



An
Bord
Pleanála

Inspector's Report ABP-318060-23

Development

The occasional and periodic use of the lands for camping, caravanning, holidaying and recreational breaks and to place no more than two caravans and two no. tents at any one time during a calendar year. The principal use of lands for agricultural purposes for the growing of fruit and vegetables for consumption and use by the landowner and family members.

Location

Drumard, Lough Oughter, Cavan

Planning Authority

Cavan County Council

Planning Authority Reg. Ref.

2360076

Applicant(s)

Yuri Mushinski.

Type of Application

Permission.

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)

Yuri Mushinski.

Observer(s)

None.

Date of Site Inspection

22nd of May 2024.

Inspector

Stephanie Farrington

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1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 2.55 ha, is located in the townland of Drumard. The site is greenfield in nature and bounded by a public road to the west (LT 55321-0), existing residential properties to the north and southwest and Lough Carratraw to the east and south. A gated entrance to the site is provided from the local road to the west.
- 1.2. The appeal outlines that the site has been historically been used for agricultural purposes and comprises largely improved grassland, mature hedgerows, mature treelines and woodland.

2.0 Proposed Development

- 2.1. The proposed development, as described in the public notices, comprises the occasional and periodic use of the lands for camping, caravanning, holidaying and recreational breaks and to place no more than two caravans and two no. tents at any one time during a calendar year and to allow for periodic and intermittent stays for no more than 120 no. days per calendar year. The principal use of lands for agricultural purposes for the growing of fruit and vegetables for consumption and use by the landowner and family members.
- 2.2. The structures associated with the use of the lands include the following:
 - Polytunnel (9mX 3m) - 27 sq.m.
 - Pergola/Covered Area – 37.3 sq.m.
 - A steel shipping container (6m x 2.4m) - 14.4sq.m.
 - Caravan 7m X 2.4m
- 2.3. The planning statement submitted in support of the application sets out the following definition of the proposed use:
 - The applicant intends to utilise the established agricultural lands for the purposes of a wider holidaying and recreational use by family members and friends;

- The structures on site are connected to the recreational use of the lands and are not proposed as a permanent residence. A limitation on the use of the lands is proposed of 120 days per calendar year.

3.0 Planning Authority Decision

3.1. Decision

Cavan County Council refused permission for the development in accordance with the following reasons and considerations:

1. The site is located in a scenic and ecologically sensitive area and the proposal would materially contravene Tourism Objective: T06 “Protect and conserve the natural, built and cultural heritage features which add value to the visitor experience in Cavan and seek to restrict developments which would damage or detract from the quality of scenic areas and identified natural and cultural heritage assets. In addition, it is considered that the proposed development would materially contravene the development objective stated in the Cavan County Development Plan, incorporating the Cavan Local Area Plan (2022-2028) for Major Lakes and Lake Environs, development objective “ML&LE”: Maintain major lake and lake environ amenity value within a landscape recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the area, give rise to adverse visual impacts or threaten disposal of effluents”. The proposal is therefore considered to be contrary to the proper planning and sustainable development of the area.
2. The application has failed to demonstrate how it is intended to dispose of on-site wastewater and refuse generated from the proposed development for recreational use. The Planning Authority is not satisfied on the basis of the information submitted that the proposed development would not be prejudicial to public health.
3. Having regard to the location of the development site which is located adjacent to a European Site (Natura 2000) – the Lough Oughter and Associated Loughs Special Area of Conservation (SAC Site Code 000007)

and the Lough Oughter Complex Special Protection Area (SPA site code 004049) and having regard to the deficiency in information submitted, it is considered that the proposed development would contravene materially a development objective stated in the Cavan County Development Plan, incorporating the Cavan Town Local Area Plan (2022-2028) for the conservation and preservation of a European Site – being NHDS4: Ensure an Appropriate Assessment (AA) in accordance with Article 6(3) and Article 6(4) of the Habitats Directive, and in accordance with the DECLG “Appropriate Assessment of Plans and Projects in Ireland- Guidance for Planning Authorities” 2009 and relevant EPA and European Commission guidance documents, is carried out in respect of any Plan or Project likely to have significant effect on a Natura 2000 site/s, either individually or in combination with other plans or projects, in view of the site’s conservation objectives. It is considered that the proposed development would not be in the interests of proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner’s report recommends a refusal of permission in accordance with the planning authority’s decision. The following provides a summary of the key issues raised:

- The proposed use of the site and associated structures for “recreational use” is regarded as development associated with tourism development and is assessed in terms of the policies and objectives for Tourism.
- The report refers to the time period of the lands for recreational purposes 120 days and refers to the exemptions for camping (Class 1) as set out within the Planning and Development Regulations.
- The report raises concern in relation to the visual impact of the development adjacent to a scenic and ecologically sensitive area. It is stated that the proposal would materially contravene Objective ML&LE 1 of the County Development Plan.

- The report outlines that the development, if permitted would set an undesirable precedent for “recreational use” in a rural area and would therefore would materially contravene objective T06 of the Cavan County Development Plan.
- The report refers to information deficiencies within the application in relation to water/wastewater and refuse proposals. The proposal is deemed to be prejudicial to public health.
- In terms of Appropriate Assessment Screening the report outlines that the planning authority is uncertain whether the proposal will have a significant effect on a European Site and recommend that a Natura Impact Statement should have been undertaken for the development.

3.2.2. Other Technical Reports

None received.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

2 no. observations were submitted during the statutory public consultation period.

The following provides a summary of the issues raised:

- The site is located within a designated SAC and NHA – Lough Oughter and Associated Loughs. The submissions refer to correspondence from the Department which outlines that any changes to agricultural practices on such sites would require Ministerial consent.
- Insufficient detail is provided within the application in relation to the scale and nature of the proposal and existing soil conditions.
- Insufficient detail is provided in relation to the impact of ancillary works/ associated services.
- The submissions raise concern in relation to traffic impact and works undertaken to the existing entrance.

- Environmental impact and impact of livestock.
- The submissions raise concern in relation to the scope and content of the submitted Appropriate Assessment.
- Concerns in relation to loss of privacy and loss of visual amenity are raised by the occupants of Drumard House.

4.0 Planning History

PA Ref: 93/20595- Permission granted in May 1993 for a temporary dwelling on site.

PA Ref: 93/20981 – Permission granted in February 1994 for a bungalow and ancillary works.

Enforcement

The planner's report which informs the decision of CCC to refuse permission for the development refers to the following history of enforcement on site:

- ENF: 22-020: in relation to the unauthorised use of land and building of structures.

5.0 Policy Context

5.1. Development Plan

Cavan County Development Plan, incorporating a Local Area Plan for Cavan Town, 2022-2028

Chapter 12 Rural

- 5.1.1. The appeal site is located in a rural, unzoned part of County Cavan. The site is located within an area designated as a Stronger Rural Area within Appendix 21 Rural Area Types. The Development Plan provides the following description of Stronger Rural Areas:

These areas are located around Cavan Town and in the South East of the County and exhibit characteristics such as;

- *Proximity to the immediate environs or close commuting catchment of Cavan, Navan and the Greater Dublin Area.*
- *Rapidly rising populations.*
- *Evidence of considerable pressure for housing development due to proximity to such urban areas or to major transport corridors with ready access to urban areas.*
- *Pressures on infrastructure such as local road networks, water supply etc.*

It is the aim of this Plan to facilitate the housing requirements of landowners and their immediate family only, subject to satisfying site suitability and technical considerations, whilst directing urban generated housing need in areas identified for housing in the adjoining towns and villages.

Chapter 9 – Tourism

5.1.2. Chapter 9 of the Plan relates to Tourism. This section of the plan outlines that tourism constitutes Cavan's most important economic sectors and refers to the unspoilt and rich natural environment of the County. The Plan outlines that the lakes and rivers in Cavan have historically created a vibrant angling industry in the county, with coarse and pike fishing to the forefront.

5.1.3. Relevant tourism development objectives include: -

- T 01: Promote the development and strengthening of the overall value of Cavan as a tourist destination by encouraging the enhancement and development of sustainable and high-quality visitor attractions, activities and infrastructure, enabling an increase in the overall capacity and long-term development of the county's tourism industry, subject to appropriate siting and design criteria and the protection of environmentally sensitive areas.
- T 05: Utilise the county's natural and heritage resources to foster the development of tourism as a viable sector of the economy in a sustainable manner which complements the scale, quality and unique features of the location and county.
- T 06: Protect and conserve the natural, built and cultural heritage features which add value to the visitor experience in Cavan and seek to restrict

developments which would damage or detract from the quality of scenic areas and identified natural and cultural heritage assets.

- T 07: Support actions to increase access to state and semi-state lands such as National Parks, Forest Parks, Waterways, together with Monuments and Historic Properties, for recreation and tourism purposes, subject to the requirements of the Habitats Directive, National Monuments Act and other provisions and policies to protect and safeguard these resources and subject to the ability of local infrastructure to support the resulting increased tourism.
- T 08: Support the development and expansion of tourism-related enterprise including visitor attractions, services and accommodation and food and craft businesses, particularly those offering a visitor experience, such as tastings, tours and demonstrations.

5.1.4. Section 9.5 relates to tourism infrastructure and visitor services and outlines that tourism related development proposals will be required to demonstrate a high standard of design, with strong consideration given to a proposal's potential impact on its surroundings in terms of scale, intensity and the potential for the proposal to add significantly to the quality of the visitor experience. The following development objectives are of relevance.

- TV 01 - Promote tourism related developments in existing settlements within the Settlement Hierarchy, subject to existing carrying capacity.
- TV 02- Facilitate the development of high-quality tourist accommodation such as hotels, hostels, B&B's / guesthouses, camping and glamping at suitable locations, in both urban and rural settings throughout the county, subject to ensuring a high standard of design, layout, landscape and environmental protection and the provision of adequate infrastructure.

5.1.5. Section 9.7 of the Plan relates to the importance of lakes and waterways of the County to the tourism industry. The Plan outlines that all tourist related development in the vicinity of any of the lakes and waterways in the County shall be subject to the requirements of the Habitats Directive. The following Lakes and Waterways Development Objectives are of relevance:

- LW 05: Support the provision of infrastructure to enable increased tourism activity associated with Cavan's waterways, including boating, marina/berthing, kayaking, angling, blueways and harbour amenities while ensuring that such provision does not negatively impact on sensitive environments and subject to the requirements of the Birds and Habitats Directives.

Chapter 10 – Natural Heritage

5.1.6. Chapter 10 of the Development Plan relates to Natural Heritage. Section 10.7 relates to Natural Heritage Areas (NHA's) and outlines that NHAs and proposed Natural Heritage Areas (pNHAs) are designated under the Wildlife (Amendment) Act (2000) and encompass nationally important semi-natural and natural habitats, landforms and geomorphological features. The council will normally only grant permission where it is clearly demonstrated that a proposal will have no significant adverse impact on the habitats and species of interest in the designated area and its ecological integrity. The site is identified within a NHA identified in Appendix 11 of the Plan- Natural Heritage Areas.

5.1.7. The following Designated Sites Development Objective is of relevance:

- NHDS 1 - Protect and conserve Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas and proposed Natural Heritage Areas.

5.1.8. Section 10.23 relates to Major Lakes and Lake Environs and outlines that there are 9 major lakes and environs in the County. These lakes have amenity value due in part to their size and location within a scenic landscape and their recreational value. The following Development Objective for Major Lake and Lake Environs is of relevance:

- ML&LE 1 - Maintain major lake and lake environment amenity value within a landscape recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the areas, give rise to adverse visual impacts or threaten habitats through disposal of effluents.

5.1.9. Lakeside Amenity Areas are identified within Appendix 17 of the Plan. No lakeside amenity areas are identified within the immediate vicinity of the appeal site. The following Development Objective for Lakeside Amenity Areas is of relevance:

- LAA 1 - Regulate development of adjoining lands to Lakeside Amenity Areas to ensure that public use is not prejudiced by incompatible use or adverse visual impact.

Appendix 16 – Scenic Views and View Points Map

- 5.1.10. Appendix 16 identifies designated Scenic Views and View Points. None are identified within the vicinity of the site.

Appendix 18 – High Landscape Areas and Major Lakes

- 5.1.11. The appeal site is identified within High Landscape Area HL2 – Lough Oughter Lakeland Area. Lough Oughter is identified as a major lake and lake environs.

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:

- The site is located within the Proposed Natural Heritage Areas: Lough Oughter and Associated Loughs - Site Code: 000007.
- The eastern area of the appeal site is located within the Lough Oughter SPA - Site Code: 004049.
- The northeastern and southeastern portions of the site is located within the Lough Oughter and Associated Loughs SAC - Site Code: 000007.

5.3. EIA Screening

- 5.3.1. Class 12(d) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Permanent camp sites and caravan sites where the number of pitches would be greater than 100.

- 5.3.2. The proposed development comprises the occasional and periodic use of the lands for camping, caravanning, holidaying and recreational breaks and to place no more than two caravans and two no. tents at any one time during a calendar year and to allow for periodic and intermittent stays for no more than 120 no. days per calendar year. The

proposed development falls well below the development threshold and mandatory EIA is therefore not required.

- 5.3.3. In respect of sub-threshold EIA, having regard to the nature and scale of the proposed development, it is considered that there is no real likelihood of significant effects on the environment. 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

- 6.1.1. A first party appeal has been submitted in respect of Cavan County Council's decision to refuse permission for the development. The following provides a summary of the grounds of appeal.
- The appeal refers to the reasons for refusal and the guidance set out within Section 7.14 of the Development Management- Guidelines for Planning Authorities. The appeal outlines that the proposed development is not a material contravention of the policy objectives TO 6 and ML &LE 1 of the Cavan County Development Plan and that the reference in the reason for refusal is ambiguous, unspecified and is not supported by internal or external bodies.
 - The appeal refers to Section 37 (2) of the Planning and Development Act.
 - The appeal asserts that the development was assessed as a commercial tourism development rather than the occasional recreational use of the land by the applicant on a personal and non-commercial basis.
 - The appeal refers to the planning authority's contention that insufficient information was provided in terms of wastewater treatment and disposal. It is stated that this could have been addressed by means of a request for further information.
 - The appeal refers to the concerns raised by the planning authority and third parties in relation to the nature of the development as a commercial enterprise

or “backdoor” mechanism to obtaining a single dwelling unit. The appeal outlines that the development relates to the limited recreational use of the land for a limited period of the calendar year and for personal use of the applicant and family members only together with the potential use of the land for horticultural practices for personal consumption.

Reason for Refusal 1

- Section 3.1 of the appeal provides a response to CCC’s first reason for refusal. The appeal outlines that the development does not represent a material contravention Tourism Objective TO 6 and Major Lakes and Environs Objective ML&LE 1. The appeal outlines that the rationale for the PA’s conclusion in relation to material contravention is unclear.
- In terms of Objective ML&LE 1 the appeal refers to the extracts from the planner’s report which outlines that the development represents a haphazard development, would prejudice the use and enjoyment of the area, give rise to visual impacts or threaten disposal of effluents and detract from the scenic quality of the area.
- The appeal outlines that contrary to the assertion of the planning authority that the proposed layout and design of the development is harmonious to the area, does not impact on the visual amenity of the lake is not located on an elevated area and is adequately set back and does not impact on publically accessible locations. The appeal outlines that the site is screened from all locations.
- It is stated that the proposal does not prejudice the enjoyment of the area. On the contrary it is stated that the development intends to enable the “holidaying and recreational use” of the lands by the applicant. It is stated that the area of Carratraw Lough adjacent to the subject site is essentially a tourist cul-de-sac with no destinations or infrastructure for tourists. The appeal outlines that the lake is not used by anglers or any other water-based amenity or recreational purposes.
- The appeal outlines that the proposed temporary structures would not impact on the visual amenities of the area. The appeal refers to applications for commercial tourist camping sites at similar locations which were not deemed

to negatively impact on visual amenity. It is stated that the scale and design of the development can be accommodated within the area.

- In terms of site conditions, the appeal outlines the following:
 - The existing hedge and treeline boundary which screens the development
 - The site is located 85m from the lakeside and 50m from the public road
 - The use of the site is temporary and seasonal, and the proposed agricultural structures are agricultural in nature and positioned to be of minimal visual impacts.
- In terms of non-compliance with Development Objective TO 06 the appeal refers to the extracts of the planner's reports which outline that the development would set an undesirable precedent for recreational use in a rural area, adjacent to a scenic and ecologically sensitive site. It is stated that this position is contrary to previous decisions by the PA for larger scaled commercial based tourist campsites in more visually exposed areas.
- The appeal questions the planning authority's assessment of the development as a tourism use and asserts that the principle of the development was not adequately assessed. The proposed development is not a tourism business. The proposed use is for recreation use of the applicant and maintenance and continuation of agricultural practices.
- The appeal outlines that the application was not referred to Fáilte Ireland. It is therefore considered to be inappropriate to refuse on grounds of impact on tourism.
- The appeal outlines that CCC's first reason for refusal is not presented in a clear, unambiguous and informative manner and in this regard is not in accordance with the Development Management Guidelines.

Reason for Refusal no. 2

- The appeal outlines that no report was received from the municipal District Engineer in respect of the proposal and that the concerns raised in the 2nd reason for refusal could have been addressed by means of a request for further information.

- The appeal outlines that water supply will be provided from a neighbouring property and water storage tank. No water will be extracted from the lake.
- There is no proposal to waste or treat wastewater on site. Wastewater will be stored within the waste storage facilities of the caravan. The effluent will be appropriately disposed of off-site at an authorised waste facility. No wastewater or effluent generated on site will be disposed into any watercourse, surface drain or groundwater either on or off site.
- The applicant intends to securely collect and store all waste generated on site for disposal off site at authorised waste disposal facilities.
- The proposed development would not be prejudicial to public health or present a risk to the disposal of effluent.

Reason for Refusal no. 3

- The appeal outlines that the rationale for the 3rd reason for refusal is unclear. The appeal cross refers to the Appropriate Assessment Screening Report submitted in support of the application and the response from AVIRO Environmental attached to the appeal.
- The appeal outlines that the development will not introduce a level of artificial lighting to the site that could cause a significant impact on the qualifying interest associated with EU designated sites.
- The appeal outlines that the AA Screening Report submitted in support of the application assesses the impacts of the development on the qualifying interests of the Natura 2000 site.
- In terms of surface water run off the appeal outlines that no excavation, infill or landscaping are proposed on site. Small scale low intensity planting is proposed for consumption of the landowner.
- Any percolation of surface water would occur at greenfield run off rates.
- The appeal outlines that noise generated from the development would be limited and mitigated by the existing screened boundary.
- The proposed development does not involve any proposed drainage measure or modifications to the subject site which would affect or impact on

groundwater. Impacts to water and groundwater are stated as being negligible.

- The appeal outlines that any noise, illumination or human activity taking place on site during the operation of the proposed development does not present a serious ongoing disturbance to species or habitats for which the relevant Natura 2000 sites are selected.

Conclusion

- The Board is requested to overturn the decision of the Planning Authority to refuse permission for the development. The reasons for refusal are confused, unjustified and do not relate to the specific nature of the proposal.

Attachments

6.1.2. The appeal is accompanied by the following attachments:

- Appendix A: Cavan County Council notification of decision to refuse permission
- Appendix B: Correspondence with ABP re First Party Appeal Fee
- Appendix C: Planning Statement lodged with application
- Appendix D: Correspondence between applicant and Cavan County Council in relation to Warning Letter
- Appendix E: Planning Search
- Appendix F: AVIRO Environmental Management – Response to refusal on “significant effect(s)” on Natura 2000 Site

Summary of Appendix F: AVIRO Environmental Management – Response to refusal on “significant effect(s)” on Natura 2000 Site

6.1.3. The following provides a summary of the appeal response prepared by AVIRO Environmental Management.

- The report relates to Cavan County Council's 3rd reason for refusal. The appeal specifically relates to the concerns raised within page 11 of the planner's report which relates to potential impacts of the operational phase of the development on lighting and disturbance, surface water run-off from soil

excavation/infill/landscaping, noise, changes to water/groundwater due to drainage, presence of people, vehicles and activities.

- The report outlines that the development will not pose any risk to Natura 2000 sites or their qualifying interests.
- In terms of lighting and disturbance the report outlines no permanent lighting fixture is proposed as part of the application. The caravans will be fitted with LED lighting.
- Surface water associated with the development will be collected in the proposed rainwater harvesting tank.
- Noise levels associated with the operational phase shall be minimal.
- The report outlines that given the scale of the development, it is unlikely that it will result in significant alteration to the water or groundwater conditions on site.
- The proposed caravans are equipped with wastewater holding tanks. These tanks are regularly emptied by licensed waste collectors.
- The report outlines that the limited scale of the development (2 no. caravans) and temporary utilisation of the land will result in limited anthropogenic impacts.
- The development will not have any negative impact on any Natura 2000 site or their qualifying interests in either construction or operational phases.

6.2. Planning Authority Response

- None received within statutory response period.

7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including all of the observations 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
- Wastewater

I consider the issues raised within Cavan County Council's 3rd reason for refusal in relation to Appropriate Assessment within Section 8 of this report.

7.2. Principle of Development – Compliance with Policy – Reason for Refusal no. 1

- 7.2.1. The appeal site is located within an unzoned rural area within Cavan on the shore of Lough Carratraw. The site is identified as a proposed NHA and is partially located within the Lough Oughter SPA and the Lough Oughter and Associated Loughs SAC. The proposed development seeks permission for the occasional and periodic use of the lands for camping, caravanning, holidaying and recreational breaks for a period of no more than 120 no. days per calendar year. The applicant owns the site and intends to use it for recreational purposes for family and friends. The public notices furthermore refer to the principal use of lands for agricultural purposes for the growing of fruit and vegetables for consumption and use by the landowner and family members.
- 7.2.2. At the outset, I note that the first appeal questions the planning authority's assessment of the development as a commercial tourism use and asserts that the principle of the development was not adequately assessed. However, on review of the documentation submitted in support of the application and appeal I am satisfied that the proposed recreational use of the lands is tourism related. I note the reference within the public notices to the use of the lands for growing fruit and vegetables. The proposed site layout plan illustrates planting areas in the vicinity of the proposed caravan structures. On an overall basis, I consider that the application is unclear in relation to the nature and extent of this proposed use. For the purposes of this assessment, and on the basis of the submitted drawings, I consider that such use and associated structures is associated with the overall recreational use of the lands.
- 7.2.3. The Cavan County Development Plan (CCDP) recognises the importance of the County's lakes and natural environment to the tourism economy of the County. The development objectives of the plan support the provision of tourist related

developments within the main settlements of the County. Development Objective TV 02 is of particular relevance to the proposal and seeks to: *“Facilitate the development of high-quality tourist accommodation such as hotels, hostels, B&B’s / guesthouses, camping and glamping at suitable locations, in both urban and rural settings throughout the county, subject to ensuring a high standard of design, layout, landscape and environmental protection and the provision of adequate infrastructure”*.

7.2.4. Cavan County Council’s 1st reason for refusal raises concern in relation to the principle of the proposal and non-compliance of the development with the provisions of the Cavan County Development Plan 2022-2028. The reason for refusal outlines that the proposal would materially contravene the following Development Objectives of the Cavan County Development Plan:

- T06 “Protect and conserve the natural, built and cultural heritage features which add value to the visitor experience in Cavan and seek to restrict developments which would damage or detract from the quality of scenic areas and identified natural and cultural heritage assets”.
- ML&LE: “Maintain major lake and lake environ amenity value within a landscape recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the area, give rise to adverse visual impacts or threaten disposal of effluents”.

7.2.5. The planner’s report which informs the decision of CCC to refuse permission for the development raises particular concern in relation to the haphazard nature of the proposal and the visual impact of the proposal on a scenic and ecologically sensitive location.

7.2.6. The appeal asserts that the proposed temporary structures would not impact on the visual amenities of the area. The appeal refers to applications for commercial tourist camping sites at similar locations which were not deemed to negatively impact on visual amenity. It is stated that the scale and design of the development can be accommodated within the area having regard to existing site conditions including the treeline boundary and set back from the shoreline. The appeal outlines that the proposal is not contrary to the requirements of Development Objective T 06.

- 7.2.7. The appeal site is identified within High Landscape Area HL2 – Lough Oughter Lakeland Area within Appendix 18 of the Development Plan. Lough Oughter is identified as a major lake and lake environs. There are no scenic views within the immediate vicinity of the site. Having regard to the location of the site and existing site conditions I accept the case made by the applicant that the proposal will not detrimentally impact on the visual amenities of the area. I do consider that the proposal is contrary to Development Objective T06 in this regard.
- 7.2.8. Notwithstanding the above, I note the reference within Development Objective T 06 to the need to protect and enhance the natural tourism features of the County. The need to protect existing lakes within the County is furthermore reflected within other development objectives of the CCDP. Development Objective ML&LE as cited within CCC's reason for refusal which seeks to "*Maintain major lake and lake environ amenity value within a landscape recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the area, give rise to adverse visual impacts or threaten disposal of effluents*". Development Objective TV 02 furthermore supports the provision of tourist developments including camping in suitable locations subject to considerations including environmental protection and provision of adequate infrastructure.
- 7.2.9. On the basis the information submitted in conjunction with the application and appeal, and as detailed further in this report, I am not satisfied that the applicant has proposed satisfactory wastewater proposals or demonstrated that the development would not negatively impact on the amenity value and water quality of the adjoining lake. I note the applicants' proposal for wastewater disposal (off site at authorised waste facility) but consider that such a proposal would be difficult to regulate to negate against impact on the adjoining watercourses and do not consider the proposal to be satisfactory for the prolonged use of the site. I recommend that permission is refused for the development broadly in accordance with the planning authority's first reason for refusal.
- 7.2.10. I note the reference within CCC's reason to refusal in relation to material contravention of Development Objectives T06 and ML&LE of the Cavan County Development Plan 2022-2028. While I consider that the development is contrary to these objectives, I do not consider that the development represents a scale of development which would constitute a material contravention.

7.3. Wastewater – Reason for Refusal no. 2

- 7.3.1. Cavan County Council's 2nd reason for refusal refers to information deficiencies within the application in relation to wastewater proposals for the development and raises concern in relation to the proposed development being prejudicial to public health.
- 7.3.2. The appeal outlines wastewater will be stored within the waste storage facilities of the caravan. It is stated that the effluent will be appropriately disposed of off-site at an authorised waste facility and outlines that there is no proposal to waste or treat wastewater on site. The appeal outlines that no wastewater or effluent generated on site will be disposed into any watercourse, surface drain or groundwater either on or off site and the development will not be prejudicial to public health in this regard.
- 7.3.3. I note the applicants' proposal for wastewater disposal (off site at authorised waste facility) but consider that such a proposal would be difficult to regulate to negate against impact on the adjoining watercourses and do not consider the proposal to be satisfactory for the prolonged use of the site.
- 7.3.4. Based on the information submitted with the application and my assessment, I am not satisfied that wastewater can be dealt with effectively on site and the development poses an unacceptable risk of environmental pollution. I recommend that permission should be refused on this basis.

8.0 AA Screening

- 8.1. Cavan County Council's 3rd reason for refusal relates to the potential impact of the proposal on designated Natura 2000 sites and outlines that the proposal would materially contravene Development Objective NHDS4 of the Cavan County Development Plan which seeks to: *"Ensure an Appropriate Assessment (AA) in accordance with Article 6(3) and Article 6(4) of the Habitats Directive, and in accordance with the DECLG "Appropriate Assessment of Plans and Projects in Ireland- Guidance for Planning Authorities" 2009 and relevant EPA and European Commission guidance documents, is carried out in respect of any Plan or Project likely to have significant effect on a Natura 2000 site/s, either individually or in combination with other plans or projects, in view of the site's conservation objectives"*

- 8.2. Development Objective NHDS 1 of the Plan furthermore seeks to- Protect and conserve Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas and proposed Natural Heritage Areas.

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 8.3. 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.

Background on the Application

- 8.4. The applicant submitted an Appropriate Assessment Screening Report as part of the application, prepared by AVRIO Environmental Management. It provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts in relation to the following Natura 2000 sites: Lough Oughter and Associated Loughs SAC, Upper Lough Erne SAC, Lough Oughter SPA and Upper Lough Erne SPA. I also refer to the report submitted by AVIRO Environmental Management attached as Appendix F of the first party appeal which addresses Cavan County Council's 3rd reason for refusal.
- 8.5. As detailed further in this assessment having reviewed the appeal documents provided and submissions, I am not satisfied that there is adequate information in relation to the European sites to allow 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.

Need for Stage 1 Appropriate Assessment Screening

- 8.6. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken on any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives.
- 8.7. The proposed development is not directly connected with or necessary to the management of a European site and accordingly is subject to the provisions of Article 6(3).

Brief Description of the Development

- 8.8. Section 2.5 of the Screening Report provides a summary of the characteristics of the development. The report refers to existing development carried out on site including the following:
- 2 no. caravans, 1 storage container, 1 pergola structure, 1 greenhouse, raised planter beds, access road and planting of trees and raised planter beds.
 - The report outlines that surface water run off from the area containing the caravans is percolating into ground at greenfield run off rates and foul wastewater from the caravans is being discharged via a licensed contractor.
- 8.9. The development is also summarised at Section 2 of this Report. I note the anomalies within the description of the development between the Screening Statement and other application documentation in terms of the characteristics of the development (i.e. Screening Report refers to retention and application relates to permission).
- 8.10. Section 2.5.2 provides a description of the baseline site environment as illustrated on Figure 2.2. The majority of the site is described as comprising agricultural grassland. Hedgerows, treelines, buildings and artificial surfaces and broadleaf and wet woodland are identified on site. The EPA website identified that the appeal site is located within a locally important aquifer with groundwater vulnerability of Moderate to the northwest of the site and High to the east and south.
- 8.11. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, I consider the following potential impact mechanisms require examination:
- Loss or fragmentation of habitat and/or disturbance of species of conservation interest within a European site.
 - The impact of potential surface water discharges from the site during construction on water quality within a European site.
 - The impact of foul and surface water discharges from the development during the operational phase on water quality within a European site.

Submissions and Observations

- 8.12. Cavan County Council's 3rd reason for refusal relates to the potential impact of the development on the Lough Oughter and Associated Loughs Special Area of Conservation (SAC Site Code 000007) and the Lough Oughter Complex Special Protection Area (SPA site code 004049). The submissions from the applicant and the Planning Authority are summarised in Section 6 of this report.

European Sites

- 8.13. The appeal site lies partially within the Lough Oughter and Associated Loughs Special Area of Conservation (SAC Site Code 000007) and the Lough Oughter Complex Special Protection Area (SPA site code 004049).
- 8.14. The applicant's Screening Report refers to the following designated sites within 15km of the site:
- Upper Lough Erne SPA – (Site Code UK 9020071) – 11.7km
 - Upper Lough Erne SAC – (Site Code UK 0016614) – 13.3km
- 8.15. The appeal site is hydrologically connected to the above sites via the Lough Oughter and Associated Loughs SAC. However, I note the significant distance between the appeal site and the above designated sites and the substantial intervening waterbody Lough Oughter and Associated Loughs SAC. This intervening waterbody presents an effective barrier to any waterborne discharges between transferred from the subject site. In view of this and in view of the separation distance between sites, I am satisfied that the possibility of significant effects on the Upper Lough Erne SAC and SPA can be excluded.
- 8.16. A summary of the Lough Oughter and Associated Loughs Special Area of Conservation (SAC Site Code 000007) and the Lough Oughter Complex Special Protection Area (SPA site code 004049) is provided 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)	Partially within and directly adjacent to	The appeal site is partially within the SAC and has 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.	Partially within and directly adjacent to	The appeal site is partially within the SPA and has hydrological connection via surface water.	Yes

- 8.17. 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.
- 8.18. Features of the site which are referred to in the site synopsis include regularly flooded areas, well developed swamp and marsh communities around much of the shoreline, wet lake margins, sheltered shores, level wet pastures, deciduous

woodland, wet bog and dry broad-leaved woodland with associated plant communities.

8.19. 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;

8.20. Map 3 of the Lough Oughter and Associated Loughs SAC Conservation Objective – Indicative Lakes Habitat illustrates that this habitat is partially within and in the immediate vicinity of the appeal site. Map 4 illustrates that the bog woodland habitat is not located within the vicinity of the site.

8.21. The Lough Oughter Complex SPA is of ornithological importance for its wintering waterbird populations. Of particular note is the internationally important population of Whooper Swan that is based in the area. The site also supports nationally important populations of a further two wintering species. Two of the species which occur regularly are listed on Annex I of the E.U. Birds Directive, i.e. Whooper Swan and Greenland White-fronted Goose. Lough Oughter is a Ramsar Convention site and a Wildfowl Sanctuary. Conservation objectives include the following:

- To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interest for this SPA: Great Crested Grebe, Whooper Swan, Wigeon.

- 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.

Identification of likely effects

- 8.22. Table 3.1 of the applicant's Screening Statement provides an overview of the likely impact of the proposed development on Natura 2000 sites. The table identifies a hydrological connection between the appeal site and the designated Natura 2000 sites and potential pollution pathways. The applicant's Screening Report outlines that sufficient mitigation measures detailed within the works negates against impacts on the SPA and SAC. These measures are detailed within Section 2.5.1 of the Appropriate Assessment Screening Report and relate to adherence to best practice environmental guidance and guidance for storage of fuels and lubricants on site.
- 8.23. The applicant's Screening Statement concludes the following:
- "In view of best scientific knowledge and on the basis of objective information, it can be concluded that this application, whether individually or in combination with other plans and projects, has/will have no impact upon any Natura 2000 sites. The integrity of these sites is/will be maintained, and the habitats and species associated with these sites will not be adversely affected. It is of the opinion of this author that this application does not need to proceed to Stage II of the Appropriate Assessment process".*
- 8.24. Notwithstanding the conclusions of the Screening Assessment, I have concerns in relation to the content and scope of the study. The onus is on the applicant to ensure that adequate and relevant information is submitted to enable an Appropriate Assessment to be carried out. Such an assessment should be based on the best scientific knowledge in the field, of all aspects of the development project which can, by itself or in combination with other plans and projects, adversely affect the European site in light of its Conservation Objectives.
- 8.25. I note that there are discrepancies within the application documentation in relation to the description of the proposed development. The proposed development, as described within the public notices, relates to permission for camping and agricultural use on the site. The applicant's Screening Report relates to permission to retain the

proposed camping and agricultural use. There are also variations in relation to the area of the site proposed to accommodate planting as detailed within Figure 2.2 of the AA Report and the Site Layout Plan (Drawing no: DCC-03). I am not satisfied that the nature of the development and potential impacts has been fully identified within the submitted Screening Statement.

- 8.26. Cavan County Council's 3rd reason for refusal relates to the impact of the proposal on the Lough Oughter and Associated Loughs Special Area of Conservation (SAC Site Code 000007) and the Lough Oughter Complex Special Protection Area (SPA Site Code 004049). The planner's report which informs the decision of CCC to refuse permission for the development raises particular concern in relation to the Operational Phase of the development in relation to lighting and disturbance, surface water run-off, changes to groundwater, presence of people/activities. The report furthermore refers to information deficiencies in the application in relation to disposal of wastewater and refuse and site and concludes that mitigation measures would be necessary to reach a conclusion that likely significant effect can be ruled out. The planning authority's assessment concludes that a Natura Impact Statement should be carried out in respect of the development.
- 8.27. I am not satisfied that such concerns have been fully addressed within the first party appeal. In particular, I have concern in relation to potential water quality impacts associated with the development and the proposed wastewater and surface water proposals. Failure to deal with wastewater and pollutants arising from the development to the requisite environmental standards would have likely implications for surface and groundwater quality.
- 8.28. The applicant's Screening Report outlines that sufficient mitigation measures detailed within the works negates against impacts on the SPA and SAC. These measures are detailed within Section 2.5.1 of the Appropriate Assessment Screening Report. The identified mitigation measure relates to adherence to best practice environmental guidance and guidance for storage of fuels and lubricants on site. However, given the location of the site partially within and directly adjacent to the SAC and SPA I am not satisfied that the suite of measures are specific enough to negate against impact on the designated sites. I am also not satisfied that in the absence of mitigation measures that the development would not impact on the adjoining SAC and SPA.

- 8.29. Without adequate provisions, there are unresolved concerns that the proposed development could pose an unacceptable risk to groundwater and surface water. Therefore, it cannot be reasonably ruled out beyond scientific doubt that there would not be significant effects, either individually or in combination with other plans or projects, on this European site on the basis of the information available. I consider that an Appropriate Assessment (Stage 2) [under Section 177V of the Planning and Development Act 2000] is therefore required.

Cumulative Impacts

- 8.30. There is no evidence on file of any plans or projects that are proposed or permitted that could impact in combination with the proposed development and as such no in-combination issues arise.

Mitigation Measures

- 8.31. 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.

Screening Determination

- 8.32. 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 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 have a significant effect on the following European sites: The Lough Oughter and Associated Loughs Special Area of Conservation (SAC Site Code 000007) and The Lough Oughter Complex Special Protection Area (SPA site code 004049) in view of the site's Conservation Objectives, and Appropriate Assessment (Stage 2) [under Section 177V of the Planning and Development Act 2000] is therefore required.

9.0 Recommendation

I recommend that planning permission is refused in accordance with the following reasons and considerations.

10.0 Reasons and Considerations

1. The appeal site is located within the designated Lough Oughter and Lakeland Area High Landscape Area (HL2) as identified within Appendix 18 of the Cavan County Development Plan 2022-2028. The proposed development relates to the recreational and agricultural use of the site. Development Objective TV 02 supports the provision of tourist developments including camping in suitable locations subject to considerations including environmental protection and provision of adequate infrastructure. Development Objective ML&LE seeks to *“Maintain major lake and lake environ amenity value within a landscape recreational and ecological context by restricting and regulating development that would prejudice use and enjoyment of the area, give rise to adverse visual impacts or threaten disposal of effluents”* and Development Objective T06 seeks to *“protect and conserve the natural, built and cultural heritage features which add to the visitor experience in Cavan”*.

On the basis of the information set out within the application and appeal the Board does not consider that the applicant has proposed satisfactory wastewater proposals or demonstrated that the development would not negatively impact on the amenity value and water quality of the adjoining lake. The proposed development would therefore pose an unacceptable risk of environmental pollution and public health and would be contrary to Development Objectives ML & LE, TV 02 and T06 of the Cavan County Development Plan 2022-2028 and the proper planning and sustainable development of the area.

2. The appeal site is located within a proposed Natural Heritage Area (Lough Oughter and Associated Loughs) and lies partially within and directly adjacent to the Lough Oughter and Associated Loughs Special Area of Conservation (SAC Site Code 000007) and the Lough Oughter Complex Special Protection Area (SPA site code 004049). On the basis of the information provided within the application and appeal, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of the Lough Oughter and Associated Loughs

Special Area of Conservation (SAC Site Code 000007) and the Lough Oughter Complex Special Protection Area (SPA site code 004049), in view of the site's Conservation Objectives and Appropriate Assessment (Stage 2) [under Section 177V of the Planning and Development Act 2000] is therefore required. In such circumstances the Board is precluded from granting permission.

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

31st of July 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	318060-23		
Proposed Development Summary	Use of land for recreational and agricultural purposes.		
Development Address	Drumard, Lough Oughter, Cavan		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No		N/A	No EIAR or Preliminary Examination required
Yes	X	Class 12(d) of Schedule 5 Part 2	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes	X	Screening Determination required

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	318060-23	
Proposed Development Summary	Use of land for recreational and agricultural purposes.	
Development Address	Drumard, Lough Oughter, Cavan	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? Will the development result in the production of any significant waste, emissions or pollutants?	No. The development is located within an existing rural context. No significant waste, emissions or pollutants are envisaged.	No No
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having regard to other existing		No No

and/or permitted projects?		
Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	Yes. The site is located partially within and adjacent to the following designated sites: <ul style="list-style-type: none"> • The site is located within the Proposed Natural Heritage Areas: Lough Oughter and Associated Loughs - Site Code: 000007. • The eastern area of the appeal site is located within the Lough Oughter SPA - Site Code: 004049. • The northeastern and southeastern portions of the site is located within the Lough Oughter and Associated Loughs SAC - Site Code: 000007. An Appropriate Assessment Screening was submitted in support of the application as addressed within Section 8 of this report.	
<ul style="list-style-type: none"> • Conclusion 		
There is no real likelihood of significant effects on the environment. EIA not required. X	<ul style="list-style-type: none"> • There is significant and realistic doubt regarding the likelihood of significant effects on the environment. Schedule 7A Information required to enable a Screening Determination to be carried out.	There is a real likelihood of significant effects on the environment. EIAR required.

Inspector: _____

Date: _____