHASE							
No.	Component	Water body receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.

1.	Surface	Goul_030 (IE_SE_15G020200)	Open Drain on Western site boundary	Potential hydrocarbon discharges and spillages	None	Yes	Uncertain
2.	Ground	Shanahoe (IE_SE_G_119)	Open Drain on Western site boundary	Potential hydrocarbon discharges and spillages	None	Yes	Uncertain
3.	Ground	Rathdowney (IE_SE_G_114)	Open Drain on Western site boundary	Potential hydrocarbon discharges and spillages	None	Yes	Uncertain
<b>OPERATIONAL PHASE</b>							
4.	Surface	Goul_030 (IE_SE_15G020200)	Open Drain on Western site boundary	Potential hydrocarbon discharges and spillages	Installation of Soakpits	Yes	Uncertain
5.	Ground	Shanahoe (IE_SE_G_119)	Open Drain on Western site boundary	Potential hydrocarbon	Installation of Soakpits	Yes	Uncertain

				discharges and spillages			
6.	Ground	Rathdowney (IE_SE_G_114)	Open Drain to West	Potential hydrocarbon discharges and spillages	Installation of Soakpits	Yes	Uncertain
DECOMMISSIONING PHASE							
7.	N/A						

## STAGE 2: ASSESSMENT

### Details of Mitigation Required to Comply with WFD Objectives – Template

#### Surface Water

Development/Activity e.g. culvert, bridge, other crossing, diversion, outfall, etc	<u>Objective 1:Surface Water</u> Prevent deterioration of the status of all bodies of surface water	<u>Objective 2:Surface Water</u> Protect, enhance and restore all bodies of surface water with aim of achieving good status	<u>Objective 3:Surface Water</u> Protect and enhance all artificial and heavily modified bodies of water with aim of achieving good ecological potential and good surface water chemical status	<u>Objective 4: Surface Water</u> Progressively reduce pollution from priority substances and cease or phase out emission, discharges and losses of priority substances	Does this component comply with WFD Objectives 1, 2, 3 & 4? (if answer is no, a development cannot proceed without a derogation under art. 4.7)
	Describe mitigation required to meet objective 1:	Describe mitigation required to meet objective 2:	Describe mitigation required to meet objective 3:	Describe mitigation required to meet objective 4:	
<b>Development Activity 1</b>  • Potential Outfall/ Discharge from Power-washer holding	• No express mitigation measures stated or proposed for the	• See comments for Objective 1	• See comments for Objectives 1 & 2.	• See comments for Objectives 1, 2 & 3.	No

tank/ attenuation tank to adjacent open drain to the west	potential outfall/ discharge of power-washer holding tank/ attenuation tank to adjacent open drain to the west.				
<b>Development Activity 2</b> <ul style="list-style-type: none"> <li>• Surface water discharge to adjacent open drain</li> </ul>	<ul style="list-style-type: none"> <li>• Although the applicant, at appeal stage, now proposes to install BRE 365 Soakpits on site, no detailed proposals are presented as to the specific design and location for same. Also, no express proposals are presented for the design and location for oil/ petrol interceptors on site which would serve to prevent potential hydrocarbons from the site entering the adjacent open drain to the west and ultimately the</li> </ul>	<ul style="list-style-type: none"> <li>• See comments for Objective 1</li> </ul>	<ul style="list-style-type: none"> <li>• See comments for Objective 1 &amp; 2.</li> </ul>	<ul style="list-style-type: none"> <li>• See comments for Objective 1, 2 &amp; 3.</li> </ul>	No

	River Goul 30 (IE_SE_15G020200) (c. 544 metres – channel length) further to the south.				
<b>Details of Mitigation Required to Comply with WFD Objectives – Template</b>					
<b>Groundwater</b>					
<b>Development/Activity</b> e.g. abstraction, outfall, etc.	<b><u>Objective 1: Groundwater</u></b> Prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater	<b><u>Objective 2 : Groundwater</u></b> Protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge, with the aim of achieving good status*	<b><u>Objective 3:Groundwater</u></b> Reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity	<b>Does this component comply with WFD Objectives 1, 2, 3 &amp; 4? (if answer is no, a development cannot proceed without a derogation under art. 4.7)</b>	
	Describe mitigation required to meet objective 1:	Describe mitigation required to meet objective 2:	Describe mitigation required to meet objective 3:		
<b>Development Activity 1</b> <ul style="list-style-type: none"> <li>Potential discharge direct to groundwater from Power-Washer holding tank/ attenuation tank to adjacent open drain</li> </ul>	<ul style="list-style-type: none"> <li>Although the applicant, at appeal stage, now proposes to install BRE 365 Soakpits on site, no detailed proposals are presented as to the specific design and location for same. Also, no</li> </ul>	<ul style="list-style-type: none"> <li>See comments for Objective 1</li> </ul>	<ul style="list-style-type: none"> <li>See comments for Objectives 1 &amp; 2.</li> </ul>	No	

to the west via said open drain.	express proposals are presented for the design and location for potential oil/ petrol interceptors on site which would serve to arrest potential hydrocarbons from the site entering the adjacent open drain to the west and ultimately the underlying groundwater.			
<b>Development Activity 2</b> <ul style="list-style-type: none"> <li>Potential discharge direct to groundwater from surface water on site via the adjacent open drain to the west of the site.</li> </ul>	<ul style="list-style-type: none"> <li>Although the applicant, at appeal stage, now proposes to install BRE 365 Soakpits on site, no detailed proposals are presented as to the specific design and location for same. Also, no express proposals are presented for the design and location for potential oil/ petrol interceptors on</li> </ul>	<ul style="list-style-type: none"> <li>See comments for Objective 1</li> </ul>	See comments for Objectives 1 & 2.	No

	site which would serve to arrest potential hydrocarbons from the site entering the adjacent open drain to the west and ultimately the underlying groundwater.			
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