



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314299-22

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<b>Development</b>	Construction of 15 dwellings, 10 apartments in 3 blocks and all associated site works
<b>Location</b>	Swellan Lower, Cavan, Co. Cavan
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	2228
<b>Applicant(s)</b>	Erne Building Solutions Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Karl Byrne.
<b>Observer(s)</b>	N/A.
<b>Date of Site Inspection</b>	19 <sup>th</sup> of April 2023.
<b>Inspector</b>	Stephanie Farrington

## 1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 1.48ha and is located along Glenside Road, approximately 2.5km from Cavan Town Centre. The majority of the site is overgrown, enclosed by fencing and comprises the incomplete phase of the existing housing development known as The Beeches and The Elms, Swellan Lower. The foundations of a number of previously approved dwellings are evident on the north-eastern portion of the site. An open drain runs along the base of the south-eastern site boundary. This connects to the existing storm water drainage ditch located to the south west of the site.
- 1.2. The north western portion of the site includes an existing open space area associated with the existing housing development. The application boundary extends to the north east to include the existing site access from Glenside Road.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the construction of 25 no. residential units on site. Access to the development is proposed via connection to the existing internal road network within the existing estate.
- 2.2. Table 1 below provides an overview of key site statistics.

<b>Table 1: Key Figures</b>	
<b>Site Area</b>	1.48 ha
<b>No. of Residential Units</b>	25
<b>Unit Mix &amp; Dwelling Type</b>	1 no. detached 2 storey house 14 no. 2 storey semi-detached dwellings 10 no. apartments in 3 no. 2 storey blocks.
<b>Height</b>	2 storey
<b>Density</b>	23 units per ha (25/1.08 ha (excluding existing access roads)).

<b>Public Open Space</b>	4,631 sq.m. within application boundary - 42% of the site area (excluding roads)
<b>Car Parking</b>	2 in curtilage per house, 1 per apartment

### 3.0 Planning Authority Decision

#### 3.1. Decision

Cavan County Council issued a notification of decision to grant permission for the development subject to 26 no. conditions. The following conditions are of note:

- Conditions 4,5 and 6 relate to measures to prevent contaminated discharges to groundwater and surface water to watercourses.
- Condition no. 11 outlines that the delineated open space areas shall be reserved for such use.
- Condition no. 15: All WC's, bathroom and ensuite windows shall be fitted and permanently maintained with obscured glazing.
- Condition no. 18 relates to the submission of an Invasive Species Management Plan for approval of CCC.

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

###### Initial Planner's Report (21.03.2022)

The initial planner's report recommends a request for further information. The following provides a summary of the key points raised:

- The principle of the completion of an unfinished housing estate on zoned, serviced lands is acceptable.
- The proposed housing mix is considered acceptable in the context of the overall development.

- The proposal has a density of 17 units per ha which is deemed acceptable having regard to the existing development within the vicinity of the site.
- The existing stream along the south-west boundary of the site flows to the Cavan River and there is a history of flooding in this location. A Site-Specific Flood Risk Assessment is requested.
- A request for further information is recommended in respect of the following:
  - Submission of Confirmation of Feasibility from Irish Water,
  - A revised Construction Management Plan which addresses (i) removal of concrete bases on site, (ii) invasive species management plan (iii) phasing plan and (iv) revised proposals for existing drain and consultation with Inland Fisheries Ireland.
  - Details of external materials for the dwellings
  - A Section drawing illustrating gradients on site between the Swellan Road and proposed estate road.
  - Demonstration of adherence to the standards set out within the “Quality Housing for Sustainable Communities” guidelines.
  - A revised Site Layout Plan indicating public lighting, visitor parking spaces and bicycle parking and boundary details.
  - Site Specific Flood Risk Assessment.
  - Revised proposals for existing ditch on site.
  - Boundary treatment details and assessment of the usability of proposed open space.
  - Compliance with 2007 Cavan Town and Environs Transportation Study.

*Planners Report (13/07/2022)*

The planner’s report prepared in respect of the applicants FI response provides a summary and assessment of the applicant’s response. The report outlines that the response is deemed acceptable and recommends a grant of permission subject to condition.

3.2.2. Other Technical Reports

#### Municipal District Engineer (11/03/22)

- The report refers to the planning history of the site and outlines that the existing estate entrance and access road has been designed and constructed to accommodate the development of the site. The proposed layout is conducive for low speeds.
- Recommends submission of a traffic report, provision of additional parking and submission of a financial contribution towards provision of street lighting within the development.

#### Environment Section

- The report recommends clarification in relation to the proposal for the piping and filling of the ditch. Consideration should be given to redirecting rather than filling the ditch and consultation with Inland Fisheries is recommended.
- The Construction Management Plan should address groundwater and surface water protection measures during the construction phase of the development.

#### Environment Section (29/06/2022)

- A grant of permission is recommended subject to condition.

#### Waste Management (14/03/2022)

- The correspondence outlines that there may be Japanese Knotweed present along the site boundary with the public road. The correspondence recommends the undertaken of a survey for invasive species and the submission of an “Invasive Species Management Plan” if the presence of invasive species is confirmed.

#### Waste Management (29/06/2022)

- A grant of permission is recommended subject to conditions.

### **3.3. Prescribed Bodies**

#### Department of Housing, Local Government and Heritage:

- The submission recommends a condition in relation to pre-archaeological testing on site.

### Irish Water

- The applicant is required to engage with Irish Water to confirm pre-connection feasibility.

### Irish Water (13/05/2022)

- The correspondence from Irish Water attached to the applicants FI response confirms that connection to water and wastewater networks is feasible without infrastructure upgrade by Irish Water.

## 3.4. **Third Party Observations**

An observation was made by the appellant on the application during the initial public consultation period and on receipt of the FI response. The issues raised reflect those set out within the appeal.

## 4.0 **Planning History**

The following planning history relates to the appeal site:

- PA Ref. 08/1461: Permission granted in March 2009 for construction of 34 no. residential units on site.
- PA Ref: 07/862: Permission granted in November 2007 to construct 26 no. residential units on site.
- PA Ref: 19/474: Permission refused in January 2020 for 3 no blocks of semi-detached houses and 1 no. semi-detached house within the existing open space area. Permission was refused in accordance with the following reasons and considerations:

*“Having regard to the level of development proposed on the overall site, including existing and proposed developments, the nature and character of development in the area, the lack of permitted public open space to serve existing and future occupants and the current usage of the site as public open space delivered as part of the site resolution plan, it is considered that the proposed development would represent a sub-standard form of development, would have an adverse effect on residential amenity, would represent the over*

*development of the site, would be out of character with developments in the vicinity, would materially contravene the 2014-2020 Cavan Town Development Plan, specifically section 9.4.7, and therefore, would be contrary to the proper planning and sustainable development of the area”.*

- PA Ref: 19475: Application for 32 no. residential units on site withdrawn in December 2020.

#### Appeal Site and Adjoining Landholding

- PA Ref: 03/1907: Permission granted in March 2004 for the construction of 23 no. residential units on site.
- PA Ref: 03/257: Permission granted in July 2003 to retain and complete 8 no. detached dwellings and 4 no. detached on site.
- PA Ref: 03/83: permission granted in July 2003 to retain and complete 2 no. semi-detached dwellings.
- PA Ref: 00/988: Permission granted in March 2001 for construction of 20 no. residential units on site.

## 5.0 Policy Context

### 5.1. Development Plan

#### Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 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. The Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028 was adopted on the 30<sup>th</sup> of May 2022 and came into effect on the 11<sup>th</sup> of July 2022.

#### Zoning

- 5.1.2. The majority of the site is zoned for “Existing Residential” purposes within the Cavan Local Area Plan included within the Cavan County Development Plan 2022-2028.

This zoning objective seeks to: *“Protect and enhance the amenity of developed residential communities”*.

5.1.3. The vision of this zoning objective seeks to: *“Ensure that any new development does not adversely impact upon the amenity of existing residential properties. New housing and infill developments should be in keeping within the character of the area. Seek to enhance associated open space and community uses and improve the quality of existing residential areas”*. Residential is listed as a use which is “permitted in principle” under this zoning objective.

5.1.4. A portion of the site to the east is zoned for “Amenity and Open Space” purposes 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.

5.1.5. The following Development Objectives set out within the Cavan Town Local Area Plan in Chapter 2 of the County Development Plan are of relevance to the proposal:

- Development Objective CSC 2: Require that an appropriate mix of housing type, tenure, density and size is provided in all new residential developments to meet the needs of the population of Cavan Town
- Development Objective CSC 3: Encourage the appropriate redevelopment of brownfield and infill sites for residential uses within the footprint of the existing built-up areas.

5.1.6. The existing watercourse which runs to the west of the appeal site is identified within a Flood Zone A on the LAP zoning map.

#### Development Management

5.1.7. Residential Density (Section 13.4.1) – This section of the plan outlines that due to the difficult topography of County Cavan, there are many instances where specified densities cannot be achieved. For Cavan Town the following densities are identified:

- Density in town/village core = 30-35
- Density in brownfield and infill sites = 22-30
- Density in Proposed Residential = 18-22
- Density in Proposed Low Density Residential = 8-10



*Residential Density Development Objectives:*

5.1.8. It is a development objective of Cavan County Council to:

- *RD 01 Encourage densities in accordance with the above table throughout the County in accordance with the Core Strategy.*
- *RD 03 Ensure densities of proposed developments reflect the key attributes and character of the surrounding/adjoining area.*

5.1.9. The plan outlines that these indicate approximate key residential outputs over the life-time of the plan and site density will be determined on a case by case basis.

5.1.10. Private Open Space (13.4.7) Private open space should be a useable area to the rear of the front boundary of the dwelling.

*Private Open Space Development Objectives*

5.1.11. It is a development objective of Cavan County Council to:

- *POS 01 Require that new development has regard to the character of the area in which they are located in terms of requirements for private open space.*
- *POS 02 Require the following minimum open space requirements for new dwelling houses - One/Two bedroom, 48sqm- 55sqm and 3/4/5 bedroom unit, 60 sqm-75sqm.*

*Public Open Space Development Objectives*

5.1.12. It is a development objective of Cavan County Council to:

- *PCOS 01 Ensure public open spaces in new residential developments comply with the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, DEHLG (2009) and the accompanying Urban Design Manual (2009) or any updates thereof.*
- *PCOS 02 Ensure public open space is well designed, of a high visual standard, generally flat, retain natural features and proposes appropriate landscaping or wetland and has a high level of surveillance and overlooking.*

5.1.13. Overlooking and Overshadowing (13.4.9) New development should be designed to avoid overlooking of existing or proposed residential units. It is a development objective of Cavan County Council to:

- *OO 01 A minimum distance of 22 metres of separation between directly opposing rear windows at first floor in the case of detached, semi-detached, terraced units shall generally be observed.*
- *OO 04 Any window proposed at ground floor level should not be less than 1 metre from the boundary it faces.*

*Design and Layout (13.4.10)*

5.1.14. Design and Layout Development Objectives. It is a development objective of Cavan County Council to:

- *DL 01 Require that all proposals for residential development demonstrate compliance with the Sustainable Residential Development in Urban Areas (Cities, Towns and Villages), the Urban Design Manual- A Best Practice Guide 2009 and the Urban Development and Buildings Heights Guidelines for the Planning Authorities (2018), or any updates thereof.*

*Apartment Development Objectives*

5.1.15. It is a development objective of Cavan County Council to:

- APT 01 A detailed design statement is required to be submitted with any development containing multiple apartments and/or duplex units, including private and communal amenity space, as per the minimum apartment design standards.
- APT 02 Proposals for apartment development will be assessed with due attention to:
  - Appropriate mix to cater for different household sizes
  - Aspect – dual aspect units are encouraged
  - Floor areas and room widths
  - Private and communal amenity space Lift/stair core access
  - Storage provision (for general, refuse and bulky items)

- Private and communal amenity space
- Communal facilities
- Car, EV (Electric Vehicle) Charging Points and bicycle parking and
- Adaptability

## 5.2. **Natural Heritage Designations**

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) – 2.6km
- Lough Oughter and Associated Loughs pNHA (000007) – 3.5km

## 5.3. **EIA Screening**

Having regard to the nature and scale of the proposed development, the separation of the site from European and other designated sites, the proposed connection of the development to public water and foul drainage connections, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can therefore be excluded at preliminary examination and a screening determination is not required.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

A third-party appeal has been submitted in respect of the notification of Cavan County Council to grant permission for the development. The appeal is submitted by Karl Byrne, 12 The Beeches, Swellan Lower. The following provides summary of the grounds of appeal.

- Validity of the Application: The appeal outlines that the proposal, as revised in response to CCC's request for further information, includes the demolition and removal of existing piled foundations and ground beam structures. These works are referred to within the construction management plan but not advertised within the public notices. The application should be deemed invalid.
- Inconsistency in application Boundary: The appeal refers to inconsistencies between the red line boundary identified within the architects' drawings and engineering drawings submitted in support of the application. The appeal outlines that there are ambiguities in terms of the works to be undertaken.
- Layout/Impact on Residential Amenity: The appeal welcomes the proposal to complete the estate. The appeal raises concern in the layout of the development and potential impact on the residential amenity of existing and proposed dwellings.
  - The proximity of proposed units nos. 6-8 to the gable of no. 12 The Beeches at c. 18-19m falls short of the 22m requirement between opposing first floor windows as stated in Paragraph 9.1.5 of the Cavan Development Plan. The appeal outlines that there should be adequate separation between opposing first floor windows. The appeal cross refers to the reference within CCC's planner's report to the requirement for a staggered approach to units 7 to 8 and outlines that this was not incorporated in the layout.
  - The separation distance of 22m is also not achieved between the rear of houses 9-12 and 4-8 which measures only 16.5m. This falls short of the Development Plan requirements and is not in accordance with the existing pattern of development within the estate. No design features have been incorporated to mitigate the reduced distance and prevent overlooking.
- Condition: The appeal outlines that the large attics available and small gardens may lead to a worsening of privacy within the development. In the instance of a grant of permission the Board is requested to attach a condition restricting future development of the houses, exempted or otherwise, without planning permission.

- Bats: The appeal outlines that native bat species feed in and around the site every summer. No bat survey was submitted in support of the application or requested by the planning authority.

## 6.2. Applicant Response

- None.

## 6.3. Planning Authority Response

Cavan County Council provided a response to the grounds of appeal. The following provides a summary of the points raised.

- Validity of Application: The submitted application documentation included a description of the application site. This refers to the presence of existing beams for 4 no. approved houses on the site and the location is illustrated on the Site Survey Drawing. The appeal response refers to the reference to “associated site works” within the public notices which would include the removal of the beams in site preparation works. The PA furthermore refers to the FI request which includes specific reference to the removal of concrete basis in the request for a Construction Management Plan. There is no requirement to refer to these works within the public notices as no demolition of any buildings is proposed. The PA contends that the planning application should not be invalidated as the development description is not considered to be inaccurate or deliberately misleading.
- Impact on Residential Amenity: The Site Layout Plan illustrates that the plots and positions of the proposed dwellings are staggered to ensure that first floor windows are not located directly opposite existing and proposed dwellings thereby mitigating potential overlooking. The PA outlines that having regard to the proposed layout and flat topography of the site, issues of potential overlooking and loss of privacy were not considered problematic in the assessment of the application.
- Bat Survey: CCC’s appeal response refers to the characteristics of the site which does not have any old/vacant or abandoned buildings which would

normally be habitats for bats. The site is not identified as a designated site for biodiversity. The Proposed Site Layout Plan has identified the existing mature planted banking to be maintained to ensure a wildlife corridor is provided.

- Condition: The Planning Authority has no objection to the principle of a condition restricting further development in the final grant of permission.
- Conclusion: The Planning Authority requests that the Board uphold the decision to grant permission for the development.

## 7.0 **Assessment**

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
- Impact on Residential Amenity
- Ecology/ Bats
- Other Issues
- Appropriate Assessment

The main issues are those raised in the grounds of appeal and the I am satisfied that no other substantive issues arise. I am satisfied that the issues of Flood Risk and Invasive Species have been satisfactorily addressed within the applicant's response to CCC's request for further information. The issue of appropriate assessment also needs to be addressed.

### 7.1. **Principle of Development**

- 7.1.1. 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.

- 7.1.2. The Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028 was adopted on the 30<sup>th</sup> of May 2022 and came into effect on the 11<sup>th</sup> 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.
- 7.1.3. The majority of the appeal site is zoned for “Existing Residential” purposes within the Cavan Town Local Area 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. The proposed residential units are located on this portion of the site.
- 7.1.4. A portion of the site to the east is zoned for *“Amenity and Open Space”* purposes 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. This area of the site is proposed to accommodate open space associated with the development.
- 7.1.5. The proposed development yields a density of 23 units per hectare. This is in accordance with the density guidance for brownfield/infill sites of 22-30 units as set out within (Section 13.4.1) of the Cavan County Development Plan. The proposal is therefore in accordance with the provisions of Development Objective RD01 of the Cavan County Development Plan which seeks to: *“Encourage densities in accordance with the above table throughout the County in accordance with the Core Strategy”*.
- 7.1.6. The development includes a mix of dwelling types and formats of units ranging from 2 bed apartment units to 3-bed detached and semi-detached units. I consider that the proposed dwelling mix will format/typology will promote a mix in tenure within the development. Dwelling materials of brick and render reflect those established within existing properties in the area.
- 7.1.7. I consider that the principle of the development of a zoned and serviced brownfield site within the development footprint of Cavan for residential purposes is acceptable in principle. The principle of residential development has been established at this location and the proposal seeks the completion of an existing unfinished housing estate. The development will support compact growth and is in accordance with the

requirements of Development Objective CSC 3 of the Cavan County Development Plan which seeks to “*encourage the appropriate redevelopment of brownfield and infill sites for residential uses within the footprint of the existing built-up areas*”.

## **7.2. Impact on Residential Amenity**

7.2.1. The appeal raises concern in relation to the impact of the proposal on the residential amenity of both existing occupants in The Beeches Estate and the future occupants of the proposed dwellings. The appeal outlines that the minimum separation distance of 22m between directly opposing first floor windows is not achieved in accordance with Development Plan Standards. Concerns relating to overlooking and loss of privacy are raised in this context.

7.2.2. Development Objective OO 01 of the Cavan County Development Plan outlines that: “*A minimum distance of 22 metres of separation between directly opposing rear windows at first floor in the case of detached, semi-detached, terraced units shall generally be observed*”. The appellant alleges that this standard is not adhered to in respect of the following circumstances:

- No. 12 The Beeches and Proposed Units 6-8;
- Between the rear of houses 9-12 and 4-8;

### *Overlooking of Units 6-8*

7.2.3. I note that the wording of Development Objective OO 01 of the CCDP relates to separation distance of 22m between directly opposing rear windows. In this regard I note that units 6-8 are forward facing windows which front the access road. The gable windows of the appellants property at no. 12 The Beeches looks onto the existing access road. The separation distance of 22m is therefore not applicable in this instance. I consider that the proposal has been appropriately designed to negate against overlooking of existing residential dwellings including the appellants property.

### *Impact on Residential Amenity of Existing Dwellings*

7.2.4. On an overall basis I consider that the development has been designed to negate against impact on the residential amenity of existing dwellings within The Beeches and The Elms. The site is currently overgrown and derelict in appearance. I consider that the development of the site would enhance the residential and visual amenity of the area particularly for existing residents in the immediate vicinity of the site where



the unfinished nature of the development is most evident. The proposal will complete the estate and complete the internal road network and provide a more appropriate interface with existing properties.

*Overlooking between Units 9-12 and 4-8*

- 7.2.5. Within the development, while I acknowledge that a separation distance of 22m is not achieved between Units 9-12 and 4-8 (separation distance of c.15m-16m achieved) I consider that the siting of the proposed units have been appropriately staggered to ensure that first floor windows are not located directly opposite each other thereby mitigating potential overlooking. On this basis I do not consider that the proposal is contrary to the requirements of Development Objective OO 01.
- 7.2.6. I refer to the grounds of appeal which requests that in the instance of a grant of permission a condition is included outlining that the large attics available and small gardens may lead to a worsening of privacy within the development. In the instance of a grant of permission the Board is requested to attach a condition restricting future development of the houses, exempted or otherwise, without planning permission. I do not consider that there is a requirement for such a condition on the basis of the proposed site layout.

*Impact on Proposed Residential Amenity*

- 7.2.7. On an overall basis, I consider that the proposal would provide a good quality of residential amenity for the future occupants of the scheme. In terms of private open space, I consider that the depth of the back gardens for the proposed houses (Units 1 to 15) is sufficient and in all instances the quantum of private open space provided is in accordance with that standards set out within Development Objective P0S2 of the Cavan County Development Plan which outlines that a minimum of 60-75 sq.m. private open space is provided for 3/4/5 bedroom houses.
- 7.2.8. Public open space for the development is primarily provided within the existing open space to the northwest of the site, and a further 2 no. pockets of open space are provided on the eastern corner of the site and at the terminus of the internal access road. I consider that the existing and proposed quantum and quality of existing and proposed public open space is acceptable.

7.2.9. The proposed development includes the construction of 10 no. apartment units (proposed units 16-25). I have reviewed the proposed apartments in light of the standards and SPPR's set out within the Sustainable Urban Housing: Design Standards for New Apartments Guidelines 2022. The proposed apartments are in compliance with the stated standards in relation to the mix of units, the size and internal layout of each unit, orientation and the level of private amenity space provided. Car parking of 1 space per unit is provided to the front of the units.

### 7.3. **Ecology/ Bats**

7.3.1. The appeal refers to the seasonal presence of bats on site and outlines that no bat survey was submitted in support of the application or requested by the planning authority.

7.3.2. In considering the grounds of appeal, I note that there are no existing buildings on site which would accommodate bats. The site includes mature trees and planting. I refer to the Landscaping Plan Drawing no. PI-L-06 which outlines that existing trees and hedges on site are to be retained and protected during construction. On this basis I do not consider that the proposal will have a significant impact on bats.

### 7.4. **Other Issues**

#### Validity of Application

7.4.1. The appeal questions the validity of the application on the basis of the lack of reference to demolition works within the public notices and anomalies in the application drawings in terms of denotation of the red line boundary. I note that the Site Survey Drawing PI-L-02 illustrates the existing ground beams on site. The removal of existing substructures on site is also addressed within the Construction Management Plan submitted in response to CCC's request for further information. The application boundary was also clarified in response to Cavan County Council's request for further information.

7.4.2. In terms of procedural matters and the alleged insufficiencies of the public notices I note that the notices were considered acceptable by the planning authority. Having regard to the issues raised regarding the validity of the application, this is within the remit of the Council and while the documentation submitted is noted, it is not considered appropriate or within the remit of the Board to further comment on these

matters. I note that Cavan County Council provided a detailed response to the grounds of appeal including the reference to the validity of the application. I am satisfied that the matters raised did not prevent the concerned party from making representations.

## 7.5. **Appropriate Assessment**

### *Compliance with Article 6(3) of the Habitats Directive*

- 7.5.1. The requirements of Article 6(3) 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.
- 7.5.2. No Screening report is submitted in support of the application. This assessment is therefore considered de novo.

### *Screening for Appropriate Assessment - Test of likely significant effects*

- 7.5.3. The project is not directly connected with or necessary to the management of a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.5.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

### *Submissions and Observations*

- 7.5.5. The planner's report which informs the decision of Cavan County Council to grant permission for the development outlines that: "*Having regard to the distance from the nearest Natura 2000 sites, I consider that appropriate assessment is not required*".
- 7.5.6. The submission on file from Irish Water outlines that connection to water and wastewater networks is feasible without infrastructure upgrade by Irish Water.

### *European Sites*

- 7.5.7. The development site is not located in a European site. A summary of European Sites that occur within a possible zone of influence (15km) of the proposed development is presented in the Table below.

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)	3.5km	Hydrological Connection via surface water.	Yes
Lough Oughter Complex SPA (004049)	Great Crested Grebe (Podiceps cristatus). Whooper Swan (Cygnus cygnus). Wigeon (Anas penelope). Wetland and Waterbirds.	3.8km	Hydrological Connection via surface water.	Yes

### *Conservation Objectives*

7.5.8. Conservation Objectives for the designated Natura 2000 sites are cited below:

#### *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.

### *Identification of Likely Effects*

7.5.9. The appeal site is hydrologically connected to the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA. On this basis, I consider that

potential impacts associated with the construction and operational phase of the development relate to potential impacts on water quality including the following:

1. Deterioration of water quality in designated areas arising from pollution from surface water run-off during site preparation and construction;
2. Deterioration in water quality post-construction due to an increase in impermeable surface resulting in increased surface runoff.

7.5.10. I note that wastewater proposals include connection to the existing wastewater treatment plant in Cavan. The Cavan County Development Plan 2022-2028 confirms capacity within the treatment plan serving Cavan Town. Irish Water have also confirmed that connection is feasibility without upgrade. Having regard to the scale of the development which includes a relatively limited number of residential units (25 no.), I consider that the foul discharge from the site would be insignificant in the context of Cavan WWTP, and thus its impact on the overall discharge would be negligible.

7.5.11. An existing watercourse runs along the southwestern boundary of the appeal site. This is identified as a Flood Zone A within the Cavan LAP zoning map. A drainage ditch traverses the southern portion of the site which connects to the existing watercourse to the south west of the site. The Flood Risk Assessment submitted in response to CCC's request for further information outlines that this is likely to mark the site boundary and has no direct surface water discharge points connected to it. The proposal seeks permission to pipe and fill the existing drainage ditch to accommodate the development. The FRA outlines that it is proposed to provide a perforated land filter/trench along the ditch along the southeastern boundary in place of the existing ditch

7.5.12. Surface water proposals include outflow to the existing watercourse from attenuation tanks at greenfield run off rate. This watercourse flows in a southerly direction and connects to the tributaries of the Cavan River which flow to the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA (as illustrated on EPA mapping).

7.5.13. I note that the Invasive Species Survey Report identifies the presence of Japanese Knotweed on the site. The report recommends the submission of an Invasive

Species Management Plan and outlines that no works can commence on site until the Japanese Knotweed is removed.

- 7.5.14. The Updated Construction Management Plan submitted in response to CCC's request for further information sets out measures to protect ground and surface water pollution during construction phase of the development. I am satisfied that the measures outlined to maintain water quality in the watercourse are standard measures for development in the vicinity of watercourses and would be in place whether the Natura 2000 site was hydrologically linked to the Natura 2000 sites or not.
- 7.5.15. Although a source-pathway-receptor linkage exists between the application site and the designated habitats of the Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA, in this instance, given the scale of the proposed development, I consider the downstream distance is sufficient to ensure that no impacts will arise. In the absence of any mitigation measures, having regard to the effect of dissipation, dilution and biodegradation, of potential pollutants in their movement through soil/water at a distance of over 4km significant adverse effects on water quality in the European sites are unlikely.

#### *Cumulative Impacts*

- 7.5.16. 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.

#### *Screening Determination*

- 7.5.17. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans and projects would not be likely to give rise to significant effects on European sites European Sites Lough Oughter and Associated Loughs SAC 000007 and Lough Oughter Complex SPA 004049 or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is therefore not required.

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

Having regard to the provisions of the Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028, the planning history of the site, the location of the appeal site within and adjacent to an established residential estate, to the nature, scale, design and density of the proposed development, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 15 <sup>th</sup> of June 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.  Reason: In the interest of clarity.
2.	Details (including samples) of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

	Reason: In the interests of visual amenity.
3.	All WC's, bathroom and ensuite windows shall be fitted and permanently maintained with obscured glazing.  Reason: In the interests of residential amenity.
4.	A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development.  Reason: In the interest of visual and residential amenity.
5.	Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting.  Reason: In the interests of amenity and public safety.
6.	The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:  (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and  (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues: (i) the nature and location of archaeological material on the site, and (ii) the impact of the proposed development on such archaeological material. A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of



	<p>agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
7.	<p>Proposals for a naming scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all street signs, and apartment numbers, shall be provided in accordance with the agreed scheme.</p> <p>Reason: In the interest of urban legibility.</p>
8.	<p>Water supply and drainage arrangements, including the disposal of surface water from the site, shall be in accordance with the detailed requirements of the planning authority.</p> <p>Reason: In the interests of public health.</p>
9.	<p>The applicant shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
10.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual amenity.</p>
11.	<p>Site development and building works shall be carried out only between the hours of 0700 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>

12.	<p>A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.</p> <p>Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles</p>
13.	<p>The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the requirements of Cavan County Council and in all respects with the standards set out in the Design Manual for Urban Roads and Streets (DMURS).</p> <p>Reason: In the interests of pedestrian and traffic safety.</p>
14.	<p>a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority pursuant to Section 47 of the Planning and Development Act 2000, that restricts any such residential units permitted (the number and location of each housing unit being specified in such agreement), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each residential unit for use by individual</p>

	<p>purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
15.	<p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p>Reason: In the interest of sustainable waste management.</p>
16.	<p>The construction of development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. The plan shall provide a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, pollution control and</p>

	<p>contingency plan, hours of working, and noise/dust management measures.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
17.	<p>Prior to the commencement of development on site an Invasive Species Management Plan shall be submitted for written agreement of the planning authority.</p> <p>Reason: In the interest of public health.</p>
18.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>
19.	<p>The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity</p>
20.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000,</p>

	<p>as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
21.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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.

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Stephanie Farrington  
Senior Planning Inspector  
28<sup>th</sup> of June 2023