

An
Bord
Pleanála

Board Direction
BD-017359-24
ABP-319750-24

The submissions on this file and the Inspector's report were considered at a Board meeting held on 03/09/2024.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- a) Policies and objectives set out in the National Planning Framework and the Regional Spatial and Economic Strategy for the Northern and Western Region.
- b) Policies and objectives set out in the Cavan County Development Plan 2022-2028 incorporating the Cavan Town Local Area Plan 2022-2028, including the location of the site on lands subject to Zoning Objectives 'Proposed Residential', 'Strategic Residential Reserve', and 'Low Density Residential' and the permitted in principle uses therein.
- c) Housing for All, A New Housing Plan for Ireland, 2021.
- d) Climate Action Plan, 2024.
- e) The Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities, 2024.
- f) The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2023.

- g) The Urban Development and Building Heights, Guidelines for Planning Authorities, 2018.
- h) The Design Manual for Urban Roads and Streets, 2013, updated 2019.
- i) The Childcare Facilities, Guidelines for Planning Authorities, 2001.
- j) The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009.
- k) The Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities, 2021, updated 2023.
- l) The nature, scale, and design of the proposed development.
- m) The availability in the area of a range of social, community, and transport infrastructure.
- n) The pattern of existing and permitted development in the area.
- o) The reports of the planning authority.
- p) The submissions received by the planning authority from observers and prescribed bodies.
- q) The grounds of appeal.
- r) The response to the grounds of appeal by the applicant and planning authority.
- s) The report and recommendation of the Planning Inspector.

Screening for Appropriate Assessment – Stage 1

The Board completed a screening for Appropriate Assessment (Stage 1), and determined that the project may have likely significant effects on the European sites, Lough Oughter and Associated Loughs SAC (site code: 000007) and Lough Oughter SPA (site code: 004049), in view of those sites' conservation objectives and qualifying interests. The Board determined that an Appropriate Assessment (Stage 2) is required of the implications of the project on same. The Board is satisfied that the possibility of likely significant effects by the project on other European sites could

be excluded in view of the nature and scale of the project and those sites' conservation objectives.

Appropriate Assessment – Stage 2

The Board considered the Natura Impact Statement submitted by the applicant and all other relevant documentation on the case file, and completed an Appropriate Assessment (Stage 2) of the implications of the project on Lough Oughter and Associated Loughs SAC and Lough Oughter SPA in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

The Board concluded that the project, individually or in combination with other plans or projects, would not adversely affect the integrity of Lough Oughter and Associated Loughs SAC (site code: 000007) and Lough Oughter SPA (site code: 004049) in view of the sites' conservation objectives and qualifying interests.

This conclusion is based on:

- An assessment of all aspects of the project including proposed mitigation measures in relation to the conservation objectives of Lough Oughter and Associated Loughs SAC and Lough Oughter SPA.
- An assessment of in-combination effects with other plans and projects including historical and current plans and projects.
- There being no reasonable scientific doubt as to the absence of adverse effects on the integrity of Lough Oughter and Associated Loughs SAC and Lough Oughter SPA.

Environmental Impact Assessment Screening

The Board completed an Environmental Impact Assessment screening determination of the project and considered that the Environmental Impact Assessment Screening Report and other documents submitted by the applicant identify and describe adequately the direct, indirect, and cumulative effects of the project on the environment.

Regard has been had to:

- a) The nature and scale of the project, which is below the thresholds in respect of Class 10(b)(i) and Class 10(b)(iv) of the Planning and Development Regulations 2001, as amended.
- b) The location of the site on lands zoned lands (Proposed Residential, Strategic Residential Reserve and Low Density Residential zoning objectives), and other relevant policies and objectives in the Cavan County Development Plan 2022-2028 incorporating the Cavan Town Local Area Plan 2022-2028, and the results of the strategic environmental assessment of this plan undertaken in accordance with the SEA Directive (2001/42/EC).
- c) The greenfield nature of the site and its location in an outer suburban area which is served by public services and infrastructure.
- d) The pattern of existing and permitted development in the area.
- e) The planning history at the site and within the area.
- f) The location of the site outside of any sensitive location specified in article 109(4)(a) the Planning and Development Regulations 2001, as amended and the absence of any potential impacts on such locations.
- g) The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage, and Local Government (2003).
- h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended.
- i) The available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the EIA Directive.
- j) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including those identified in the Construction and Environmental Management Plan, Ecological Impact Assessment, Natura Impact Statement, Landscape Management and Maintenance Plan, Site Specific Flood Risk Assessment, and Archaeological Impact Assessment.

in so doing, the Board concluded that by reason of the nature, scale and location of the proposed development, the development would not be likely to have significant effects on the environment and that an Environmental Impact Assessment and the preparation of an Environmental Impact Assessment Report would not, therefore, be required.

Conclusion on Proper Planning and Sustainable Development

Having regard to its nature, scale and extent and subject to compliance with the conditions set out below, it is considered the proposed development would be consistent with the applicable 'Proposed Residential', 'Strategic Residential Reserve', and 'Low Density Residential' zoning objectives and other policies and objectives of the Cavan County Development Plan 2022-2028, incorporating the Cavan Town Local Area Plan 2022-2028, would constitute an acceptable mix and quantum of residential development, would result in an appropriate density of residential development, would provide acceptable levels of residential amenity for future occupants, would not seriously injure the residential or visual amenities of property in the vicinity, would not cause adverse impacts on or serious pollution to biodiversity, would be acceptable in terms of pedestrian, cyclist and traffic safety and convenience, and would be capable of being adequately served by water supply, wastewater, and surface water networks without risk of flooding. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development shall be amended as follows:

- a) A maximum of 14 no. duplex apartments of 2 bedroom/ 3 person design are hereby permitted.
- b) The remaining 25 no. duplex apartments initially proposed as 2 bedroom/ 3 person units are hereby permitted as 1 bedroom/ 2 person apartments. The revision in unit type shall be achieved through the repurposing of the single bedspace bedroom in each apartment to ancillary accommodation (e.g. office, playroom, storage space).
- c) Revised floor plans and an updated Housing Quality Assessment for the duplex apartments, identifying/ numbering each unit and indicating compliance with the minimum floor areas and standards of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2023, shall be submitted to the planning authority for its written agreement.

Reason: To comply with Section 28 Ministerial Guidelines and protect the amenities of future residents.

3. The development shall be implemented subject to the following:

- a) The development of the site shall be undertaken in a phased manner in accordance with Phasing Plan Dwg No. DR-A-510 subject to Condition 3(b) below, unless otherwise agreed in writing with the planning authority.
- b) Construction of Phase 4 shall not be commenced until such time as the childcare facility (included in Phase 2) is constructed and made available for use, to the satisfaction of the planning authority.

Reason: In the interests of orderly development and to ensure the timely provision of amenities and infrastructure for future residents.

4. a) Mitigation and monitoring measures outlined in the plans and particulars, including the Construction and Environmental Management Plan, Ecological Impact Assessment, Natura Impact Statement, Landscape Management and Maintenance Plan, and Site Specific Flood Risk Assessment, submitted with this application shall be implemented.

Reason: In the interest of protecting the environment, public health, and clarity.

5. a) Proposals for a development name and numbering scheme, and associated signage shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

b) The development name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/ marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

6. a) Details of the materials, colours, and textures of all the external finishes to the proposed buildings and boundary treatments shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

b) Details of security shuttering, external lighting, and signage for the childcare facility shall be agreed in writing with the planning authority prior to commencement of development.

c) Details of a maintenance strategy for all external finishes within the proposed development shall be submitted for the written agreement of the

planning authority. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

7. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/ installation of lighting. The agreed lighting system shall be fully implemented and operational before the proposed development is made available for occupation.

Reason: In the interests of amenity and public safety.

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

9. All links/ connections to adjoining lands (within and outside the developer's control) shall be provided up to the site boundary to facilitate future connections subject to the appropriate consents.

Reason: In the interest of permeability and safety.

10. The internal road network serving the proposed development, including carriageway widths, corner radii, turning bays, junctions, set down/ drop off area(s), parking areas, footpaths, kerbs, pedestrian crossings, raised tables, and cycle lanes shall be in accordance with the detailed construction standards of the planning authority for such works, and design standards outlined in the Design Manual for Urban Roads and Streets and the National Cycle Manual issued by the National Transport Authority. In default of

agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of traffic and pedestrian safety.

11. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/ points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/ stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/ points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

Reason: To provide for and/ or future proof the development such as would facilitate the use of electric vehicles.

12. a) The main entrance to the development on the L-1532 shall be provided in accordance with the standards specified in the Design Manual for Urban Roads for a design speed of 60kph on a bus route (with minimum unobstructed visibility splays of 65m), and to the construction standards of the planning authority for such works. Prior to commencement of development, a site entrance visibility splay plan indicating same shall be submitted to and agreed in writing with the planning authority.
- b) The site frontage along the L-1532 shall be set back and a footpath shall be provided in accordance with Dwg No. D111-CSC-XX-XX-DR-C-0001 Proposed Road Layout, and to the construction standards of the planning authority for such works.
- c) All works shall be undertaken at the developer's expense and completed to the satisfaction of the planning authority.

Reason: In the interest of traffic and pedestrian safety, and sustainable transport.

13. Prior to commencement of development and/ or occupation of the residential units, as applicable, final Road Safety Audit(s) and/ or Quality Audit(s) of the development, including the main entrance with the L-1532, internal road and path layouts, shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of sustainable transportation, and traffic and pedestrian safety.

14. a) The management and maintenance of the development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being so taken in charge.

b) The communal open spaces, hard and soft landscaping, car and cycle parking areas, access ways, refuse/ bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by the legally constituted management company.

c) Details of the management company contract, and drawings/ particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

Reason: In the interests of orderly development and to provide for the satisfactory future maintenance of this development.

15. a) The areas of communal and public open space in the development shall be reserved for such use, levelled, contoured, soiled, seeded, and landscaped (hard and soft) in accordance with Landscape Management and Maintenance Plan and associated landscape plans, unless otherwise agreed in writing with the planning authority.

b) Final design, finishes, methods of construction and/ or installation of footpaths, cycle paths, seating, crossing points over ditches/ watercourses/

SuDS features, and equipment in play areas shall be submitted to the planning authority for its written agreement.

c) The landscaping work shall be undertaken in accordance with the phasing requirements stipulated in Condition 2 and shall be completed before the applicable residential units are made available for occupation, unless otherwise agreed with the planning authority and completed.

d) A schedule of landscape maintenance shall be submitted to and agreed in writing with the planning authority prior to occupation of the development. This schedule shall cover a period of at least three years and shall include details of the arrangements for its implementation.

e) The areas of communal and public open space shall be reserved and maintained as such by the developer until taken in charge by the management company or by the local authority.

Reason: In the interest of nature conservation, residential amenity, and to ensure the satisfactory development of the open space areas and their continued use for this purpose.

16. a) The developer shall engage the services of a suitably qualified archaeologist (licensed under the National Monuments Acts 1930- 2004) to carry out pre-development testing at the site. No sub-surface work shall be undertaken in the absence of the archaeologist without his/ her express consent.

b) The archaeologist shall notify the National Monuments Service of the Department of Housing, Local Government and Heritage in writing at least four weeks prior to the commencement of site preparations. This will allow the archaeologist sufficient time to obtain a licence to carry out the work.

c) The archaeologist shall carry out any relevant documentary research and may excavate test trenches at locations chosen by the archaeologist, having consulted the proposed development plans.

d) Having completed the work, the archaeologist shall submit a written report to the planning authority and to the National Monuments Service of the Department of Housing, Local Government and Heritage for consideration.

e) Where archaeological material is shown to be present, avoidance, preservation in situ, preservation by record (excavation) and/or monitoring may be required and the Department of Housing, Local Government and Heritage will advise the developer with regard to these matters.

f) No site preparation or construction work shall be carried out until after the archaeologist's report has been submitted and permission to proceed has been received in writing from the planning authority in consultation with the Department of Housing, Local Government and Heritage.

g) A photographic survey shall be conducted of the wet ditch and laneway and be included in the archaeologist's report.

h) In order to safeguard Recorded Monument CV020-037--- Rath, a buffer zone from the external perimeter of the monument shall be delineated by agreement with the consultant archaeologist and subject to approval with the Department. The buffer zone shall be fenced off during construction works. No works including landscaping, planting or construction shall be permitted within the buffer zone.

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

17. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays, 0800 to 1400 on Saturdays, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

18. Prior to the commencement of development, a Resource Waste Management Plan (RWMP) as set out in the EPA's 'Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects' (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of proper planning and sustainable development.

19. Prior to the commencement of any works associated with the development hereby permitted, the developer shall submit a Construction Environmental Management Plan (CEMP) for the written agreement of the planning authority. The CEMP shall incorporate details for the following: collection and disposal of construction waste, surface water run-off from the site, on-site road construction, and environmental management measures during construction including noise control, dust and vibration control and monitoring of such measures. A record of daily checks that the construction works are being undertaken in accordance with the CEMP shall be kept at the construction site office for inspection by the planning authority. The agreed CEMP shall be implemented in full in the carrying out of the development.

Reason: In the interest of residential amenities, public health and safety.

20. An Operational Waste Management Plan (OWMP) containing details for the management of waste within the development (including duplex apartment blocks and childcare facility), the provision of facilities for the storage, separation, and collection of the waste and for the ongoing operation of these facilities, shall be submitted to and agreed in writing with the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed OWMP.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage for the proposed development.

21. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and surface water management.

22. The developer shall enter into water and/ or wastewater connection agreement(s) with Uisce Éireann, prior to commencement of development.

Reason: In the interest of public health.

23. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and sections 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

24. (a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location

of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

25. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority and/ or management company of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The

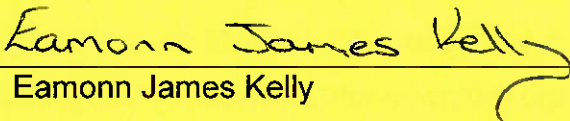
form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

26. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Board Member


Eamonn James Kelly

Date: 03/09/2024

Note

The Board noted the preponderance of 2 bedroom/ 3 person units and the Inspector's comments that these matters are too material to change by way of condition due to the likely requirement for amendments to internal layouts and the

potential for alterations to be necessary to the external designs of the duplex blocks (e.g. access arrangements, door and window openings) that are beyond the scope of this appeal. The Board also considered this issue carefully before concurring with the Inspector's assessment that the reconfiguration required to avoid 25 no. duplex apartments initially proposed as 2 bedroom/ 3 person units being permitted as 1 bedroom/ 2 person apartments (as per Condition 2 above) was too material a change to be undertaken by way of a Board condition.