



An  
Bord  
Pleanála

## Inspector's Report ABP-300480-17

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<b>Development</b>	Permission for a House.
<b>Location</b>	Ballyeagh, Ballybunnion, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	17/1029.
<b>Applicant(s)</b>	Paul Shanahan.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Paul Shanahan.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	7 <sup>th</sup> May 2018
<b>Inspector</b>	Fiona Fair.

## 1.0 Site Location and Description

- 1.1. The appeal site (0.7ha) is located in Ballyeagh, 2.5 Km south of Ballybunnion town in west Kerry. The site is located within 1 Km of the west coast and 92 m (one field) from the mouth of the Cashen River which forms part of the River Shannon SAC.
- 1.2. The access road is a cul de sac road which serves a ribbon of mainly bungalow style dwellings, approx. ten. The cul de sac terminates at the applicant's family home, a bungalow, which is situated across the cul de sac to the south at a slightly higher ground level than the appeal site.
- 1.3. The appeal site comprises flat ground which is open and exposed in nature, with no field boundaries. There are extensive view to the south across the Cashen River. The landscape character of the surrounding rural coastal area is flat with marsh land, reeds, scrub and sand dunes present.

## 2.0 Proposed Development

- 2.1. The proposal comprises:
  - Permission to construct a single storey, two bedroom dwelling house, of 114 sq. m
  - Connection to public infrastructure; mains water connection and foul sewer connection.

The application is accompanied with a letter from the applicant setting out his ties with the local area. Paul Shanahan (the applicant) lived at The Cashen, Ballyeigh, Ballybunnion for some 35 years. Nancy Shanahan (mother) lived on the adjacent site for the last 25 years. The applicant's parents have passed away and willed the site to him. He has never know the area to flood or to have flood related issues.

## 3.0 Planning Authority Decision

### 3.1. Decision

**Permission Refused** for the following reason:

1. The proposed site has been identified under the Irish Coastal Protection Strategy Study (ICPSS) Mid Range and High Range Future Scenarios at risk of flooding in a 1 in 200 – year event. This places the site in Flood Zone A in accordance with the Department Guidance Document: The Planning System and Flood Risk Management 2009. In accordance with these guidelines, vulnerable development such as residential development should not be permitted in Flood Zone A or B. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planners Report sets out that in light of the flood risk associated with the site and the Department Guidance Document: The Planning System and Flood Risk Management 2009, permission should not be granted for this development.

#### **3.2.2. Other Technical Reports:**

Irish Water (IW): No objection

Flood Report: Recommends Refusal. It is submitted that in accordance with the Guidelines. The Planning System and Flood Risk Management that residential development should not be permitted in Flood zone A or B.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

None.

## 4.0 Planning History

- 4.1. **Reg. Ref. 13/703** Permission sought by current applicant for a two storey dwelling house on the adjoining site to the east. Further Information (F.I) requested. The application was withdrawn.

## 5.0 Policy Context

### 5.1.1. Sustainable Rural Housing Guidelines for Planning Authorities

The guidelines refer to criteria from managing rural housing requirements while achieving sustainable development. Among the policy aims identified for sustainable rural housing are

- Ensuring that the needs of rural communities are identified in the Development Plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas at appropriate location necessary to sustain rural communities is accommodated.
- Expanding on the rural policy framework set out in the National Spatial Strategy, the Guidelines provide that the people who are part of the rural community should be facilitated in the planning system in all rural areas, including those under strong urban based pressures. The principles set out in the Guidelines also require that new houses in rural areas be sited and designed to integrate well with the physical surroundings and be generally compatible with:

- The protection of water quality and the arrangements made for on-site wastewater disposal facilities.
- The provision of a safe means of access in relation to road and public safety.
- The conservation of sensitive sites such as natural habitats, the environs of protected structures and other aspects of heritage.

### 5.1.2. **Department Guidance Document: The Planning System and Flood Risk Management 2009**

Flood zones

Section 2.23 of the guidance document sets out: Flood zones are geographical areas within which the likelihood of flooding is in a particular range and they are a key tool in flood risk management within the planning process as well as in flood warning and emergency planning. There are three types or levels of flood zones defined for the purposes of these Guidelines:

**Flood Zone A** – where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5% or 1 in 200 for coastal flooding);

**Flood Zone B** – where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 and 1% or 1 in 100 for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 for coastal flooding); and

**Flood Zone C** – where the probability of flooding from rivers and the sea is low (less than 0.1% or 1 in 1000 for both river and coastal flooding). Flood Zone C covers all areas of the plan which are not in zones A or B.

The Guidelines Document states: ‘In summary, the planning implications for each of the flood zones are:

**Zone A** - High probability of flooding. Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. Only water-compatible development, such as docks and marinas, dockside activities that require a waterside location, amenity open space, outdoor sports and recreation, would be considered appropriate in this zone.

**Zone B** - Moderate probability of flooding. Highly vulnerable development, such as hospitals, residential care homes, Garda, fire and ambulance stations, dwelling houses and primary strategic transport and utilities infrastructure, would generally be considered inappropriate in this zone, unless the requirements of the Justification Test can be met. Less vulnerable development, such as retail,

commercial and industrial uses, sites used for short-let for caravans and camping and secondary strategic transport and utilities infrastructure, and water-compatible development might be considered appropriate in this zone.

In general however, less vulnerable development should only be considered in this zone if adequate lands or sites are not available in Zone C and subject to a flood risk assessment to the appropriate level of detail to demonstrate that flood risk to and from the development can or will adequately be managed.

**Zone C** - Low probability of flooding. Development in this zone is appropriate from a flood risk perspective (subject to assessment of flood hazard from sources other than rivers and the coast) but would need to meet the normal range of other proper planning and sustainable development considerations.

#### 5.1.3. **Development Plan**

The site is governed by the policies and provisions contained in the Kerry County Development Plan 2015-2021. The site is located in an area zoned Rural Secondary Special Amenity Area which is detailed in section 3.3.2.2 of the Plan. Excerpt attached as appendix to this report.

The following sections of the Development Plan are of relevance:

Chapter 3, Section 3.3 sets out Rural Development Policies.

Objectives numbers RS-1 to RS-6 constitute the overall objectives relating to Rural Housing Policy.

I note in particular **RS-4** which states: 'Ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County'. And **RS- 6** which states: 'Ensure that all permitted residential development in rural areas is for use as a primary permanent place of residence. In addition such development shall be subject to the inclusion of an occupancy clause for a period of 7 years.

Chapter 12 Zoning and Landscape'.

Objective ZL-1 'Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives'.

The site is located within an area categorised as a stronger rural area. In such areas population levels are generally stable within a well developed town and village structure and in the wider rural areas around them. This stability is supported by a traditionally strong rural / agricultural economic base. The key challenge in these areas is to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas.

## 5.2. Natural Heritage Designations

The site is zoned 'Rural Secondary Special Amenity Area' and is located approx. 92 m north of the Lower River Shannon Special Area of Conservation (SAC) and 0.8 Km east from the West Coast also designated as part of the Lower River Shannon SAC

Kerry Head SPA, Stacks to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA, the River Shannon & River Fergus Estuaries SPA are located within 15 Km of the appeal site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The issues raised are summarised as follows:

- The applicant was born and raised in Ballybunnion. His late mother lived in the house directly across from the proposed site.
- The site has not been flooded in 50 years.
- There are 5 adjacent houses. They have never been flooded.
- Flood mitigation measures are included.
- The front part of the site where the house is located is outside the at risk area according to the OPW.
- The OPW map SW/RA/EXT/MRFS/52 gives an OD level of 3.73 for 1 in a 200 chance in any given year.

- A FFL of 4.00 is proposed, thereby raising the house above any possible flooding.
- The FFL of 4.00 is above the 1 in a 1000 chance in any given year which the OPW estimate to be 3.92
- The applicants agent testifies that they have been working in the area for over 40 years and there has been no flooding in this time.

## 6.2. **Planning Authority Response**

None received.

## 7.0 **Assessment**

The issues of the subject appeal case can be dealt with under the following headings:

- **Development Plan and Principle of the Development**
- **Flood Risk**
- **Appropriate Assessment**

### 7.1. **Development Plan and Principle of the Development**

- 7.1.1. The site is located within an area designated 'Rural Secondary Special Amenity Area' and is designated as a Stronger Rural Area in the Kerry County Development Plan 2015 – 2021. The site is located approx. 100 m from the Lower River Shannon cSAC.
- 7.1.2. Areas of Secondary Special Amenity constitute sensitive landscapes which can accommodate a limited level of development. The level of development will depend on the degree to which it can be integrated into the landscape. Residential development in these areas is regulated in accordance with the provisions of section 3.3.1 and table 3.7 set out in the Kerry County Development plan. The following provisions shall apply:



- Individual residential home units shall be designed sympathetically to the landscape and the existing structures and shall be sited so as not to have an adverse impact on the character of the landscape or natural environment.
- Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is therefore on the applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development.
- Any proposal will be subject to the Development Management requirements set out in this Plan in relation to design, site size, drainage etc.

7.1.3. Table 3.7 states that in areas zoned Rural Secondary Special Amenity, applications for permission for residential houses will only be considered from applicants from the following categories:

‘Sons and Daughters of the traditional landowner, or favoured niece or nephew, the land having been in the ownership of the family for in excess of 10 years while being the location of the principal family residence.

Or

The applicant shall demonstrate a genuine rural employment need.

Or

The applicant’s family shall have lived in the immediate locality prior to Jan 2003 with the applicant having been reared in the locality’.

7.1.4. Paul Shanahan (the applicant) is the owner of the site. It is submitted that he was born and raised in Ballybunnion and that he lived at The Cashen, Ballyeigh, Ballybunnion for some 35 years. His family home is situated across the access road to the south of the appeal site at a higher ground level. The applicant’s parents have passed away and willed the site to him. It is not disputed by the planning authority that he does not comply with the rural housing need criteria as set out in the County Development Plan. I also see no reason to refuse planning permission based upon non-compliance with rural settlement strategy as set out in the County Development Plan.

- 7.1.5. The proposal seeks permission to construct a single storey, two bedroom dwelling house (114 sq. m) of modern idiom with mono pitch style roof (maximum ridge height of some 5m). I note that the site is serviced and it is proposed to connect to public infrastructure; mains water connection and foul sewer connection.
- 7.1.6. Chapter 12 of the County Development Plan deals specifically with zoning and landscape. Policy relating to areas zoned Rural Secondary Special Amenity in section 12.3.1 Rural (b) states that: 'The landscape of areas in this designation is sensitive to development. Accordingly, development in these areas must be designed so as to minimise the effect on the landscape'...'permission will not be granted for development which cannot be integrated into its surroundings. 'Chapter 12 sets out objectives for landscape protection I note in particular:
- ZL-1 'Protect the landscape of the county as a major economic asset and an invaluable amenity which contributes to people's lives'.
- ZL-4 'Regulate residential development in Rural Areas in accordance with the zoned designation of that area and the policies outlined in the Rural Settlement Strategy set out in section 3.3 of the plan'.
- 7.1.7. I consider Objective RS-4 of pertinence to the subject appeal it states that 'the protection of the landscape is a major factor in developing policies for rural areas. It should be noted that the landscapes and scenery are not just of amenity value but constitute an enormous economic asset. The protection of this asset is therefore of primary importance in developing the potential of the County.'
- 7.1.8. While the location of the appeal site is designated 'Rural Secondary Special Amenity Area' and section 12.2.1 of the Plan states that 'permission will not be granted for development which cannot be integrated into its surroundings', there are no protected 'amenities, views or prospects' identified in the area of the appeal site as per Map 12.1 a of the Kerry County Development Plan. The proposed dwelling is not located on the coastal side of the cul de sac access. There are already some 5 bungalows approximate. In agreement with the planning authority I consider the scale, height, mass and architectural design treatment of the dwelling would not have an adverse impact on the character of this coastal landscape setting, in particular given existing development. The dwelling has been designed to minimize

the effect on the landscape. The proposal accords with Objectives ZL-1 and ZL-4 of the current CDP.

## 7.2. Flood Risk

- 7.2.1. The proposed dwelling was refused for one reason. The draft reason for refusal by the planning authority considered that the site was at risk of flooding in a 1 in 200 – year event. This places the site in Flood Zone A in accordance with the Department Guidance Document: The Planning System and Flood Risk Management 2009. It is submitted that in accordance with the Guidelines that vulnerable development such as residential development should not be permitted in Flood Zone A or B.
- 7.2.2. The proposed site has been identified under the Irish Coastal Protection Strategy Study (ICPSS) Mid Range and High Range Future Scenarios at risk of flooding in a 1 in 200 – year event. Lands to the north and abutting the northeast corner of the appeal site (outside of appeal site) and a portion of the east of the site are subject to Pluvial - Indicative 1% AEP (100-yr) as per the OPW Draft Flood Maps. Also, a substantial portion of the norther part of the site is subject to 'Pluvial - Extreme Event: for 1 – 200 year event as per the OPW Draft Flood Maps.
- 7.2.3. The applicant submits that the site has not been flooded in 50 years. There is no evidence from the OPW flooding maps of a flood event on the site. It is submitted that the front part of the site where the house is located is outside the at risk area according to the OPW. I note the unsolicited revised site layout maps on the file (dated 7<sup>th</sup> Nov 2017) the first party submits that flood mitigation measures are proposed in that the FFL of 4.00 m OD is above the level of 3.73 m OD for 1 in a 200 chance in any given year, as per OPW map SW/RA/EXT/MRFS/52. The FFL of 4.00 is above the 1 in a 1000 chance in any given year which the OPW estimate to be 3.92. It is contended that by raising the FFL to 4m OD the house is therefore protected from any future possible flooding.
- 7.2.4. Ground level across the site range from 2.7m OD to 4.0 m OD. The site is serviced. There have been no flood events recorded within the development boundary, as per [www.floodmaps.ie](http://www.floodmaps.ie). However, the site is located in a 1 in 200 flood zone i.e. Flood Zone A, as per section 2.32 of the DoEHLG/OPW Guidelines. Under the Guidelines

a 'Highly Vulnerable Development' in a 'Flood Zone A' is required to satisfy the justification Test.

7.2.5. No justification test has been submitted with the subject proposal. There is no local authority engineers report on the file. Cognisance being had to proposals to alter the FFL of the dwelling in order to reduce the flood risk to an acceptable level, and to the submission that the dwelling itself is located on lands outside of the 1 in 200 year chance in any given year, I consider that the issue of flood risk associated with the development has not been adequately assessed. I am of the opinion that it is encumbering on the applicant to prepare detailed proposals for flood risk, examination of flood plain and surface water management as part of flood risk assessment. I therefore, can see no justifiable reason to overturn the reason of refusal by the planning authority. Therefore, in conclusion to my assessment I recommend that permission be refused on grounds of flood risk.

### 7.3. **Appropriate Assessment**

7.3.1. The appeal site is located approx. 100m from the Lower River Shannon SAC. The appeal site is located within 15 Km of the following Natura Sites:

- Kerry Head SPA,
- Stacks to Mullaghareirk Mountains West Limerick Hills and
- Mount Eagle SPA, the
- River Shannon & River Fergus Estuaries SPA

7.3.2. There are no streams on the appeal site. The site is serviced and it is proposed to connect to public infrastructure; mains water connection and foul sewer connection. No issues have arisen with respect to capacity of waste water treatment.

7.3.3. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of the Lower River Shannon SAC (site code 002165) having regard to the nature and scale of the proposed development, infrastructure services in place, lack of hydrological connectivity and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the

development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## **8.0 Recommendation**

8.1. I recommend that planning permission should be refused for the reason and consideration as set out below.

## **9.0 Reasons and Considerations**

1. The proposed development is in an area which is deemed to be at risk of flooding, by reference to the Irish Coastal Protection Strategy Study (ICPSS) Mid Range and High Range Future Scenarios at risk of flooding in a 1 in 200 – year event. Having regard to the provisions of the Development Plan and the Department Guidance Document: The Planning System and Flood Risk Management 2009 in relation to development proposals in areas at risk of flooding, it is considered that, in the absence of a justification test with adequate examination of flood plain, surface water management and appropriate mitigating measures to address any risk, the proposed development would be contrary to the proper planning and sustainable development of the area

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Fiona Fair

Planning Inspector

15.05.2018