



An  
Bord  
Pleanála

## Inspector's Report 302782-18

---

|                                     |                                                                                                                                     |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <b>Development</b>                  | Construction of house, domestic garage, new entrance and boundary walls, proprietary treatment unit with connection to public sewer |
| <b>Location</b>                     | Kilmore, Ballingeary, Co. Cork                                                                                                      |
| <b>Planning Authority</b>           | Cork County Council                                                                                                                 |
| <b>Planning Authority Reg. Ref.</b> | 186027                                                                                                                              |
| <b>Applicant(s)</b>                 | Denis Hurley                                                                                                                        |
| <b>Type of Application</b>          | Planning permission                                                                                                                 |
| <b>Planning Authority Decision</b>  | Grant permission s.t. conditions                                                                                                    |
| <b>Type of Appeal</b>               | Third party                                                                                                                         |
| <b>Appellant(s)</b>                 | Inland Fisheries Ireland                                                                                                            |
| <b>Observer(s)</b>                  | None                                                                                                                                |
| <b>Date of Site Inspection</b>      | 17 <sup>th</sup> December 2018                                                                                                      |
| <b>Inspector</b>                    | Mary Kennelly                                                                                                                       |

## **1.0 Site Location and Description**

- 1.1.** The site is located in the village of Ballingeary, which is located to the southwest of Macroom (c.23km) and to the west of Inchigeelagh (approx. 8km). The village is located on the R584, which links Macroom (N22) with Bantry (N71), via Inchigeelagh and Ballingeary. The regional road generally follows the River Lee along the stretch between Inchigeelagh and Gougane Barra. The River Bunsheelin flows southwards through the village and joins the River Lee to the south and the Owen Garriff River joins the River Lee to the west of the village. Ballingeary is located within the Muskerry Gaeltacht.
- 1.2.** The appeal site is situated in the outskirts of the village, on the northern approach road, but is within the settlement boundary for the village. This road joins the R584 further to the south, just to the east of the main street. The section of the road within which the site is located has been developed with individual houses fronting the road on both sides, to the north and south of the appeal site. The Bunsheelin River flows to the west of the houses fronting the road. The site is located within the floodplain of the Bunasheelin River. There are three existing houses further to the north of the site on the western side of the road and a row of over 12 dwellings on the eastern side. Ballingeary's swimming pool is located immediately to the south of the site.
- 1.3.** The site area is given as 0.15ha. The site is bounded by the banks of the river to the west and by the road to the east. It is a flat, narrow site which has been filled in the past. There is an existing retaining wall alongside the riverbank.

## **2.0 Proposed Development**

- 2.1.** It is proposed to construct a new one and a half-storey dwelling, (221m<sup>2</sup>) and domestic garage (40.15m<sup>2</sup>), new entrance and boundary walls. A proprietary treatment unit with connection to the public sewer is also proposed, together with all associated and ancillary works.
- 2.2.** The proposed development will be connected to the public water supply. The proposed development includes a set back to the front boundary to accommodate a 2m wide footpath along the roadside of the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission subject to 14 conditions. These were generally of a standard type and included the following conditions of note:

**Condition 8** Entrance to be recessed by 4.5m

**Condition 10** Connection shall be made to public water supply.

**Condition 11** Connection shall be made to public sewer.

**Condition 12** Septic tank and percolation area to be designed, constructed and maintained in accordance with EPA code of Practice 2009.

**Condition 13** Foul drainage shall be by means of a proprietary wastewater treatment system in accordance with EPA Code of Practice.

**Condition 14** WWTP to be operated and maintained to satisfaction of P.A.

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

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

The Area Planner's report (20/09/18) noted that the applicant owns the site and that there has been a long and complicated planning history attached to the overall family landholding, and that the current application would be the fourth house to be developed on these lands. However, it was considered that the proposal would be acceptable given location of the site and the nature of development in the area.

It was also noted that the site is within a flood risk zone, that it is currently cleared and has been filled to some extent, like the rest of the site to the north. The Area Planner noted that although Ballingearry has a history of flooding and that there had been previous refusals on the site on these grounds, a flood prevention scheme, (based on river modelling carried out by the OPW), has been designed for the village. In this respect, it was noted that the proposed flood defence works stop south of the swimming pool and it would not extend as far north as the site. However, it was considered that as the site is quite elevated, it is not at risk of

flooding and that the WWTP would also be above the flood level. Accordingly, no objection was raised in terms of flooding.

It was noted that the public waste water treatment plant in Ballingearry cannot accept additional untreated effluent. The Area Planner referred to the report of the Area Engineer, who had advised that the proposal to install a treatment plant the outfall of which would be connected to the public sewer network was acceptable.

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

Area Engineer's Report – (10/09/18) - It was noted that site lines are adequate and that the proposal to accommodate a footpath was acceptable. The proposal to connect to the public water supply and that surface water drainage would be disposed of on-site were acceptable. It was noted that sewerage would be treated on site prior to discharge to the public sewer. This was considered to be acceptable provided that Irish Water was satisfied with this solution.

It was further noted that Ballingearry has a history of flooding and that there have been refusals on these grounds in relation to development on this site and in the vicinity. However, reference was made to the OPW river modelling in the village and the initial flood prevention design for the village (extract attached to report). No objection was raised on the basis that no defence works are planned on the western bank to the north of the swimming pool, the site is quite elevated and that the treatment plant is above the flood level.

### **3.3. Prescribed Bodies**

**Inland Fisheries Ireland** (03/09/18) – the public sewerage system in Ballingearry is currently both organically and hydraulically overloaded. It is requested that the development would not be occupied until such time as the public sewerage facilities are upgraded and fully commissioned or an alternative method of effluent disposal has been put in place.

## **4.0 Planning History**

**PL04.236030 (09/5853)** – planning permission refused by Board following third party appeal by An Taisce against decision to grant permission for 4 dwellings on lands

including the subject site and lands to the north. The proposed development included retention of protective riverside wall and raised ground levels. It is noted that the application as originally submitted had proposed connection to the public sewer but this was subsequently revised to individual treatment plants. The Inspector's report raised concerns regarding the reinforced concrete wall and palisade fencing and the small buffer zone (7m in parts) from the river edge. The Board refused permission, generally in accordance with the Inspector's recommendation, for four reasons, which may be summarised as follows:

1. Flooding – site within the floodplain of Bunsheelin River. It was considered that the site was at risk of flooding and given the availability of more suitable sites elsewhere, refusal was warranted, having regard to the Planning System and Flood Risk Management Guidelines, as the site was considered to be unsuitable for development of the type proposed.
2. On-site treatment of Effluent followed by discharge to public sewer – this was considered to be prejudicial to public health and an unacceptable threat of water pollution because of the risks of flooding or any breakdown of the system leading to the discharge of untreated effluent into a watercourse, having regard to the requirements of the Surface Water Regulations and the proximity of the treatment plants to the Bunsheelin River.
3. Inadequate sewerage treatment – it was considered that the individual treatment of foul water on site cannot provide a sufficient and safe treatment system. The development was therefore considered to be premature due to the deficiency in the public sewerage system, and the period of time within which this constraint may be reasonably expected to cease.
4. Visual amenity – having regard to the constricted nature of the site, to the impact on the riparian corridor, the proposal would be visually incongruous and would adversely affect the character of the adjoining riverside amenity.

**08/6657** – Residential development of 4 dwellings (including site and lands to north) and retention of riverside wall and raised ground levels refused by P.A. The reason for refusal related to a compromise of the integrity of the river embankment and the safety of the future occupants as well as being prejudicial to public health and a threat to the residential amenity of adjoining properties.

**07/9798** – a proposal to construct seven dormer dwellings on the site, including lands to north, was refused due to the significant level of unauthorised works on site and overdevelopment.

**96/10271** – 7 no. dwellings refused on grounds of significant unauthorised works.

To north of site

**09/56500** – Conditional permission granted for single dwelling house 26/2/10 – applicant is member of Hurley family.

**11/4742** – permission granted for single dwelling house to north – member of Hurley family.

**15/4603** – permission granted for single dwelling house to north – member of Hurley family.

## **5.0 Policy Context**

### **5.1. Guidelines for Planning Authorities – The Planning System and Flood Risk Management (2009)**

These guidelines set out good practice in the consideration of flood risk in planning and development management. The key principles include the following:

- a) Avoid development in areas at risk of flooding (sequential approach)
- b) If this is not possible, consider substituting a land use that is less vulnerable to flooding.
- c) Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.

Exceptions to the restriction of development due to potential flood risks are provided for through the use of the Justification Test, where planning need and the sustainable management of flood risk to an acceptable level can be demonstrated.

### **5.2. Cork County Development Plan 2017-2023**

The site is located in a High Value landscape. The regional road R584 between Macroom and Bantry/Gougane Barra is a designated scenic route. Lough Allua,

located to the east of Ballingeary, which is an expanded area of the River Lee, is designated as a proposed NHA. The policy in relation to Water Services, surface water and waste water is set out in Chapter 11.

**WS 3-1** includes a requirement that new development connects to public waste water treatment systems where capacity allows and must ensure compliance with the SW River Basin Management Plans, and relevant legislation.

**WS 6-1** sets out the overall approach to development and flood risk, which is to avoid areas at risk of flooding. Where development in floodplains cannot be avoided, a sequential approach must be taken based on avoidance, reduction and mitigation of risk.

**WS 6-2** sets out the policy for development in Flood Risk Areas. All development in Flood Zones A and B must be supported by site specific flood risk assessments.

Other relevant policies include:

**RCI 6-1 – Design and Landscaping of New Dwelling Houses in Rural Areas**

- (a) Encourage design that respects character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape.
- (b) Promote sustainable approaches to design – energy efficient in design, layout and siting.
- (c) Require appropriate landscaping and screen planting with mainly indigenous /local species and groupings.

**GI-6-1 Landscape**

- (a) Protect the visual and scenic amenities of County Cork's built and natural environment.
- (b) Landscape issues – important factor in all land-use proposals
- (c) Ensure new development meets high standards of siting and design.
- (d) Protect skylines and ridge lines for development
- (e) Discourage development requiring the removal of extensive amounts of trees, hedgerows and historic walls or other distinctive boundary treatments.

### 5.3. Blarney Macroom Municipal District Local Area Plan 2017

Ballingeary is designated as a Key Village in the Blarney/Macroom Municipal District. The site is located within the Development Boundary for the village and is within the Existing Built-Up Area. The site is also situated within Flood Zone A. The overall scale of development for each Key Village is set out in Table 4.1. It is stated (4.1.14) that this level of development is based on the assumption that the required wastewater infrastructure and water supply improvements identified will be delivered, and if not delivered, the overall scale of growth will need to be managed to reflect available water services capacity. The overall scale of growth for Ballingeary is 60 dwellings.

**GO-01 (d)** - Notwithstanding the scale of growth outlined in Table 4.1, in the absence of a public wastewater treatment plant, only the development of individual dwelling units served by individual treatment systems will be considered, subject to normal proper planning and sustainable development considerations. Any new dwellings with individual wastewater treatment must make provision for connection to the public system in the future and must have a sustainable properly maintained private water system, unless a public supply is available. Such proposals will be assessed in line with the appropriate EPA code of practice and will have regard to any cumulative impacts on water quality.

**GO-01 (o)** – All proposals for development within the areas identified as being at risk of flooding will need to comply with Objectives WS 6-1 and WS6-2 as detailed in Chapter 11, Volume 1 of the CDP, 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.

**DB-01** – Within the (Ballingeary) development boundary encourage the development of up to 60 additional dwelling units during the plan period. In order to secure sustainable population growth, proposed appropriate and sustainable water and wastewater infrastructure that will help secure the objectives of the Water Framework Directive and protect the Geragh SAC and SPA need to be provided where not already available, in advance of commencement of discharges from new development permitted in this settlement.

**DB-03** – Protection of the linguistic and cultural heritage of the village.

#### **5.4. Natural Heritage Designations (within 15km radius)**

St. Gobnet's Wood SAC (000106)

Mullaghanish to Musheramore Mountains SPA (004162)

Derryclogher Bog SAC (001873)

Bandon River SAC (002171)

The Gearagh SAC (004109)

The Gearagh SPA (000108)

Glanlough Woods SAC (002315)

## **6.0 The Appeal**

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

The third-party appeal was submitted by Inland Fisheries Ireland. The submission included several photographs of the public sewerage system and of the Bunsheelin River in the vicinity of the site.

The main points raised may be summarised as follows:

- **Capacity of existing public sewerage system** – treatment and disposal of sanitary effluent in the village of Ballingearry is by means of a septic tank under the control of Irish Water and which is licensed by the EPA. The location of the tank, adjacent to the Bunsheelin River is immediately upstream of the confluence with the River Lee. The Annual Environmental Report (2017) - submitted by Irish Water to the EPA – contained the following information:
  - The annual mean hydraulic loading and organic loading are each greater than the Peak Treatment Capacity.
  - The plant capacity is PE200 and the final effluent from the primary discharge Point was non-compliant with the Emission Limit Values in 2017.

- The parameters which exceeded the ELVs were BOD, COD, TSS, Ortho P/MRP and Ammonia N. there were 30 samples non-compliant and the parameters were non-compliant on all 6 occasions that they were tested.
- The non-compliance is due to the lack of a percolation area for the septic tank and it is therefore operating over capacity.
- The Hydraulic capacity (dry weather flow) is 45m<sup>3</sup>/day while the current loading is 80m<sup>3</sup>/day.
- **Capital investment plan** – the agglomeration will continue to fail to meet these ELVs until the new treatment plant is constructed. Irish Water advised the EPA that it is on the current capital investment programme for 2022+.
- **Proposed disposal of septic effluent after treatment to the public sewer is unacceptable** – as the existing public system is overloaded both hydraulically and organically, a condition should be attached prohibiting occupation of the dwelling until the public sewerage system is upgraded and fully commissioned, or an alternative method of effluent disposal has been put in place. Further disposal of treated effluent to the public sewer (as permitted by condition 11) would result in further hydraulic loading.
- **Quality of water in Bunasheelin River** – The statement in the IW Annual Report 2017 that “The discharge from the wastewater treatment plant does not have an observable negative impact on the water quality” is disputed. Photos are attached to the grounds of appeal (dated 10/10/18) which show the discharge from the septic tank and the accumulation of sewage fungus on the river bed downstream of the outfall.
- **Conditions 12 and 13 at odds with rest of decision** – Conditions 12 and 13, which require that the septic tank and proprietary waste water treatment plan be designed and operated in accordance with the EPA’s Code of Practice, are at odds with Conditions 1 (plans and particulars) and 11 (requirement to connect to public sewer).
- **Impact on water quality and habitats** – IFI’s main concern is the impact of the discharge on the water quality and fisheries habitat of this salmonid river.

- **IFI seeks that permission be refused** – unless treated effluent can be disposed of in a manner that does not increase the hydraulic loading of the Ballingearry septic tank.

## **6.2. Planning Authority Response**

The P.A. has not responded to the grounds of appeal.

## **6.3. Response from first party to grounds of appeal**

**6.3.1.** A response was submitted by the appellant on 19<sup>th</sup> November 2018. The applicant is now prepared to revise the proposal and to install a proprietary treatment unit with a 15sq.m sand polishing filter. The following points were made:

- The IFI has no objection provided that there is no further deterioration of an already undesirable situation in relation to the Ballingearry septic tank and its outfall to the Bunasheelin River. The revised proposal to dispose of effluent within the site would address these concerns.
- The set-back distances can be achieved in accordance with the EPA Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses.
- A full set of percolation test results are enclosed together with a site layout plan, indicating proposals for a proprietary treatment unit and a sand polishing filter with final discharge to groundwater.
- A planning condition to restrict occupation until such time as the public sewerage facilities have been upgraded is no longer required.
- Provision will be made within the development to connect to the public sewer once it has been upgraded and the proprietary system can be decommissioned at that time.

## **6.4. Further response from third party appellant**

**6.4.1.** The appellant responded to the submission from the applicant on 24<sup>th</sup> December 2018. The revised proposal to dispose of effluent by percolation on site by means of

a proprietary treatment unit and soil polishing filter. The IFI has no objection to this revised proposal provided that the Board considers both treatment and percolation is available of an appropriate standard and applies conditions in this respect.

## **7.0 Assessment**

**7.1.** It is considered that the main issues arising from the appeal are as follows:-

- Flood risk assessment;
- Adequacy of foul water treatment;
- Visual and riverside amenity.

### **7.2. Flood risk assessment**

**7.2.1.** The site forms part of a larger site for which a development proposal for four houses was refused by the Board in 2010 on the grounds of unsuitability of the site for development by reason of flood risk. The reason for refusal (236030) had noted that the site is located within the floodplain of the Bunsheelin River and that it did not comply with the requirements of the Ministerial guidelines on flood risk management. The Inspector had also considered that notwithstanding the conclusions of a flood study carried out by UCC, no assessment had been undertaken of the potential loss of floodplain storage and that as the site was within Flood Zone A, development should only be considered in exceptional circumstances, having regard to Justification Test, which was not carried out in this case. The Board should note that Ballingearry is located near the source of the River Lee and has been identified as a community at significant risk of flooding (fluvial) within the Lee River Basin, and that the Bunsheelin River flows through Ballingearry to join the River Lee to the south of the village. There have been several incidences of flooding in the village and a number of planning applications on/adjacent to the appeal site had been refused on these grounds in the past.

**7.2.2.** There are several matters which have occurred in the intervening period which are material to this issue. Firstly, the planning authority has granted permission on three occasions for single dwelling houses to the north of the appeal site, on lands in the ownership of the Hurley family, (Reg. Ref. Nos. 09/5650, 11/4742 and 15/4603). The

documents for the first two of these decisions are not available on the P.A. website, but are available for 15/4603. In the Planner's report, it is stated that a flood risk assessment had been submitted in respect of 09/5853 (which was overturned by the Board – 236030), and in which it had been deemed that the site was not susceptible to flooding, and that permission had subsequently been granted on a site to the south (11/4742) on this basis. The Area Planner considered that on this basis, and having regard to a report from the Area Engineer who had raised no objections, the issue of flooding did not need to be examined any further. However, the Board had concluded that the site was within the floodplain and was at risk of flooding, as set out in Reason No. 1 of the decision (236030).

**7.2.3.** The second material matter is the adoption of a new County Development Plan (2014) and a new Municipal District Local Area Plan for Blarney/Macroon (2017). The CDP incorporates several policies which set out the approach to development in areas of flood risk (WS 6-1 and WS 6-2), which generally seek to avoid such areas, and where this is not possible, to adopt a sequential approach based on avoidance, reduction and mitigation of risk. All planning applications within Flood Zones A or B must comply with the Ministerial Guidelines (Chapter 5) and must be accompanied by a Site Specific Flood Risk Assessment. A Stage 1 assessment would be required where there is uncertainty relating to the Flood Extent Maps and would involve a desk-top study, the preparation of site levels and cross sections, a commentary on site specific issues and a recommendation on future action. The Municipal District LAP indicates that the site is partially located within Flood Zone A, covering the area immediately alongside the western boundary with the river and covering the northern half of the site.

**7.2.4.** The third material matter is that the OPW has published a Flood Risk Management Plan for the Lee River, Cork Harbour and Youghal Bay River Basin (2018), which includes a Flood Relief Scheme for Ballingearry. This FRMP describes the Bunsheelin River catchment as being 'fast-responding' due to the constraints imposed by the mountainous topography at the upper reaches and to the relatively high annual rainfall in this area. Hydraulic modelling was carried out and used to map the flood hazard and to develop flood risk management options. The flood maps provide information regarding the likely frequency of the occurrence, depth and risk of flooding in the area. The Flood Extent maps show that parts of the site are

indicated as being within the 10% AEP flood extent and parts are within the 0.1% AEP flood extent. It is noted that the appeal site is located at the northern extent of the flood risk area with the main areas at risk being concentrated around the confluence of the Bunasheelin and Lee Rivers further to the south. The proposed flood defence works extend northwards as far as the swimming pool site immediately to the south of the appeal site, but not to the site itself.

**7.2.5.** Having regard to the material matters highlighted above, it is considered that notwithstanding the additional information available regarding the potential flood risk to development on the site and elsewhere within the village, there is still some uncertainty regarding the potential flood risk relating to the site itself. In such circumstances, the applicant should be required to submit a site specific FRA as required by policy WS 6-1/2. In the absence of this information, it is considered that a refusal of the proposal would be warranted, particularly given the riverside location and constricted nature of the site.

**7.2.6.** The P.A., however, took a different view. The Area Engineer noted that the particular site “is quite elevated and is not at risk of flooding” and that “the treatment plant would also be above the flood level”. On this basis, he stated that he had no objections to the development on flooding grounds. It is noted that the submitted drawings include a site section (DH-SS-01) which shows that the site is elevated above both the public road and the river, and that although it is proposed to cut and fill to a limited extent, the FFL of the house would be 89.5m OD. The drawing indicates that the riverbank level is c.88.5m. The site plan layout drawings P01 (01/08/18 and revised submission to Board 20/11/18) include spot levels which indicate that the site levels fall to the west and to the south within the site and that they are generally between 88.4 and 90.1m OD. The OPW Flood Extent Maps show that at the point closest to the site, (5UL1\_577), the water levels range from 88.41mOD to 88.70mOD to 89.00mOD, (10% AEP to 1.0%AEP to 0.1%AEP). The Flood Risk Management Guidelines indicate that Flood Zone A is equivalent to between 1% and 0.5% AEP and Flood Zone B is greater than 0.1% AEP. Thus the site is partially located within Zones A and B, wherein development should be avoided, particularly vulnerable development such as housing.

**7.2.7.** On the basis of the information on the file, (as highlighted above), it is considered that a considerable degree of uncertainty remains regarding the potential flood risk

on the site and in the vicinity. As the lands to the north have recently been developed for housing, the cumulative effects of this development on the flood risk also needs to be addressed. It is considered that in the absence of a site-specific flood risk assessment for the proposed development, the flood risk to the proposed development and to other development in the vicinity could not be ruled out. As such, the reason for refusal set out in the previous Board decision 236030 has not been adequately addressed and the proposal is not in accordance with Policies WS6-1 and WS6-2 of the Cork County Development Plan or with the requirements of the Planning System and Flood Risk Management Guidelines for Planning Authorities 2009. It is considered, therefore, that permission should be refused on these grounds. Should the Board be minded to grant permission however, it is considered that this matter could be addressed by means of a request for further information.

### **7.3. Adequacy of waste water treatment proposals**

- 7.3.1.** The proposed development, as submitted to the planning authority, had proposed that foul water would be treated by means of a proprietary treatment unit and discharged to the public sewer. This means of waste water disposal is similar to that proposed in 236030, which was refused, and in subsequent permissions on the family lands to the north. The Board (reason 2) had considered that this solution was unacceptable having regard to Article 5 of the Surface Water Regulations and to the proximity of the treatment plants to the river, due to the risks associated with flooding or any breakdown of the system leading to discharge of untreated effluent to the watercourse. Furthermore, the Board (reason 3) had considered that the individual treatment of foul water on the site could not provide a sufficient and safe treatment system to serve the proposed housing development, and given that deficiency in the public treatment system, the proposed development was considered to be premature.
- 7.3.2.** The appellant (IFI) has pointed out that the public wastewater treatment system is both hydraulically and organically overloaded and that the water quality of the adjacent river is adversely affected. It was recommended that should the Board be minded to grant permission, that a condition prohibiting occupation until after the public system had been upgraded be attached to any such permission, unless an alternative proposal was made for the disposal of wastewater. The applicant

responded with a revised proposal for disposal of wastewater within the site via a soil polishing filter (20/11/18). The appellant does not object to the revised proposal, provided that the Board is satisfied that both treatment and percolation is available of an appropriate standard and applies conditions in this respect.

- 7.3.3.** The grounds of appeal were accompanied by a report from Irish Water as part of its wastewater discharge licence, the Annual Environmental Report 2017, which stated that the primary discharge point was non-compliant with the Emission Limit Values in respect of the following parameters – BOD, COD, TSS, Ortho P and Ammonia N. It was stated that there were 30 samples non-compliant and a failure to comply on all 6 occasions that the parameters were tested in 2017. However, the ‘significance of the results’ states that notwithstanding the non-compliance with the ELVs for the licence, the receiving waters meet the required EQs and the discharge from the plant does not have an observable negative impact on the water quality. The appellant disputes this and provides its own evidence in the form of photographs of observed negative impact on the river, which is a salmonid river.
- 7.3.4.** Regardless of whether the water quality of the river is currently meeting the required standards, there is sufficient evidence to suggest that it is under threat from the lack of capacity of the public sewerage system, both hydraulically and organically. The revised proposal to defer connection to the public sewer until it has been upgraded, and in the meantime dispose of effluent within the site, with a proprietary unit and soil polishing filter, together with a commitment to connect to the public sewer once upgraded, goes a long way towards addressing the reasons for refusal of 236030. However, the potential risks to the water quality of the Bunsheelin River, given the proximity of the site and proposed treatment unit to the watercourse, and the uncertainty regarding the flood risk associated with the site, means that issues highlighted in the second and third reasons for refusal of 236030 remain unresolved. As highlighted in Reason 2, there would be an unacceptable threat to water quality because of the risks of flooding or any breakdown of the system leading to discharge of untreated effluent into the watercourse.
- 7.3.5.** As stated in reason no. 2 (236030), Article 5 of the European Communities Environmental Objectives (Surface Waters) Regulations 2009, requires that a public authority, in performance of its functions, shall not undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological

status of a body of surface water. In light of the information provided with the grounds of appeal regarding water quality and the overloading of the public septic tank, together with the failure to provide adequate evidence to dispel the flood risk associated with the proposed development as discussed in 7.2 above, it is considered that the applicant has not adequately demonstrated that a safe and sufficient wastewater treatment system for the development can be provided. Given the lack of hydraulic and organic capacity in the public system, which is not due to be included in the capital investment programme until 2022, the proposed development is, therefore, considered to be premature. The proposed development would, therefore, be prejudicial to public health and pose an unacceptable threat of water pollution, and should be refused. Should the Board be minded to grant permission however, it is considered that this matter could be addressed by means of a request for further information.

#### **7.4. Visual and riverside amenity**

- 7.4.1.** The previous Board decision (236030) refused the proposed development of four houses on a larger site on the basis that the development would be visually incongruous and would adversely affect the character of the adjoining riverside walkway. This was based on the layout of the development, the constricted nature of the site and to the impact on the riparian corridor of the Bunsheelin River. In the intervening period, three individual houses have been constructed on the larger site, some of which are quite close to the riparian corridor. It is considered that one additional dwelling in the gap between the swimming pool and the closest house to the north would not, in itself, have a significantly adverse effect on the character of the riverside amenity or be unduly visually congruous. It is considered therefore that this reason is no longer of relevance.

#### **7.5. Environmental Impact Assessment**

Having regard to the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 7.6. Appropriate Assessment

There are seven European sites within a 15km radius of the site, which are as follows:

St. Gobnet's Wood SAC (000106) which lies approx. 11km to the north-east.

Mullaghanish to Musheramore Mountains SPA (004162) which lies approx. 12km to the north-east.

Derryclogher Bog SAC (001873) which lies approx. 12 km to the south-west.

Bandon River SAC (002171), which lies approx. 14km to the southeast.

The Gearagh SPA (004109) and The Gearagh SAC (000108), which lie approx. 15km to the east.

Glanlough Woods SAC (002315) which lies approx. 15km to the north-west.

Given the distances involved, that the site is located in an established area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

## 8.0 Recommendation

- 8.1. I recommend that planning permission should be refused for the construction of a new dwelling on the site for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The proposed development is located within an area identified as being at risk of flooding. Having regard to policy objectives WS6-1 and WS6-2 of the current Cork County Development Plan 2014, and to the requirements of the Planning System and Flood Risk Management Guidelines for Planning Authorities 2009, which seek to avoid the development of vulnerable uses in such areas, and in the absence of a site-specific flood risk assessment, the Board is not satisfied that the proposed development would not give rise to a risk of flooding and that in conjunction with other recent development in the vicinity of the site, would not contribute to flooding elsewhere. The proposed

development, would, therefore, be contrary to the proper planning and sustainable development of the area.

2. In the absence of a site-specific flood risk assessment, the Board is not satisfied that the proposed individual waste water treatment system, notwithstanding the proposed proprietary treatment plant and sand polishing filter, would not pose an unacceptable threat of water pollution, because of the risks of flooding leading to the discharge of untreated effluent into a watercourse. The proposed development would, therefore, be premature by reference to the deficiency in the public sewerage system serving the area and the period of time within which this constraint may be reasonably be expected to cease. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

Mary Kennelly  
Planning Inspector

22<sup>nd</sup> January 2019