



An
Bord
Pleanála

Inspector's Report ABP-311150-21

Development	Erection of 15 holiday chalets with connection to all associated site services. Application includes a Natura Impact Statement (NIS).
Location	Cabu by the Lakes, Killykeen, Co. Cavan.
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	21116
Applicant(s)	Killykeen Forest Holidays Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	An Taisce.
Observer(s)	Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
Date of Site Inspection	1 st November 2021
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The c.1.2ha appeal site is situated c. 12km west of Cavan town and c. 3km to the east of Killashndra, within the townland of Killykeen, County Cavan. Killykeen Forest Park lies to the east of the site. The site is situated on the southern end of Lough Oughter on a largely wooded peninsula that is surrounded by water on three sides, c.70m to the east, c.170m to the north and c.70m to the west. It comprises land immediately north of the existing 'Cabu by the Lakes' – Killykeen Forest Park Ltd's holiday village (overall landholding c.30ha). This holiday village has 28 holiday chalets with supporting accommodation including reception, sitootiree (covered outdoor seating area), clubhouse, shop, restaurant, spa treatment room, hot tub, sauna cabins and parking area (capacity 112 guests). To the south of the site, and peninsula, is an existing stable block. This is visually separated from the subject site and is accessed via an internal access road. In October 2020, change of use was granted for use of the stable block as tourist accommodation (capacity 27 guests).
- 1.2. The appeal site comprises an area of broadleaved woodland which has been partly thinned. It is bound to the north and east by woodland and to the west and south by the holiday village, all within a strong woodland setting. The site is generally more elevated than the existing holiday development.
- 1.3. Access to the holiday village is via a short private lane from the local public road which provides access to the Forest Park. The lane has a barrier system at the entrance to the site. Access within the site is from an existing internal access road and network of footpaths which serve the holiday village.

2.0 Proposed Development

- 2.1. The proposed development, as revised by way of significant further information (revised public notices, 24th June 2021) comprises the construction of 15 no. holiday chalets, connected to existing site services. Seven of the holiday chalets are detached, 1.5 storeys in height. Eight are semi-detached chalets, single storey in height. The cabins will accommodate a maximum of 74 visitors. Chalets will be pre-fabricated off site and assembled on-site, with the build methodology include screw piled foundations to create a timber podium for the chalet above the forest floor. Development will be undertaken in a single phase, with construction over a 6 to12

month period with construction access via existing roads. In order to facilitate the development, 45 trees will be removed from the site and the remainder protected and augmented in order to provide a woodland setting for the development. Guests staying in the chalets are required to park in the car park for the duration of the stay (except for loading/unloading), with new paths to connect the proposed chalets to the existing access road. It is stated in the Planning and Development Report that with the existing accommodation (112), permitted stable conversion (27) and proposed development (74), the holiday complex will accommodate a total of 213 visitors.

2.2. Water supply is via an existing, upgraded reservoir on site with water sourced from a local group supply scheme. Foul water will be discharged into an existing purpose built sewerage treatment system installed in 2019, designed to cater for the proposed increase in usage from the subject development. Surface water will be discharged within the site to a purpose built soakaway. Included with the planning application are:

- Planning Report.
- Drawings.
- Landscaping and Visual Impact Assessment.
- Sediment Erosion Prevention Control Management Plan.
- Natura Impact Statement.
- Noise Assessment Report.
- Bat Assessment.
- Terrestrial Mammal Survey.
- Bird Survey and Impact Assessment.
- Operational Waste Management Plan.
- Construction Environmental Management Plan.
- Wastewater Treatment Plant Assessment.
- Tree Survey Report.
- Construction and Demolition Waste Management Plan.
- Traffic Impact Assessment.
- Sustainable Design Statement.

- Cultural Heritage Report.
- Site Specific Flood Risk Assessment and Site Services Report.
- Pollution Control Statement.
- Woodland Enhancement and Management Plan.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 21st July 2021, the planning authority decided to grant permission for the development subject to 13 no. conditions, including:

- C3 – Restricting the use of the facilities to accommodation and limiting the playing of music on the site.
- C4 to C9 - Control and monitor discharges from the site to water during operation and set out measures to minimise the risk of pollution of waterbodies.
- C10 – Requires implementation of mitigation measures set out in the NIS and precludes infilling of the SAC/SPA or interference with its boundary.
- C11 – Requires the retention of all trees on the site, except those to facilitate the development.
- C12 – Requires measures to prevent pollution of waters during construction.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 26th April 2021 – Refers to the nature of the existing development, relevant development plan policies, the planning history of the site, pre-planning consultations, submissions and technical reports made. The report considers the merits of the development under a number of headings including site layout and design, visual impacts, effluent disposal, surface water, traffic, CDP designations and appropriate assessment. It considers the site layout and design of the development to be appropriate given its woodland setting, proximity to existing development and absence of visual impacts and

proposals for woodland management. Appendices provide a preliminary screening for EIA, an appropriate assessment screening report and an appropriate assessment report. The report concludes that the development does not warrant EIA and is not likely to give rise to any significant impact on the integrity of a European site. The planning report recommends further information in respect of matters raised in observations and technical reports, including, surface and foul water drainage, compliance with conditions attached to PA ref. 18/221, details of works to remove trees, photomontages of modelled impacts (visual) and noise impact of the development on fauna.

- 20th July 2021 – Refers to the further information submitted and considers that the issues have been adequately addressed. In summary, it considers that the development is compatible with the existing development (tourism facility), is a low impact development and will be carried out in accordance with strict environmental management procedures. The report recommends granting permission for the development subject to conditions.

3.2.2. Other Technical Reports

- Environment (23rd March 2021) – Recommends further information in respect of the proposed surface water and foul water drainage system to serve the development (site layout maps to indicate drainage systems). States that if the development is granted permission the discharge licence issued by the Environment Section (SS/W002/18) would have to be reviewed to reflect the discharges associated with the development. Subsequent report (2nd July 2021) recommends permission subject to conditions.

3.2.3. Prescribed Bodies

- Irish Water (22nd March 2021) – No objections.
- An Taisce (6th April 2021) – Lack of compliance with conditions of previous permission (PA ref. 18/221). Loss of 0.4ha of mixed woodland habitat. Timing of removal (impact on bird species), licences for felling and bat/bird survey work prior to felling. No assessment of removal in NIS and no assessment of potential impacts. May need to be included as a retention element in the application. Visual impact of development on Lough Oughter

lakelands complex. Noise assessment does not address effect on noise on fauna, including those in nearby European sites.

- IFI (19th April 2021) – Refer to the importance of Lough Oughter as a natural resource for fisheries, angling, tourism, amenity use and nature conservation, and to the importance of the River Erne and its tributaries as a sensitive salmonid habitat. IFI require a 25m riparian zone to be maintained along the margins of the Lough and recommends specific measures to minimise pollution during construction.

3.3. Third Party Observations

3.3.1. There is one third party observation on file. It raises the following issues:

- Impact on sensitive ecology of the site, Lough Oughter Special Area of Conservation, Special Protection Area and proposed Natural Heritage Area, Wildlife Sanctuary and Ramsar site. Generic conservation objectives for SAC and SPA preclude adequate assessment of likely effects of the development on the European site and cannot remove all scientific doubt. No assessment of in-combination impacts (lake shore effects).
- Inadequacy of NIS. Zone of influence is inadequate. Terms of reference too narrow (air and noise pollution, pets, associated visitor trips). Inadequate assessment of noise.

4.0 Planning History

4.1. The following planning applications are referred to in the planning report and by the applicant:

- PA ref. 9119169 – Permission granted to Coillte to erect eight house units and ancillary services. Not commenced. Buildings were proposed on land contiguous to the existing development i.e. to the north west of the subject site.
- PA ref. 9119385 - Permission granted to Coillte for recreation building stables complex, boat jetty and ancillary services (land to the south of the appeal site and Killykeen peninsula).

- PA ref. 18/221 – Permission granted to Killykeen Forest Holidays Ltd for (1) change of use of small amenity building to shop and off licence and minor alterations, (2) change of use of larger amenity building to clubhouse (bar and restaurant) and extension to building, (3) change of use of plant and storage building to plant and changing rooms, provision of 3 external seating pods, (4) New outdoor spa with hot tubs, sauna barrels and treatment room, (5) Outdoor seating lounge (Sitoorerie) at location of tennis court, (6) connection to existing services. NIS submitted. (The application was made in respect of the current holiday village, to south and west of subject site).
- PA ref. 19/188 (ABP 306084-19) – Permission granted by the Board for change of use of existing holiday stables building to guest accommodation, connection to existing sewerage. NIS submitted.

5.0 Policy Context

5.1. National Policy

- National Planning Framework 2040. Supports the development of activity based tourism and rural enterprise (section 1.3, 5.1, NPO 22, 23), having regard to the protection of natural resources.

5.2. Cavan County Development Plan 2014 to 2020

5.2.1. The current Cavan County Development Plan recognises the important contribution tourism makes to the economy of the county, with the potential to diversify the rural economy and regenerate towns and villages, and supports the development of the industry (section 9.6). Section 9.7 of the current County Development Plan provides policies in respect of tourism accommodation in rural areas. It includes the following policies:

- RTO23 - Requires strong justification for new tourist accommodation.
- RTO25 - Promotes the re-use and adoption of existing rural buildings if tourist accommodation is proposed outside of existing settlements.

- RTO27- Requires that all tourism related developments are of a high standard in terms of design and landscaping.
- RTO28 – Directs tourism based development, where appropriate, into existing settlements.
- RTO29 – Requires development to be constructed in a manner that conserves and enhances the natural environment.

5.2.2. In Section 8.8.1 the Plan identifies Lough Oughter Lakeland area as a High Landscape Area. Policy NHEO26 seeks to maintain the scenic and recreation value of the area by restricting all adverse uses and negative visual impacts. Killykeen Forest Park is identified as a County Heritage Site and the following two policies apply:

- NHEO27 - To restrict incompatible development in order to protect the amenity, scientific and historical values of these areas.
- NHEO32 – To regulate development within the Park to maximise recreational, amenity and community uses.

5.2.3. Lough Oughter is also identified as a ‘Major Lake and Environs’, with amenity value due to its size and location within a scenic landscape and its recreational value. Policies NHEO33 seeks to maintain the amenity value of the lakes and their environs within a landscape, recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the areas, give rise to adverse visual impacts or threaten habitats through the disposal of effluents. NHEO34 implements the above policy along the shorelines of Major Lakes and the immediate adjoining area, including skyline development on surrounding hill crests.

5.2.4. The County Development Plan refers to the Marble Arch Caves Geopark and identifies Lough Oughter and Killykeen as two of 18 sites which form a key part of the Geopark. Section 9.9 of the Plan sets out policies in respect of geotourism i.e. natural tourism with specific focus on geology and landscape. It is stated in the Plan that geotourism is intrinsically linked to the overall quality of the local environment and therefore all elements of a specific geographical attraction such as biodiversity value, heritage features archaeological value and appropriate interpretation should

be developed, promoted and protected in conjunction with the geological value of the area.

5.3. **Draft Cavan County Development Plan 2022-2028**

- 5.3.1. Policies of the draft Cavan County Development Plan refer to the 80,000 visitors to Killykeen Forest Park annual and continue policies which support its development for tourism alongside the protection of its landscape value, habitats and ecology.

5.4. **Natural Heritage Designations**

- 5.4.1. The appeal site directly adjoins Lough Oughter and Associated Loughs, proposed Natural Heritage Area (site code 000007). Approximately 75m to the west of the site, the Lough is designated as Lough Oughter and Associated Loughs Special Protection Area (SPA, site code 004049) and c.90m west of the site it is designated as a Special Area of Conservation (SAC), Lough Oughter and Associated Loughs SAC (site code 000007).

5.5. **EIA Screening**

- 5.5.1. Class 12 of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) provides that holiday villages which would consist of more than **100 holiday homes** outside of a built up area requires environmental impact assessment. Class 13 refers to changes and extensions and requires EIA for any change or extension of development already authorised, executed or in the process of being executed, which would result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of part 2 of the schedule and result in an increase in size of greater than 25% or an amount equal to 50% of the appropriate threshold, whichever is greater.
- 5.5.2. The proposed development comprises **15 no. holiday chalets** (74 guests, with an average occupancy therefore of 5). The chalets comprise individual properties and conservatively may be described as holiday homes. At 15 in number, the development is significantly below the threshold for mandatory environmental impact assessment (100 holiday homes).

- 5.5.3. The development is not, however, standalone. It comes forward as part of a larger development comprising the permitted holiday village (28 holiday chalets, 112 guests, average occupancy 4) and converted stable block (14 bedrooms, 29 guests). It is also situated alongside Killykeen Forest Park which annually attracts over 80,000 visitors (draft County Development Plan).
- 5.5.4. If an average occupancy of 4.5 is used, the 29 guests using the stable block would equate to a further 6 holiday homes. Using this assessment method, the proposed development in conjunction with the existing and permitted development would provide an equivalent total of 49 holiday homes. This number remains well below the threshold for mandatory EIA.
- 5.5.5. Schedule 7 of the Regulations sets out criteria for determining whether sub-threshold development should be subject to EIA. Criteria include the characteristics of the proposed development, the environmental sensitivity of the location and the types and characteristics of potential impacts.
- 5.5.6. The appeal site is relatively modest in size i.e. 1.38ha. The development comprises the construction of 15 holiday chalets on screw pile foundations, with the timber frame units manufactured off site and assembled in a 'lego like' on site. It will result in the loss of a small area of existing woodland, and an increase demand for water, energy and waste water services (it is noted however, that the applicant intends to connect the development to the existing licensed wastewater treatment system which has sufficient capacity to accommodate the development). The development will also introduce more human activity to the area (74 guests).
- 5.5.7. The subject site is situated in a sensitive geographical area, adjoining a site of national heritage interest, within a short distance of two European sites and located within a High Landscape Area, the environs of a Major Lake and geopark.
- 5.5.8. Having regard to the modest scale of the development and its construction methodology, it is unlikely to require the use of significant natural resources or to give rise to significant waste, pollution or other significant effects in magnitude or extent. Effects are highly likely to be localised to the area of the site and its immediate environs. Whilst I acknowledge that the development is situated in a sensitive environment and there are a number of matters that require assessment,

these can be addressed through appropriate assessment and the need for EIA can, therefore, be excluded at preliminary examination.

- 5.5.9. With regard to project splitting, I do not consider that this issue arises, as the consideration of the need for EIA has included reference to all elements of the development (built, permitted and proposed) and the requirement for EIA, as set out in the Planning and Development Regulations, 2001 (as amended).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An Taisce's grounds of appeal are:

- **Assessment.** The Habitats Directive requires that permission cannot be granted unless the consenting body is satisfied beyond reasonable scientific doubt that a project in its own right or in combination with other plans or programmes will not adversely affect the integrity of a European site, in the light of best scientific knowledge and the site's conservation objectives. The planning authority did not interrogate the science presented and their decision does not constitute an appropriate record to meet the reporting obligations and invalidates the planning decision. The Board is now considering the application 'de novo' and the onus is on the consent body to give sufficient reasons as to their determination that the application would not affect the integrity of a European site (*Balz v An Bord Pleanála* [2016] IEHC 134).
- **Project splitting.** The applicant has brought forward incremental applications for the development of the site (PA ref. 18/221 and 19/188). It is indicated in the application that more applications may be brought forward. The cumulative impacts of the overall holiday village and visitor traffic coming to Coillte Forest Park are not being addressed. An EIAR cannot be screened out given the cumulative ecological impacts linked to the overall holiday village and associated impacts of Killykeen Forest Park.
- **Prematurity.** The application is premature pending an integrated Management Plan for the publicly accessible recreational area that includes the Coillte and applicant's landholding and the publication of site specific

conservation objectives for the Lough Oughter complex. To do so would jeopardize the overall integrity of the designated sites, in contravention of national and statutory protections.

- Retention. Removal of woodland constitutes enabling works and should be reclassified as retention.
- Lacunae. Absence of sworn affidavits by technical authors. Inadequate description of the area immediately in and around the Killykeen peninsula, one of the most important ornithological areas for wintering wildfowl and numerous other protected species. AA process and NIS fail to adequately review impacts of noise and acoustics, cumulative impacts of noise (site traffic) and pollution (entering and exiting village complex with Forest Park traffic), visitor noise impact, impact of dogs and general disturbance.
- Inappropriate planning conditions. Surface water discharge conditions are not relevant and invalidates the grant of permission (Section 34(2) Planning and Development Act 2000, as amended). No supporting documentation to demonstrate suitability of site to discharge to ground. Conditions are contrary to applicant's proposals in respect of surface water. No reference to need to review discharge licence in conditions of the permission.

6.2. Applicant Response

6.2.1. The applicant responds to the matters raised as follows:

- Preliminary legal considerations – Development has been the subject of a comprehensive assessment of impact on European sites. NIS was carried out by three ecologists, all expert professionals. The permitted 2005 Coillte development was located in NHA. On advice of ecologist, the proposed development was moved outside the boundary of the NHA. Location is better screened from lake than previously permitted development. Satisfied that the planning authority carried out an AA in accordance with the Guidelines for Planning Authorities and complied with the requirements set out in case law (Balz v An Bord Pleanála 2016).
- Project splitting - The two previous applications related to changes of use of existing structures which were already on site, and constitute a phased and

small scale approach to the restoration and renovation of a site purchased by the applicant in 2017. The permitted development (under PA ref. 18/221 – upgrading of complex) has been carried out to a high standard with minimal interference with the surrounding landscape. Development under PA ref. 19/188 (stables) has not been carried out to date due to covid. Due to the distance of this site from PA ref. 18/221, it would not make sense to couple the two applications together. The two permitted renovations of existing structures did not require an EIAR and a new development of 15 cabins does not warrant an EIAR.

- Prematurity – Site is not located in Lough Oughter SPA. Extensive surveys carried out over 12 months. NIS is based on comprehensive scientific information and makes clear site specific recommendations to ensure integrity of SPA is maintained. No need for affidavit. Planning matters are properly decided by the planning authority and Board and not the judiciary. The NIS was prepared by competent experts. In line with guidelines issued by the DoELG, it identifies and describes Natura 2000 sites within 25km of the appeal site and any other sites within its zone of interest. Applicant is satisfied that the NIS has fully assessed all potential impacts on designated sites in the absence of site specific conservation objectives (SSCO) for the Lough Oughter complex. SSCO for a similar site were referred to in the NIS to gain an understanding of the attributes and targets that are needed to restore or maintain the qualifying interests of the SAC.
- Retention – The removal of scrub and woodland trees does not constitute development and therefore cannot be classified as a retention element. The work was carried out as part of normal woodland management, in the appropriate season and has been referred to in various technical reports submitted with the application. Considerable regrowth has taken place.
- Lacunae
 - Noise – Traffic from the additional 15 units will have no significant impact in terms of noise on flora and fauna, given the context for the development and 80,000 visitors to the park per annum. At 100% capacity, 52 weeks/year the development would give rise to less than 8% of current visitors. Guests are required to park in the car park and

access accommodation by foot (with the exception of unloading/loading bags). No need for a bye law to enforce noise condition which can be enforced via statutory notice.

- Traffic – Development will use existing access road and car park. There is sufficient capacity in the car park to cater for the development. Traffic levels are modest in the context of existing visitor numbers to the park.
- Night time disturbance – The development was the subject of a detailed noise assessment, which included noise monitoring at perimeter sites. Noise impacts were fully considered in the NIS. Almost no noise generated by the site at night. Slight noise from existing sitooterie, not elevated above normal conversation. No loud music or night time entertainment offered.
- General disturbance – There is a level of activity associated with the existing structures. The proposed development will add little to this. Site is well run and does not and will not impact on the lakeshore. Existing cabins only glimpsed from the lake.
- Surface water
 - The existing chalets are serviced by soakaways which allow roof water to discharge to ground. Drainage from the reception and recreational buildings discharge to a mix of soakaways and piped drains which run westerly towards the lough.
 - All surface water from proposed development will discharge to soakaways. Designed using BRE Digest 365 method and for a 1 in 30 year storm.
 - An additional temporary soakaway is proposed for the temporary wheelwash (construction).
 - Some of the conditions attached to the decision refer to operations during construction and recommended in the NIS (condition no. 4).
 - Some appear to refer to erroneously to discharge to a watercourse rather than to ground. Applicant will accept any conditions in respect of surface water monitoring/sampling.

6.3. Planning Authority Response

- 6.3.1. On the 11th November 2021, the planning authority notes the grounds of appeal and submits that having regard to the Planning Assessment, report from Inland Fisheries Ireland, the internal reports from Environment Section, the requirements of the Habitats Directive, NIS submitted, scale and number of additional units (15 no. in total), the development would not have a significant impact on the adjacent European sites.

6.4. Observations

- 6.4.1. In response to correspondence from the Board, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DTCAGSM) made the following observations on the appeal:

- Highlights that consent authorities can only authorise a plan or project if they have made certain it will not adversely affect the integrity of a European Site.
- Notes that 1.2ha of compensatory woodland is to be planted and recommends a report detailing plans for this in advance, landscaping plan to be of native species with no pesticide use, landscape management of wider Cabu site be altered to encourage more ground flora and understorey around cabins, rather than regularly cut grass under the trees.
- Notes that the Bat Survey records that '*potential bat roost trees were felled*' before the opportunity arose to survey them for the presence of a roost. States that it is unclear when the information regarding bat roost potential was made available to the applicant.
- Recommends that mitigation measures in NIS and other technical reports are implemented, with particular attention to lighting scheme (to Bat Conservation Trust Lighting Guidelines, 2018).
- Recommends erection of boxes for pine martens, detailed mitigation measures to avoid water pollution as contained in IFI report, all mitigation measures to be included in Construction Environmental Management Plan, with oversight by Ecological Clerk of Works employed by the applicant, not

contractor, post construction mitigation assessments be carried out and a report submitted after 1, 2 and 5 years.

6.5. Further Responses

- None.

7.0 Planning Assessment

7.1. I have examined the application details and all the documentation on file, including all the submissions received in relation to the appeal, and inspected the site. Having regard to these, the national and local planning policy context which supports the development of activity-based tourism and rural enterprise and the established nature of the existing development, I considered the main issues in this appeal are:

- Project splitting and need for environmental impact assessment.
- Prematurity.
- Retention.
- Planning conditions.
- Adequacy of appropriate assessment and lacunae.

7.2. Project splitting and need for EIA are considered in section 5.4 of this report, EIA Screening. Adequacy of appropriate assessment and lacunae are addressed in section 8.0, Appropriate Assessment. Having regard to the responsibility placed on the Board for *de novo* assessment, I also comment briefly on the following matters.

Landscape and visual effects

7.3. The applicant's report on Landscaping and Visual Impact Assessment concludes that with existing tree screening and landform, additional proposed planting and time the development will be fully integrated into the local setting with potential to achieve positive effects on the landscape. The photomontage of the proposed development (Site Model View Photomontage, FI) indicates the outline of the proposed cabins within the site as seen from the lake. The photomontage indicates cabins at a similar elevation to existing. However, the elevation of the proposed cabins is greater than existing cabins and similar to the level of existing communal facilities (see Proposed Foul, Surface Water and Watermain Layout, Drawing no. 20-137-100,

FI). Further the site sections do not show the proposed development in context with existing structures.

- 7.4. Notwithstanding these issues, having regard to my inspection of the appeal site, the heavily wooded nature of the site and its environs, which will form a wooded framework for the site, and the proposals for landscaping of the site, I am satisfied that the proposed development in the longer term will not be substantially visible from the shore or lake. However, this aspect of the development i.e. the success of the proposed landscaping and tree planting in screening the development, should be subject to post construction monitoring and reporting to the planning authority.

Bats

- 7.5. Appendix 5 of the application documents 'Bat Assessment' provides an assessment of the likely effects of the development on bats. The survey area for the assessment includes most of the western peninsula within which the site is situated (Figure 1, Appendix 5). The survey was carried out in March, April, June, July and November 2019, comprising daytime inspections (buildings/structures and trees for bat roost potential; bat habitat/commuting routes), night time inspections (dusk and dawn surveys, passive static bat detector, lighting survey, IR filming, harp trapping session) and desktop review. The survey states that it identified three trees in the development site area that had Low Value bat roost potential (category 3), but that these were felled in 2020. It is not clear if the applicant was aware of the bat roost potential of these trees at the time of felling. The report states that mitigation measures for felling would have included erection of bat boxes for specific species and retention of felled trees on the ground for 24 hours. Overall felling of trees is considered to have a minor impact (limited bat roost potential).
- 7.6. A subsequent survey of the site, post thinning was undertaken in July 2020 (passive detector surveillance). It indicated no change in the number of bat species using the site but a change in the relative proportions of different species using it, with the felled area favouring some species and not others. Table 16a indicates the bat species recorded in the entire site survey and using it for roosting, foraging and commuting. Eight species were recorded, the full complement of resident bat species in County Cavan. Table 16b indicates the six species occurring in the development site, using it for foraging and commuting only. The report notes that

soprano pipistrelle was the most frequently encountered bat species, with a large volume of roosts in the Cabu by the Lakes site (existing buildings) and dependent on Killykeen Forest Park and Lough Oughter complex for foraging. It states that the population recorded in Cabu by the Lakes (c.1000 + individuals) would be considered to be of High Local Importance in relation to Geographical Scale of Importance. Other bat species within the survey site (whole) are assigned a Local Importance. Overall the level of bat activity is considered to be Low-Medium level for the development site. Given the use of buildings within the holiday village by soprano pipistrelle, the report recommends a Bat Management Plan to provide support and advice for the operation of the site as a tourist site and the conservation of bat roosts within the chalets.

- 7.7. Impact assessment of the development on bat species includes the following:
- a. The development site is small in area and the local bat population would not be reliant on it due to the large array of habitats elsewhere in the immediate surroundings.
 - b. The potential impact of the development is considered to have a Minor Negative to Moderate Negative impact on bat species (with removal of trees, increase in human activity and proposed tree planting), with Moderate Negative impacts in relation to brown long-eared bats and Natterer's bat, due to the loss of commuting woodland habitat and introduction of lighting (see Table 13a).
 - c. In consideration of the level of bat activity and presence of extensive suitable bat habitats in the immediate area, the significance of impact is considered to be Negative but Slight for the duration of the development, if no bat mitigation measures are implemented.
- 7.8. Bat mitigation measures are set out in section 5.1 of the Bat Assessment and include a bat box scheme, to mitigate for tree felling, a lighting plan to strictly follow Bat Conservation Trust Lighting Guidelines during construction and operation and a landscaping plan/ woodland management plan to retain the woodland integrity of the proposed development site and adjacent area, and monitoring.
- 7.9. Having regard to the foregoing, I am satisfied that the applicant has adequately assessed the likely effect of the proposed development on bat species and that this

has included analysis of the effect of tree thinning on bats. Further, having regard to small area of the subject site, the location of the development in a larger geographical area which with the current level of human activity associated with the existing development, provides suitable roosting, foraging and commuting habitat for bat species, I am satisfied that with the implementation of proposed mitigation measures no significant adverse effects on bat species are likely to arise.

Mammals

- 7.9.1. Survey of mammals on the subject site and surrounding area (trial cameras), was carried out between March 2019 and July 2020 (Appendix 6, Terrestrial Mammals Survey). It includes an assessment of the likely effects of felling carried out in February 2020. Terrestrial mammals recorded included Pine Marten, Wood Mouse, Fox, Rabbit, Hedgehog, Red Squirrel, Badger, Irish Hare and Otter. Survey of the development site prior to and post felling indicate reduced siting of the terrestrial mammals and a moderate impact on the local mammal population. Similar to bat species, given the small area of the site, the report considers that the local mammal population would not be considered to be reliant on the area due to the large array of habitats present in the surrounding area. However, it is acknowledged that mammal species recorded travelled through the development area. Trees that were potentially suitable for Pine Marten dens and Red squirrel dreys were removed during thinning. Overall the report considers that the development (removal of woodland and scrub and increase in human activity) would have a Permanent Significant Negative impact on terrestrial mammals. Mitigation measures include a Construction Management Plan, landscaping and woodland management plan (to retain woodland integrity in area of site and adjacent area), mammal friendly zones (restricting tourists to main tourist area by dark zones and physical barriers), mammal resting areas (artificial nest boxes), appropriate lighting (bat survey), mammal management plan and monitoring. With mitigation, impact of the proposed development is considered to be Permanent Slight to Moderate Negative impact.
- 7.9.2. Having regard to the foregoing it is evident that the proposed development is located in an area which currently forms part of the territory for terrestrial mammals and that the development will reduce this territory. Whilst the development site is small in the context of the surrounding area, and habitat that this offers, and the development will not of itself give rise to significant adverse effects, there is a risk of gradual erosion

of the 'nature zone'. Significance of effects is therefore highly dependent on the full implementation of mitigation measures and monitoring of efficacy of these measures.

- 7.9.3. Birds. Survey of the appeal site identified its use by 35 bird species (Table 17 of Appendix 7), with the avifauna recorded at the site considered to be a good representation of the impoverished Irish woodland bird community. Impacts on avifauna (wetland birds are considered in the Appropriate Assessment section of this report below) are considered to be a permanent slight negative impact with *loss of habitat*. With proposed mitigation measures of 1.2ha of replacement planting this impact is predicted to reduce to imperceptible/no change. No effects are anticipated as a consequence of *water pollution* with proposed industry standard mitigation measures. *Disturbance* effects are limited to slight negative temporary effects during construction and no perceptible effects during operation as the observed woodland birds are observed breeding in artificial habitats e.g. gardens.
- 7.9.4. Having regard to the location of the appeal site in a larger woodland environment, the survey of avifauna indicating the type of species using the site, the proposals for 1.2ha of replacement planting, mitigation of impacts during construction and the likely habituation of species observed to human activity, I would accept that overall effects on avifauna are not significant.
- 7.9.5. Cultural heritage. Appendix 15, the Cultural Heritage Report, recommends archaeological assessment prior to construction works. This seems reasonable given the context for the development in lands that previously formed part of the designed landscape of Farnham estate.

7.10. **Prematurity**

- 7.10.1. The proposed development comes forward as an extension to an existing tourism facility in the environs of Lough Oughter. The County Development Plan expresses specific objectives in respect of development in the vicinity of the Lough, restricting development which would be incompatible with the protection of its amenity value, including its scientific value, habitats and shoreline. Conservation objectives in respect of Lough Oughter SPA and SAC are generic but they do provide the current statutory objectives for the site.

7.10.2. Any application coming forward must be, and can only be adjudicated on, in the policy context which exists at the time. In this instance, I consider that the existing policy context is sufficiently robust to preclude development which would have an adverse effect on the amenity of the Lough, including its ecological and scientific value. Further, this assessment has had regard to the scientific information is available for Lough Oughter and the subject site, including reports by the NPWS and survey data provided by the applicant in technical reports, which is considered to be sufficient to determine the likely effects of the development on the environment. I do not consider, therefore, that the proposed development is premature pending an integrated Management Plan for the publicly accessible recreational areas or the publication of site specific conservation objectives for the Lough Oughter complex.

7.11. Retention

- 7.11.1. Section 4(1)(i) of the Planning and Development Act 2000, as amended, provides that the thinning or felling of forests or woodlands are exempted development. However, section 4(4) removes this exemption if the development requires environmental impact assessment or appropriate assessment.
- 7.11.2. Prior to thinning, the woodland on the subject site was described as having a well-developed and closed canopy, with trees generally tall and thin with top heavy crowns. The woodland was classified as mixed broadleaved woodland (WD1, Fossit), based on the proportion of non-native species in the woodland, sycamore and beech (section 3.2 NIS). Other species present were native ash, alder and silver birch. Holly, bramble and honeysuckle were the main understorey species. Woodland floor comprised shallow dray drainage ditches, moss and ferns. Ground flora was dominated by ivy.
- 7.11.3. Thinning is described in section 3.2 of the NIS. It was carried out in spring 2020 and included thinning of trees and scrub/understorey from 0.4ha. Figures 7 and 5 respectively illustrate the site prior to and post thinning. Species removed were ash, birch, larch, willow and holly.
- 7.11.4. From inspection of the site, it is evident that scrub and trees have been removed from part of the development area (c.0.4ha), leaving a 'thinned out' forest with more sparsely arranged tall trees with a top heavy crown. The affected area lies outside of

designated national and European sites of nature conservation interest. Further, technical reports indicate that whilst the site plays host to bat, bird and mammal species, these are not dependent on the site given its context in a large, afforested area and lakeside environment. In addition, whilst thinning has taken place, there appear to be no major earth works or movement of soils or alterations to drainage patterns and therefore very limited scope for effects outside the site.

7.11.5. Having regard to the foregoing it is considered that the thinning of the woodland of itself is not likely to have triggered a requirement for environmental impact assessment or appropriate assessment. Consequently, I do not consider that the works which have taken place would have required planning permission or therefore comprise a matter for retention in the subject development.

7.12. **Planning conditions**

7.12.1. Drainage. The appellant refers to inappropriate and contradictory conditions in respect of surface water drainage.

- C4 – Prevents the discharge of hydrocarbons to surface water during construction and operation (e.g. bunding of fuel tanks).
- C5 – Requires the wastewater treatment facilities to be managed, operated and maintained in accordance with the Local Government (Water Pollution) Acts 1977 and 1990, section 4 discharge licence requirements.
- C6 - Requires uncontaminated surface runoff to be collected and managed in accordance with the details in the application documents received on the 3rd March 2021.
- C7 – Requires provision and maintenance of a sampling location on the surface water drainage system prior to discharge to waters.
- C8 – Requires maintenance and monitoring of sampling chamber.
- C9 – Requires remedial works in the event that the quality or appearance of surface water indicate contamination.
- C10 – Requires implementation of all mitigation measures set out in section 4.4 of the NIS.

- C12 – Requires measures to prevent pollution of watercourses during construction and measures to prevent the introduction of invasive species.

7.12.2. The Proposed Foul, Surface Water and Watermain Layout Drawing, No. 20-137-100, submitted on the 11th June 2021 indicates that clean surface water arising from roofs will be disposed of into appropriately sized soakaways. Design of soakaways includes an inspection pipe (Proposed Foul Sewer Sections and Soakaway Sections, drawing no. 20-137-01). During construction a temporary wheelwash and interceptor will drain to a temporary soakaway.

7.12.3. The design of the soakaways is based on trial pit calculations, anticipated volumes of water arising under different storm conditions and time for storage to empty by 50% (to ensure capacity for next storm event) – Site Services Report. The applicant's Site Specific Flood Risk Assessment provides no evidence of flooding on site or risk of flooding arising from the development. The proposals seem reasonable, appropriate to the site and have been accepted by the planning authority. I note that arrangements are similar to the existing chalets, the roofs of which are also drained by soakaways.

7.12.4. With regard to wastewater, it is stated in the application documents that foul water will be directed to the upgraded wastewater treatment plant which is in place on site (in the area of the stable block), and which has capacity to accommodate effluent from the subject development, existing holiday village and converted stable block (capacity 213 guests). The system is described in Appendix 10 'Wastewater Treatment Plant Assessment'. It includes primary, secondary and tertiary treatment with phosphorus removal. Final effluent discharges through a polishing filter to ground (capacity 250 person hydraulic loadings/day). Monthly monitoring of effluent between July 2020 and January 2021 indicates an effluent quality which is well within limit values. A copy of the current Discharge Licence (SS/W002/18) is attached in Appendix C of the report. It indicates compliance with each condition of the licence and this position is not contradicted by the planning authority.

7.12.5. Having regard to the foregoing, I would accept that some of the planning authority's conditions of permission do not directly relate to the application details on file. However, these can be remedied by the Board in its Order. Further, notwithstanding this issue, and subject to ongoing maintenance of the WWTP and monitoring via the

existing discharge licence, I am satisfied that the proposed development will not give rise to any adverse discharge to groundwater.

7.12.6. Enforcement. Condition no. 3 of the permission precludes use of the facilities for any purpose other than accommodation and prohibits the playing of music and/or other events which involves amplification equipment. The planning authority would be responsible for the enforcement of this condition under powers bestowed on them by section 151-162 of the Planning and Development Act 2000, as amended, and would not require noise byelaws to ensure compliance.

7.13. **Lacunae in NIS.**

7.13.1. The adequacy of the NIS is considered below under Appropriate Assessment. Matters raised by the appellant in respect of description of the importance of the area immediately in and around Killykeen peninsula to wintering wildfowl and other protected species and the impacts of noise, general disturbance, traffic and cumulative effects are addressed in my assessment. I am satisfied that no lacunae existing to prevent conclusions being drawn in respect of appropriate assessment.

8.0 **Appropriate Assessment**

8.1. **Screening**

8.1.1. Compliance with Habitats Directive. The requirements of Article 6(3) of the Habitats Directive as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

8.1.2. Background. The applicant's screening report for Appropriate Assessment is included as section 3 of the 'Natura Impact Report' (Appendix 3 of application documents). The Screening Report was prepared in line with current best practice guidance. It provides a description of the proposed development and identifies European Sites within a possible zone of influence of it. The Report concluded that potential impacts may occur on Lough Oughter and Associated Loughs SAC and SPA, given the location of the European sites in relation to the proposed development, and that the project must proceed to the next stage of Appropriate

Assessment, Natura Impact Assessment. Having reviewed the documents, and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites. The appellant refers to the absence of signed affidavits by technical experts. This is a legal procedure and not appropriate to the planning system for the purpose of appropriate assessment.

- 8.1.3. Test of likely significant effects. The project is not directly connected with or necessary to the management of a European Site. The proposed development is therefore examined in relation to any possible interaction with European sites, to assess whether it may give rise to significant effects on these.
- 8.1.4. Project Description. The proposed development is described in section 3.1 of the applicant's Natura Impact Assessment and in associated technical documents. In summary, it comprises the construction of 15 holiday cabins/chalets with associated walkways connecting the units. Access to the site will be via the existing public and private road network. Total capacity of the holiday village will be 213 guests, with the subject development, existing holiday village and permitted conversion of stable block.
- 8.1.5. The construction methodology includes 'screw' piled foundations and timber pilotis (stilts) to a raised platform above the woodland floor. The timber cabin frames will be manufactured off site and infill wall panels will be cut offsite and assembled in a 'lego' like fashion onsite. There will be no concrete trench foundations required for the cabins. Surface water from roofs will be disposed of by soakaway. Wastewater will be disposed of into the existing foul network which has been upgraded which caters for 250 persons. Following treatment and filtration, effluent discharges to ground. The plant operates under Licence and is fully compliant to date (July 2020), Appendix 10 Wastewater Treatment Plant Assessment.
- 8.1.6. 45 no. trees will be removed to facilitate the development (Tree Survey Report, Appendix 11), including larch, sweet chestnut, ash, beech, Norway Spruce and oak. Trees comprises 3 no. category A trees (high quality), 21 no. category B (moderate quality), 19 no. category C (low quality) and 2 no. category U (cannot be retained due to serious defect) (Table 2, Appendix 11). Remaining trees will be protected during works and additional planting is proposed within the footprint of the

development (Landscaping Scheme, drawing no. 18-013-06). The report states that the development is the provision of accommodation within a forested environment, *‘where the integration of cabins and trees is a fundamental concept and consequently influences the design which ensures minimal impact’*.

- 8.1.7. The site and the woodland surrounding it, in the applicant’s ownership, will be managed in accordance with a Woodland Enhancement and Management Plan (Appendix 18). The Plan includes objectives in respect of recreation, landscape and nature conservation.
- 8.1.8. Construction will be carried out in accordance with the applicant’s Construction Environment Management Plan (CEMP). The timing and phase of construction will be in accordance with ecological requirements as detailed in the ecology reports, under the supervision of an Ecological Clerk of Works. Working areas will be confined to road routes and cabin locations (with working margins), with a barrier system preventing access to the ‘construction exclusion zone’. A construction compound will be established on an existing area of hardstanding. The report refers to an Ecological Impact Assessment.
- 8.1.9. Pollution control measures are referred to in the CEMP (Appendix 9) and set out in detail in Appendix 17, Pollution Control Statement. These include strict controls of erosion, sediment generation, generation of other pollutants associated with the construction process and consultation with IFI to ensure compliance with Requirements for the Protection of Fisheries Habitats during Construction and Development Works in and Adjacent to Waters (IFI, 2016).
- 8.1.10. Submissions and observations. DTCAGSM made observations/ recommendations on the appeal (see section 6.4 above).
- 8.1.11. European Sites. The appeal site lies within 100m of two European sites, Lough Oughter and Associated Loughs Special Area of Conservation (SAC) and Special Protection Area (SPA).

European site (code)	Qualifying Interests	Distance	Connections	Considered further in screening

Lough Oughter and Associated Loughs SAC (000007)	<ul style="list-style-type: none"> • Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation. • Bog woodland. • Lutra (Otter) 	95m west	Proximity	Yes
Lough Oughter and Associated Loughs SPA (004049)	<ul style="list-style-type: none"> • Great Crested Grebe (<i>Podiceps cristatus</i>). • Whooper Swan (<i>Cygnus cygnus</i>). • Wigeon (<i>Anas penelope</i>). • Wetland and Waterbirds. 	78m west	Proximity	Yes

8.1.12. Conservation objectives.

- Lough Oughter and Associated Loughs SAC - To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
- Lough Oughter and Associated Loughs SPA - To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

8.1.13. Identification of likely effects. The proposed development could give rise the following effects on the European sites:

- Deterioration in water quality as a consequence of pollution of surface water during construction and operation, for example with runoff discharging into Lough Oughter.
- Deterioration in water quality as a consequence of pollution of groundwater during operation, for example with use of the existing wastewater treatment system.
- Noise and disturbance, affecting qualifying interests, during construction and operation.
- Habitat loss and/or fragmentation.
- Cumulative effects with other plans or projects in the area e.g. existing and planned development in the area, visitors to Killykeen Forest Park, with

potential effects on water quality and qualifying interests by way of disturbance.

- 8.1.14. Mitigation measures. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

8.2. **Screening Determination.**

- 8.3. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having regard to the proximity of the subject site to European sites and the nature of the development and its potential effects, it is concluded that the project individually (or in combination with other plans or projects) could have a significant effect on European Site Nos. 000007 and 004049, in view of the site's Conservation Objectives, and Appropriate Assessment is therefore required.

8.4. **Appropriate Assessment**

- 8.4.1. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.4.2. Compliance with Article 6(3) of the EU Habitats Directive. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).
- 8.4.3. Screening determination. Following the screening process, it has been determined that Appropriate Assessment is required as it cannot be excluded on the basis of

objective information that the proposed development, individually or in combination with other plans or projects will not have a significant effect on Lough Oughter and Associated Loughs SAC/SPA. Measures intended to reduce or avoid significant effects have not been considered in the screening process.

8.4.4. The NIS. The application documents include an NIS, 'Appendix 3 – Natura Impact Statement' which examines and assesses potential adverse effects of the proposed development on the above European sites. The applicant's NIS was prepared in line with current best practice guidelines. It:

- Provides a synopsis of the European sites and their conservation objectives. In the absence of site specific conservation objectives for Lough Oughter and Associated Loughs SAC/SPA the NIS refers to sites with similar qualifying interests to gain an understanding of and assessment of the attributes and targets needed to restore or maintain the favourable conservation condition of each qualifying interest of the SAC/SPA.
- Identifies potential significant effects on the SAC/SPA as a consequence of the development by reference to the sites conservation objectives and theoretical attributes and targets.
- Assesses the potential impact of the development by itself and in combination with other plans and projects, on the qualifying interests of the SAC/SPA. The assessment refers to field surveys and technical reports in respect of terrestrial mammals, bats, birds, noise and traffic, to policies of the County Development Plan, other pressures on the European site and projects in the wider area.
- Sets out mitigation measures in respect of site works, protection of water quality, habitat protection, protection of terrestrial mammals, bats and birds, landscaping, noise, site operation and monitoring.

8.4.5. The NIS concluded that following mitigation the development does not have the potential to significantly affect the conservation objective of the European sites or their integrity as a whole.

8.4.6. Having reviewed the documents, submissions and consultations I am satisfied that the information allows for a complete assessment of any adverse effects of the

development, on the conservation objectives of Lough Oughter and Associated Loughs SAC/SPA alone, or in combination with other plans and projects.

- 8.4.7. Summary of consultations and submissions. See above.
- 8.4.8. Appropriate Assessment of the Implications of the Proposed Development. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed. The assessment has been guided by the following national and EC guidelines on appropriate assessment.
- 8.4.9. European sites. Lough Oughter and its associated loughs covers a large geographical area, occupying much of the lowland drumlin belt in north and central Cavan. The Special Area of Conservation is described in the site synopsis as a maze of waterways, islands, small lakes and peninsulas including some 90 inter-drumlin lakes and 14 basins in the course of the River Erne. The site is important for two habitats listed on Annex I of the EU Habitats Directive, natural eutrophic lakes and bog woodland, and for one species, the otter, listed in Annex II of the Directive. Conservation objectives are set out above. Features of the site which are referred to in the site synopsis include regularly flooded areas, well developed swamp and marsh communities around much of the shoreline, wet lake margins, sheltered shores, level wet pastures, deciduous woodland, wet bog and dry broad-leaved woodland with associated plant communities.
- 8.4.10. It is stated in the Site Synopsis for the SAC, that the main threat to the quality of the site are water polluting activities such as run off from fertiliser and slurry application and sewage discharge which have raised the nutrient status of some lakes, within the complex, to hypertrophic. Housing and boating developments are on the increase, adjacent to and within the site. There is also significant fishing and shooting pressure on and around the lakes. Increased afforestation has resulted in the loss of wetland habitat and feeding ground for wintering birds such as Greenland White-fronted Geese. Conservation objectives for the site are set out above.
- 8.4.11. Lough Oughter and Associated Loughs SPA covers a largely similar area to the SAC, are important for wintering waterfowl and breeding birds. It is internationally

important for Whooper Swan, of regional importance for Greenland White-fronted Goose and supports nationally important wintering populations of Great Crested Grebe, Mute Swan, Wigeon and Golden Eye. Other species which occur regularly include Teal, Mallard, Pochard, Tufted Duck, Lapwing, Curlew, Little Grebe, Cormorant and Black-headed Gull. The site is important for three species listed on Annex I of the EU Birds Directive, Whooper Swan, Great Crested Grebe, Wigeon and for its wetland and waterbirds. Conservation objectives are set out above.

8.4.12. Aspects of the Proposed Development. As stated in the screening report, above, potential effects could arise from the development to the detriment of the qualifying interests and conservation objectives of the European sites.

- Deterioration in water quality as a consequence of pollution of surface water during construction and operation, for example with runoff discharging into Lough Oughter.
- Deterioration in water quality as a consequence of pollution of groundwater during operation, for example with use of the existing wastewater treatment system.
- Noise and disturbance, affecting qualifying interests, during construction and operation.
- Habitat loss and/or fragmentation.
- Cumulative effects with other plans or projects in the area e.g. existing and planned development in the area, visitors to Killykeen Forest Park, with potential effects on water quality and qualifying interests by way of disturbance.

8.4.13. Assessment of Effects on Conservation Objectives – Lough Oughter and Associated Loughs SAC

- *Natural eutrophic lakes with Magnopotamion and Hydrocharition-type vegetation.*

8.4.14. It is stated in the Site Synopsis for the SAC, that the main threat to the quality of the site are water polluting activities. Increased eutrophication (enrichment with minerals and nutrients) and pollution of lake waters could arise from the proposed development via inadequate treatment of wastewater (groundwater and mixing of

this with surface water in the hyporheic zone) and enriched/polluted surface water runoff during construction and operation.

8.4.15. Detailed mitigation measures are set out in the application documentation (Sediment Erosion Plan) and NIS to prevent the deterioration of water quality by way of run off and discharge of effluent. These include standard and detailed arrangements for site works (including a daily monitoring regime), to be incorporated into a Construction and Environment Management Plan, and operation of the existing on-site treatment plant in accordance with its design parameters and monthly reporting on discharges (in conjunction with permitted and planned development). As discussed above, the applicant has demonstrated compliance with all emission limits in the operation of the WWTP to date.

8.4.16. In the absence of effects from the development, cumulative effects with other plans and projects are unlikely to arise. In this regard I note that policies of the County Development Plan provide for the protection of water quality in the determination of applications for development and other projects identified in the NIS are largely removed from the site.

8.4.17. Having regard to the foregoing, and subject to the implementation of the full suite of mitigation measures in respect of the protection of water quality, and subject to regular and on-going reporting on these, I am satisfied that no adverse effects on water quality will arise as a consequence of the development.

- *Bog woodland.*

8.4.18. It is stated in the NIS that bog woodland includes woodlands of intact ombrotrophic bogs, bog margins and cutover bog, occurring on deep acid peat that is relatively well draining and commonly associated with former turf cutting activity or drainage. There are no bog habitats in the area of the site, and I would accept therefore that the development is unlikely to have any significant effect on it. Further, water quality is not identified as a likely attribute for the maintenance of the habitat.

- *Lutra lutra (Otter)*

8.4.19. The terrestrial mammal survey identified otter within the study area, but outside of the application site, with two positive triggers on trail cameras near the lake shore to the north west of the application site. An otter was also observed swimming in the

lake during the bat survey. Impacts on this species could arise from changes in water quality, habitat loss and disturbance along the lake shore, disturbance during construction and operation as a consequence of noise and increased visitor numbers (night time noise, lighting). Inappropriate night time lighting could also fragment otter habitat.

8.4.20. The proposed development does not result in habitat loss within the European site and there are no plans for any additional use of the shore area. Detailed mitigation measures are set out in the NIS to prevent the deterioration of water quality by way of run off and discharge of effluent, including detailed arrangements for site works, protection of water quality to be incorporated into a Construction and Environment Management Plan. Mitigation measures also include a landscape/woodland management plan that aims to retain woodland integrity of the development site and adjacent area, buffer planting along the woodland perimeter (to reduce potential or lighting and noise impacts) and restricting human activity to the main tourist area, with mammal friendly zones along the boundary of the landholding that allows unrestricted mammal movement along the boundary of the site, ensuring connectivity with the wider Killykeen Forest Park. Noise impact during construction is indicated in section 4.3 of the Noise Assessment Report (Appendix 4). It indicates likely noise levels at nearest chalets and therefore gives an indication of noise levels likely in the immediate area of the site. Table 10 indicates Moderate effects at chalets closest to the site, falling to Negligible for those that are removed from it. Given the distance of the development site from the shore, the location where otter was observed, disturbance by way of construction noise would not be likely. Operational noise is indicated in Figure 4 and 5 of Appendix 4, with negligible changes in noise levels at nearby chalets (Table 11). Again I would infer from this no significant change to the noise environment at the lake shore, where otters were observed.

8.4.21. With regard to cumulative effects, there is a risk that the development would increase visitors activity at existing shoreline locations. However, the proposed development would have a capacity for 74 guests, and this would represent a very modest number of the 80,000 annual visitors to Killykeen Forest Park (draft Cavan County Development Plan 2022 to 2028) and would be unlikely to result in any significant cumulative effects on otter species.

8.4.22. Having regard to the foregoing I am satisfied that no adverse effects on otter species will arise as a consequence of the development.

8.4.23. Assessment of Effects on Conservation Objectives – Lough Oughter and Associated Loughs SPA

- *Great Crested Grebe (Podiceps cristatus).*
- *Whooper Swan (Cygnus cygnus).*
- *Wigeon (Anas penelope).*
- *Wetland and Waterbirds.*

8.4.24. The main threats to the SPA, listed in the Natura Data Form are from hunting, fertilisation, leisure fishing, animal breeding, nautical sports and forestry. Impacts from the development on species of conservation interest could arise by way of habitat loss or fragmentation, deterioration in water quality and disturbance e.g. from increased human activity, noise, night-time lighting, water based activities, trampling of vegetation, rubbish, camp fires etc.

8.4.25. The applicants NIS refers to conclusions of the Bird Surveys and Impact Assessment (Appendix 7) in its assessment of likely effects of the development on the species of conservation interest in the SPA. This report provides information on the I-WeBS count figures for populations of non-breeding waterbirds in Lough Oughter complex for the period 2010/2011 to 2014/2015 (Table 1) and the results of bird surveys carried out between March 2019 and February 2020 for the development site and surrounding area (Appendix 7). The survey pre-dates thinning of the subject site. Survey methodology includes:

- A monthly point count survey of the development site and surrounding area (Figure 1, Appendix 7).
- Monthly walkover surveys for waterbirds in the four lakeland areas around the site (Figure 2). The wetland area surveyed is 131.4ha, c.6.7% of the total 1,973ha of the Lough Oughter Complex SPA.

8.4.26. A total of 35 bird species were recorded within the area of the proposed development site and 16 species of wetland associated birds in the lakeland areas around the site (Table 17 and 18, Appendix 7). No species of conservation interest were identified using the subject site.

8.4.27. In Table 19 the report compares the maximum count of species in the applicant's survey to the I-WeBS 5 year mean count for the same species. Adopting a figure of 5% of the SPA total to be significant, it concludes that the wetlands surrounding the appeal site *may be significant within the SPA for wintering populations of non SCI species Mute Swan, Mallard, Little Egret, Grey Heron, Moorhen and Black-headed Gull and two SCI species Wigeon and Great-crested Grebe*. The report therefore acknowledges the importance of the area in and around Killykeen Peninsula for wetland and waterbirds. I note that the report is conservative in its conclusions as it compares peak survey counts with 5 year averages.

8.4.28. The report predicts the impact of the development on the wetland and waterbird species of the SPA, having regard to the findings of the bird survey and mitigation measures. I summarise conclusions below:

Impacts on Lough Oughter Complex SPA and waterbird species			
Impact	Potential effects	Mitigating Factors/Mitigation	Residual impact
Loss of habitat	No loss of habitat.	<ul style="list-style-type: none"> • None required. 	No change.
Water pollution (construction)	Potential adverse effects on wetland and waterbirds	<ul style="list-style-type: none"> • Mitigation measures to control potential pollutions during construction (CEMP). • Continual monitoring of wastewater treatment system, regular checks and maintenance. 	No residual change.
Disturbance	Potential for effects.	<ul style="list-style-type: none"> • Distance of bird species from site in excess of distance in which disturbance effects arise (see Table 20), including two of the species of SCI (Whooper Swan and Wigeon). Two species recorded closer to proposed site than minimum distance for boats, not by 	No perceptible impacts.

		<p>pedestrians, including one species of SCI (Great-crested Grebe).</p> <ul style="list-style-type: none"> • Distance of site from nearest wetland areas (80m). • Screening between site and wetland areas (existing tree cover). • No alteration of access by humans to wetland areas. • No powered boats or jet skis allowed in Forest Park. • Visitors to be informed of sensitivity of habitat. • Prohibition of row boats and canoes in proximity to reedbeds (important for sensitive waterbirds including Great-crested Grebe). 	
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8.4.29. Impacts and effects on the species of conservation interest, Great crested Grebe, Whooper Swan, Wigeon and wetlands and water birds are considered in Table 21 of the report, with particular reference to likely effects on population and distribution of the species. Impacts on population are not anticipated due to distance of species from site (in excess of disturbance distances), distance from breeding/feeding areas, absence of loss of habitat and mitigation of potential aquatic pollution. Impacts on distribution are also considered to be negligible due to distance from feeding and breeding sites, distance of species from site (in excess of disturbance distances), short duration of construction, limited effects of construction to immediate area of the site and increased disturbance during operation at locations already experiencing disturbance.

8.4.30. There is no specific reference in the bird survey to impacts by dogs. However, as stated in the NIS, birds of conservation interest were observed at distance from the subject site and beyond 'minimum approach distance' (MAD), indicating that effects

from dogs are unlikely to arise. Further, the development proposes no new access to the shoreline and there seems little likelihood of significant increase in dogs at existing shoreline location from an additional 15 chalets.

- 8.4.31. *Noise and acoustic impacts.* The applicant's Noise Report (Appendix 4 of application) provides baseline information on day time and night time noise occurring at three monitoring locations on the perimeter of the site between 7am on the 8th September 2020 and 7am on the 9th September 2020 (Figure 2 and Table 6, Appendix 4). Baselines levels indicate a quiet noise environment both at day and night (Table 7).
- 8.4.32. Predicted levels of noise during construction at nearest noise sensitive locations (existing chalets) are shown in Table 10 and Figure 3 respectively. Effects range from negligible to moderate and would be short term, for the duration of construction works. Operational noise will arise from additional vehicular traffic and the interaction of residents. The noise modelling exercise, which includes vehicular traffic to the Forest Park, indicates negligible effects of the development at daytime or nighttime (Table 11), with no need for mitigation measures (from a human perspective).
- 8.4.33. Drawing no. TE21.017.100 indicates noise levels at four no. monitoring points for wildlife ('Wildlife Noise Points Indicated in Table 12 in the Noise Assessment Report'). Table 12 refers to daytime and night time noise levels at these locations and it is assumed that these are background levels. The report predicts that during construction noise may affect the subject site and surrounding area, but with standard mitigation practices (section 6.1.1 and 6.1.2, Appendix 4) will be limited to 55db and daylight hour, with the potential for disturbance to birds occurring on the site (not wetland birds or birds of conservation interest to the site). During operation the report acknowledges that some human disturbance will be arise and may disturb terrestrial birds (not wetland birds). Whilst the report does not specifically refer to the likely effects of the development on wetland birds, the absence of significant noise outside the boundary of the site and the wider area (as indicated by the effects on noise sensitive receptors), would suggest that significant effects on observed wetland birds and qualifying interests of the SPA are highly unlikely given the distance at which these birds were observed from the appeal site (see Table 16 and Table 20 of Bird Survey, Appendix 7). As stated above, given the potential for a

relatively small increase in visitors to the existing publicly accessible shore locations (with or without dogs) from the development (74 guests) in the context of the annual number of visitors to Killykeen Forest Park (80,000 per annum), additional cumulative noise and disturbance related development effects are unlikely to be significant.

8.4.34. Having regard to the foregoing, notably the monthly bird survey, I-Web data, distance of the appeal site from observed species, buffer effect on the landscape that separates the appeal site from the wetland habitat, mitigation measures proposed during construction and operation of the development, absence of any works to the shoreline and modest increase in visitor numbers in the context of overall visitors to the Forest Park, I consider that the assessment and conclusions of the applicant's Bird Survey and NIS are robust that the development is not likely to result in adverse effects on the qualifying interests of the SPA.

8.4.35. Mitigation

8.4.36. Mitigation measures have been referred to above throughout this assessment. They typically involve implementation by the applicant and/or his representative and monitoring of effects during construction and during subsequent operation of the development. I am satisfied that the measures referred to are reasonable and adequately reduce the effect of the development on the environment.

8.4.37. Integrity Test

8.4.38. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain with confidence that the project would not adversely affect the integrity of Lough Oughter and Associated Loughs SAC or SPA in view of the Conservation Objectives of this site. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

8.5. **Appropriate Assessment Conclusion**

8.5.1. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177 V of the Planning and Development Act 2000 as amended. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Lough Oughter and

Associated Loughs SAC and SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

- 8.5.2. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites Nos. 000007 and 004049 or any other European site, in view of the site's Conservation Objectives. This conclusion is based on a full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and ecological monitoring in relation to the Conservation Objectives of Lough Oughter and Associated Loughs SAC/SPA, detailed assessment of in combination effects with other plans and projects and no reasonable scientific doubt as to the absence of adverse effects on the integrity of the SAC/SPA.

9.0 Recommendation

- 9.1. I recommend that permission for the proposed development be granted subject to conditions.

10.0 Reasons and Considerations

Having regard to the location of the proposed development within an established serviced tourist/recreational development and to the modest provision of additional chalets, it is considered that the proposed development, subject to compliance with the conditions set out below, would be compatible with the established use of the site, would not seriously injure the visual amenities of the area, would not impact on the natural conservation of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area

11.0 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 submitted to the planning authority on the 11th
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	<p>day of June, 2021, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to the commencement of development, details shall be submitted of 1.2ha of native woodland that is to be planted for written agreement. It shall include details of timescale for implementation and on-going management.</p> <p>Reason: In the interest of biodiversity.</p>
3.	<p>The facilities shall be used only for accommodation. Use of outdoor sound amplification equipment is not permitted. Outdoor playing of music and/or other outdoor events which involve sound amplification equipment are not permitted.</p> <p>Reason: In the interests of nature conservation and the protection of designated sites and species.</p>
3.	<p>Prior to the commencement of development, a revised Woodland Enhancement and Management Plan shall be submitted to the planning authority for written agreement, which incorporates mitigation measures set out in the NIS and technical reports. It shall provide ground flora and understorey in the woodland areas around the cabins.</p> <p>Reason: In the interest of clarity and protection of biodiversity.</p>
4.	<p>All mitigation measures outlined in Section 4 of the Natura Impact Statement and all associated technical reports shall be implemented in full, except where modified by conditions set out below.</p> <p>Prior to the commencement of development a comprehensive list of all mitigation measures shall be submitted to the planning authority in a single document indicating the party responsible for the individual measure and a</p>

	<p>reporting mechanism to the planning authority on the implementation of all measures during construction and operation of the development.</p> <p>This shall include post construction mitigation assessment and reporting to the planning authority at year 1, year 2 and year 5.</p> <p>Reason: In the interests of nature conservation and the protection of designated sites and species</p>
5.	<p>(a) Lighting of the proposed development shall be carried out in accordance with Bat Conservation Trust, 2018, Lighting Guidelines, details of which shall be submitted to the planning authority in advance of commencement for written agreement.</p> <p>(b) All of the mitigation measures recommended in Section 5 of the Bat Assessment (bat boxes, lighting, landscaping and monitoring) shall be implemented in full.</p> <p>Reason: In the interests of conservation of the bat community in the area</p>
6.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
7.	<p>All sound trees on the site (including those in surrounding hedgerows) shall be retained except those that require to be removed to facilitate the actual development of the site.</p> <p>Reason: In the interest of visual amenity.</p>
8.	<p>The construction of the development shall be managed in accordance with a 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, including hours of working, noise management measures and off-site disposal of construction/demolition waste. It shall incorporate all relevant mitigation measures referred to in the NIS and other technical reports and require employment of an</p>

	<p>Ecological Clerk of Works, to be employed by the developer, to oversee and report on implementation of the CEMP.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
9.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and</p> <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.</p> <p>The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
10.	<p>The wastewater treatment facilities shall be managed, operated and maintained in accordance with the Local Government (Water Pollution) Acts 1977 and 1990; Section 4 discharge licence requirements.</p>

	<p>Reason: In the interests of public health, and of proper planning and sustainable development.</p>
11.	<p>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.</p> <p>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.</p>

Deirdre MacGabhann
 Planning Inspector

6th December 2021