



An
Bord
Pleanála

Board Order
ABP-319750-24

Planning and Development Acts 2000 to 2022

Planning Authority: Cavan County Council

Planning Register Reference Number: 2460067

Appeal by the Residents of 1-16 The Willows care of Ciaran Fitzpatrick of 11 The Willows, Latt, County Cavan against the decision made on the 23rd day of April 2024, by Cavan County Council to grant, subject to conditions, a permission to Drumlark Investments Limited care of Michael Fitzpatrick Architects Limited of Main Street, Butlersbridge, County Cavan in accordance with plans and particulars lodged with the said Council:

Proposed Development: Permission for a large scale residential development consisting of the provision of a total of 145 number residential units along with provision of a crèche. Particulars of the development comprise as follows: (a) site excavation works to facilitate the proposed development to include excavation and general site preparation works; (b) the reprofiling of ground levels within the site and associated site works as required; (c) the provision of a total of 91 number residential dwellings which will consist of 25 number two-bed units, 55 number three-bed units and 11 number four-bed units. The dwellings range in height from single storey to two-storey; (d) The provision of a total of 54 number duplex apartment units consisting of 15 number one-bed units and 39 number two-bed units. The

duplex apartment blocks range in height from two-storey to three-storey; (e) provision of a two-storey creche with associated parking, bicycle and bin storage; (f) provision of associated car parking at surface level via a combination of in-curtilage parking for dwellings and via on-street parking for the creche and duplex apartment units; (g) provision of electric vehicle charge points with associated site infrastructure ducting to provide charge points for residents throughout the site; (h) provision of associated bicycle storage facilities at surface level throughout the site and bin storage facilities; (i) creation of a new access point from the public road with associated works to include for a connections to the existing public footpath along with provision of a pedestrian crossing point with a raised table; (j) the provision of a new shared cycleway and footpath to serve the site; (k) provision of internal access roads and footpaths and associated works to include for retaining walls and regrading of site levels as required; (l) provision of residential communal open space areas to include formal play areas along with all hard and soft landscape works with public lighting, planting and boundary treatments to include boundary walls, railings and fencing; (m) internal site works and attenuation systems which will include for provision of a hydrocarbon and silt interceptor prior to discharge; (n) installation of culverts and headwalls to facilitate crossing over the existing watercourse aligning the site boundary with associated works; (o) all ancillary site development/construction works to facilitate foul, water and service networks for connection to the existing foul, water and ESB networks, all at Drumlark Townland, Cavan, County Cavan.

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

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, 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; and
- (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 significant effects on the European sites, Lough Oughter and Associated Loughs Special Area of Conservation (Site Code 000007) and Lough Oughter Special Protection Area (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 Special Area of Conservation (Site Code 000007) and Lough Oughter Special Protection Area (Site Code 004049) 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 Special Area of Conservation (Site Code 000007) and Lough Oughter Special Protection Area (Site Code 004049) in view of the sites' conservation objectives and qualifying interests.

This conclusion is based on:

- (i) An assessment of all aspects of the project including proposed mitigation measures in relation to the conservation objectives of Lough Oughter and Associated Loughs Special Area of Conservation and Lough Oughter Special Protection Area.
- (ii) An assessment of in-combination effects with other plans and projects including historical and current plans and projects.
- (iii) There being no reasonable scientific doubt as to the absence of adverse effects on the integrity of Lough Oughter and Associated Loughs Special Area of Conservation and Lough Oughter Special Protection Area.

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 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.

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 have adverse impacts on or cause 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 number duplex apartments of two-bedroom, three-person design are hereby permitted.
 - (b) The remaining 25 number duplex apartments initially proposed as two-bedroom three-person units are hereby permitted as one bedroom, two-person apartments. The revision in unit type shall be achieved through the repurposing of the single bedspace bedroom in each apartment to ancillary accommodation (that is, 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 drawing number 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. Mitigation and monitoring measures outlined in the plans and particulars, including the Construction 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 development 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 submitted to, and 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 interest 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 60km/h on a bus route (with minimum unobstructed visibility splays of 65 metres), 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 drawing number 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 interest 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 3 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 Environmental Protection Agency'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 and 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 six 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, that is, 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.

Eamonn James Kelly

Eamonn James Kelly

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this *5th* day of *September*, 2024.