

An
Bord
Pleanála

Board Order
ABP-318406-23

Planning and Development Acts 2000 to 2022

Planning Authority: Cavan County Council

Planning Register Reference Number: 23/8

Appeal by Cian O'Donoghue on behalf of Friends of Killymoney Lough of Swellan, Cavan, County Cavan and by Tesco Ireland Limited care of RMLA Limited of Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin against the decision made on the 12th day of October, 2023 by Cavan County Council to grant subject to conditions a permission to the said Tesco Ireland Limited in accordance with plans and particulars lodged with the said Council:

Proposed Development: Development consisting of the construction of: (i) a single storey retail unit of circa 5,197 square metres (gross floor area: circa 2194 square metres, convenience net sales area and circa 957 square metres comparison net sales area) including a licensed alcohol sales area, bulk store, ancillary offices, staff facilities, cage marshalling area, bin storage, service yard and associated directional signage; (ii) one number drive thru café unit (circa 174 square metres gross floor area) with external seating and the provision of five number car parking spaces (including two number electric parking spaces, two number disabled and one number standard) and two number set down bay areas; (iii) one number four pump (eight stand) petrol

filling station incorporating an automatic car wash/jet wash (circa 89 square metres), a forecourt canopy (covers circa 255 square metres and 4.8 metres in height) and associated signage, oil interceptors, underground storage tanks and tanker fill point; (iv) four number internally illuminated elevation signage on the eastern, western and southern elevations; (v) 297 number car parking spaces associated with the retail unit (including parent and toddler, disabled and electric parking spaces), one number 20 number cycle parking spaces in freestanding external shelters and set down/loading bay areas; (vi) two number dedicated 'Click and Collect' car spaces with canopy structure and associated signage; (vii) grocery home shopping delivery vehicle docking area situated in the service yard; (viii) one number vehicle access point from Cock Hill Road at the north east boundary of the site and one number vehicle left-in/left-out access point at the southern boundary of the site, all with associated pedestrian and cycle access facilities; (ix) pedestrian linkages with the town centre by way of the provision of a sloped pedestrian walkway and steps on the western boundary of the site with four number pedestrian crossings on Cock Hill Road; (x) one number internally illuminated double-sided totem sign associated with the retail unit (seven metres x 2.3 metres) and one number internally illuminated double-sided totem associated with the petrol filling station (7.2 metres x 1.7 metres); (xi) ESB substation and switch room, pump house, sprinkler tank, two number attenuation tanks, three number detention basins, feature and street lighting, plant, store canopy, trolley shelter/bays and all ancillary site development works, landscaping, ramps, fences, enabling works and site services; all at site measuring 4.126 hectares in Canan Town located in the townlands of Townparks and Tullymongan Lower (to the east of Main Street), Cock Hill, Cavan Town, County Cavan. The site is bounded to the north by St. Clare's National School, to the south by residential lands and to the west by the Main Street backlands; as amended by the revised public notice received by the planning authority on the 18th day of August, 2023.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to the provisions of the Cavan County Development Plan 2022-2028 incorporating the Local Area Plan for Cavan Town 2022-2028 and the “Retail Planning Guidelines for Planning Authorities” issued by the Department of the Environment, Community and Local Government in April, 2012, to the zoning status of the site and its location within the retail core of Cavan as identified within the Cavan County Retail Strategy, and to the scale and design of the proposed development as well as the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area or the amenities of property in the vicinity, would be acceptable in terms of accessibility as well as traffic safety and convenience, would be consistent with national climate ambitions, the Climate Action and Low Carbon Development (Amendment) Act 2021 as well as the Cavan Local Authority Climate Action Plan 2024-2029, would not have unacceptable impacts upon water quality objectives or the environment including designated European Sites. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment Screening exercise in relation to the potential effects of the proposed development on European Sites, taking into account the nature, scale and location of the proposed development, the Appropriate Assessment Screening Report submitted to the planning authority and the Inspector's report and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development has the potential for a significant effect on Lough Oughter and Associated Loughs Special Area of Conservation (Site Code 000007) and Lough Oughter Complex Special Protection Area (Site Code 004049), in view of the sites' conservation objectives, and that a Stage 2 Appropriate Assessment (and submission of a Natura impact statement) was, therefore, required.

Appropriate Assessment

The Board considered the Natura impact statement submitted in support of this application and concluded that the proposed development, either individually or in combination with other plans or projects, would not be likely to adversely affect the integrity of the Lough Oughter and Associated Loughs Special Area of Conservation (Site Code 000007) or the Lough Oughter Complex Special Protection Area (Site Code 004049).

This conclusion is based on:

- (a) a full and detailed assessment of all aspects of the proposed project including proposed mitigation measures in relation to the conservation objectives of Lough Oughter and Associated Loughs Special Area of Conservation (Site Code 000007) and Lough Oughter Complex Special Protection Area (Site Code 004049),
- (b) detailed assessment of in-combination effects with other plans and projects including current proposals and future plans, and
- (c) no reasonable scientific doubt as to the absence of adverse effects on the integrity of the designated sites.

Environment Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale, location, and extent of the proposed development,
- (b) the Environmental Impact Assessment Report, including Addendum Report, and associated documentation submitted to the planning authority ,
- (c) the submissions received during the course of the application; and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board agreed with the

examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant, and in the submissions made in the course of the planning application.

Reasoned Conclusion for Environmental Impact Assessment

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below. The main significant effects, both positive and negative, are:

- (a) 'Population and Human Health' and 'Air' and 'Climate' as a result of dust, noise, traffic, and waste emissions. These effects would be mitigated through a Construction Environmental Management Plan and the application of other best practice construction management measures, which would not result in any unacceptable residual effects,
- (b) 'Biodiversity' with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC' and 'Water' as a result of adverse pollutants from contaminated sources, leaks and spills, silt and sediment etc. These effects would be mitigated through the measures set out in the submitted Natura impact statement, the Construction Environmental Management Plan, and the application of

other best practice construction management measures, which would not result in any unacceptable residual effects,

- (c) operational stage effects on the local landscape including the visual impact upon the character of the area. These effects would be mitigated through design measures, proposed landscaping and appropriate conditions, which would not result in any unacceptable residual effects.

Having regard to the above, the Board is satisfied that the proposed development would not have any unacceptable direct or indirect effects on the environment. The Board is satisfied that the reasoned conclusion is up to date at the time of making the decision and that the information contained in the Environmental Impact Assessment Report complies with the provisions of Article 3, 5 and Annex (IV) of EU Directive 2014/52/EU.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority on the 3rd day of August and the 18th day of August, 2023, 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to the commencement of development, the applicant shall submit to, and agree in writing with, the planning authority the following details:
- (a) full boundary treatment details and details of proposed retaining walls,
 - (b) a revised site layout plan which addresses the issues raised within the Stage 1/2 Road Safety Audit submitted in support of the application,
 - (c) a revised ground floor plan for the proposed store which clearly delineates the area to be devoted to convenience and comparison floor space. The total convenience goods net retail sales area (as defined in Annex 1 of the "Retail Planning Guidelines for Planning Authorities" issued by the Department of the Environment, Community and Local Government in April, 2012) of the supermarket shall not exceed 3,000 square metres, and
 - (d) final details of proposed bus stop.

Reason: In the interest of visual amenity, traffic safety and to comply with the Retail Guidelines.

3. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

Reason: To protect the integrity of European Sites.

4. The mitigation measures contained in the submitted Environmental Impact Assessment Report (EIAR), shall be implemented.

Reason: To protect the environment.

5. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which was received by the planning authority on the 3rd day of August, 2023, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure a satisfactory completion and maintenance of the development in the interests of residential amenity.

6. (a) The plaza area and pedestrian connectivity between the site and the existing town centre shall be provided in accordance with the layout received by the planning authority on the 3rd day of August 2023.
- (b) All landscaping, pedestrian links, civic spaces and boundary treatment shall be fully completed prior to the operation of development.
- (c) The pedestrian route (stairs/ramps) on the western side of the site connecting the upper portion of the site with the lower portion of the site and the existing town centre to the west of the site shall remain open for public use 24 hours a day 7 days a week.

All details in relation to (a), (b) and (c) above shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In order to provide appropriate pedestrian linkage between the proposed development and the existing Town Centre.

7. All mitigation measures set out in the Natura Impact Statement, the Environmental Impact Assessment Report, the Construction Environmental Management Plan, the site-specific Flood Risk Assessment and the Arboricultural Impact Assessment and associated documentation submitted with the application and by way of the submitted further information shall be implemented in full, except as may otherwise be required in order to comply with the conditions attached to this permission.

Reason: In the interest of clarity, the protection of European Sites, the protection of the environment and in the interest of public safety during the construction and operational phases of the development

8. Details of the materials, colours and textures of all the external finishes, including surface materials, to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development. 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.

9. (a) Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) No additional signs, symbols, advertisement or advertising structure other than those shown on the drawings submitted with the application shall be erected or displayed on the building or within the curtilage of the site without the prior agreement of the planning authority.
- (c) The windows to the proposed units shall not be obscured by adhesive material or otherwise, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

10. Prior to commencement of development, the developer shall submit details of the siting and specifications of the proposed petrol filling station underground fuel tanks for the written agreement of the planning authority. The applicant shall include Stage 1 petrol vapour recovery as part of the proposed development. Stage 2 petrol vapour recovery must be included if the actual/intended petrol throughput is greater than 500m³/year.

Reason: In the interests of public health and of proper planning and sustainable development.

11. The proposed petrol filling station shall comply with the requirements of the "Design, Construction, Modification, Maintenance and Decommissioning of Petrol Filling Stations" (Blue Book)- Published by the Association for Petroleum and Explosives Administration/ Energy Institute. This should also comply with the requirements of the Development Plan in relation to electric vehicle charging points/stations.

Reason: In the interest of public safety.

12. If, during the course of site works any archaeological material is discovered, the City/County Archaeologist/Planning Authority shall be notified immediately. (The applicant/developer is further advised that in this event that under the National Monuments Act, the National Monuments Service, Dept. of Housing, Heritage and Local Government and the National Museum of Ireland require notification.)

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

13. All service cables associated with the proposed development (such as electrical and telecommunications) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. Any existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

14. On completion of construction and prior to opening of the development, a Stage 3 Road Safety Audit (RSA) of the development and its junctions with the public road shall be carried out by an independent qualified engineer in accordance with Transport Infrastructure Ireland Publication GE-STY-01024 and submitted to the planning authority for written agreement. Recommendations of the Audit shall be fully implemented at the expense of the developer prior to first occupation or use of the development for trading.

Reason: In the interests of traffic safety and of proper planning and sustainable development.

15. A total of 34 (including 3 for accessible users) car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage 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 has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development.

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

16. 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.

Reason: In the interests of amenity and public safety.

17. Prior to the commencement of operations of the development, a finalised Mobility Management Plan and Travel Plan shall be submitted to, and agreed in writing with, the planning authority. This plan shall include modal shift targets and shall provide for incentives to encourage the use of public transport, cycling, walking and car pooling by staff and customers. The mobility strategy shall be prepared and implemented in perpetuity by the operators of the development.

Reason: In the interest of encouraging the use of sustainable modes of transport.

18. Drainage arrangements, including the attenuation and disposal of surface water, and the provision of Sustainable Urban Drainage Systems, 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.

19. Prior to the commencement of development, the developer shall enter into a Connection Agreement (s) with Uisce Éireann (Irish Water) to provide for a service connection(s) to the public water supply and/or wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

20. All plant, including extract ventilation systems, shall be sited in a manner so as not to cause nuisance at sensitive locations due to emissions. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interests of visual and residential amenity.

21. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, external areas, open spaces, landscaping, roads, paths, parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to, and agreed in writing with, the planning authority before the commercial units are made available for occupation.

Reason: To provide for the future maintenance of this development in the interest of proper planning and sustainable development.

22. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained and waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment and the amenities of properties in the vicinity.

23. Prior to 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 reducing waste and encouraging recycling.

24. The construction of the development shall be managed in accordance with an updated Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development with measures to reflect mitigation described in the submitted Environmental Impact

Assessment Report and Natura impact statement for the application, in addition to the following:

- (a) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
- (b) location of access points to the site for any construction related activity;
- (c) location of areas for construction site offices and staff facilities;
- (d) details of site security fencing and hoardings;
- (e) details of on-site car parking facilities for site workers during the course of construction,
- (f) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (g) measures to obviate queuing of construction traffic on the adjoining road network;
- (h) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
- (i) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;

- (j) details of appropriate mitigation and monitoring measures for noise, dust and vibration, and monitoring of such levels;
- (k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (n) a record of daily checks that the works are being undertaken in accordance with the Construction Environmental Management Plan shall be available for inspection by the planning authority.

Reason: In the interests of amenities, public health and safety

25. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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 amenities of property, including the local school, in the vicinity.

26. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works and shall comply with all relevant standards of the Design Manual for Urban Roads and Streets (DMURS).

Reason: In the interests of amenity and of traffic and pedestrian safety.

27. Details of the opening hours for all commercial units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any operations in each respective unit.

Reason: In the interest of residential amenity.

28. 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 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.

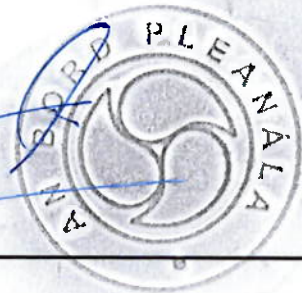

29. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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.

30. The developer shall pay the sum of €1,500,000 (one million five hundred thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended, in respect of public infrastructure and facilities benefitting the development namely the Cavan Town Eastern Access Route. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of

indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.



Joe Boland

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this 3RD day of December 2024.