



An
Bord
Pleanála

Inspector's Report ABP 300961-18

Development	15 houses and associated site works.
Location	Lybe, Belgooly, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/7004
Applicant	Diamond Rock Developments Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	1 st Party v. Refusal
Appellant	Diamond Rock Developments Ltd.
Observers	1. Colman & Olga Kirby 2. Bernadette Crowley
Date of Site Inspection	28/06/18
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site is largely as described on file ref. PL04.225875.

This site lies on the west side of Belgooly c. 4 kilometres north-east of Kinsale. The site has a frontage of 130 metres onto the north side of a minor county road which runs along an east-west axis and which joins the Regional Road R600 some 25 metres to the east of the site. The R600 linking Cork City with Kinsale runs along a north-south axis and forms the main thoroughfare through the village.

The area of the site is 1.87 hectares and it is roughly square shaped save for the north-eastern boundary which is irregular and follows the outline of a shed and wall bounding a concrete yard. There is direct access from the yard onto the R600 further east and this access also serves a narrow lane, which runs roughly north-south and to the rear of a terrace of three houses which front onto the main street. A commercial premises lies to the south of these houses. Further south the east boundary of the site is defined by the Belgooly River/Mill Stream along which there is an embankment and line of conifer trees.

New modern housing developments lie both to the north and west of the site and a block wall with a typical height of 1.7 metres forms the shared boundary towards the west. Part of the roadside boundary to the site is open and elsewhere the boundary comprises of a wall or embankment on which lies a hedgerow. The entrance to the Riverbank housing estate lies 25 metres to the west of the site's road frontage.

The site comprises of an open field with building material and a cabin/chalet noted in the south-western corner. Two detached houses front onto the county road opposite the site frontage to the south.

2.0 Proposed Development

The proposal is for 15 no. two storey dwellings -

- 11 no. detached 4 bedroom units (house types 1 & 2)
- 4 no. semi-detached 3 bedroom units (house type 3)

A 6740 sq.m. open space area in addition to a 400 sq.m. local play area are proposed.

The application is accompanied by:

- Planning Assessment
- AA- Screening Report
- Flood Risk Assessment
- Draft Environmental, Construction and Waste Management Plan

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for the following reason:

The site does not have a specific residential zoning objective and is not essential to facilitate regeneration or compact sustainable growth of the village, does not involve brownfield or previously developed lands, and as there are alternative lands within the development boundary with a lower or no risk of flooding, the proposed development would conflict with national guidelines on flooding (2009), Para. 11.6.18, Policy Objective WS 6-1, & Policy Objective WS 6-2 in the County Development Plan 2014 and Para.4.4.14 & Policy Objective IN-01 in the Bandon-Kinsale Municipal District Local Area Plan 2017, it would not result in the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Executive Planner's report notes that the proposal does not pass the flood risk justification test. Apart from knowing there is capacity in the treatment plant to cater for the loading and that Irish Water plan to upgrade and replace the treatment plant, there remains uncertainty. The site is not essential to the expansion of the village or realisation of the Council's strategy in Belgooly. A refusal of permission is recommended. The subsequent Senior Executive Planner's report states that there

is no justification to grant permission as there are suitable alternative lands identified in the LAP. The site is not essential or needed to achieve the planning growth of this key village. It is noted that Irish Water has no objection to the proposal. A refusal of permission is recommended

3.2.2. Other Technical Reports

The Estates primary report notes that the section drawings are inaccurate. Levels through the site should be clarified. The proposal that all roads within the development are set at 3.25 metres and proposed to be laid at local falls is not acceptable. Longitudinal gradients should be between 0.5% and 5% dependant on type of surface being laid. A Stage 1 road safety audit should be carried out. Further details on the emergency roadway required. Visitor parking required. Further details in terms of flood risk and proposed measures to be incorporated required.

The Area Engineer notes that the two main issues concern flooding and wastewater disposal. There have been issues with the effluent quality produced by the WWTP installed in Riverbank adjoining which the scheme proposes to connect to. The adequacy of the wastewater treatment system needs to be confirmed. The proposal is premature and should not proceed in its current form.

Public lighting report recommends a further information request in addition to a schedule of conditions being attached.

3.3. **Prescribed Bodies**

Irish Water has no objection subject to conditions.

Inland Fisheries Ireland has no objection provided Irish Water confirms there is sufficient capacity in the public sewer. Planning conditions should ensure there is no interference with bridging, draining, or culverting of the adjacent river, its banks, or bankside vegetation.

3.4. **Third Party Observations**

The issues raised in the observations relate to flooding, impact on amenities of adjoining property, adequacy of public services, traffic and natural amenity.

4.0 Planning History

2008 - PL04.225875 (06/11965) – permission refused for 48 houses on the site for one reason relating to flooding risk and which noted:

- the location of the site within the floodplain of the Mill Stream
- the evolving policies on development control and flooding
- the findings of the Mill Stream Study
- the uncertainties inherent in the prediction of flooding and the need for further flood risk analysis
- the limited strategic function of the site having regard to the size of Belgooly and its role in the settlement structure.

5.0 Policy Context

5.1. Development Plan

5.1.1. Bandon Kinsale Municipal District Local Area Plan 2017

Belgooly is identified as a key village

Section 1.8.5 – the Council’s overall approach to Flood Risk Management is set out in Chapter 11 of the County Development Plan 2014.

The Council’s approach to flood risk is to:

- (a) Avoid development in areas at risk of flooding; and
- (b) Where development in floodplains cannot be avoided, to take a sequential approach to flood risk management based on avoidance, reduction and mitigation of risk.

Section 1.8.8 - a Strategic Flood Risk Assessment (SFRA) has been undertaken as part of the preparation of this plan, and all zoned lands in areas at risk of flooding have been reviewed.

Objective IN-01 – all proposals for development within the areas identified as being at risk of flooding will need to comply with Objectives WS 6-1 and WS 6-2 as detailed in Chapter 11 Volume 1 of the Cork County Development Plan, 2014, as

appropriate and with the provisions of the Ministerial Guidelines – ‘The Planning System and Flood Risk Management’. In particular, a site specific flood risk assessment will be required as described in WS 6-2.

Section 4.4.1 - the strategic aim for Belgooly is to encourage the consolidation of the village within its attractive riverside setting, preserve the landscape setting of the settlement and to promote development in tandem with the provision of services.

Section 4.4.12 - Belgooly water supply is at its limit. Upgrading of the scheme is required to accommodate further development.

Section 4.4.13 - There are also sewer network issues. Upgrading of the foul sewers and provision of a new Waste Water Treatment Plant is required in order to accommodate further growth. The proposed sewerage scheme is currently on hold.

Section 4.4.14 - parts of Belgooly have been identified as being at risk of flooding.... Government Guidelines require, and it is an objective of this plan, that future development is avoided in areas indicated at being at risk of flooding.

Objective DB-10 – within the development boundary encourage the development of up to 150 additional dwelling units during the plan period.

5.1.2. **Cork County Development Plan**

Objective WS 6-1 Flood Risks – Overall Approach

Take the following approach in order to reduce the risk of new development being affected by possible future flooding:

- Avoid development in areas at risk of flooding; and
- Where development in floodplains cannot be avoided, to take a sequential approach to flood risk management based on avoidance, reduction and mitigation of risk.

In areas where there is a high probability of flooding – ‘Zone A’ – it is an objective of this plan to avoid development other than ‘water compatible development’ as described in Section 3 of the ‘The Planning System and Flood Risk management – Guidelines for Planning Authorities’ issued in November 2009 by DoEHLG.

Objective WS 6-2 - Development in Flood Risk Areas

Ensure that all proposals for development falling within flood zones 'A' or 'B' are consistent with the Ministerial Guidelines.... In order to achieve this, proposals for development identified as being at risk from flooding will need to be supported by a site specific flood assessment prepared in line with Paragraph 11.6.16 of this plan.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by McCutcheon Halley on behalf of the 1st Party against the planning authority's notification of decision to refuse permission, and which is accompanied by supporting documentation, can be summarised as follows:

- The statement in the reason for refusal that the site does not have a specific residential zoning objective is contradicted by Section 4 of the LAP which refers to key villages of which Belgooly is one. Table GO-01 of the LAP sets out the overarching objectives which apply to all key villages including the objective to encourage housing.
- The LAP notes that residential zonings in villages as per the 2005 plan have been discontinued and replaced with objectives in each village which set out the total number of new dwellings likely to be built in the village during the lifetime of the plan.
- All lands within the development boundary are deemed to have a residential zoning objective and the areas which are within the centre of the village are deemed to be zoned for a mix of residential, business, retail and community development.
- The site is in an infill area between the original village core and the pattern of development which has emerged over the past 20 years. The proposal would enhance the compact form of the village. The development of alternative

lands to the south-east of the village would have the opposite effect as it would promote peripheral sprawl and leave a gap in the central area of the settlement.

- The site has been designated for development since the 2005 LAP in which it was zoned R-03 for medium density development. The suitability of the site was confirmed in the LAP reviews in 2011 and 2017.
- Given the challenging target of securing a net increase of 150 housing units within a 6 year period there would appear to be no valid reason to restrict new development to brownfield or previously developed lands.
- Many planning authorities have taken an over cautious approach to the implementation of the Flood Risk Guidelines. The Department Circular PL2/2014 is relevant. The use of site specific flood risk assessment in decision making is of importance.
- The LAP adopts a balanced approach which is consistent with the circular. This is reflected in Objective IN-01 which states that a site specific flood risk assessment will be required for all proposals.
- There is an important distinction between Policy Objectives WS 6-1 and WS 6-2 of the County Plan. The former refers to the overall approach to flood risk management which is described in paragraphs 11.6.9 to 11.6.11 of the Plan. It is clear from paragraph 11.6.10 that the site would not have been included in the development boundary if it would significantly conflict with the indicative Flood Extent Maps. The latter objective refers to the approach to be adopted to applications in areas at risk of flooding which is set out in more detail in Paragraphs 11.6.12 to 11.6.18. This process was followed in the current case.
- In seeking to justify a refusal of permission under paragraph 11.6.18 there is an onus to establish that there is no specific zoning objective for the site and that there are flood residual risks. Neither applies in this instance. The site specific flood risk assessment has demonstrated that the flood levels of the dwellings and the level of the alternative access road will ensure that there is no residual impact on the dwellings or their occupants during periodic tidal flooding of the public open space and the main access to the site.

- All levels given on the drawings are accurate.
- The road longitudinal gradients will be between 0.5% and 5% as per the Department of Environment – Recommendation for Site Development Works for Housing Areas.
- As the proposal is for 15 no. houses, only, a Road Safety Audit is not considered to be necessary.
- The proposed development will not alter the flow paths that currently drain the flood plain area. The level of the play area will be 3.25 m minimum which is above the flood level.
- A letter from Irish Water confirms that the Belgooly wastewater treatment plant has capacity for the development.

6.2. Planning Authority Response

No further comment.

6.3. Observations

Observations have been received from:

1. Colman & Olga Kirby
2. Bernadette Crowley

The submissions can be summarised as follows:

- There is a significant risk of flooding of this and surrounding sites should the proposal go ahead.
- There are much more suitable sites within the village boundary to increase housing stock.
- As per the LAP upgrading of the foul sewers and provision of a new waste water treatment plant is required to accommodate further development in the village. The existing system is malfunctioning.
- Traffic conditions at the bridge are dangerous. There are other sites which have safer access to the main road (R600)

- A Road Safety Audit and Risk Assessment should be completed.
- There is a lack of community facilities in the village.
- There is no detail on the amount of fill required for the proposed development.

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Principle of development
- Flooding
- Layout and Design
- Site Services
- Appropriate Assessment

7.1. **Principle of Development**

The site is within the development boundary of Belgooly which is designated as a key village in the Bandon Kinsale Municipal District Local Area Plan 2017. The strategic aim is to establish such villages as the primary focus for development in rural areas in the lower order settlement network and to allow for the provision of local services by encouraging and facilitating population growth at a scale, layout and design that reflects the character of the village where water services and waste water infrastructure are available.

As noted by the agent for the applicant the residential zonings in villages as provided for in previous LAPs no longer apply and have been replaced with an objective in each settlement which sets out the total number of new dwellings likely to be built during the lifetime of the plan. An increase of 150 dwelling units is earmarked for Belgooly within the plan period with the normal recommended scale of any individual scheme being 25 units as set out in Table 4.1.

On this basis it is reasonable to surmise that an application for development within the development boundary is to be assessed on its merits and within the context of the policies and objectives set out for the village in the LAP.

The site in question is immediately to the south-west of what would be considered the traditional village centre developed along the R600 Cork-Kinsale Road and is bounded by existing residential development to the west and north. In isolation, therefore, I consider that the principle of residential development on the site would be acceptable and would represent a logical and ordered expansion of the built environment.

However, I consider that the totality of the LAP sets the context for development potential within the development boundary. In this regard I note that Section 4.4.14 acknowledges that parts of the village have been identified as being at risk of flooding and that it is an objective of the plan following on from Government Guidelines, that future development is avoided in such areas. I propose to address the issue of flood risk below.

7.2. Flood Risk

As noted on the relevant map in the LAP the site is within Zone A - Area Susceptible to Flooding. It is located on the right flood plain of the Belgooly River/Mill Stream. The Guidelines on the Planning System and Flood Risk Management 2009, amended and clarified by the subsequent Circular PL2/2014, state that most types of development would be considered inappropriate in this zone and should be avoided and/or only considered in exceptional circumstances and where the justification test has been applied. These principles have been incorporated into the County Development Plan. Objective WS 6-1 seeks to avoid development in areas at risk of flooding and, where development in floodplains cannot be avoided, that a sequential approach to flood risk management based on avoidance, reduction and mitigation of risk is taken. Save for water compatible uses there is a presumption against development.

Whilst the agent for the applicant refers to the 2014 Department Circular and the caveats in terms of use of OPW Flood mapping as the sole basis for deciding on planning applications, Section 1.8.8 of the 2017 Bandon Kinsale Municipal District LAP notes that A Strategic Flood Risk Assessment (SFRA) has been undertaken as part of the preparation of the plan and that all zoned lands in areas at risk of flooding have been reviewed. On foot of this review the site retains its Flood Zone A designation. As per objective IN-01 of the plan all proposals for development are

required to comply with objectives of WS 6-1 and WS 6-2 of the County Development Plan.

Whereas the agent for the applicant considers that there is an important distinction between objectives WS 6-1 and WS 6-2 of the County Development Plan I submit that the fundamental requirement in both is that all proposals for development falling within flood zones A and B are consistent with the Guidelines on The Planning System and Flood Risk Management. As noted above the Guidelines are explicit that development in Zone A should be avoided and/or only considered in exceptional circumstances. On this basis I would concur with the view as expressed by the Council's Senior Executive Planner that as housing is a vulnerable type use the default position would be, in the first instance, to avoid such areas.

I would also submit that whilst the site is within the development boundary of the village and would constitute a logical consolidation of development within the village, this cannot override the key principle of both the Guidelines and the LAP which seeks to avoid development in areas at risk of flooding. As evidenced on the LAP map there are other sizeable parcels of undeveloped land within the development boundary which are not constrained by flood risk. As such I would submit that the proposal cannot be seen as exceptional with alternatives available within the boundary which would assist in the realisation of the LAP housing objectives of an additional 150 units within the plan period.

I note that the application is accompanied by a Flood Risk Assessment in which an unsteady 1D/2D model was carried out with risk assessment assessing the combined effects of Belgooly River/Mill Stream and the River Stick combined with tidal flooding risk. The results of the said modelling and assessment dictate the layout of the site with the dwellings to be located along the eastern and northern boundaries and the remainder of the site retained in open space. The mitigation measures proposed include finished floor levels of 3.75mOD and an emergency road embankment to ensure access and egress during extreme flood events. The assessment also includes a justification test in which it is concluded that the stipulated criteria as set out in section 5 of the guidelines are met.

Box 5.1 of the Guidelines sets out the criteria that must be met in the justification test. As noted above whilst within the development boundary the site is not

specifically zoned for residential purposes. The extent of other undeveloped lands within the boundary which are not constrained by flood risk are noted. A flood risk assessment has been undertaken which concludes that subject to mitigation measures would not increase flood risk elsewhere. However, I consider that the layout and design is dictated by the site constraints rather than its village centre location and the wider planning objectives seeking compatibility with its setting and enhancement of the character of the settlement.

I therefore recommend refusal of permission on grounds of flood risk.

7.3. Layout and Design

The proposal for 15 dwellings on a site with a stated area of 1.98 hectares equates to a density of approx. 8 units per hectare. I note that neither the LAP for the area or the Guidelines on Sustainable Residential Development in Urban Area stipulate minimum or maximum density parameters for such village sites. As noted above the layout is effectively dictated by the constraints imposed by flood risk. The dwellings are proposed in a linear arrangement along the western and northern boundaries with finished floor levels of 3.75mOD. A large open space area is required to be retained whilst an emergency road at an elevation of between 2.80mOD and 3.10mOD is to be provided from the south-east side of the development. I submit that the layout, as a consequence of the necessary interventions, has little cognisance of its location in such proximity to the village centre and would add little to the village character and setting as required by the LAP.

The amenities of adjoining properties can be adequately protected in terms of overlooking and loss of privacy subject to suitable separation distance being maintained and appropriate boundary treatments. I also consider that the local road could accommodate the additional traffic which would be generated by the proposal.

7.4. Site Services

I note from the Area Engineer's report on file that a new water supply is about to be commissioned that will bring potable water from Innishannon/Ballea via Riverstick to Belgooly.

Again, I note from the Area Engineer's report that the existing wastewater treatment plant in Riverbank to which connection is proposed cannot operate to its 1000 PE rating and requires upgrading. This would appear to be supported by the current LAP which notes that the upgrading of the foul sewers and provision of a new Waste Water Treatment Plant is required in order to accommodate further growth in Belgooly. Notwithstanding, a letter from Irish Water attached to the 1st party appeal notes that there is capacity in the Riverbank plant for the development. Should the Board be disposed to a favourable decision in this instance it may consider it appropriate to seek clarification on this matter.

7.5. Appropriate Assessment

The site is c.11 km to the west of Cork Harbour SPA and 14km to the north of Old Head of Kinsale SPA. Having regard to the nature and scale of the proposed development, the location of the site within the village of Belgooly and the separation distance to the nearest European sites, no appropriate assessment issues arise, and it is not considered that the proposed 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

Having regard to the documentation on file, the grounds of appeal, a site inspection and the assessment above I recommend that permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to:

- The location of the site within the floodplain of the Belgooly River/Mill Stream and which is liable to flooding
- The location of the site within Flood Zone A as delineated for the village of Belgooly in the Bandon Kinsale Municipal District Local Area Plan 2017.
- Objective IN-01 of the said Local Area Plan which states that all proposals for development within the areas identified as being at risk of flooding need to comply with Objectives WS 6 -1 and WS 6-2 as detailed in Chapter 11 Volume 1 of the Cork County Development Plan, 2014, as appropriate.
- Objective WS 6-1 of the County Development Plan, 2014, which requires the avoidance of development other than 'water compatible development' in Zone A
- The Guidelines for Planning Authorities on The Planning System and Flood Risk Management issued by the Department of Environment, Heritage and Local Government which state that development with Zone A – High Probability of Flooding should be avoided and/or only considered in exceptional circumstances.
- The undeveloped lands not within designated Flood Zones A and B within the development boundary delineated for the key village of Belgooly in the Bandon Kinsale Municipal District Local Area Plan, 2017

it is considered that the proposed residential development, which is designated as a vulnerable use, would not constitute such an exceptional case for development on this site. Notwithstanding the development provisions of the Local Area Plan, and the mitigation measures proposed, it is considered that the proposed development

would materially contravene the objectives addressing flood risk set out in the Local Area Plan and County Development Plan, which are considered reasonable, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

August, 2018