



An
Bord
Pleanála

Inspector's Report ABP-312752-22

Development

Extension to existing housing development known as "Elm Drive", comprising of 21 dwellings, installation of temporary on-site wastewater treatment unit prior to discharge to existing foul sewer, and all associated site works.

Location

Elm Drive, Moodoge & Ballyjamesduff, Co. Cavan

Planning Authority

Cavan County Council

Planning Authority Reg. Ref.

21/565

Applicant(s)

Kieran Callaghan & Pauric Smith

Type of Application

Permission

Planning Authority Decision

Grant, subject to 24 conditions

Type of Appeal

Third Party -v- Decision

Appellant(s)

Elm Drive Residence Association

Observer(s)

IFI

Date of Site Inspection

13th April 2022

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located c. 0.3 km from the town centre of Ballyjamesduff in the southern portion of the town, which is served by the Oldcastle Road (L-3013). This site lies between two existing residential cul-de-sacs, Elm Drive to the east and Park View to the north. Also, to the north lies the Cavan Box Park and the grounds of Ballyjamesduff AFC. To the south and west lie farmland.
- 1.2. The site itself is of irregular shape and it extends over an area of 1.6 hectares. This site comprises a grassed area at the north-western end of Elm Drive and the majority of an agricultural field further to the west. The grassed area falls at a gentle gradient towards its north-western corner. The field is of strongly undulating form with the long southern and western boundaries descending generally towards the central and northern/north-western portions of the site. Secondary gradients decline generally along the lengths of these boundaries towards the west and towards the north. The aforementioned portions of the site represent a localised area of low-lying ground, which is correspondingly wet, as indicated by the extensive presence of rushes. The south-eastern corner of the field is excluded from the site.
- 1.3. The northern boundary of the site with the Cavan Box Park is enclosed by means of a green steel palisade fence. Elsewhere, the site boundaries are enclosed with timber post and rail or timber post and wire fencing, except for where they abut rear gardens on Elm Drive, where timber post and panel fencing exists.

2.0 Proposed Development

- 2.1. The proposal is for the construction of 21 dwellings, which would comprise 5, four-bed, detached dwellings (150.5 sqm) and 16, three-bed, semi-detached dwellings (115.8 sqm), 2 of which would be the subject of a Part V agreement. These dwellings would be laid out in two rows, along the southern and western portions of the site. They would be accessed by means of a new road, which would be accessed off the existing turning head at the end of the cul-de-sac, Elm Drive. (This cul-de-sac is in turn accessed from the Oldcastle Road). This road would serve the two rows of dwellings and it would enclose a green area that would be laid out between it and the northern boundary of the site. This area would be laid out to provide a playing field and a play area and it would be the subject of tree planting around its perimeter.

- 2.2. The proposal would be connected to the public water mains in Elm Drive. It would also be connected to the public sewer in Park View via a temporary on-site wastewater treatment plant, which would be sited in the north-western corner of the site. Surface water would be attenuated by means of a tank, which would be installed in a central position adjacent to the northern boundary of the site, before being discharged to the public stormwater sewer in Parkview.
- 2.3. Under further information, the applicant revised and clarified aspects of the proposal, as summarised below under the heading “Planning Reports”.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted subject to 24 conditions, including conditions numbered 3 & 4 pertaining to bonds against failure to provide public services/open space and provision/decommissioning of the temporary WWTP.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The following further information was requested:

- Applicant to liaise with Irish Water over timeline for WWTP upgrade and whether connection to the public sewerage system via a temporary WWTP would be acceptable.

Details of annual maintenance of temporary WWTP requested and applicant alerted to the need for a bond.

- Red line to encompass access road to Elm Drive and this road to be finished to standard necessary for “taking-in-charge”.
- Brick to be specified to front elevations and windows inserted in the northern side elevation to the dwelling on Plot 1.

- Landscaped area to the northern side of Plot 1 to be incorporated within this Plot and variations to boundary treatments on Plots 13 and 21 specified.
- Detailed masterplan for the proposed area of open space.
- Outfall from on-site surface water drainage system to be shown.
- Details of surface water drainage system during the construction phase to be shown.
- Details of dust monitoring to be shown.

3.2.2. Other Technical Reports

- Cavan County Council:
 - Waste Management: Standard conditions requested.
 - Environment: Following receipt of further information, grave concerns expressed over the proposed temporary wastewater treatment unit, on the grounds that, in the absence of a definitive timeline for this unit and hence a date for its decommissioning, issues with its management and maintenance could have adverse implications for the environment and public health.
 - Area Engineer: No objection.
- Irish Water: No objection, standard observations.
- IFI: Following receipt of further information, objection maintained: Temporary WWTP would discharge via the Ballyjamesduff WWTP to the Pound Stream, a tributary of the Mount Nugent River which flows into Lough Sheelin. This River is of poor status, and, under the Water Framework Directive, its improvement is a priority. Concern is expressed over the maintenance of the proposed private WWTP, and the view is expressed that the proposal should be served exclusively by the public sewerage system once the proposed upgrade of the Ballyjamesduff WWTP is complete (2200 PE to 5200 PE).
- Department of Housing, Local Government and Heritage: Advises that subsurface archaeological remains may be encountered, conditions requested concerning an archaeological assessment entailing test trenches and the compilation of a subsequent report to the Department.

4.0 Planning History

Of Elm Drive and the site

- 03/538: 11 dwellings, access road, connections to public services: Permitted and implemented.
- 06/1125: Extension to Elm Drive to provide 31 dwellings: Refused at appeal PL02.221403 for the following reason:

Having regard to the topography of the site and the site layout plan, the lack of usability of proposed private open space to serve dwellings and taking into consideration the level difference and proximity of proposed dwelling houses to existing dwelling houses, it is considered that the proposed development would seriously injure the existing and potential residential amenities of the area, would result in open space that lacks usability and would, therefore, not be in the interest of the proper planning and sustainable development of the area.

- 07/2404: Extension to Elm Drive to provide 22 dwellings: Permitted, but unimplemented.
- Pre-application consultation occurred on 26th February 2021.

5.0 Policy and Context

5.1. National planning policies and advice

- National Planning Framework
- Sustainable Residential Development in Urban Areas Guidelines
- Urban Design Manual
- Quality Housing for Sustainable Communities: Best Practice Guidelines

5.2. Development Plan

Under the former Cavan County Development Plan 2014 – 2020, Ballyjamesduff is identified as a large town (2016 Census population 2661). The site is shown as lying within the town's development boundary and in an area zoned proposed residential,

wherein the objective is “To provide for residential development and to protect and improve residential amenity.”

Under the draft Cavan County Development Plan 2022 – 2028 (dCDP), the site is the subject of the following Map-based Specific Objective 5: “Support the use and expansion of the community sporting facilities including the Soccer and GAA Clubs and their importance to the community of Ballyjamesduff and its hinterlands and the value of their proximity to the Town centre.” Under a proposed material amendment to this Plan, it would be rezoned as sport and recreation, wherein the objective is to “Protect and provide for sporting and recreational areas”. Under this zone, residential use is “not permitted”. The Chief Executive’s Report on Material Amendments to the dCDP, issued on 27th April 2022, does not make any recommendation with respect to this proposed material amendment to the dCDP. This Plan was adopted with this amendment on 30th May 2022, and it came into force on 11th July 2022.

5.3. Natural Heritage Designations

Lough Sheelin SPA (004065)

5.4. EIA Screening

Under Items 10(b)(i) and (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where more than 500 dwelling units would be constructed or where urban development would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere, the need for a mandatory EIA arises. The proposal is for the development of 21 dwellings on a site with an area of 1.6 hectares. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Elm Drive Residents Association

The appellant reports that each of the 12 households on Elm Drive were given to understand at the time of purchase that no more dwellings would be built off the access road from Oldcastle Road. The current proposal contradicts this understanding. It further reports the following concerns:

- The applicants erected an agricultural gate on the far side of the communal open space, which is used for (un)loading livestock,
- An electricity pylon, which is lower than standard, and which has never been sufficiently protected to deter children from climbing it,
- Temporary fencing that has collapsed,
- The access road remains unfinished, and
- The communal area is not maintained by the management company and so residents have to cut the grass.

The appellant cites the following grounds of appeal:

- The proposal would treble the amount of traffic on the access road to Elm Drive, where children play.
- The access road is too narrow. Due to the gradient of some drive-ins, residents have to park on-street.
- The said narrowness and incidence of on-street parking impedes access by emergency vehicles. This situation would be exacerbated by the proposal.
- The proposal would jeopardise the safe enjoyment by residents of the communal area.
- The said narrowness and incidence of on-street parking would impede construction traffic.
- In the light of the above, this appeal should be assessed on health and safety grounds.

- Objection is not raised to the proposed dwellings, only the use of the access road as a through road to serve the site, its implications for the existing communal area, and the additional future access indicated to the west of the dwellings at the end of the existing access road.

6.2. Applicants Response

The applicants have responded to the appellant's grounds of appeal. They begin by reviewing national, regional, and local planning policies, before addressing each ground as follows:

- Principle of development
 - The proposal would accord with national planning policies and advice.
 - The site is zoned for residential development and so it should be developed.
 - The juxtaposition of an agricultural access and a residential cul-de-sac would be discontinued under the proposal.
 - The ESB poles referred to are the responsibility of the ESB.
- Existing estate
 - Elm Drive was developed under the permission granted to 03/538 and the developer has maintained the grassed area laid out at the end of this cul-de-sac.
 - While the grassed area would be encroached upon by the proposed on-site access road, the proposed recreational facilities for the site would represent betterment for existing residents.
- Traffic
 - The proposed on-site access road would comply with DMURS standards, e.g., its width would be 6m. This width would be the same as the existing access road to Elm Drive, from which it would take access. To increase this width would be to invite speeding.
 - The Area Engineer raised no objection to the proposal.

- Traffic safety
 - Under the proposal, each dwelling house would be provided with 2 off-street parking spaces and a further 6 parking spaces would be provided for visitors. CDP standards would thereby be met.
 - The applicant undertakes to prepare a Traffic Management Plan for the construction stage of the proposal. The submitted Construction Management Plan refers to certain provisions in this respect, e.g., hours of operation and staff parking arrangements.
- Legacy issues
 - The existing access road on Elm Drive is incorporated within the application site. The maintenance of this road would be capable of being attended to by a management company, until it is taken in charge.
- Design matters
 - The proposal would adhere to the 12-fold criteria of the Urban Design Manual.
 - The applicants are confident that the house designs, too, would ensure that a quality outcome would ensue.
- Wastewater
 - Notwithstanding the concerns of the IFI, the applicants consider that the Planning Authority's acceptance of the installation and use of a temporary wastewater treatment unit, until Irish Water's Ballyjamesduff WWTP is upgraded, would be appropriate. This approach has been accepted by the Board, too, in SHD cases.
- Ownership of the grassed area
 - The applicants confirm that they own the site, including the grassed area of concern to the appellant. No legal evidence has been submitted to support any counter claims and the Planning Authority raised no concerns over ownership.

The applicants acknowledge that the dCDP proposes a different zoning for the site. In this respect, they remind the Board that it is the currently adopted CDP that is of

relevance in the assessment of their proposal. If the dCDP is adopted by the time the Board comes to make its decision, then it would not, under Section 37(2)(a) of the Planning and Development Act, 2000 – 2021, be bound to follow the new CDP. Indeed, the applicants take the view that the acute shortage of new housing estates in County Cavan would, in the context of national planning policies, provide proper grounds for departing from such a CDP.

6.3. Planning Authority Response

- The appellant's concern over the uncompleted state of the access road to the site was addressed under further information, insofar as the red edge of the site was extended to include this road, and by Condition No. 7 attached to the permission, which requires completion of this road.
- The loss of the existing grassed area would be more than compensated for by the proposed green/play area within the site.
- A copy of a letter from Irish Water is submitted, which confirms that the upgrade of the Ballyjamesduff WWTP is at an advanced stage and intended completion is in 2024. In these circumstances, the proposed temporary wastewater treatment unit is viewed as a reasonable interim measure.
- The existing grassed area is shown as being in the applicant's ownership. Any question concerning the ownership of this area should be viewed in the light of Section 34(13) of the Planning and Development Act, 2000 – 2021, which states that "a person shall not be entitled solely by reason of a permission under this section to carry out any development."

6.4. Observations

Inland Fisheries Ireland (IFI)

- Under the proposal, a temporary WWTP would be installed, which would discharge to the Pound Stream, a tributary of Mount Nugent River. This River flows into Lough Sheelin and together they provide a trout fishery.
- The EPA has identified the significant pressure that Mount Nugent River is under, i.e., it is of poor water quality status. The Ballyjamesduff WWTP, which

discharges to this River, is proposed to be upgraded in 2024. No additional discharges to this River, e.g., via the Pound Stream, should be made in advance of this upgrade.

- Concern is expressed that the assimilative capacity of the Pound Stream to receive the discharge of the temporary WWTP has not been established. The IFI expresses the view that this capacity would be inadequate. Accordingly, the proposal poses too high a risk to water quality and the existing trout fishery.
- Concern is also expressed that there maybe slippage in the timeline for the upgrade of the Ballyjamesduff WWTP. In this respect, advice in a DoE Circular 7/96 is cited, which states that planning authorities should have regard to the adequacy of existing or planned sewerage infrastructure in exercising their planning control functions. Cavan County Council also has a role in ensuring that water bodies are not polluted, and that water quality is either maintained/improved under the Water Framework Directive.
- Concern is further expressed that the future maintenance of the proposed temporary WWTP, which would be privately managed. The view is expressed that, given the size of the proposal, it should be serviced by the public sewerage system.

6.5. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of relevant national planning policies and advice, the former Cavan County Development Plan 2014 – 2020 (CDP 2014 – 20), the now adopted Cavan County Development Plan 2022 – 2028 (CDP 2022 – 28), the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use, zoning, and density,
- (ii) Development standards,

- (iii) Amenity,
- (iv) Traffic, access, and parking,
- (v) Water, and
- (vi) Appropriate Assessment.

(i) Land use, zoning, and density

- 7.2. Under the former CDP 2014 – 20, the site is shown as lying within Ballyjamesduff's development boundary and in an area zoned proposed residential, wherein the objective is "To provide for residential development and to protect and improve residential amenity." Under the current CDP 2022 – 28, which was adopted on 30th May 2022 and came into force on 11th July 2022, the site is shown as being rezoned sport and recreation, wherein the objective is "Protect and provide for sporting and recreational areas". It is also the subject of Specific Objective 5: "Support the use and expansion of the community sporting facilities including the Soccer and GAA Clubs and their importance to the community of Ballyjamesduff and its hinterlands and the value of their proximity to the town centre." Under the former zoning, residential use was "permitted", while under the current zoning it is "not permitted".
- 7.3. The applicants anticipated the rezoning of the site in its response to the appellant's grounds of appeal. They request that the Board exercise its discretion under Section 37(2)(a) of the Planning and Development Act, 2000 – 2022, to grant permission even though the proposal would materially contravene the CDP 2022 – 28. They contend that such contravention would be justified, due to the current housing shortage and in the light of national planning policies that seek to address this shortage.
- 7.4. In weighing whether a material contravention of the CDP 2022 – 28 would be justified in this case, I note that this CDP has only just been adopted. I note, too, that, under Table 8, the projected population of Ballyjamesduff would rise by 346 (7.3%) from 3,007 in 2022 to 3,353 in 2028, i.e., over the plan period. Under Table 11, 14.16 hectares are identified for housing, i.e., 1.38 hectares for low density and 12.84 hectares for other densities with corresponding estimated dwelling yields of 11 and 216. The 2016 Census identified that the average household size in Cavan is 2.8 persons. The total dwelling yield estimated for the plan period is 227. If the average household size is maintained or even if it declines to say 2.5 persons, the

population that could be accommodated would be 636 or 568, respectively, i.e., a factor of 1.84 or 1.64 of the projected rise in population of 346. In these circumstances, the need to materially contravene the CDP 2022 – 28 in order to address any local housing shortage would appear to be unnecessary.

- 7.5. Under the 2016 Census, Ballyjamesduff had a population of 2661. Under the Sustainable Residential Development in Urban Areas Guidelines, it is categorised as a smaller town. These Guidelines advise on density. They identify three locations for sites in smaller towns, i.e., central, edge of centre, and edge of town. The subject site is located neither in nor adjoining the town centre and so I consider it to be an edge of town one.
- 7.6. Under the aforementioned Guidelines, densities of below 15 – 20 dwellings per hectare can be considered, where the dwellings concerned do not represent more than 20% of the total new planned housing stock for the town. The sites concerned also need, where relevant, to have a strong urban edge. Ballyjamesduff's settlement framework identifies the need for 26 hectares of land to meet projected growth during the period of the CDP. The subject site has an area of 1.6 hectares and so it represents a small proportion of the lands zoned proposed residential, i.e., it is well within the 20% threshold. This site would lie within the development boundary in a position whereby it would not abut this boundary. Under the proposal, the site would be developed to provide 21 dwellings along with 0.48-hectares of open space, which would serve a wider area of housing than simply that which would be provided on the developed site. Consequently, for the purposes of calculating net density, the site has an area of 1.12 hectares and so the proposal would exhibit a density of 18.75 dwellings per hectare. Under the Guidelines, this would be an appropriate level of density.
- 7.7. I conclude that, while the proposal would be of an appropriate density for the site's location, it would materially contravene the new zoning objective for the site.

(ii) Development standards

- 7.8. The applicants have submitted a Housing Quality Assessment, which interacts with the 12-fold criteria of the Urban Design Manual and Table 5.1 of the Quality Housing for Sustainable Communities: Best Practice Guidelines.

- 7.9. In relation to the former Urban Design Manual, the importance of useable private and public open space is emphasised. Useable parking spaces are also of self-evident importance. The proposal would entail the provision of private open space to the rear of the proposed dwellings, two parking spaces to the front of these dwellings, and an extensive area of public open space opposite them in the central and northern portions of the site.
- 7.10. The site comprises a grassed area at the north-western end of Elm Drive and the majority of an agricultural field further to the west. The grassed area falls at a gentle gradient towards its north-western corner. The field is of strongly undulating form with the long southern and western boundaries descending generally towards the central and northern/north-western portions of the site. Secondary gradients decline generally along the lengths of these boundaries towards the west and towards the north. The aforementioned portions of the site represent a localised area of low-lying ground, which is correspondingly wet, as indicated by the extensive presence of rushes.
- 7.11. The applicants have submitted cross sections of the two rows of proposed dwellings. These show the before and after levels of the site in conjunction with these dwellings. They do not address the changes in levels and any attendant retaining measures that may be needed to provide useable rear gardens. Likewise, they do not address these changes and the provision of parking spaces that would be to acceptable gradients, i.e., the applicants Housing Quality Assessment cites Technical Guidance Document M – Access and Use in this respect. The appellant draws attention to the existence of drive-ins with overly steep gradients along Elm Drive that result in a higher incidence of on-street parking than would otherwise be the case. Clearly the need arises to avoid any repetition of this outcome and so, if the Board is minded to grant, conditions should be attached that require the submission of cross sections for each house plot which show the before and after levels, any attendant retaining measures, and the actual gradients of parking spaces.
- 7.12. As indicated above, the proposed public open space would be provided in the lowest lying portion of the site, which presently contains vegetation that indicates wet ground conditions. No details have been submitted as to how this open space would be drained. During my site visit, I observed that the adjoining sports grounds to the north are on raised well-drained lands. I am thus concerned that the useability of the

proposed open space, which would include a playing field and a play area, should be assured by means of a detailed design, which addresses the issue of land drainage. Again, if the Board is minded to grant, a condition to this effect should be attached.

- 7.13. In relation to Table 5.1 of the Quality Housing for Sustainable Communities: Best Practice Guidelines, the applicants Housing Quality Assessment includes a table that shows how the two proposed house types would comply with all the relevant floorspace targets of these Guidelines. Thus, house type A, a three-bed/five-person dwelling with a total floorspace of 115.8 sqm and house type B, a four-bed/six-person dwelling with a total floorspace of 150.5 sqm would be compliant.
- 7.14. The dwellings would have rear gardens that face variously south-east, south, and south-west and so they would enjoy good levels of lighting, provided the above cited issue of levels is resolved satisfactorily, i.e., unduly sunken rear gardens are avoided, e.g., by terracing.
- 7.15. The house type B would have a two-storey return on its rear elevation. At first floor level the window to the bedroom denoted as No. 4 would have a window in the extended side elevation, which would overlook the adjacent neighbouring property. This window should be re-sited to the rear elevation of this return to avoid jeopardising privacy. A condition to this effect should be attached to any permission.
- 7.16. I conclude that, subject to conditions, the proposal would meet relevant development standards and be capable of providing future residents with a satisfactory standard of amenity.

(iii) Amenity

- 7.17. The dwellings proposed for house plots numbered 1 and 21 at the eastern and northern extremities of their respective rows would lie within the vicinity of existing dwellings. Plot No. 1 would be to the west of No. 7 Elm Drive, a dormer bungalow with dormers on the (eastern) front elevation and rooflights in the (western) rear elevation. It would be sited at a lower level than this dwelling and a landscaped green area (409.8 sqm) would lie between it and No. 7. Plot No. 21 would be to the south-east of the nearest two-storey dwelling on Park View. The dwelling on this plot would be sited in a position forward of the existing dwelling. Its rear north-western corner would be 10m away from the existing dwelling's front south-eastern corner.

The extended northern elevation of the proposed dwelling would correspond with the front garden of the existing one. This elevation would be highly visible from the cul-de-sac to the north. Its presence would be softened by proposed adjacent tree planting.

7.18. Visually, the proposed dwellings would present to the on-site access road and the public open space beyond. Their front elevations would have brick finished gabled features. The scale of the two types of dwellings would be similar, i.e., the combined length of the pairs of semi-detached dwellings would be similar to the length of the detached dwellings.

7.19. The proposal would be compatible with the visual and residential amenities of the area.

(iv) Traffic, access, and parking

7.20. During the construction and operational phases of the proposal, vehicular traffic would be generated. Access to the site for such traffic would be from Oldcastle Road (L-3013), via Elm Drive. The appellant objects to the use of Elm Drive as the route to the site. It expresses concern that the additional through traffic would overwhelm this cul-de-sac, which is narrow and subject to on-street parking. Consequently, passage for construction and emergency vehicles would potentially be impeded. It also objects to the use of the grassed area at the end of the cul-de-sac to provide an on-site access road.

7.21. The applicants have responded by drawing attention to the absence of objection from the Area Engineer. They state that on street parking would have a traffic calming effect and that, during the construction phase, a Construction Traffic Management Plan would be implemented in a bid to control any disruption to existing residents. They also state that the severed grassed area would be compensated for by the more extensive and formally laid out area of public open space with its playing field and play area.

7.22. I note that the carriageway width of Elm Drive is 6m and so, provided vehicles are not parked opposite one another on this carriageway, there would be sufficient room for through traffic to pass. I note, too, that the cul-de-sac is of straight alignment, and it terminates in a circular turning head. Forward visibility is therefore good and manoeuvring options are increased by the presence of this turning head.

- 7.23. The appellant raises concerns about the uncompleted state of the carriageway to Elm Drive. The applicants have responded by drawing attention to the incorporation of this carriageway and footpaths within the red edge of the current application site. They undertake to bring them up to the requisite standard for taking-in-charge and to maintain them through a management company until such time as they are taken-in-charge.
- 7.24. During my site visit, I observed that the “T” junction between Oldcastle Road (L-3013) and Elm Drive occurs at a point on the local road where it is subject to a 60 kmph speed limit and to a gently rising gradient towards the south. Sightlines and forward visibility at this junction are good and so its increased use, under the proposal, would be acceptable.
- 7.25. Turning to the proposed on-site access road, the submitted plans show the carriageway as being 5.5m wide, increasing to 6.5m wide where there is no grass verge. The inclusion of an extensive grass verge outside house plot number 11 and the absence of a grass verge along the initial portion of the cul-de-sac that runs northwards need to be addressed. If the Board is minded to grant, a condition should be attached in these respects.
- 7.26. In addition to the 2 off-street parking spaces that would accompany each proposed dwelling, 6 visitor parking spaces would be provided in a row of perpendicular spaces as an insert into the area of public open space. This level of parking provision would be reasonable.
- 7.27. Pedestrian access to the site would be provided from both Elm Drive and Park View. The public open space would be provided with a network of footpaths, which would connect with the footpath on the nearside of the proposed carriageway and, via pedestrian crossings, with the footpath on the far side.
- 7.28. I conclude that the traffic generated by the proposal would be capable of being accommodated satisfactorily on the public road network. Access and parking arrangements would, likewise, be satisfactory, as would pedestrian facilities.

(v) Water

- 7.29. The proposal would be connected to the public water mains in Elm Drive and to the foul and surface water public sewers in Park View. Irish Water and Cavan County Council’s Area Engineer have raised no objection to these connections.

- 7.30. Ballyjamesduff WWTP is presently operating at capacity. Irish Water has confirmed in a letter to the Planning Authority dated 18th January 2022 the upgrade of this WWTP (2200 PE to 5200 PE) is at an advanced stage and it is intended to be completed by 2024.
- 7.31. The applicants anticipate that their proposal may be operational before the aforementioned upgrade is complete. They thus propose to install a temporary WWTP in the north-western corner of the site. This Plant would process waste water prior to its discharge to the public sewer and the Ballyjamesduff WWTP. It is described in the report from the applicants' engineers entitled "Foul, Surface Water, attenuation Calculations and Details." Irish Water has raised no objection to this interim arrangement.
- 7.32. By contrast the IFI and Cavan County Council's Environment Section have raised objection to the proposed temporary WWTP. The former expresses concern that the discharge from the temporary WWTP via the Ballyjamesduff WWTP would add to the pressure on the Pound Stream, which is a tributary of the Mount Nugent River which flows into Lough Sheelin. This River is of poor status, and, under the Water Framework Directive, its improvement is a priority. The view is expressed that the proposal is premature in advance of the upgrade of Ballyjamesduff WWTP. The latter expresses concern that, in the absence of a definitive timeline for this unit and hence a date for its decommissioning, issues with its management and maintenance could have adverse implications for the environment and public health.
- 7.33. The applicants have responded by drawing attention to both the Planning Authority's acceptance of the installation and use of a temporary WWTP until Irish Water's Ballyjamesduff WWTP is upgraded, and to the acceptance of this approach by the Board, i.e., in SHD cases, e.g., ABP-303253-18. Likewise, the Planning Authority has responded by drawing attention to Irish Water's letter dated 18th January 2022, cited above.
- 7.34. The case cited by the applicants is not directly comparable to the current proposal. Thus, the Dundalk WWTP was in the process of being upgraded when the decision was made, with completion due to coincide roughly with the time of decision. However, in order to avoid a scenario wherein completion was delayed and yet the

proposed housing went ahead, a condition, numbered 4(a), was attached, which stipulates that first occupation should await such completion.

- 7.35. The current proposal seeks permission for 21 dwellings in advance of the upgrade of the Ballyjamesduff WWTP. According to a report in the AngloCelt newspaper dated 28th April 2022, Irish Water has just applied to Cavan County Council for planning permission for this upgrade. In these circumstances, the timeline for this project cannot be anticipated with any certainty and so there may be slippage on Irish Water's prediction of completion by 2024. The "grave concerns" of the Environment Section over the management and maintenance of the proposed temporary WWTP should, therefore, be given weight. Likewise, to attach a condition linking first occupation of dwellings to the completion of the proposed WWTP upgrade, as in the case of Condition 3(a) attached to the permission granted to ABP-303253-18, would be unreasonable when the critical timeline is uncertain.
- 7.36. The IFI's concerns, too, are relevant. The above cited engineering report describes the process in the proposed temporary WWTP. It concludes this description by stating that "The clear liquid at the top of the final settlement tank contains very little residual organic material and can be safely discharged as treated effluent." The implication of this conclusion is that this discharge would not be entirely neutral and so the discharge would, at the margin, add to the pressure upon the identified river system.
- 7.37. The applicants propose to install a surface water drainage system that would include the installation of an attenuation tank underneath the proposed public open space. Their engineer's report, cited above, sets out the justification for the sizing of this tank and the rate of discharge that it would operate to. Discharge from the tank would flow into the public stormwater sewer in Park View.
- 7.38. Under the OPW's flood maps, the site is not the subject of any formal identified flood risk.
- 7.39. I conclude that the proposal would be premature in advance of the upgrade of the Ballyjamesduff WWTP.

(vi) Appropriate Assessment

- 7.40. The applicants did not address whether their proposal would need to be the subject of an Appropriate Assessment, i.e., no Stage 1 Screening Report was submitted.

The Planning Authority acknowledged that Lough Sheelin SPA (004065) lies c. 6km away from the site. It took the view that, given the nature of the project, and given, too, this distance, no significant effect on the conservation objective of this SPA would be likely and so the need for Appropriate Assessment would not arise.

7.41. Under the project, 21 dwellings would be constructed on a 1.6-hectare site. As the Ballyjamesduff WWTP is at capacity, these dwellings would be served by a temporary WWTP, which would discharge into the Pound Stream, which flows into the Mount Nugent River, which in turn flows into Lough Sheelin. Accordingly, there is a source/pathway/receptor route between the site and Lough Sheelin SPA, and so I do not consider that the project can be considered to be a *de minimis* case, i.e., Stage 1 Screening is needed. The following test is therefore applicable: Is the project likely to have a significant effect either individually or in combination with other plans and projects on a European Site(s)?

7.42. I have outlined the project above and I have identified, by means of the source/pathway/receptor model, the only European Site that would be potentially affected by the project, i.e., Lough Sheelin SPA. This site has the following qualifying interests:

Great Crested Grebe (Podiceps cristatus) [A005]

Pochard (Aythya ferina) [A059]

Tufted Duck (Aythya fuligula) [A061]

Goldeneye (Bucephala clangula) [A067]

Wetland and Waterbirds [A999]

The conservation objective for these qualifying interests is “To maintain or restore the favourable conservation condition of the wetland habitat at Lough Sheelin SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.” The accompanying site synopsis states that “Despite variable water quality in recent decades, Lough Sheelin remains a very important site for wintering waterfowl, especially diving duck”, and it concludes by stating that “Lough Sheelin is a nationally important site for four species of wintering wildfowl and is one of the main Midlands lakes sites for wintering birds.”

7.43. Under the project, the proposed dwellings would be serviced initially by a temporary WWTP, which would discharge to the Pound Stream. The applicant’s engineer states that “The clear liquid at the top of the final settlement tank contains very little

residual organic material and can be safely discharged as treated effluent.” Accordingly, it would not have an entirely neutral impact upon this Stream. The IFI expresses concern that the assimilative capacity of this Stream has not been established. It flows into the Mount Nugent River, which is presently under pressure from the Ballyjamesduff WWTP. In the absence of more detailed information about the discharge and the river system that would receive it, I am unable to conclude that the additional loading would be capable of being assimilated without adversely affecting the water quality of Lough Sheelin. If such quality was to be thus affected, then the trout fishery could be damaged with knock-on effects upon the feeding habitat afforded by the Lough to wintering wildfowl. Significant effects upon the conservation interest of this SPA cannot, therefore, be definitively ruled out.

7.44. Given that Stage 1 Screening was not undertaken at the application stage, whether Appropriate Assessment is needed is effectively a new issue. If the Board is minded to grant, then this issue should be raised with the parties.

7.45. I conclude that I am not in a position to exclude the possibility that the project could potentially have a significant effect upon the conservation objective of the Lough Sheelin SPA.

8.0 Recommendation

That permission be refused.

9.0 Reasons and Considerations

1. Having regard to the zoning of the site for sport and recreation and the classification of residential use as “not permitted” under this zoning in the Cavan County Development Plan 2022 – 2028, the proposal to develop this site to provide 21 dwelling houses would contravene materially the zoning objective for it, which is to “Protect and provide for sporting and recreational areas.” This proposal would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the fact that, until the Ballyjamesduff WWTP is upgraded, the proposal would have to rely upon a private WWTP, which would discharge into the Pound Stream, the assimilative capacity of which is unknown, the applicant has failed to demonstrate that this WWTP would be capable of operating without an unacceptable deterioration in the water quality of this Stream and the River Mount Nugent into which it flows. In these circumstances, this proposal may result in the pollution of this river system with the attendant threat to public health that this would pose. It would, therefore, be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

25th July 2022