



An
Bord
Pleanála

Inspector's Report

ABP-313863-22

Development	Demolish existing derelict dwelling house and construction of 24 no. 3-bed semi-detached dwellings. Significant further information including a Natura Impact Statement and revised plans have been received.
Location	Aghnaskerry, Co Cavan.
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	21528
Applicant(s)	Galetech Energy Services.
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Friends of Killymooney Lough. Friends of the Irish Environment Eithne and Sean Gurhy Gareth Talbot
Observer(s)	An Taisce.

Date of Site Inspection

19th of April 2023.

Inspector

Stephanie Farrington

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	6
3.1. Decision	6
3.2. Planning Authority Reports	7
3.3. Prescribed Bodies	11
3.4. Third Party Observations	13
4.0 Planning History.....	13
5.0 Policy Context.....	13
5.1. Development Plan.....	13
5.2. Natural Heritage Designations	19
5.3. EIA Screening	19
6.0 The Appeal	21
6.1. Grounds of Appeal	21
6.2. Applicant Response	29
6.3. Planning Authority Response	32
6.4. Observations	33
7.0 Assessment.....	33
8.0 Recommendation.....	66
9.0 Reasons and Considerations.....	66

1.0 Site Location and Description

- 1.1. The appeal site is located approximately 400m to the northeast of Cavan Town Centre, in the townland of Aghnaskerry, along the L2538 Ardkeen Road. The site, which has a stated area of 1.33ha, is currently occupied by a derelict 2 storey dwelling and associated garage to the east and undeveloped agricultural land. Access to the existing dwelling is provided via Ardkeen Road. Site boundaries are defined by a mix of treeline and hedgerow planting. A number of drainage ditches are present on site (south, southwest and west). A stream is located on the southern boundary of the site. These watercourses outfall to Killymooney Lough to the south.
- 1.2. The site falls in the north to south direction from the Ardeen Road. Existing site levels range from 94mOD along the Ardkeen Road to 78mOD along the southern boundary as illustrated on Drawing no. 21-207-100 (Proposed Site Services Layout Foul and Surface Water).
- 1.3. The site is adjoined by Ardkeen Road to the north, a residential property along Ardkeen Road and the grounds of Gaelscoil Bhreifne to the west, to the east by residential units fronting Ardkeen Road and agricultural lands and to the south by agricultural land and Killymooney Lough.

2.0 Proposed Development

The proposed development, as amended in response to Cavan County Council's request for further information, comprises the following:

- Demolition of Existing Derelict Dwelling on Site
- Construction of 24 no. residential units
- Access from Ardkeen Road
- Connection to existing water and wastewater services
- Landscaping and all associated site development works

Table 1 below provides an overview of key site statistics.

Table 1: Key Figures	
Site Area	1.33ha
No. of Residential Units	24
Unit Mix & Dwelling Type	6 no. House Type A - 3 bed semi-detached - 152 sq.m. 6 no. House Type B - 3 bed semi-detached - 144.5m. 12 no. House Type C units - 3 bed semi-detached - 129.5m.
Height	Type A and B – 7.2m including 2.4m basement Type C – c. 8.7m
Public Open Space	15% Public Open Space (0.220ha)
Car Parking	2 per dwelling in curtilage, 4 no. visitor spaces

The development includes a proposal to connect to the existing water and wastewater infrastructure along Ardkeen Road.

The following documentation was submitted in support of the application.

- Architectural and Engineering Drawings
- Design Statement
- Preliminary Construction and Demolition Waste Management Plan
- Preliminary Construction Environmental Management Plan
- Visual Impact Statement
- Natura Impact Statement
- Application Form and Public Notices

The following additional documentation was submitted in response to Cavan County Council's request for further information:

- Revised Architectural and Engineering Drawings
- Irish Water pre-connection feasibility letter

- Outline Construction Environmental Management Plan
- Ecological Appraisal
- Natura Impact Statement
- Stage 1/2 Road Safety Audit
- Visual Impact Assessment
- Street Lighting Report
- Boundary Treatment Specification Plan
- Revised Public Notices

3.0 Planning Authority Decision

3.1. Decision

Cavan County Council issued a notification of decision to grant permission for the proposed development subject to 33 no. conditions. The following conditions are of note:

- Condition nos. 5 to 12 relate to measures to prevent surface and ground water pollution at construction and operational phase of the development.
- Condition no. 13 relates to consultation with Inland Fisheries.
- Condition no. 14 relates to the submission of an Invasive Species Management Plan for agreement of the planning authority prior to the commencement of development.
- Condition no. 22 relates to written agreement with Irish Water prior to the commencement of development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner's Report (15/10/2021)

The initial planner's report recommends a request for further information in accordance with the planning authority's decision. The following provides a summary of the main points raised:

- The planner's report notes the following in respect of Screening for EIAR: *"In this case, the proposed development, which is to erect 26 no. residential units is sub-threshold. However, the information submitted with the application does not include a thorough assessment of the cumulative impact of the proposed development, an issue which is also highlighted in the third-party submissions. My assessment is that more information is needed in this regard"*.
- Residential development is permitted in principle on Phase 1 Residential zoned lands. The principle of development is considered acceptable at this location.
- Part of the site is located on lands zoned for "Amenity/Recreation" purposes. Residential development should be restricted to Phase 1 zoned lands.
- A visual impact assessment is recommended.
- The report raises concerns in relation to the usability of the proposed private open space on the basis of the topography of the site. Adequate and usable public open space should be provided.
- Public open space should be centrally located, overlooked and usable by all residents.
- The report cross refers to the submission on file from An Taisce which raises concern in relation to the cumulative impact assessment within the submitted NIS. The report also notes inaccuracies within the NIS.
- A request for further information is recommended in respect of the following:

- A revised Site Layout Plan which confines residential development to lands zoned for Phase 1 Residential purposes, includes revised proposals for private and public open space and provides details of boundary treatment. Revised are also requested to provide a brick finish to residential units (Items 1, 3,4, 5).
- The applicant is requested to engage with Irish Water and clarify the ownership management and ongoing maintenance of the pumping station (Item 6 and 7).
- Items 8-10 of the FI request related to transportation related concerns. The applicant was requested to submit a detailed visibility splay drawing at the proposed site entrance, a revised proposal for the internal road network and submission of a Stage 1/2 Road Safety Audit.
- The applicant was requested to submit a visual impact assessment, a bat survey of the existing dwellings, an ecological survey of the site, proposals to address invasive species on site, lighting plan and an updated NIS (Items 2,11,12,13,14, 15).

Planner's Report on Further Information (25/05/2022)

The planner's report includes a summary and assessment of the applicant's FI response. The report recommends a grant of permission subject to conditions. The following provides a summary of the key points raised:

- The revised layout ensures that residential development is confined to lands zoned for "Phase 1 Residential" purposes. There is no residential development within the area zoned for Amenity and Recreation purposes within the Cavan Town and Environs Development Plan 2014-2020. This area of the site will be used for public open space which is compatible with the zoning objective for the site.
- The report provides a summary and assessment of the applicants FI response and cross refers to technical reports from other departments in CCC and the submissions from the prescribed bodies. The FI response is deemed acceptable.

- The proposed works do not have the potential to significantly affect the conservation objective or qualifying interest of the Lough Oughter and Associated Loughs SAC or the Lough Oughter Complex SPA. The integrity of the site will not be adversely affected.
- The report provides a response to the third-party submissions received in respect of the applicant's FI response. The following is noted in this regard:
 - The scale of the development can be classified as a medium density development and a split-level design solution is proposed in response to a steep topography.
 - The proposed development will have a medium to low visual impact.
 - The site has an optimal location in relation to the town centre, amenities and community facilities.
 - The proposed site layout accords with the zoning objectives pertaining to the site as set out within the Cavan Town and Environs Development Plan 2014-2020.
 - The report refers to the zoning objectives set out within the Draft Cavan Town Local Area Plan 2022-2028. The provisions of the Draft LAP are noted including the zoning of the site for "Amenity and Open Space" purposes. However, in accordance with the provisions of S. 34(2)(a) of the Planning and Development Act 2000, the planning authority is obliged to have regard to the provision of the plan which is currently in force the Cavan Town and Environs Development Plan 2014-2020. The site is zoned for "Phase 1 Residential Lands" within this plan and the development is in accordance with this zoning objective.
 - The concerns raised within the submissions in relation to Killymooney Lough are noted. The proposed development does not encroach on the wetlands of the Lough.
 - The report recommends a grant of permission having regard to the location of the development, the zoning of the site within the Cavan Town and Environs Development Plan 2014-2020 and the infill nature of the development.

3.2.2. Other Technical Reports

Municipal District Engineer (13/10/21)

A request for further information is recommended in respect of the following:

- Demonstration of achievement of unobstructed sightlines from the proposed entrance.
- Revised proposals which include a relocation of the junction to houses 1-12 away from the public road.
- Submission of a Stage 1/ 2 Road Safety Audit.

Environment (21/09/2021)

- GSI mapping illustrates that the site is located in an area designated as a poor Aquifer with moderate to High Vulnerability.
- The development site is located within the Cavan _ 010 river water body which is classified as Poor Ecological Status and must be improved to at least a Good Ecological Status in accordance with the requirements of the Water Framework Directive.
- The report recommends consultation with Irish Water.
- A grant of permission is recommended subject to conditions.

Road Design Office (13/10/21)

- The proposal has been assessed in terms of the Traffic and Transport Assessment Guidelines. The proposal does not meet the thresholds at which the production of Traffic and Transport Assessments is required.
- No objection is raised in relation to the principle of the development.
- Further information is recommended in relation to the achievement of unobstructed sightlines at the proposed entrance.
- The report raises concern in relation to the layout of the internal road system and a revised internal layout in the vicinity of units 1-12 is requested. The report outlines that the revised layout should be subject to a Stage 1/ 2 Road Safety Audit.

Environment Report (07/04/2022)

- The report outlines that all mitigation measures and recommendations included in the application and further information documents received must be implemented during the relevant phase (construction and operational).
- Recommends a grant of permission subject to condition.

Waste Management (20/04/2022)

- The report recommends the submission of an Invasive Species Management Plan prior to the commencement of development.
- Standard waste management conditions are recommended.

Road Design (24/05/2022)

- The Road Design section is satisfied that the issues raised in the FI request have been addressed by the FI response. A grant of permission is recommended subject to condition.

Municipal District (24th of May 2022)

- The FI response satisfactorily addresses the points raised within the FI request.

3.3. Prescribed Bodies

Department of Heritage, Local Government and Housing (30/09/2021)

- The report refers to the NIS submitted in conjunction with the application. The Department welcomes the inclusion of mitigation to protect Lough Oughter and Associated Loughs Special Conservation Area (SAC) and Lough Oughter Complex Special Protection Area (SPA).
- The submission recommends the preparation of a baseline wildlife survey including a bat survey.
- It is unclear if there are invasive species on site.
- All hedgerows and uncultivated vegetation should be retained.
- A lighting plan for the development should be submitted.
- The department recommends the inclusion of measures to improve lake quality and SUDS on site.

Department of Housing, Local Government and Heritage (06/05/2022)

- The submission recommends a revised lighting plan, incorporation of biodiversity areas, a further otter survey to inform mitigation for the species using the area and the submission of an Invasive Species Management Plan.

Department of Housing, Local Government and Heritage (11/05/2022)

- The submission recommends the inclusion of an archaeological condition in the instance of a grant of permission.

An Taisce (27/09/2021)

- The submission outlines that the cumulative impact assessment in the NIS is insufficient.
- Badger and red squirrel surveys are recommended.
- Killymooney Lough is an important biodiversity area. The impact on amenity and green space in and around Cavan town should be assessed.
- The Council should ensure that adequate services and infrastructure exist to serve the proposed development prior to any grant of permission including: public transport infrastructure and capacity, safe pedestrian and cycling infrastructure, local services, sufficient wastewater treatment capacity, sufficient shops, employment opportunities and amenity.

Inland Fisheries (4/10/2021)

- The proposed development is located within the Cavan Town River catchment. Serious concerns are raised in relation to the on-going maintenance of privately run wastewater treatment plants and pumping stations. The application documentation is not clear in relation to the maintenance and management of the pumping station.
- IFI believe that the Ardkeen Pumping Station has insufficient capacity to cater for development.
- All watercourses that occur on site should be protected in terms of water quality, topography and habitat.
- Introduction of invasive species should be avoided.

- Regard should be had to the extent of hard/paved surfaces within the development.
- The submission details a series of measures that are critical for preserving water quality and aquatic habitats.

Irish Water (7/09/2021)

- This submission recommends consultation with Irish Water.

Irish Water (25/11/2021)

- The proposed water connection is feasible without infrastructure upgrade by Irish Water.
- The proposed wastewater connection is feasible subject to upgrade. The submission outlines that the existing 150mm diameter foul sewer, located on the public road directly outside the proposed site, is required to be upgraded to a 225mm over a distance of 60m in order to facilitate the proposed development. The upgrade works shall be funded by the developer.

3.4. Third Party Observations

5 no. observations were submitted during the initial public consultation period and a further 3 observations were submitted in respect of the applicant's response to further information. The issues raised reflect those raised within the grounds of appeal.

4.0 Planning History

None on site.

5.0 Policy Context

5.1. Development Plan

Cavan County Development Plan 2022-2028

- 5.1.1. At the time of the assessment of the application, the Cavan Town and Environs Development Plan 2014-2020 was the operative development plan for the area. The

application was assessed by Cavan County Council in accordance with the policies and objectives of this plan.

- 5.1.2. The Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028 was adopted on the 30th of May 2022 and came into effect on the 11th of July 2022. I have assessed the proposal in accordance with the policies and objectives of the operative Development Plan, namely the Cavan County Development Plan 2022-2028.

Core Strategy

- 5.1.3. The Core Strategy for the County is set out within Chapter 1 of the County Development Plan. The Strategic aims of the development plan include the following:

- I. To guide the future development of County Cavan in line with national and regional objectives set out in the NPF and RSES and other national guidelines and policies.*
- II. To promote and facilitate the development of the County in accordance with the provisions of the Core Strategy, including directing development in line with the settlement hierarchy and promoting development at an appropriate scale that is reflective of the terms of the Core Strategy Table and zoning maps.*
- III. To apply the Settlement Hierarchy to determine the scale, rate and location of proposed developments and apply appropriate development management measures to ensure compliance with the Settlement Hierarchy including the population targets for the County.*
- IV. To promote the delivery of at least 30% of all new homes that are targeted in settlements within their existing built-up footprints.*
- V. To promote the delivery at least 20% of all new housing in rural areas on brownfield sites*

- 5.1.4. Cavan Town is designated as a Key Town within the County Settlement Hierarchy. Development Objectives KTC 04 seeks to:

“Require sustainable, compact, sequential growth in Cavan Town by consolidating the built-up footprint through a focus on regeneration and development of town centre infill and brownfield sites, and encouraging regeneration of underutilised,

vacant and derelict lands for residential development and mixed use to facilitate population growth”.

- 5.1.5. Table 6 of the CCDP outlines that the population of Cavan Town is envisaged to increase its population by 30% by 2040 in accordance with the guidance set out within the RSES for the Northern and Western Region.
- 5.1.6. Table 11 of the CCDP sets out the Core Strategy Table for County Cavan. This identifies that approximately 55 ha of land is zoned for residential development within Cavan Town. The table identifies a surplus of residentially zoned lands of 14.55ha. Section 2.13 of the CCDP outlines that the lands identified for residential development are sufficient to meet the population targets set out in the Core Strategy Table and reflect each settlement’s role in the Settlement Hierarchy.

Cavan Town Local Area Plan

- 5.1.7. The Cavan Town Local Area Plan is set out within Section 2.2 of the Cavan County Development Plan 2022-2028. Development Objective CTD 01 of the LAP outlines that:

“It is a development objective of Cavan County Council to:

- *CTD 01 Apply the visions, policies, objectives, standards and guidance contained within the Cavan County Development Plan 2022-2028, as outlined throughout the Plan and associated appendices and maps, to the Cavan Town Local Area Plan 2022-2028”.*
- *CSD 05 In the assessment of development proposals, to take account of transport corridors, environmental carrying capacity, availability and/or capacity to provide waste water and water supply services, potential to conflict with Water Framework Directive objectives, potential to impact on the integrity of European sites and Annexed Habitats and species, features of biodiversity value including ecological networks, impact on landscape and visual characteristics, education and other socioeconomic objectives. Development proposals may require screening for Appropriate Assessment and there shall be no net loss in Biodiversity from development proposals in the lifetime of the plan.*

Sustainable Communities

5.1.8. Cavan Town Sustainable Communities Development objectives include the following:

It is a development objective of Cavan County Council to:

- *CSC 09 Promote appropriate development opportunities in the vicinity of Swellan Lough, Green Lough and Killymooney Lough to create an amenity site that could provide for a walking cycling route around the Loughs.*
- *CSC 10 Protect the biodiversity and education opportunities that exists in Green Lough, Swellan Lough and Killymooney Lough.*

Mapped Based Objectives

5.1.9. Section 2.2.14 of the Cavan Town LAP sets out Map based specific objectives for the Cavan Town area as illustrated on the LAP Zoning Map. Objective 3 relates to Killymooney Lough and seeks to:

“Promote the amenity at Killymooney Lough taking advantage of its high point with views over Cavan town. Support the development of a public open space, amenity and recreational area, building on this area of natural importance. Identify a potential link from the existing Greenway to connect with Killymooney Lough”.

Zoning

5.1.10. The majority of the site is zoned for “Amenity and Open Space” purposes with an objective to *“protect and provide for amenity and open space areas”*. The vision for this zoning objectives as set out within the Development Plan is to *“Provide for amenity and open space facilities in the county. Only passive amenity and open space type facilities will be considered”*. Residential is listed as a use which is not permitted under this zoning objective.

5.1.11. The Development Plan outlines the following in respect of not permitted uses: *“Not Permitted means the proposed use will not normally be favourably considered by the local authority, except in exceptional circumstances, and in such instances, the development may represent a material contravention of the Plan”*.

5.1.12. The eastern portion of the site, which accommodates the existing dwelling, is zoned for Existing Residential purposes within the Development Plan with an objective to: *“Protect and enhance the amenity of developed residential communities”*. Residential

is listed as a use which is “permitted in principle” on lands zoned for Existing Residential purposes.

Recreational, Amenity and Open Space Objectives

5.1.13. Section 4.16 of the Development Plan relates to Recreation, Amenity and Open Space. The following Development Objectives are of relevance:

“It is a development objective of Cavan County Council to:

RAOS 01: Ensure sufficient land is allocated to provide a variety of open spaces on a hierarchical basis throughout the County in order to achieve a choice of open space, recreational and amenity facilities”.

Natural Heritage

5.1.14. Chapter 10 of the County Development Plan refers to Natural Heritage. The following development objectives are of relevance:

It is a development objective of Cavan County Council to:

- *NH1 Conserve, protect and manage the County’s natural heritage assets for future generations while encouraging appreciation, understanding and enjoyment of the amenity value for the present generation.*
- *NH7 Assess the impact on biodiversity of proposals for large developments, particularly those on greenfield sites, or in environmentally sensitive areas. Such developments must include measures for the enhancement and protection of biodiversity.*

5.1.15. Section 10.16.1 of the Plan relates to Landscape Categories within County Cavan. 5 no. landscape character areas are identified within Cavan. Cavan Town is located within Character Area 2: The Lakelands. Section 10.24 relates to Inland Waterways and outlines that Inland Waterways, which include lakes, rivers, canals and streams are living systems, that are home to a wide variety of habitats and species, and which also contribute significantly to the character and amenity of the county and support tourism, recreation and quality of life for those living and visiting the county.

5.1.16. Development Objectives for Inland Waterways include the following:

It is a development objective of Cavan County Council to:

- *IW1 Protect and enhance the natural heritage and landscape character of the County's Waterways and maintain them free from inappropriate development and provide for public access, where feasible, acknowledging the existence of contiguous Natura 2000 sites.*
- *IW2 Protect the biodiversity of rivers, streams and other water courses and maintain them in an open state and to discourage the culverting or realignment thereof.*

Development Management

5.1.17. Development Management Objectives are set out within Chapter 13 of the Development Plan. Development Objective RSL 01 outlines the following:

It is a development objective of Cavan County Council to:

RSL 01 Applications for new developments shall clearly demonstrate, as part of their application, how they have maintained waterways free from development in an environmentally and aesthetically sensitive manner. This shall include.

- *The identification of a minimum of 10 – 20 meters either side of the waterway which shall be maintained free from development.*
- *Proposals to ensure the maintenance of riparian habitats.*
- *Proposals for the creation of linear parks and wildlife corridors and connections to existing ones.*
- *Identification of existing public rights of way and walking routes.*
- *Proposals to ensure such areas are accessible to all.*

Appendices

- *Appendix 14: County Cavan Landscape Categorisation: Cavan Town is located within the Area 2: The Lakeland Area. Killymooney Lake is listed as a main lake found in the Lakelands area.*
- *Appendix 25: Cavan Town Assets and Projects Overview 2021. The following key objectives are identified for Killymooney Lough:*

- *Promote amenity Killymooney lough and high point, and enhance the visitor experience, taking advantage of its high point with views over Cavan town.*
- *Identify a potential link from the existing greenway to connect with Killymooney Lough.*
- *Appendix 26 of the Development Plan includes a Statement of Compliance with Ministerial Guidelines.*

5.2. Natural Heritage Designations

5.2.1. The nearest designated European sites to the appeal site, including SAC's and Special Protection Areas (SPA's) include the following:

- Lough Oughter and Associated Loughs SAC (000007) – 3.5km
- Lough Oughter Complex SPA (004049) – 3.8km
- Drumkeen House Woodland pNHA (000980) – 2.1km
- Lough Oughter and Associated Loughs pNHA (000007) – 3.5km

5.3. EIA Screening

5.3.1. The proposed development falls within the categories of 'Infrastructural Projects', under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:

10(b)

- (i) Construction of more than 500 dwelling units.
- (iv) Urban development which 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. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)

5.3.2. The proposal, as amended in response to CCC's request for further information, comprises the demolition of the existing dwelling on site and construction of 24 no.

residential units on a site of 1.33ha. The site is located within an existing built-up area but not in a business district. The site area is therefore well below the applicable threshold of 10 ha. The proposed development falls below the development threshold and mandatory EIA is therefore not required. The site is located within the environs of Cavan town. The nature of development within the vicinity of the site is defined by a mix of residential, commercial, educational and recreational land uses. The development will not have an adverse impact in environmental terms on surrounding land uses.

5.3.3. I have given consideration to whether sub-threshold EIA is required. The introduction of a residential development on a serviced and zoned site within the environs of Cavan will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development and in my view is not likely to have a significant effect on any designated Natura 2000 site as detailed further in Section 7 of this report. The application is accompanied by an Ecological Appraisal, Natura Impact Assessment and a Construction Environmental Management Plan.

5.3.4. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Cavan County Council, upon which its effects would be marginal.

5.3.5. Having regard to:

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site within the existing environs of Cavan town, which is served by public infrastructure, and the existing pattern of development in the vicinity,
- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended),

- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

5.3.6. I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination a sub-threshold environmental impact assessment report for the proposed development was not necessary.

6.0 The Appeal

6.1. Grounds of Appeal

4 no. third party appeals were lodged in respect of Cavan County Council’s notification of decision to grant permission for the development. The following provides a summary of the grounds of appeal raised by each appellant.

Gareth Talbot

Natura Impact Statement

- The appeal raises concerns in relation to the quality of the Natura Impact Statement (NIS) submitted in conjunction with the application. The appeal outlines that the NIS is not in accordance with the requirements of Article 6(3) and Article 6(4) of the Habitats Directive.
- The appeal outlines that the Water Framework Directive seeks to ensure good status in water. The proposal to build near the Lough reduces the target of reaching a good status.
- The appeal raises concerns in respect of the construction practices adopted during the Gaelscoil Bhreifne development and cross refers to photographic and video footage submitted in support of the objection.

- The revised application moved the boundary 10m closer to the Lough, further increasing risk of pollution. The appeal refers to the revisions to the original application and outlines that the extent of revisions would merit a new application.
- The report refers to the hydrological connection to the Lough Oughter and Associated Loughs SAC and the Lough Oughter Complex SPA. It is stated that no assessment of the water quality of same before and after the development is submitted. The appeal refers to the previous use of the lake by migrating swans. They have not returned in recent years and this is not addressed within the NIS or Environmental reports.
- The appeal outlines that the statement within the NIS that the development “*is not directly connected with or necessary to the nature conservation management of the designated site*” is contradicted by the fact that the site is hydrologically linked to designated sites.
- The appeal raises concern that only small sections of the NIS address potential impacts associated with the development.
- The appeal refers to the reference in the NIS to the point that Site Specific Conservation Objectives for the Lough have not yet been prepared and outlines that this shows a lack of care and attention towards the Lough.
- The appeal outlines that the NIS includes no evidence to substantiate the claim that the development will not lead to direct impacts upon bird species of the SPA. No independent review of bats is undertaken and a survey of otters is not provided.
- In terms of indirect impacts, the appeal refers to potential pollution of the Lough by existing and proposed developments. The appeal outlines that impacts on the Lough at construction phase of the development are not appropriately addressed. The appeal raises concern in respect of ingress of soil/waste into the Lough.
- The appeal outlines that mitigation measures are not properly documented. The development would impact on existing wildlife, bats and hedgerows. The

appeal cross refers to videos of the Lough on the USB key attached to the appeal which illustrates the presence of wildlife on the site.

- It is stated that the proposal is contrary to a number of ecology and conservation policies set out within the Cavan Town and Environs Development Plan.
- The appeal raises concern in relation to impacts associated with the construction phase of the development in terms of compacting, dust and vibration, potential for landslide and impact on the adjoining creche.
- The appeal refers to the history of removal of trees and hedgerows from the site which is not addressed within the NIS.
- Works to provide Irish Water wastewater connection are not addressed within the NIS.

Design:

- The appeal raises concern in relation to the proposed brick finish and potential for light reflection. It is stated that no information is provided in relation to heating proposals.

Traffic and Transportation:

- The appeal refers to traffic incidents in the area and raises concern in relation to speeding on the Ardkeen Road. The appeal also refers to congestion associated with the existing schools on the Ardkeen Road.

Visual Impact Assessment:

- The appeal raises concern in relation to the scope, content and quality of the visual impact assessment. The VIA refers to Loreto Road which is over 5km from the appeal site.
- The appeal outlines that the VIA does not correspond with the application drawings. The development is not sympathetic or sensitive to the visual impact of the area. The Lough is not a publicly accessible space.
- The appeal refutes the case made within the VIA that the development of the site will not significantly interfere with the view towards the rural landscape and Killymooney Lough.

Foul Water and Sewerage

- The appeal raises concern in relation to the siting of the pump house within a playground.
- Noise and vibration impacts associated with the pump house are not addressed.
- Insufficient information is provided in relation to the specifications and operation of the pump house and required back up.

Compliance with Zoning

- The appeal refers to the forthcoming zoning of the site for Amenity and Open Space purposes within the Cavan County Development Plan 2022-2028.

Educational Facilities

- The outlines that the development of the site would render it unavailable to accommodate a future expansion of schools in the area.

Working Hours

- The appeal lists restrictions on working hours associated with the construction phase of the development.

Other Matters

- The appeal raises concern in relation to potential conflict of interests within Cavan County Council in dealing with the application.
- Reference is made to the planning history of the area wherein different applicant names are provided. This makes applications harder for the public to search.

Tony Lowes on behalf of Friends of the Environment

- The appeal refers to the zoning of the site for “Amenity and Open Space” purposes within the Draft Cavan County Development Plan 2022-2028 and outlines that the Lough is one of the area’s most attractive Loughs and surrounding landscapes.
- The planner’s report refers to the change in zoning from Phase 1 Residential to Open Space and Amenity within the Draft Plan but assesses the proposal

in accordance with the provisions of the Cavan Town and Environs Development Plan 2002-2028. The planner fails to have regard to the provisions of Section 18.3(a) of the Planning and Development Act 2000 which outlines that *“the authority or the Board may also consider any draft local area plan”*. The failure to address this relevant provision in legislation undermines the decision-making process.

- The application could have been refused in accordance with the provisions of the Cavan Town and Environs Development Plan including the following:
 - Policy Objective NHEP1: *“To protect, conserve, manage, enhance, and safeguard natural amenity assets and natural heritage features for future *generations while maximising their recreational amenity and tourism potential for the present generation by existing development that could have a negative impact”*.
 - Objective 4: *“To protect, manage, conserve and seek to enhance the County’s biodiversity”*.
- The application, if approved does not “protect” or “enhance” the Lough and its environs. The development would result on a detrimental impact on the recreational, public health, amenity and tourism potential that decision makers are required to maximise. The presence of Gaelscoil Bhrefne reinforces the need for green space at this location.
- The appeal outlines that water quality is important for designated Natura 2000 sites and drinking water. The levels of chlorine in Cavan Water Supply exceeds limits for Free and Total Residue Chlorine in 2021.
- The EPA ecological status of Killymooney Lough Stream and Green Lough stream is “poor” and so “unsatisfactory”. The AA fails to demonstrate how hydrological mitigations can prevent the impacts arising from the construction and operation of the proposed development in these conditions.
- The Cavan Wetland Survey dates to 2008 and is under review. The development is premature pending its completion.

- The appeal outlines that the AA has gaps in environmental data and cumulative impacts. Red squirrels, otter, hedgehogs, swans and pheasants are common in the area.
- The proposal would perpetuate loss in biodiversity and flora and fauna in the area.

Eithne and Sean Gurhy

- The development is not in accordance with the zoning objectives pertaining to the site as set out within the Draft Cavan County Development Plan and Local Area Plan 2022-2028. The Local Authority afforded primacy to the previous development plan.
- The development is contrary to the sustainable development of the area. The locality is heavily developed and there are more appropriate sites in the vicinity of Cavan Town.
- The appeal questions the transparency of the application process.
- The Visual Impact Assessment does not provide a fair representation of the impact of the development on Killymooney Lough and the surrounding landscape. The report's author ignores the presence of the Lough and the impact of the proposal on views of the Lough from the surrounding area.
- The Appropriate Assessment and Natura Impact Assessment do not meet the necessary provisions of European Law. The ecological assessment was carried out over a short period in December 2021 and February 2022. On both dates the survey was challenging due to heavy rain during the preceding days. The survey does not acknowledge the seasonality and significant impact the recent road construction has had on the area.
- There are ongoing concerns in relation to water and sewerage in the area.
- Traffic impact and safety concerns associated with the proposed junction have not been addressed by the local authority. The appeal raises concern in relation to congestion associated with existing and future development within the area. Construction traffic will also be a major issue.

- Proposed mitigation is not adequately described and is unclear in relation to traffic and visual impact.
- Concerns are raised in relation to water safety associated with the proposal to open Killymooney Lough as an amenity area and associated traffic impact and potential for antisocial behaviour. The appeal outlines the presence of 2 schools within the vicinity and outlines that children live in the area.

Cian O' Donoghue on behalf of Friends of Killymooney Lough

- The appeal refers to the zoning of the site for "Amenity and Open Space" purposes within the Cavan County Development Plan 2022-2028. The development is deemed contrary to this zoning objective. There are sufficient lands zoned within the Development Plan to accommodate residential development which are more appropriate the residential development and not located within the visually sensitive setting of a Lough.
- The appeal lists a number of policies and objectives of the Cavan County Development Plan 2022-2028 which are relevant to the application.
- Limited information is provided in relation to the scope of amenity linkages with the Lough or the environmental impact of the proposed development on a Natura 2000 site.

Visual Impact

- The appeal raises concern in relation to the scope, content and inaccuracies within the submitted Visual Impact Assessment. It is stated that the document does not illustrate the prominence of the Lough in the landscape. The appeal raises concern in relation regarding the proposed development and its impact on the local landscape and views of Killymooney Lough. No visual assessment is done of the pump house, play area and attenuation tank.
- The appeal outlines that the views are not representative of the existing baseline situation. No mention is made of the infringement of the development on views of Killymooney Lough. The appeal outlines that multiple other visually imposing viewpoints of the Lough are missing. The appeal outlines that the planning authority's assessment of the VIA is not credible.

Environmental Concerns

- The appeal raises concern in relation to the scope and content of the submitted NIS and Ecological assessment. It is stated that the AA and NIS are not compliance with Articles 6(3) and 6(4) of the Habitats Directive and the Water Framework Directive.
- The appeal outlines that the Ecological Assessment includes statements which lack substance and the report has limitations in terms of the timing of the surveys (December and February).
- None of the mitigation considered in the AA and Ecological Appraisal can be considered conclusive, given the lack of detailed surveys/data.
- The AA presents largely unsubstantiated factual findings on the cumulative impact of the development without removing all scientific doubt. Cumulative impacts are not sufficiently addressed. No reference is made to the developments permitted under PA Ref: 20376 or PA Ref 21528 of the permitted Tesco superstore in the vicinity. CCC failed to screen for an AA on PA Ref: 21/63. Future housing development marked on the site layout is not addressed.
- It is stated that CCC's concerns relating to the NIS as detailed within the Council's FI request have not been sufficiently addressed.
- The appeal refers to information deficiencies within the application in relation to recommendations for further surveys (newt, bats, badgers and otters).
- The mitigation proposed to assist water quality lacks clarity and fails to show any scientific evidence of how it would impact on the integrity of NIS sites.
- The appeal outlines that Killymooney Lough has no classification and has not been surveyed by the EPA.
- The appeal raises concern in relation to sewerage in the local area.

Traffic and Transportation Issues

- The local authority has disregarded Road Safety Issues and Traffic Impact Associated with the development. The cumulative impact of recent developments within the area have resulted in significant traffic impact. An increase in traffic would deter walkers and cyclists alike.

- The appeal outlines that the adjoining road network is narrow, on a steep gradient with narrow footpaths. The appeal outlines that there have been several accidents in the Cockhill/Ardkeen area.
- The appeal raises concern in relation to the provision of a construction entrance to the site from Ardkeen Road. Concerns relating to traffic and noise impacts associated with the construction phase of the development are also raised.
- Concerns are raised in relation the proposal to make the Lough more accessible. Water safety concerns are raised.

Other Issues

- The appeal raises concern in relation to the preferential treatment of the developer by Cavan County Council.
- The appeal outlines that there is a general lack of transparency and misinformation gaps surrounding the application.
- The development of the site for residential purposes would restrict the expansion of Gaelscoil Bhreifne in the future and should be resisted by the local authority.

6.2. Applicant Response

The applicant submitted a response to the grounds of appeal. The following provides a summary of the key points raised:

- A number of the issues raised within the appeals are immaterial to the matters which the board is required to have regard to.
- The application was assessed by Cavan County Council in accordance with the provisions of the operative development plan at the time namely the Cavan Town Development Plan 2014-2020. Notwithstanding the changes to the zoning objective for the area as set out within the adopted Cavan Local Area Plan 2022-2028 the proposal is fully in accordance with the proper planning and sustainable development of the area on the basis of the following:

- The urgent delivery of housing supply is a clear policy objective of national and regional policy and all other relevant policies of the Cavan County Development Plan and Cavan Town Local Area Plan.
- The long-standing pre-existing zoning of the site within the Cavan Town Development Plan 2014-2020 as Priority Phase 1 Residential Development due to its location within 650m of Cavan town centre would allow for the sequential, organic and sustainable development of the town in accordance with the principles of compact growth.
- The change to the zoning objective in the absence of any justification and the recommendations of the Chief Executive during the course of the preparation of the CDP that the site should be retained for residential zoning having regard to its favourable location, access to amenities and social infrastructure and contribution to compact growth.
- The submission of the OPR on the Draft Development Plan highlighting the clear absence of a justification for the change of zoning of the site from “Phase 1 Residential Development” to “Amenity and Open Space” and the recommendation that the residential be retained.
- The established pattern of development within the vicinity of the site and its strategic infill location.
- The nature, scale and design of the proposed development and the proximate availability of public amenities and community facilities.
- The conclusion of the NIS and AA determination of the Planning Authority which outlines that the development will not have any effect on any designated site.
- The recommendations of the Planning Officer that the proposed development is in accordance with the proper planning and sustainable development of the area and decision of CCC to grant permission for the development notwithstanding the zoning objective set out within the Draft LAP.
- The conditions attached to CCC’s notification of decision to grant permission for the development.

- More Suitable Locations for Scale of Development: The proposed development is an entirely suitable location for a development of the nature and scale to that proposed and would be in accordance with the proper planning and sustainable development of the area.
- Visual Impact: The VIA is in accordance with best practice methodology for such assessments. 4 no. viewpoints are prepared from publicly accessible locations. It would have been incorrect to have selected Killymooney Lough as a visual receptor. Having regard to the location and design of the proposed development and separation distances, no significant landscape effects will be experienced. Visual impacts are not identified to be significant in all instances having regard to the topography of the site and the adjacent land uses; together with landscaping proposals for the site. The VIA illustrates that the development will not be dominant in the landscape and will assimilate into the urban fabric of Cavan town, particularly given the presence of adjacent residential and educational development which at a greater or equal topographical elevation than the subject site.
- NIS The site is not located within or immediately adjacent a Natura 2000 site. The applicant refutes the contention that the NIS submitted is not in accordance with the requirements of Articles 6(3) and 6(4) of the Habitats Directive.
- Ecological and Environmental Impact on Killymooney Lough: The mitigation measures set out within the NIS, Ecological Appraisal and Outline Construction and Environmental Management Plan will ensure pollutants will not be discharged from the site and no deterioration in the water quality will arise. The development will not jeopardise the attainment of a good water quality status in accordance with the Water Framework Directive.
- Ecology Assessment: The Ecology Assessment was undertaken in accordance with best practice methodologies and sets out detailed mitigation measures to ensure that ecological receptors are protected. The proposed development will not result in any significant effects on ecological receptors, including Killymooney Lough.

- Wastewater: The applicant engaged with Irish Water in relation to water and wastewater proposals. While connection to the wastewater network is feasible an upgrade to an existing 60m existing foul sewer is required to accommodate the proposed development. The applicant's response confirms that this can be completed by the applicant.
- Traffic Safety: The appeal refers to the traffic related documentation submitted in support of the application. The layout of the proposal was informed by the findings of the RSA to ensure road safety is maximised.
- Environmental Impacts on Killymooney Lough: While the Lough is hydrologically linked to Natura 2000 sites, it is not a European designated site. The scope of a NIS does not include matters relating to bats, hedgerows and tree felling.
- Construction Impact: The construction phase of the development will be undertaken in accordance with all mitigation measures set out within the application documentation including measures relating to the timing of the proposed works.
- Conclusion: The proposed development will be a positive contribution to the achievement of the aims and objectives of the Core Strategy of the Cavan County Development Plan 2022-2028. The application documentation illustrates that the development will not have a significant impact on the environment.
- The Board is requested to uphold the decision of the Planning Authority to grant permission for the development.

6.3. Planning Authority Response

Cavan County Council issued a response to the grounds of appeal as summarised below:

- The Planning Authority has considered the contents of the appeal submissions in respect of the planning application. The PA considers all relevant matters have been considered as per the planning officers report.

- The Cavan County Development Plan incorporating a Local Area Plan for Cavan Town 2022-2028 was adopted on the 30th of May and comes into effect from the 11th of July 2022.

6.4. **Observations**

An Taisce

- The zoning of the site as per the Cavan County Development Plan 2022-2028 is now amenity and open space. Residential uses are not permitted in areas zoned for amenity and open space purposes.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development/ Compliance with Policy
- Layout, Design and Visual Impact
- Ecology and Biodiversity
- Site Service and Water Quality
- Traffic and Transportation
- Other Issues
- Appropriate Assessment

7.2. **Principle of Development/ Compliance with Policy**

7.2.1. The appeals and observation on the application outline that the proposal is contrary to the zoning objective pertaining to the site as set out within the Cavan County Development Plan 2022—2028 and the policies and objectives set out therein. The appeals also cite a number of policies and objectives of the Cavan Town Development Plan 2014-2020 which is application is deemed to be contrary to.

- 7.2.2. At the time of the assessment of the application, the Cavan Town and Environs Development Plan 2014-2020 was the operative development plan for the area. The application was assessed by Cavan County Council in accordance with the policies and objectives of this plan.
- 7.2.3. The Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028 was adopted on the 30th of May 2022 and came into effect on the 11th of July 2022. I have assessed the proposal in accordance with the policies and objectives of the operative Development Plan namely the Cavan County Development Plan 2022-2028.
- 7.2.4. The majority of the appeal site is zoned for “Amenity and Open Space” purposes within the Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028 with an objective to *“Protect and provide for amenity and open space areas”*. Residential Development is listed as a use which is not permitted on lands zoned for Amenity and Open Space purposes. The eastern portion of the site is zoned for Existing Residential purposes with an objective to *“Protect and enhance the amenity of developed residential communities”*.
- 7.2.5. The Development Plan Core Strategy includes the following Strategic Aim:
- II. To promote and facilitate the development of the County in accordance with the provisions of the Core Strategy, including directing development in line with the settlement hierarchy and promoting development at an appropriate scale that is reflective of the terms of the Core Strategy Table and zoning maps.*
- 7.2.6. The appeal site is located to the north of Killymooney Lough. The development objectives of the Cavan Local Area Plan seek to provide enhanced public open space, amenity and recreational areas in the vicinity of Killymooney Lough. These include the following:
- Development Objective CSC09: It is a development objective of Cavan County Council to: *“Promote appropriate development opportunities in the vicinity of Swellan Lough, Green Lough and Killymooney Lough to create an amenity site that could provide for a walking cycling route around the Loughs”*.

- Specific Objective 3 as identified in the LAP zoning map relates to Killymooney Lough and seeks to: *“Promote the amenity at Killymooney Lough taking advantage of its high point with views over Cavan town. Support the development of a public open space, amenity and recreational area, building on this area of natural importance. Identify a potential link from the existing Greenway to connect with Killymooney Lough”*.

- 7.2.7. The proposed development seeks to provide a residential development on lands primarily zoned for “Amenity and Open Space” purposes within the Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028. Residential is listed as a use which is not permitted on lands zoned for “Amenity and Open Space” purposes. The development would contravene materially the zoning objectives pertaining to the majority of the site as set out within the Development Plan and be contrary to the requirements of Strategic aim (ii) of the Development Plan Core Strategy which seeks to promote development that is reflective of the scale of the Core Strategy and zoning maps.
- 7.2.8. The appeal site forms part of a larger land parcel in the vicinity of Killymooney Lough which is zoned for “Amenity and Open Space” purposes within the Cavan Town LAP. Specific Objective 3 of the Cavan Local Area Plan which seeks to promote amenity at Killymooney Lough and support the development of a public open space, amenity and recreational area building on the area of natural importance.
- 7.2.9. While I acknowledge that the application the subject of this appeal was lodged under the previous policy framework for Cavan Town, the current situation would preclude a grant of planning permission as the development would contravene the provisions of the Cavan County Development Plan 2022-2028 which incorporates a LAP for Cavan Town.
- 7.2.10. The applicant’s response to the grounds of appeal acknowledges the change in zoning from Phase 1 Residential in the Cavan Town and Environs Development Plan 2014-2020 to “Amenity and Open Space” within the Draft 2022-2028 Cavan County Development Plan 2022-2028. The appeal response sets out a rationale for the development on a number of grounds including the following:

- The development is in compliance with national and regional policy and all other relevant provisions of the CCDP which seek to promote compact growth;
- The location of the site relative to Cavan town and the long standing and pre-existing residential zoning objective pertaining to the site,
- The contents of the submission from the OPR on the Draft Development Plan outlining a lack of justification for the change in zoning from Phase 1 Residential Development” to “Amenity and Open Space” and the recommendation that the residential be retained.
- The established pattern of development within the vicinity of the site and its strategic infill location.
- The nature, scale and design of the proposed development and the proximate availability of public amenities and community facilities.
- The conclusion of the NIS and AA determination of the Planning Authority which outlines that the development will not have any effect on any designated site.
- The recommendations of the planning authority and conditions attached to CCC’s notification of decision to grant permission for the development.

7.2.11. Given the circumstances of the current appeal, having regard to the change of policy framework since the Planning Authority issued its decision to grant permission, I consider it reasonable, to consider the development in the context of a material contravention of the current relevant policy objectives.

7.2.12. Section 37 (2) a of the Planning and Development Act 2000, as amended outlines that: “*Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates*”. The provisions cited under paragraph 37 (2) b include the following:

- (i) *the proposed development is of strategic or national importance,*

- (ii) *there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) *permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) *permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

7.2.13. In terms of criteria (i) while I note the development of the site would support compact growth, the proposed development of 24 no. houses would not in my view be considered of national or strategic importance. In terms of criteria (ii) I do not consider that there are conflicting objectives within the adopted County Development Plan as they relate to the provision of amenity and open space areas, particularly within the vicinity of waterways within the County such as Loughs. In terms of criteria (iii) I note that Appendix 26 of the Cavan County Development includes a statement of consistency of the CDP with Ministerial Guidelines. I do not consider that this provision applies in the context of the recently adopted Cavan County Development Plan 2022-2028. In terms of criteria (iv) I note that while the existing pattern of development in the area is suburban in nature the site is also within the vicinity of Lough Killymooney where it is an objective of the CDP to provide public open space and enhanced amenity facilities within the area. I also note that there have been no permissions granted in the area since the making of the development plan.

7.2.14. In conclusion, I recommend that permission is refused for the development on grounds of material contravention of the “Amenity and Open Space” zoning objective pertaining to the majority of the site.

7.3. Layout, Design and Visual Impact

Layout and Design

- 7.3.1. The appeal site is currently undeveloped is located to the north of Killymooney Lough. The topography of the site falls from the Arkeen Road towards the Lough. Existing site levels range from 94mOD along the Ardkeen Road to 78mOD along the southern boundary as illustrated on Drawing no. 21-207-100 (Proposed Site Services Layout Foul and Surface Water). The area in which the site is located is suburban in character and is adjoined by residential to the north and east and the grounds of Gaelscoil Bhreifne and recently constructed access road to the west.
- 7.3.2. The proposed development, as amended in response to CCC's request for further information, includes the demolition of existing derelict dwelling on site and associated garage and construction of a residential development comprising 24 no. dwellings, access, landscaping and all associated works.
- 7.3.3. The existing dwelling on site is derelict and in a state of disrepair and I have no objection in principle to its demolition. However, I note that elevations or sections of the existing property proposed for demolition are provided with the application in accordance with the requirements of Part 4 Article 22 (5) of the Planning and Development Regulations 2001- 2023.
- 7.3.4. The layout is generally suburban in nature, includes in curtilage parking and public and private amenity space. The applicant's design statement outlines that the site contours have determined the design of the development. The dormer style dwellings along the public road include a basement/split level style to reduce the amount of cut and fill. The design statement outlines that proposed dwellings 1-12 are dormer style and are designed to appear as detached dwellings from the public road. Proposed units 13 to 24 front onto the large area of public open space to the south of the site which overlooks Lough Killymooney. The development includes 2 no. in curtilage car parking spaces per dwelling and 4 no. visitor parking spaces.
- 7.3.5. The public open space is primarily located to the south of the development and is overlooked by proposed dwellings. I have no objection to the quantum or quality of open space provided within the scheme. I note that the submission on file from the Department of Heritage, Local Government and Housing in relation to opportunities to enhance the biodiversity value of the site. I consider that this could be addressed via condition in the instance of a grant of permission.

- 7.3.6. The proposed units are finished with a brick and render finish. I do not consider that there would be issues in terms of light reflection from the proposed materials units as asserted within the grounds of appeal. In design terms, I consider that the development would assimilate with the character of the area.
- 7.3.7. The appeals on the application relate to information deficiencies in terms of the specifications for the proposed pumping station, attenuation tank and heating proposal within the application. The appeals raise concern in respect of the siting of the pumping station within an area of open space and outlines that insufficient information has been provided in relation to the details of the pumping station, the visual impact of the structure and potential noise emissions. I agree with the appellant that limited information is provided in relation to the proposed pumping station. However, I consider that the details of the structure including measures for negating against noise could be agreed via condition in the instance of a grant of permission. Heating proposals for the units is a matter for detailed design.

Visual Impact

- 7.3.8. The appeals raise concern in relation to the visual impact of the proposed development and the impact of the development on the character and setting of Killymooney Lough. At the outset, in considering the baseline environment, I note that the site is not located within a designated scenic landscape area. The Landscape Character assessment attached as Appendix 14 of the CCDP identifies Cavan town and environs within the Lakelands Character Area (Area 2). Killymooney Lake is listed as a main lake found in the Lakelands area. There are no protected views or scenic routes identified within the vicinity of the site within the CCDP.
- 7.3.9. I note that Killymooney Lough is subject to a Map Based Objective 3 as illustrated within the LAP zoning map which seeks to: *“Promote the amenity at Killymooney Lough taking advantage of its high point with views over Cavan town. Support the development of a public open space, amenity and recreational area, building on this area of natural importance. Identify a potential link from the existing Greenway to connect with Killymooney Lough”*. While I consider that such views of Cavan Town would not be obstructed by the proposed development, I note that the appeal site forms part of a larger land parcel which is zoned for *“Amenity and Open Space”* purposes within the Cavan Town LAP.

- 7.3.10. A Visual Impact Assessment prepared by Michael Fitzpatrick Architects was submitted in response to Cavan County Council's request for further information. The visual impact assessment includes 4 no. photomontage views of the development and outlines that the proposed development will enhance the surrounding area with a strong emphasis on Killymooney Lough. The assessment concludes that the development will have a "minimal" impact from the identified viewpoints. On review of the information submitted, I do not consider that the proposal would represent a visually obtrusive or dominant addition to the landscape of the area.
- 7.3.11. The appeals on the application raise concern in relation to the limited scope and content of the submitted VIA. In particular, it is stated that the VIA does not illustrate the prominence of views of the Lough Killymooney from the Ardkeen Road. The appeals furthermore outline that no visual assessment is done of the pump house, play area and attenuation tank.
- 7.3.12. On site inspection, I note that the Lough is visible from adjoining road network along the Ardkeen Road (as illustrated in the attached presentation document). I accept the point raised within the appeals that the visual impact of the proposed development on such views are not displayed or assessed within the submitted VIA. I consider that specifications of the pumping station are also limited within the application. However, I do not consider that these would be of a scale or format which would significantly detract from the visual amenity of the area.
- 7.3.13. I also note that there are a number of anomalies within the submitted VIA. The text in Section 3 text relates to the viewpoints 1-5, but only 4 viewpoints and photomontages are provided (as illustrated on Figure 3.1). The conclusion section of the report provides a summary of the magnitude of change and significance of visual effects on 3 no. viewpoints rather than the 4 no. views identified.
- 7.3.14. Notwithstanding the above, I note that the site is not located within a designated visually sensitive location as identified within the Cavan County Development Plan and no protected views or scenic routes are identified within the vicinity of the site. While I acknowledge the limitations of the submitted Visual Impact Assessment, I do not recommend a refusal of permission on grounds of information deficiencies within the visual impact assessment, having regard to the more substantive reason for refusal relating to the principle of the development.

7.4. Ecology and Biodiversity

- 7.4.1. The appeals on the application raise concern in relation to the impact of the proposal on ecology and biodiversity in the vicinity of Killymooney Lough. Section 10.24 of the Cavan County Development Plan relates to Inland Waterways and notes their importance for biodiversity, recreation and amenity purposes. Development Objective CSC 10 of the Cavan Town Local Area Plan seeks to: *Protect the biodiversity and education opportunities that exists in Green Lough, Swellan Lough and Killymooney Lough.*
- 7.4.2. An ecological assessment prepared by Avrio was submitted in response to CCC's request for further information. The appeals raise concern in relation to the impact of the proposal on the biodiversity of the site, the limited scope and content of the study including the limitations of the survey dates and the requirement for additional more detailed surveys.

Survey

- 7.4.3. The Ecological Appraisal outlines that a Fossitt Habitat survey was undertaken on the 10th of December 2021, and an extended survey was undertaken on the 21st of February 2022 to incorporate additional lands to the southwest. The appeals on the application refer to the limitations associated with the survey dates due to poor weather conditions. Section 4.2 of the Ecological Appraisal outlines that weather conditions were (i) dry and sunny on the 10th of December 2021 and (ii) dry and cloudy on the 21st of February 2022.

Baseline Environment

- 7.4.4. The survey identifies that habitats on site primarily comprise of GS2: Dry meadows and grassy verges (majority of site) and BL3 Buildings and artificial surfaces (to the east of the site). Hedgerow and Treelines are also present throughout the site. The Ecological Appraisal outlines that some hedgerow and treelines to the south of the site have been cleared from photographic evidence. This point is raised within the grounds of appeal.
- 7.4.5. Southwest of the site boundary habitats include Wet Grassland and Reed and Large Sedge Swamp. The existing grassland habitats on site are classified as low ecological value and their removal is classified as negligible. The hedgerows and

trees on site are identified as being of moderate ecological value at a site level and should be retained where possible.

- 7.4.6. The appeals on the application outline that the Cavan Wetland Survey dates to 2008 and is under review and it is stated that the development is premature pending its completion. I have reviewed the designated wetland survey areas identified on Wetland Surveys Ireland maps. I note that the designated wetland area associated with Killymooney Lough does not extend to include the appeal site. This is consistent with the classification of the site within the Ecological Appraisal. The proposal could therefore not be deemed premature pending the publication of an updated wetland survey for Cavan. The predominant habitat on site is classified of low ecological value.

Invasive Species

- 7.4.7. The Ecological Appraisal outlines that invasive species are located within the site boundary including Herringbone Cotoneaster, Montbretia and Winter Heliotrope. The distribution of these species on site are illustrated on Figure 3: Fossitt Habitat Map of the Ecological Appraisal. The report includes a recommendation for the preparation of an invasive species management plan. I note that Condition no. 14 of Cavan County Council's notification of decision to grant permission for the development that an invasive species management plan should be submitted for written agreement of the planning authority prior to the commencement of development. I am satisfied that this can be addressed by means of compliance with a condition.
- 7.4.8. The appeals raise concern in relation to the impact of the proposal on existing biodiversity on the site. The Ecological Appraisal includes an overview of existing species on the site summarised below.

Bats

- 7.4.9. The Ecological Appraisal outlines that habitats within the site and the wider area are considered optimal for commuting and foraging bats due to the presence of open grassland, treelines, hedgerows and areas of open water. The existing buildings on site have moderate potential for bat roosting and surveys are recommended to establish their presence. The survey also recommends that surveys of trees and hedgerows within the site should be resurveyed for the presence of bats.

Birds

- 7.4.10. The Ecological Appraisal outlines that existing trees on site are suitable for breeding birds and outlines that recommendations have been provided for the timing of vegetation removal to ensure breeding birds are not adversely affected.

Badger

- 7.4.11. The Ecological Assessment outlines that no specific evidence of badger was noted on the site or within the immediate environs. It is stated that badgers may access the site for commuting and foraging from time to time.

Red Squirrel & Pine Martin

- 7.4.12. The site and surrounding area is classified as being of poor suitability for red squirrel and pine martin. No evidence of these species was found on site.

Otter

- 7.4.13. The report identifies mammal trails to the southwest of the site, which are assumed to be otter. While these prints were identified as being old, a designated otter survey is recommended to establish the presence of otter within the site and within the immediate environs. A more detailed otter survey is also recommended in the submission on file from the Department of Heritage, Local Government and Housing to inform mitigation measures. I note that otter is a qualifying interest of the Lough Oughter and Associated Loughs SAC. I consider potential impacts on this species within the Appropriate Assessment section of this assessment (Section 7.8).
- 7.4.14. Otter movements within the area are likely to be incidental and any disturbance is unlikely to have a significant effect on the population. The Construction Phase Pollution Plan attached as Appendix B1 of the Outline Construction Environmental Management Plan illustrates the preservation of a 5m buffer zone from existing drainage ditches on site. I would also note that any Otter within the area are likely to be accustomed to some disturbance associated with human activity and habitation, given the location of the site within the environs of Cavan town. I consider the risk of disturbance to Otter during the construction phase is low.

Smooth Newt and Common Frog

- 7.4.15. The Ecological Appraisal outlines that the site and immediate environs provide a suitable habitat for smooth newt and common frog. A Habitat Suitability Index was

undertaken, and the site scored a suitability score of 0.50 “Below Average Pond Suitability”. Further surveys are recommended.

Assessment

- 7.4.16. The appeals on the application raise concern in relation to the limited scope and content of the Ecological Survey and lack of detailed assessments. The appeals outline that the proposal would result in the loss of biodiversity and flora and fauna in the area. On an overall basis, I consider the scope and content of the study to be sufficient to inform the application. Further surveys are recommended, and I consider that these can be requested by means of condition in the instance of a grant of permission.
- 7.4.17. In this regard, I refer to Condition nos. 14 and 30 of CCC’S notification of decision to grant permission for the development in this regard which relate to the submission of an Invasive Species Management Plan and compliance with the measures set out within the Ecological appraisal report.
- 7.4.18. I refer to the submission on the applicant’s FI response from the Department of Housing, Local Government and Heritage (06/05/2022) which recommends the submission of a revised lighting plan, incorporation of biodiversity areas, a further otter survey to inform mitigation for the species using the area and the submission of an Invasive Species Management Plan in accordance with the recommendation of the Ecological Appraisal. The submission outlines that the threat of invasive species is one of the key pressures which increase biodiversity loss in Ireland.
- 7.4.19. I note that the submission does not raise concern in respect of the principle of the development. I consider that the points raised in relation to biodiversity and landscaping proposals could be addressed via appropriately worded conditions in the instance that the Board was minded to grant permission for the development.

7.5. Site Services and Water Quality

Water Supply

- 7.5.1. Water supply is proposed via connection to the existing Watermain along Ardkeen Road as illustrated on Drawing no. 21-207-101 “Proposed Site Services Layout Water”. The correspondence on file from Irish Water confirms that there is sufficient capacity within the network to accommodate the proposed connection.

Wastewater

- 7.5.2. Drawing no. 21-207-100 illustrates the Proposed Foul and Surface Water connections for the development. An Individual wastewater connection is proposed to serve each dwelling, and this connects to a pumping station proposed to the south-west of the site. The proposed pumping station connects to the existing foul water sewer located to the north of the appeal site along Ardkeen Road.
- 7.5.3. The submission on file from Irish Water confirms that the proposed connection is feasible pending upgrades of the existing foul sewer on the public road from a 250mm diameter foul sewer to a 225mm diameter foul sewer for a distance of 60m to accommodate the proposal. The applicant's response to CCC's request for further information confirms that the management and maintenance of the proposed pumping station will be undertaken by a management company.
- 7.5.4. The appeals on the application raise concern in relation to the capacity of the wastewater network and outline that there are issues with the wastewater network within the vicinity of the site. In this regard, I note that the Cavan County Development Plan outlines that Cavan Town is served by an existing wastewater treatment plan which has sufficient capacity (Section 2.2.6). I therefore consider that there is sufficient capacity to accommodate the proposed development, subject to the necessary upgrades to the existing foul sewer on the Ardkeen Road as specified within the submission from Irish Water.

Surface Water

- 7.5.5. The development includes connection to a storm sewer network which connects to a proposed attenuation tank. This tank discharges to the existing open drain to the southeast of the site which connects to Lough Killymooney. A hydrobrake will limit outflow to a rate of 9.77 L/S.
- 7.5.6. On the basis of the information submitted in conjunction with the application, I am satisfied that surface water can be accommodated on site. I note the contents of the submission on file from the Department of Heritage, Local Government and Housing (30/09/2021) which recommends the inclusion of measures to provide nature-based surface water management on site. This point could be addressed by means of condition in the instance that the Board is minded to grant permission for the development.

Water Pollution

- 7.5.7. The appeal site is located to the north of Killymooney Lough. The site is hydrologically linked to Killymooney Lough via existing drainage ditches along the southwestern and western site boundaries which outfall to Killymooney Lough. The appeals raise concern in relation to the impact of the proposal on water quality of the Lough and outline that the impact on water quality of Killymooney Lough is not appropriately assessed or addressed within the application. Particular concern is raised in relation to the cumulative impact of developments in the vicinity of the Lough on its water quality.
- 7.5.8. The existing waterbodies in the vicinity of the site are located within the Cavan _ 010 river water body catchment. This waterbody is classified as Poor Ecological Status (Status 2010-2015) as illustrated on the EPA mapping (<https://gis.epa.ie/EPAMaps/Water>). Such designated waterbodies must be improved to at least a Good Ecological Status in accordance with the requirements of the Water Framework Directive. Killymooney Lough is hydrologically linked to the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA. While Killymooney Lough is hydrologically linked to Natura 2000 sites, it is not a designated European Natura 2000 Site.
- 7.5.9. The appeals raise specific concern in relation to construction phase impacts on Lough Killymooney. The appeal submitted by Gareth Talbot includes photographic footage of construction in the vicinity of the Lough during construction works on the adjoining school and access road (photographs and video footage on a USB key are submitted). I have taken the information submitted into consideration in assessing the development.
- 7.5.10. The appeal site is set back over 60m from Killymooney Lough and the nearest proposed dwelling is set back over 100m from the Lough. The nature of intervening development between the site and the Lough include agricultural land and wetlands associated with the Lough. I consider that this set back is sufficient to negate against impacts on the existing Lough.
- 7.5.11. I note the reference in the appeals to cumulative impact of developments in the vicinity of the Lough on water quality. I consider that the main potential for impact is the construction phase of the development, however this would be of short duration

and appropriate measures are proposed to be in place to protect water quality. The appeals refer to previous construction practices in the vicinity of the Lough on lands in the ownership of the applicant and the potential impact of these developments on water quality.

- 7.5.12. I note that the specific measures to prevent run off/pollution from the site at construction and operational phase of the development are detailed within the NIS (Section 5 Mitigation Measures), the Ecological Appraisal and the Outline Construction Environmental Management Plan (CEMP). I consider that the measures set out within the application documentation which include monitoring of ground and surface water discharge from the site are comprehensive, have been designed on the basis of the site characteristics, and would negate against water pollution from the site. I consider that adherence to the measures outlined will ensure pollutants will not be discharged from the site and no further deterioration in the water quality will arise as a result of the proposal.
- 7.5.13. I furthermore note that the proposal has been assessed by the Environment Section in CCC, Inland Fisheries and the Department of Heritage, Local Government and Housing and no objection to the principle of the development is raised on grounds of impact on water quality subject to conditions. These conditions have been incorporated within CCC's notification of decision to grant permission for the development. Subject to adherence of the identified mitigation measures which includes ongoing monitoring I am satisfied that the proposal would not result in the water pollution of Lough Killymooney. In this regard, I consider that the development will not jeopardise the attainment of a good water quality status in accordance with the Water Framework Directive.

7.6. Traffic and Transportation

- 7.6.1. The appeals raise concerns in relation to traffic impact, cumulative traffic impact, construction access and the restrictions of the adjoining road network to accommodate the proposal.
- 7.6.2. The appeal site is located off the L2538 local primary road at Aghnaskerry, Cavan. The L2538 (Ardkeen Road) adjoins the northern boundary of the site, operates at a speed limit of 50kmph, and runs in a straight alignment in the vicinity of the site. A

footpath and public lighting is provided along the northern side of the L2538, a narrow grass margin forms the roadside edge of the development site.

- 7.6.3. Access to the development from the Ardkeen Road is proposed to the northeast of the site in the vicinity of the existing derelict dwelling on site. The internal access road comprises a 5.5m carriageway with a 2m footpath along one side. Revisions were made to the internal layout of the access road in response to CCC's request for further information.
- 7.6.4. Drawing no. PL18-121 04 entitled "Site Plan and Road Sections" submitted in response to Cavan County Council's request for further information illustrates sightlines of 70m from the proposed site entrance. DMURS sets out a requirement of 45m on 50kmph roads. I note that the application was assessed by the Road Design and Municipal District Office of Cavan County Council and no concerns were made in relation to the principle of the proposal subject to conditions.
- 7.6.5. I note that the Road Safety Audit submitted in response to CCC's FI requested outlines that it is unclear if the proposed sightlines are achievable. Condition no. 26 of CCC's notification of decision to grant permission outlines that the developer shall submit details of unobstructed sightlines at the proposed site entrance prior to the commencement of development. Subject to compliance with this condition, I do not consider that the proposed operational phase access would result in unsafe turning movements or give rise to potential for traffic hazard. I similarly have no objection to the principle of a construction phase access to the site and consider that details of same could be subject to agreement with the planning authority prior to the commencement of the development in the instance of a grant of permission.
- 7.6.6. The appeals raise safety concerns in relation to speeding vehicles along Ardkeen Road in the vicinity of the site. I note that the submitted RSA outlines that vehicle speeds in excess of the 50kmph speed limit are noted in the vicinity. The RSA recommends the implementation of traffic calming measures along the Ardkeen Road in the vicinity of the site entrance. Condition no. 26 (viii) of CCC's notification of decision to grant permission for the development outlines that all recommendations set out within the RSA shall be implemented. I consider that the implementation of traffic safety measures in the vicinity of the proposed site entrance would address

the concerns raised within the appeal in relation to Road Safety and reduce traffic speeds within the area.

- 7.6.7. The development comprises construction of 24 no. dwellings with 2 no. in curtilage parking spaces proposed for each dwelling. 4no. visitor parking spaces are proposed. Having regard to the scale of the development, the proposed parking provision and the location of the site within the settlement footprint and in close proximity to Cavan Town Centre I do not consider that the development would generate substantial traffic movements on the adjoining road network.

7.7. **Other Issues**

Procedural Matters

- 7.7.1. The appeals question the transparency of the application process and a number of procedural issues and concerns relating to the dealing with the application by Cavan County Council are raised. The majority of these matters are not a matter for the Board to adjudicate upon.
- 7.7.2. The appeals raise concern in relation to the assessment of the application by CCC in accordance with the provisions of the Cavan Town and Environs Development Plan 2014-2020. I note that the application was assessed by Cavan County Council in accordance with the operative Development Plan in place at the time of the decision being issued. The appeal has been assessed on its individual merits having regard to the provisions of the operative plan, namely the Cavan County Development Plan 2022-2028.

Revisions to the Application Site Boundary

- 7.7.3. I note that the application site boundary was extended to the south towards Killymooney Lough and the no. of residential units were reduced from 26 to 24 in response to CCC's request for further information. The appeal from Gareth Talbot outlines that the extent of the revisions to the application would merit a new application. However, I note that the FI response was deemed significant and readvertised, and submissions were received. I do not consider that there is a requirement for a new application on this basis.

Future Expansion of School

7.7.4. The appeals on the application outline that the development of the site for residential purposes would result in it being unavailable for the future expansion of Gaelscoil Bhreifne which is located on lands to the west of the site. In this regard, I note that the site is not specifically designated to accommodate the expansion of the adjoining school. The proposed residential application has been assessed on its merits and in accordance with the provisions of the Cavan County Development Plan 2022-2028.

Safety Concerns

7.7.5. The appeals on the application raise safety concerns associated with the proposal to open up the Lough for public access particularly in light of the presence of schools within the area. It is stated that limited information is provided in relation to amenity linkages. Concerns relating to water safety and antisocial behaviour are provided in this regard. I note that the proposed development includes the provision of an area of open space to the south of the appeal site which adjoins the wetlands area adjacent to Lough Killymooney.

7.7.6. The Landscaping and Boundary Treatments Plan (Drawing no. PL18-121-03) illustrates that proposed boundary treatment at the public open space area includes a combination of a 1.8m Kileshal H-Post (in the vicinity of the biodiversity garden and playing field) and a 1.2m timber and post rail fence. I consider that the placement of fencing around the site boundary would address any safety and security concerns associated with the proposed development. I am satisfied that the proposed residential units are sufficient set back from the Lough to negate against health and safety issues.

Construction Impacts

7.7.7. The appeals raise concern in relation to the construction phase impacts associated with the development. In this regard I note that the construction phase of any development on the site would be in accordance with the provisions of a Construction Management Plan, the contents of which would be agreed with the planning authority prior to the commencement of development. The scope of this report would include working hours and detailed measures to negate against undue environmental construction phase impacts within the area.

7.7.8. An Outline Construction Environmental Management Plan was submitted in support of the application. In the instance that the Board was minded to grant permission for

the development, I would recommend the inclusion of a condition requesting that on appointment of a contractor a detailed Construction Environmental Management Plan is submitted for written agreement of the planning authority prior to the commencement of development.

7.8. Appropriate Assessment

7.8.1. *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.

7.8.2. *Background*

An Appropriate Assessment Screening Report prepared by Whitehill Environmental was submitted in support of the application.

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 Lough Oughter Complex 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.

7.8.3. *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.

7.8.4. *Project Description and Site Description.*

The proposed development is described in section 3.1 of the applicant's Appropriate Assessment Screening Report. In summary the proposed development comprises

the demolition of the existing derelict dwelling on site and the construction of 24 no. residential units, access, connection to existing public services, landscaping and all associated site development works.

7.8.5. *Submissions and Observations*

These are summarised further in this assessment, see Section 7.8.15.

7.8.6. *European Sites*

Table 2 of the applicant's Screening Report identifies 2 no. designated sites within 15km of the appeal site. Lough Oughter and Associated Loughs SAC (Site Code 000007) and Lough Oughter Complex SPA (Site Code 004049). The SAC is identified as being 3.4km to the north-west of the site and the SPA is identified as being 3.7km north west.

European Site (Code)	Qualifying Interests	Distance	Connections	Considered further in Screening
Lough Oughter and Associated Loughs SAC (000007)	Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation. Bog woodland. Lutra lutra (Otter)	3.4km north west (8.8km) downstream	Hydrological Connection via surface water during construction and operation.	Yes
Lough Oughter Complex SPA (004049)	Great Crested Grebe (Podiceps cristatus). Whooper Swan (Cygnus cygnus). Wigeon (Anas penelope). Wetland and Waterbirds.	3.7km northwest (10.8km) downstream)	Hydrological Connection via surface water during construction and operation.	Yes

7.8.7. Conservation Objectives

Lough Oughter and Associated Loughs SAC (000007)

- 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 Complex SPA (004049)

- To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

7.8.8. Identification of likely effects

Section 3.4 of the applicant's Screening Report outlines that the appeal sites is hydrologically connected to the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA via the Killymooney Lough and Stream, the Green Lough Stream and the Cavan River. On this basis, it is stated that in a worst- case scenario and in the absence of mitigation, an accidental pollution event during construction or operation could potentially affect the surface water quality of these local watercourses to an extent that undermines the conservation objectives and certain qualifying interests of the European sites associated with Lough Oughter.

The applicant's Screening Assessment outlines that "*a reduction in water quality has the potential to affect the aquatic habitats and natural conditions that are required to maintain or achieve the specific attributes and targets of the qualifying interests associated with the SAC and SPA*".

The following areas are examined in relation to potential impacts and subsequent effects from the proposed development on the Natura 2000 sites identified:

- Deterioration of surface or ground water quality in designated areas arising from pollution from surface water run-off during site preparation and construction.
- Deterioration in ground or surface water quality in designated areas arising from pollution during the operation of the proposed development.
- Cumulative Impacts

The applicant's Screening Statement concludes the following:

In accordance with the Habitats Directive, the proposed development is not directly connected with or necessary for the nature conservation management of the Lough Oughter and Associated Lough SAC and the Lough Oughter Complex SPA. Therefore, following consideration of the location and potential effects that may occur on these sites, this project must proceed to the next stage of Appropriate Assessment, namely the Natura Impact Assessment.

7.8.9. *Cumulative Impacts*

The issue of cumulative impacts is addressed within the applicant's Stage II Screening Report (NIS). See section 7.8.18 below.

7.8.10. *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.

7.8.11. *Screening Determination*

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.

7.8.12. *Appropriate Assessment*

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.

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 to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

7.8.13. *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 and the Lough Oughter Complex SPA. Measures intended to reduce or avoid significant effects have not been considered in the screening process.

7.8.14. *Natura Impact Statement – Appropriate Assessment Stage II Report*

The applicant's Appropriate Assessment Stage II Report 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.

The NIS evaluates the potential for direct, indirect effects along or in combination with other plans and projects having taken into account the use of mitigation measures. Section 4.2 of the NIS provides an overview of the qualifying interests of the SAC and SPA and sets out an overview of the potential impacts of the proposal.

The applicant's report:

- Provides a synopsis of the European sites and their conservation objectives.
- Identifies the potential impacts from the development on each of the qualifying interests of the SAC and SPA as a consequence of the development by reference to the site's conservation objectives.
- Section 5 of the NIS sets out detailed mitigation measures.

The applicant's NIS concludes that *“on the basis of best available scientific evidence, it is concluded that when the mitigations set out in the NIS are implemented, that the proposed development will have no direct, indirect or cumulative impacts on the conservation status or integrity of any European (Natura 200) site”*.

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 and Lough Oughter Complex SPA alone, or in combination with other plans and projects.

7.8.15. Summary of consultations and submissions.

Cavan County Council

The planner's report (25/05/2022) outlines the following in respect of the submitted NIS:

"The proposed works do not have the potential to significantly affect the conservation objective or qualifying interest of the Lough Oughter and Associated Loughs SAC or the Lough Oughter Complex SPA. The integrity of the site will not be adversely affected".

Prescribed Bodies

I refer to the submission on file from the An Taisce, Irish Water, Inland Fisheries and the Department of Heritage, Local Government and Housing as summarised in Section 3.3 of this report. The key points raised in relation to the NIS are briefly outlined below:

- Department of Heritage, Local Government and Housing: The Department welcomes the series of mitigation measures within the NIS to protect Lough Oughter and Associated Lough (SAC) and Lough Oughter Complex (SPA). The submission dated 06/05/22 recommends the submission of an otter survey to inform mitigation measures.
- Inland Fisheries: all watercourses should be protected in terms of water quality, topography and habitat. A series of mitigation measures are recommended to protect water quality.
- An Taisce – the cumulative impact assessment of the NIS is insufficient.
- Irish Water – confirms that connection to wastewater network is feasible subject to upgrades.

Third Party Appeals

The third-party appeals on the application raises a number of concerns in relation to the content, scope and alleged inaccuracies within the NIS. These are summarised below:

- The NIS is not in accordance with Article 6(3) and 6(4) of the Habitats Directive
- No site-specific conservation objectives for Killymooney Lough are identified. Concerns relating to construction phase impacts of the Lough are raised.
- Impacts on Bats, Hedgerows, Otters and Birds are not addressed. The appeals refer to a lack of a detailed otter survey.
- Lack of Assessment of Cumulative Impact

At the outset, in considering the grounds of appeal I note that while Killymooney Lough is hydrologically linked to Natura 2000 sites, it is not a designated European Site. In addition, I note that matters raised in relation to bats, tree felling, and hedgerows do not fall within the scope of an NIS. I have addressed such matters in earlier sections of this report.

Potential impacts on otter (a designated Qualifying Interest of the Lough Oughter and Associated Loughs SAC) are addressed further within this assessment. I also address the comments in relation to cumulative assessment.

7.8.16. 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.

I have relied on the following guidance:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service.

- EC (2002) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EC
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC

I have also examined the Natura 2000 data forms as relevant and the Conservation Objectives supporting documents available through the NPWS website (www.npws.ie).

7.8.17. European sites.

Lough Oughter and Associated Loughs SAC (Site Code 000007) 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.

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 include the following:

- To restore the favourable conservation condition of Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation in Lough Oughter and Associated Loughs SAC;

- To maintain the favourable conservation condition of Bog woodland* in Lough Oughter and Associated Loughs SAC;
- To maintain the favourable conservation condition of Otter (*Lutra lutra*) in Lough Oughter and Associated Loughs SAC;

Lough Oughter Complex SPA (Site Code 004049) covers a largely similar area to the SAC. 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 include the following:

- To maintain or restore the favourable conservation condition of the wetland habitat at Lough Oughter Complex SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

7.8.18. Aspects of the Proposed Development.

Section 4.3 of the applicant's NIS sets out further elaboration of the potential effects could arise from the development to the detriment of the qualifying interests and conservation objectives of the European sites including the following:

- Deterioration of surface or ground water quality in designated areas arising from pollution from surface water run-off during site preparation and construction

The NIS outlines that works are proposed on a site which is hydrologically connected to and on a slope down to Killymooney Lough. While it is noted that this Lough is not a designated habitat it provides a hydrological connection to the SAC and SPA. If appropriate mitigation measures are not taken during construction and operation of the proposed development, then there is a possibility that water quality in this lough and subsequently in designated downstream receptors will be negatively impacted upon. Possible direct impacts include the pollution of waters during construction with silt, oil, cement, hydraulic fluid etc. This pollution would directly affect the habitat of

protected species by reducing water quality. The substances would also have a toxic effect on the ecology of the water in general, directly affecting certain species and their food supplies.

The NIS outlines that there is a potential risk of direct and indirect impacts arising from the site preparation and construction of the proposed application.

- Deterioration in ground or surface water quality in designated areas arising from pollution during the operation of the proposed development.

In this regard, the NIS outlines that surface water will be attenuated on site and discharged to a local watercourse that leads to Killymooney Lough. Therefore, it is stated that the most likely source of water pollution during the operational phase of the development is silt or hydrocarbon contaminated surface water run-off into the watercourse.

- Cumulative Impacts.

The NIS lists a number of applications in the vicinity which have been taken into consideration in the assessment of cumulative assessment including the following:

- The pre-school in the vicinity (PA Ref 21145, 20145),
- The new roadway and entrance junction along the L2543 Cavan Town Eastern Access Road/Cock Hill Road (PA Ref: 20376).
- The extension to the existing school (PA Ref: 21145).

The NIS outlines that Cavan County Council will screen future applications for AA on a case by case basis. Therefore, it is not considered that there will be any significant adverse in combination effects with the proposed works and any other development that has been screened for AA.

I note the concerns raised within the appeals in relation to cumulative impact of development within the area. However, in the instance that there are no impacts to the SAC or SPA arising as a result of this development, there is no potential for cumulative impacts.

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

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

The Site Synopsis for the SAC, outlines 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 enriched/polluted surface water runoff during construction and operation.

The applicant's NIS outlines that the downstream distance between the application site and this QI is over 8km, therefore potential significant effects upon the QI are unlikely. However, as there is a hydrological connectivity effects cannot be ruled out and mitigation measures should be included to prevent run-off from the works causing local deteriorations in water quality which subsequently result in significant effects on this habitat.

The mitigation measures seek to implement best practice environmental control measures as part of the construction methodology on site together with on-site monitoring. 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.

The applicants NIS outlines that there are no areas of designated/non-designated woodland within the zone of influence of the site. On this basis it is stated that there is no potential impact upon this qualifying interest.

I would therefore consider that the development is unlikely to have any significant effect on it. Further, I note that water quality is not identified as a likely attribute for the maintenance of the habitat.

- Lutra Lutra (Otter)

The applicant NIS outlines that the otter occurs throughout the Lough Oughter system. The presence of this species is positively correlated with good water quality and deterioration of same will lead to impacts upon this species. A reduction in water quality could impact on the diet of this species and lead to other stressors.

The applicant's NIS identifies that it is possible for otters to occur within the zone of influence of the application site (downstream). The NIS outlines that mitigation measures will be included to protect the overall status of the otter within the SAC and to prevent the deteriorations in water quality which could affect this species. The NIS outlines that measures will also ensure the protection of otters outside of the SAC which might occur locally around Killymooney Lough.

The Ecological Appraisal submitted in support of the application outlines that the drainage ditches on site may be suitable for commuting and foraging but no evidence of holts/laying up areas were identified throughout the site. The Ecological Appraisal identifies some historic prints within a drainage ditch on site which, on a precautionary basis, are assumed to be otter. Further pre-construction ecological surveys are recommended.

I consider that Otter may be disturbed during the construction phase, due to noise and activity in proximity to the existing drainage ditches on site and Lough Killymooney, whereby individuals using these watercourses for foraging and commuting may avoid using the area during construction. The proposed site layout plan illustrates that the existing drainage ditches are being retained on site. Whilst there may be some short-term disturbance during construction, I consider this is unlikely to be a significant effect for the SCI, given the distance from the European site.

Otter movements within the area are likely to be incidental and any disturbance is unlikely to have a significant effect on the population. The Construction Phase Pollution Plan attached as Appendix B1 of the Outline Construction Environmental Management Plan illustrates the preservation of a 5m buffer zone from existing drainage ditches on site. I would also note that any Otter within the area are likely to be accustomed to some disturbance associated with human activity and habitation, given the location of the site within the environs of Cavan town. I consider the risk of disturbance to Otter during the construction phase is low and can be excluded.

The proposed development does not result in habitat loss within the European site. The NIS outlines that any deterioration in water quality in the Erne system could indirectly affect these species through impacts on its food source. Detailed mitigation measures are set out in the NIS to prevent the deterioration of water quality by way

of run off, including arrangements for site works, protection of water quality and monitoring of ground and surface water discharging from the site which are incorporated within the Outline Construction Environmental Management Plan (CEMP). The NIS outlines that measures will also ensure the protection of otters outside of the SAC which might occur locally around Killymooney Lough.

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

7.8.20. Assessment of Effects on Conservation Objectives – Lough Oughter Complex SPA

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

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 deterioration in water quality.

The applicant's NIS outlines that the proposed development will not lead to any direct impacts or effects upon the bird species that are listed as QI's of this SPA. It is stated that there will be no loss or fragmentation of their habitats within the SPA. The NIS outlines that any deterioration in water quality in the Erne system could indirectly affect these bird species and the habitats that they depend on. In order to prevent any deterioration in water quality during the construction and operation of the proposed development, mitigation measures will need to be included.

The proposed development does not result in habitat loss within the European site. Detailed mitigation measures are set out in the NIS to prevent the deterioration of water quality by way of run off, including arrangements for site works, protection of water quality. I also refer to the measures detailed within the Outline Construction Environmental Management Plan which relate to water quality and protection.

I consider that the mitigation measures are robust that the development is not likely to result in adverse effects on the qualifying interests of the SPA.

7.8.21. Mitigation

Section 5 of the NIS sets out mitigation measures for the proposed development.

The include the following:

Environmental Protection Measures:

- Prior to commencement the site engineer and contractors should be made aware of the ecological sensitivity of the site and its connectivity to designated areas.
- Site Preparation and Construction shall adhere to best practice and conform with the relevant guidance.

Prior to Commencement Measures:

- An Environmental Clerk of Works will be appointed to oversee works on site to ensure that the mitigation measures within the CEMP and NIS are being undertaken properly.
- Site specific mitigation measures are identified for the following: (1) Sediment Management, (2) Fuels, Oils, Chemicals, Liquids and Hazardous Materials (3) Cement, Concrete, Grout and On-Site Washing Facilities.

Protection of Biodiversity

- The removal of trees and hedgerows must be done outside of the bird nesting season.
- Specifications are provided for lighting.
- Landscaping proposals shall focus on native species.
- Additional measures for the protection of biodiversity within the application site that have been outlined in the Ecological Appraisal must be adhered to.

Post Construction

- During operation only clear surface water should be directed into local watercourses.
- During the landscaping of the site, only native trees and shrubs should be used (including willow, alder and birch).

The applicant's NIS concludes that: *“on the basis of best available scientific evidence, it is concluded that when the mitigations set out in the NIS are implemented, that the proposed development will have no direct, indirect or cumulative impacts on the conservation status or integrity of any European (Natura 200) site”*.

7.8.22. Cumulative Impacts

As there are no impacts to the SAC or SPA arising as a result of this development, there is no potential for cumulative impacts. There are no likely impacts arising from the proposed development on Natura 2000 sites and therefore cumulative impacts with other projects will not occur.

7.8.23. Integrity Test

I have considered the NIS along with the information submitted with the application and concerns raised within the appeals on the application in relation to the scope and content of the NIS. The main underlying concerns raised within the appeals on the application relate to impacts on water quality. I am satisfied that the suite of measures set out within the NIS and CEMP are comprehensive and sufficient to negate against impacts on water quality.

I also note the distance of the site from the designated Natura 2000 sites and urban nature of urban development between it and the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA. While the site is hydrologically linked to these sites, having regard to the effect of dissipation, dilution and biodegradation, of potential pollutants in their movement through soil/water at a distance of c.3.7 – 3.8km, significant adverse effects on water quality in the European site are unlikely.

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 Lough Oughter Complex 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.

7.8.24. Appropriate Assessment Conclusion

The proposed development has been considered in light of the assessment requirements of Section 177 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 (Site Code 000007) and Lough Oughter Complex SPA (Site Code 004049). 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.

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 in relation to the Conservation Objectives of Lough Oughter and Associated Loughs SAC and Lough Oughter Complex 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 both the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA.

8.0 Recommendation

- 8.1. I recommend the permission is refused for the development in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. The majority of the appeal site is zoned for "Amenity and Open Space" purposes within the Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028 with an objective to "*Protect and provide for amenity and open space areas*". The eastern portion of the site is zoned for Existing Residential purposes with an objective to "*Protect and enhance the amenity of developed residential communities*".

The proposed development seeks to provide a residential development on lands primarily zoned for “Amenity and Open Space” purposes within the Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028. Residential is listed as a use which is not permitted on lands zoned for “Amenity and Open Space” purposes. The development would contravene materially the zoning objectives pertaining to the majority of the site as set out within the Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028 and would be contrary to the requirements of Strategic aim (ii) of the Development Plan Core Strategy which seeks to promote development that is reflective of the scale of the Core Strategy and zoning maps.

The development is therefore considered contrary to the provisions of the Cavan County Development Plan 2022-2028 and the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Stephanie Farrington
Senior Planning Inspector

26th of June 2023