



Planning Ref: **07/19 Part 8**
(Please quote in all related correspondence)

26 June 2019

Director of Services - Planning
Kilkenny County Council
County Hall
John Street
Kilkenny

Via email to planning@kilkennycoco.ie

Re: Notification to the Minister for Culture, Heritage and the Gaeltacht under Article 28 (Part 4) or Article 82 (Part 8) of the Planning and Development Regulations, 2001, as amended.

Proposed Development: Kilkenny County Council: Redevelopment of Mayfair Building on the former Smithwicks Brewery site

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On behalf of the Department of Culture, Heritage and the Gaeltacht, I refer to correspondence received in relation to the above.

Outlined below are heritage-related observations/recommendations of the Department under the stated heading(s).

Archaeology

The Department refers to the Council's notification in relation to the above-proposed development and the recent submission of an Archaeological Impact Assessment (AIA) in tandem with same (Dr Richard Clutterbuck, Archaeologist, Report dated May 2019. Report received this office 19-06-2019). On review of the Archaeological Impact Assessment, please find outlined below the archaeological recommendations of the National Monuments Service of the Department of Culture, Heritage and the Gaeltacht.

The Department concurs with the archaeological mitigation strategy as outlined in Dr Clutterbuck's report (pages 41-43 incl.) and therefore the Department recommends that Items 1-8 inclusive (p41-41) are included as conditions of Part 8 permission and are carried out exactly as detailed in this report.



Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.”

Nature Conservation

The proposed development is adjacent to the Breagagh River, a tributary of the nearby River Nore, which forms part of the River Barrow and River Nore Special Area of Conservation (Site Code 002162) and River Nore Special Protection Area (Site Code 004233).

A report for the purposes of Appropriate Assessment screening, prepared by Moore Group – Environmental Services (May 2019) states that there are to be no discharges from the proposed development site to the Breagagh River during the construction phase, but no details are given as to how this will be achieved. Given the location of the proposed project and potential surface or groundwater flow pathways to the Breagagh River or River Nore, the Department remains concerned that construction impacts from the project, in particular, mobilisation of silt and other contaminants during rainfall events (i.e stormwater runoff), have not been adequately assessed in relation to the nearby European site’s water dependant qualifying interests. The Department notes that the report does not address the potential for soil contamination, given the location within the Smithwick’s Brewery complex, and the resultant risk of exposure of such contaminated soil in the course of the construction works, or any associated site works which remove hard standing.

The report for the purposes of Appropriate Assessment screening states that storm water from this site discharges to the Breagagh River via an existing petrol/oil interceptor. However Drawing No. 171029/C/003 (proposed storm water layout) of the Water Infrastructure Design Report shows a second existing outfall to the south west of the site which appears to have no petrol/oil interceptor. In addition, no details are providing on the functioning or capacity of the existing petrol/oil interceptor for the construction and operation phase of the project.

No details have been given of the landscaping plan and no assessment has been made of its impacts on the nearby European sites, in particular in relation to invasive and non-native species.

The Department advises that Kilkenny Council reviews its Appropriate Assessment screening of the project in light of the above.

Matter relating to biodiversity

Bat species are strictly protected under Annex IV of the Habitats Directive. The proposed development will involve demolition of buildings, the replacement of the entire roof area of the building and the removal of trees which may directly impact on bat species. The development will also involve artificial illumination (external lighting including uplighters and downlighters and the construction of a pop-out ‘glazed pod’ overlooking the Breagagh



River) which may interfere with bat roosts and restrict bat foraging and commuting. It should be noted that the building is intended for 24hour usage, necessitating night-time lighting which may also impact bat species. Given the nature of the development and its location adjacent to the Breagagh River, and in compliance with Regulation 23 of the European Communities (Birds and Natural Habitats) Regulations 2011-2015¹, as amended, the department advises that an assessment of the impacts of the proposed development on bats is carrying out (including full bat activity surveys).

Mitigation in relation to artificial lighting required to minimise the use of the area by bat species must be clearly outlined. As well as impacting on foraging and commuting bat species, artificial lighting can cause decline in insect populations. In assessing and mitigating impacts, the procedures outlined in '*Guidance Note 08/18 Bats and Artificial Lighting in the UK*'

(http://www.bats.org.uk/news.php/406/new_guidance_on_bats_and_lighting) and

Eurobats '*Guidelines for Consideration of Bats in Lighting Projects*'

(http://www.eurobats.org/publications/eurobats_publication_series) must be consulted.

Guidance within these documents should be implemented where possible. Any proposed mitigation measures in the bat survey report must be adhered to.

Where it is not possible to identify a means of avoiding risk completely, consideration should be given as to whether a derogation licence from the Minister under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011-2015 is required. Applications for a derogation licence should be made in writing, including survey results and proposed mitigation measures, to Wildlife Licensing Unit, National Parks and Wildlife Service, Department of Culture, Heritage and the Gaeltacht. An application for such a derogation licence should be made in advance of seeking planning permission for works. This will ensure that full consideration can be given to the impacts of the proposed project on the species and to avoid the possibility of delay to the proposed project or of a refusal of a derogation licence which would prevent the works being carried out as planned.

Any clearance of vegetation on the site, including trees, should only be carried out outside the main bird breeding season (i.e. from September to February inclusive).

¹ Circular Letter NPWS 2/07: Guidance on Compliance with Regulation 23 of the Habitats Regulations 1997 – Strict Protection of Certain Species/Derogation Licences



Kindly forward a copy of your decision to the following address as soon as it issues:
You are requested to send further communications to this Department's Development Applications Unit (DAU) via **eReferral**, where used, or to manager.dau@chg.gov.ie; if emailing is not possible, correspondence may alternatively be sent to:

The Manager
Development Applications Unit (DAU)
Department of Culture, Heritage and the Gaeltacht
Newtown Road
Wexford
Y35 AP90

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A handwritten signature in black ink, which appears to read 'Diarmuid Buttimer', is written over a horizontal line.

Diarmuid Buttimer
Development Applications Unit