



An
Bord
Pleanála

Inspector's Report ABP-303922-19

Development	House
Location	Site 7 The Paddocks, Bridge Road, Listowel, County Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/1221
Applicant(s)	Robert Brennan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Robert Brennan
Observer(s)	None
Date of Site Inspection	20 th May, 2019
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The estate within which the appeal site is located is to the south of the town centre of Listowel in County Kerry. This part of the town is within a meander of the River Feale and is being developed for housing. The site of the proposed development consists of a corner plot at the northern end of an established housing estate, "The Paddocks", to the south of the town centre in Listowel, County Kerry. It is bounded to the north and east by existing detached, dormer dwellings and to the west and south by the estate road network, with detached dormer dwellings on the opposite side of the road.

2.0 Proposed Development

- 2.1. The proposed development would comprise a four bedroom, dormer style, detached house with a stated gross floor area of 200.63 square metres, on a site with a stated area of 0.058 hectares. The development would be served by mains water and sewerage supplies.
- 2.2. Details submitted with the application included information on flood control measures proposed to be implemented.

3.0 Planning Authority Decision

3.1. Decision

On 15th February, 2019, Kerry County Council decided to refuse permission for the proposed development for one reason relating to the site being at risk of flooding.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted the site' planning history, development plan provisions, and reports received. It was stated that the site is located on lands zoned 'General Development' in the Listowel Town Development Plan and within an area designated as 'Flood Zone A' as per *The Planning System and Flood Risk Management Guidelines*. The proposed flood protection measures and proposed finished floor

level were noted. It was considered that, notwithstanding these measures, the proposed development would be a flood risk. A refusal of permission was recommended.

3.2.2. Other Technical Reports

The County Archaeologist noted that there were no recorded monuments in proximity to the proposed development.

The Conservation Planner stated that she had no observation to make in relation to the proposal.

3.3. Prescribed Bodies

Irish Water had no objection to the connection to water services.

3.4. Third Party Observations

Michael J Healy-Rae TD requested an update on the application.

4.0 Planning History

P.A. Ref. 18/669

Outline permission for a house was refused by the planning authority in August, 2018 for one reason relating to the flood risk associated with the site.

5.0 Policy Context

5.1. Listowel Town Development Plan 2009-2015

Zoning

The site is zoned 'General Development' with the objective:

"To provide for developments which have a low vulnerability to flooding or for developments which can manage flood risk to an acceptable level without increasing flood risk elsewhere and which demonstrate that they cannot be accommodated, in a sustainable manner, within low or lower flood probability areas. This zoning is intended to be flexible, provided that the basic concepts of proper planning,

sustainable development, town centre vitality and viability, good design practice and residential amenity are protected. Developers should be cognisant of the DEHLG guidelines for Planning Authorities on 'The Planning System and Flood Risk Management' with regard to all aspects of development proposals for these lands."

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be synthesised as follows:

- The proposal is located in lands of 1:1000 fluvial flood extent and not in lands of 1:100 fluvial flood extent as stated by the Planner and in the decision.
- The Development Plan zoning provision provides for "development in lands ... which can manage flood risk to an acceptable level without increasing flood risk elsewhere ..." The proposal accommodates flood gates, non-return valves and walled site boundaries. These additional measures have been accepted by the Planning Department and Environment Section in recent developments in the same flood zone, namely the Listowel Community Centre (P.A. Ref. 16/171).
- The zoning provides for developments "which can demonstrate that they can be accommodated, in a sustainable manner, within low or lower probability areas". The proposed site is at the highest point of the lands zoned 'General Development' at this location and is 320m from the River Feale.
- The zoning objective states "The zoning is intended to be flexible, provided that the basic concepts of proper planning, sustainable development, town centre vitality and viability, good design practice and residential amenity are protected." This is a vacant site in an established residential development that is less than a 5 minute walk to the town centre, town park, community centre, shops, church, etc.
- The CFRAM Map does not refer to site no. 7 as being in Flood Zone A nor does it show the site as being in a flood area of 1% AEP Fluvial Flood Extent (i.e. 1 in 100). The CFRAM Study report for Listowel clearly identifies the site

as being in land with a 0.1% AEP Fluvial Flood Extent (i.e. 1 in 1000 chance in any given year). Listowel Racecourse is also within such lands and permission was granted for a new restaurant there under P.A. Ref. 15/537 and permission was granted for an extension to Listowel Community Centre (P.A. Ref. 16/171).

- Reference is made to OPW and local authority reporting (Unique ID:230357) and to the area historically flooding before it was protected by an embankment.
- The Council granted permission for 200 houses in this area and subsequent estate developments were developed over time, with currently over 100 built.
- The Town Council built a river walk along the bank of the River Feale. If it was in an area of flood risk it would not have been constructed.
- Permission was granted by the Board for two large residential developments on the lands, namely ABP Ref. PL 67.218427 and ABP Ref. PL 67.217559.
- The appeal site is a fully serviced site. There were no issues with the proposal from the Council's Environment Section.
- There are no public notices in this area indicating that these lands are susceptible to flooding.

The appeal includes the referenced CFRAM report and map.

6.2. Planning Authority Response

The planning authority submitted that it took into consideration the flood protection measures proposed and the existing housing in the area. It was considered that the potential for flooding was a real and serious issue and that the precedent for further development in the area had also to be considered. It was submitted that a refusal of permission was appropriate.

7.0 Assessment

- 7.1. I consider that the sole issue of relevance to the appeal relates to the flood risk associated with the proposed development.
- 7.2. The site of the proposed development is at the northern end of a residential estate close to the town centre of Listowel. This site is part of an established housing estate. It is the only remaining site within “The Paddocks” that remains undeveloped and is one of the remotest locations from the River Feale. This estate is fully serviced and the site of the proposed development is bounded by a front boundary wall and by party boundary walls with residential properties to the north and east, while the entrance road to the estate lies to the south. There is a dished entrance along the frontage and footpaths, public lighting, open spaces, etc. are developed throughout the estate. There are houses to the north and east of this site and most of the housing in “The Paddocks” and all of the housing in the neighbouring estate, “The Meadows”, are sited to the south, i.e. between the site and the River Feale. The River Feale has an embankment along its edge and there is a public walkway along the river edge.
- 7.3. It is my submission to the Board that the proposed site has to one of the least vulnerable sites to flooding at this location being one of the most distant plots in this residential area from the River Feale, the source of flooding concerns in this area. Needless to indicate that if inundation of water occurred at this location by river flooding arising from the capacity of the River Feale being exceeded and flood defences being overwhelmed, this would of course require virtually all of the housing at this location to be extensively flooded likely before the appeal site itself would be subject to flooding.
- 7.4. This site is bounded on all sides by established detached dormer houses. I note for the Board that planning permissions have been granted by the planning authority for dwellings in the immediate vicinity of this site in recent years as follows:
- Site No. 8 (i.e. immediately adjoining the site to the north) for the retention of the dwelling within revised site boundaries (P.A. Ref. 12/4025);
 - Site No. 4 (i.e. adjoining site to north-east) for the retention of the house (P.A. Ref. 16/488); and

- Site No. 5 (a short distance to south of appeal site) for the retention of the dwelling within revised site boundaries (P.A. Ref. 09/4014).

It is my submission to the Board that the planning authority is being wholly inconsistent in its approach to dealing with this application in light of the approach taken in other similar types of development in the immediate vicinity.

7.5. The appeal site is zoned "General Development" which allows for developments which have a low vulnerability to flooding or developments which can manage flood risk to an acceptable level without increasing flood risk elsewhere. It is reasonable to assume that this site is one with a lower vulnerability to flooding than the significant number of houses that have already been permitted to be developed at this location and have subsequently been developed. The proposed development itself poses no flood risk to other properties in the area. Furthermore, I note that the appellant is providing flood control measures to address any potential flooding of this site. It appears inexplicable, in light of what has been developed in this area, what has recently been permitted, the flood control measures being provided, and having regard to the actual location of the site relative to established development and the River Feale, why the planning authority has chosen this site, at this time, to determine that this fully serviced/serviceable site is more prone to flooding than others that surround it such that it merits a refusal of permission. I do not consider this to be consistent, balanced or fair.

7.6. I note that there is a difference of opinion between the planning authority and the appellant regarding probability of flooding at this location, with the planning authority determining the site to be within Flood Zone A and the appellant submitting that the CFRAM Study for Listowel identifies the site as being on land with a 0.1% AEP Fluvial Flood Extent (i.e. within Flood Zone B). I note the available OPW Draft Flood Mapping for this area and that this indicates that the site does not lie within Flood Zone A. Indeed, it is somewhat unclear as to whether the site lies directly within Flood Zone B, although it could reasonably be determined to be so in light of the arbitrary boundaries drawn and lands immediately adjoining this site being so designated. With regard to the "*The Planning System and Flood Risk Management Guidelines for Planning Authorities*", I note that no Justification Test appears to have been undertaken by the applicant and no results were submitted to the planning authority as part of the application details. The Board may consider seeking such

details by way of further information. It is my submission, in light of the area's significant flood prevention measures having been put in place to address fluvial flooding and the applicant's control measures being provided as part of the development that the necessity for such further information on this infill site is unwarranted at this time.

7.7. Arising from the flood protection measures in the wider area to protect properties from fluvial flooding and from the precautionary measures being taken by the applicant, I consider that it may reasonably be determined that this development can be accommodated in a sustainable manner at this site. The proposal would be compatible with the zoning provisions for these lands and would otherwise be in accordance with the provisions of the current Kerry County Development Plan.

7.8 Finally, I note that the Board has previously granted permission for housing developments at this location under Appeal Refs. ABP Ref. PL 67.217559 and PL 67.218427. The former relates to a scheme of 68 houses on lands to the south-east of the site, i.e. between it and the River Feale, and the latter relates to a scheme of 33 houses on lands to the south of the site, i.e. between it and the River Feale. These developments were permitted and it was determined by the Board that those residential schemes would not increase the risk of flooding.

Note 1: Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development such that there would be a need for environmental impact assessment.

Note 2: It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any designated European Site and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

8.0 Recommendation

- 8.1. I recommend that permission is granted in accordance with the following reasons, considerations and conditions.

9.0 Reasons and Considerations

Having regard to the zoning provisions for the site as set out in the Listowel Town Development Plan and to the design, character and layout of the development proposed, it is considered that the proposed dwelling would not seriously injure the amenities of the area or properties in the vicinity, would not increase the risk of flooding, and would otherwise be in accordance with the provisions of the current Kerry County Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Kevin Moore
Senior Planning Inspector

23rd May 2019