



An
Bord
Pleanála

Inspector's Report ABP-305220-19

Development	Construct two single-storey detached houses, vehicular access and associated works
Location	Millbrook, Bellanamullia townland, Athlone, County Roscommon
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	PD/18/621
Applicant(s)	Eamon Minagh
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party
Appellant(s)	Clare Lennon
Observer(s)	None
Date of Site Inspection	25 th November 2019
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1.** The appeal site is located on the north side of the Bellanamullia area of Athlone, 2km from the M6 motorway, and approximately 4.5km northwest of Athlone town centre.
- 1.2.** It is stated to measure 0.47ha and currently accommodates a detached bungalow, set back 18m from the front roadside boundary. Vehicular access to the house on site and to the lands towards the rear is available from the southwest corner off a local road (L-7560 local road), which connects with the R362 regional road 200m to the south of the appeal site. The open undeveloped lands to the rear of the site flank onto the right bank of the Cross River and do not appear to be in use for a specific purpose.
- 1.3.** The surrounding area is characterised by one-off houses fronting onto the local road to the south and residential estates to the west. Lands to the north and east of the site on the opposite side of the river are in agricultural use. Ground levels in the immediate vicinity drop gradually in a southeast direction with a stated 2.5m drop from the front boundary with the local road to the rear boundary with the river.

2.0 Proposed Development

- 2.1.** The proposed development comprises the following:
 - subdivision of the property and the construction of two four-bedroom detached single-storey houses, both with gross floor areas of 127sq.m and accessed off an existing vehicular entrance;
 - site development works, including raised ground levels, connections to local services, retaining structure along the river, landscaping and boundary treatments.
- 2.2.** In addition to the standard planning application documentation and drawings, the application was accompanied by a Flood Risk Assessment. In response to a request for further information a Certificate of an Exemption from the provision of Part V housing, a letter of consent from the stated owner of part of the site and a second Site Specific Flood Risk Assessment were submitted.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant permission for the proposed development, subject to 17 conditions of a standard nature, including the following:

- Condition no.9 – phasing plan to be submitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Planning Officer (February 2019) can be summarised as follows:

- the proposed development would comply with the zoning objectives for the site and settlement strategy polices;
- the density of the proposed development and the design of the houses would be consistent with the existing pattern of development in the area;
- the provision of open space is satisfactory and the proposed development would not result in undue overlooking of neighbouring properties;
- the proposed site layout effectively replicates the layout previously permitted under Roscommon County Council (RCC) Ref. PD/08/1353;
- further information is required with respect to boundary treatments, sight visibility at the entrance, provision of on-site car park spaces, public lighting, footpaths, social housing and site services, including whether a pumped or gravity-fed connection to the foul sewer would be provided;
- the site is in flood zone A and a site specific flood risk assessment, including a justification test, is required.

The recommendation within the final Planning Report (July 2019) reflects the decision of the planning authority. The Planning Officer was satisfied that their previous concerns had been fully addressed in the further information response submitted.

3.2.2. Other Technical Reports

- Roads & Transportation – further information and amendments required;
- Area Engineer – further information required;
- Environment Section – further information required and conditions set out.

3.3. Prescribed Bodies

- Irish Water – no response;
- Inland Fisheries Ireland – no response;
- Waterways Ireland – no response;
- Environmental Protection Agency – no response;
- Department of Agriculture, Food & the Marine – no response.

3.4. Third-Party Observations

- 3.4.1. During consideration of the application by the Planning Authority, two submissions were received from a resident of the house adjacent to the north of the site. The issues raised in the submissions are similar to those also raised in the grounds of appeal and are summarised within the grounds of the appeal below.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. According to the Planning Officer's report, pre-planning discussions took place between representatives of the planning authority and the owner of the site. The following recent planning applications relate to the appeal site:

- RCC Ref. PD/08/1353 – permission was granted by the planning authority in February 2009 for the demolition of a domestic garage and the construction of two houses. Condition 4 of this permission required details of wayleaves along the riverbank and the life of this permission was subsequently extended until February 2019 under RCC Ref. PD/13/3047;

- RCC Ref. PD/08/177– permission was refused by the planning authority in April 2008 for the demolition of a house and the construction of eight houses and a garage for reasons relating to scale, density, layout, site constraints, overlooking, traffic hazard and wastewater treatment capacity;
- RCC Ref. PD/05/1506 – permission was granted by the planning authority in July 2006 for the demolition of a house and the construction of three houses and ancillary services. Condition 4 of this permission required details of a 6m-wide wayleave along the riverbank;
- RCC Ref. PD/05/440– outline permission was refused by the planning authority in June 2005 for the construction of three houses for reasons relating to the precedent the development would set and the site constraints, including the low-lying nature of the lands and the proximity to the river.

4.2. Surrounding Sites

- 4.2.1. There have been numerous planning applications for one-off housing, domestic alterations and residential estates in the surrounding area, however, none of these are of particular relevance in the consideration of the subject appeal.

5.0 Policy & Context

5.1. Monksland/Bellanamullia (Athlone West) Local Area Plan 2016-2022

- 5.1.1. Bellanamullia is identified as a tier two settlement within the County Settlement Strategy. The subject site is zoned 'existing residential' within the Local Area Plan, where residential development is permitted in principle and where it is the stated aim to, inter alia:
- protect and enhance the residential amenities of existing and new residential communities and provide a high level of services within walking distances of residential developments;
 - provide for infill residential development at a density and design appropriate to the area and the needs of the community.

5.1.2. Map 8 of the Plan illustrates that part of the appeal site alongside the Cross River is at risk of flooding. Sections 7.4 and 8.2.2 of the Plan address flood risk, including the following relevant policies:

- policy 21 – protect waterbodies, including buffers where appropriate;
- policy 22 – protect flood zones A & B from inappropriate development;
- policy 24 – require site specific flood risk assessments;
- policy 25 - require flood risk impact assessment and management plans for significant development impacting on flood risk areas;
- policy 27 – alleviating flood risk requires appropriate assessment.

5.1.3. Chapter 8 of the Local Area Plan includes development management guidelines and standards for residential development under section 8.2.11.

5.2. National Guidelines

5.2.1. The following planning guidance documents are relevant:

- Design Manual for Urban Roads and Streets (DTTaS and DoECLG, 2013);
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) (2009);
- The Planning System and Flood Risk Management – Guidelines for Planning Authorities (including the associated Technical Appendices) (2009).

5.3. Natural Heritage Designations

5.3.1. The nearest designated sites to the appeal site, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), are listed in table 1 below.

Table 1. Natural Heritage Designations

Site Code	Site Name	Distance	Direction
000440	Lough Ree SAC	3.1 km	northeast
004064	Lough Ree SPA	3.1 km	northeast
000216	River Shannon Callows SAC	3.6 km	southeast

004096	Middle Shannon Callows SPA	3.6 km	southeast
001625	Castlesampson Esker SAC	4.6 km	west
002339	Ballynamona Bog and Corkip Lough SAC	4.7 km	west
002337	Crosswood Bog SAC	8.3 km	east
000611	Lough Funshinagh SAC	9.2 km	northwest

5.4. Environmental Impact Assessment - Preliminary Examination

- 5.4.1. Having regard to the nature and scale of the proposed development, it is considered that the issues arising from the proximity and connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment), as there is no likelihood of other significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third-party appeal has been lodged by a resident of the house adjoining the site to the north, and in conjunction with their third-party observations, the grounds of appeal can be summarised as follows:

- fluvial flooding occurred on site in March 2019;
- the applicant's flood risk assessment does not confirm that there would be no increase in flood risk to the appellant's property;
- a flood risk assessment of the proposed development carried out by representatives of the appellant is submitted and this confirms that there would be increased flood risk for neighbouring properties and that the proposed development would not be appropriate for the site.

6.2. Applicant's Response

- 6.2.1. The applicant's response to the grounds of appeal can be summarised as follows:

- the appellant's flood risk assessment is based on a visual survey, as opposed to the applicant's flood risk assessment which was based on surveys, an on-site visit and detailed engineering inputs;
- increased flood risk to the appellant's property would not arise, as the finished-floor level to the appellant's property is at 42.07m ordnance datum (OD), which would be 1.95m over the 1 in 1,000 flood event level;
- foul and surface water drainage would be designed to address flood risk and environmental requirements;
- the proposed development includes fill in the locations of the houses, but all areas on site would be above the 40.13m OD maximum flood level;
- the applicant's flood risk assessment highlights that there would not be an adverse impact on the hydrological regime of the area and increased flood risk to neighbouring properties and lands would not arise.

6.3. Planning Authority Response

6.3.1. The planning authority did not respond to the grounds of appeal.

6.4. Observations

6.4.1. None received.

7.0 Assessment

7.1. Introduction

7.1.1. Subject to planning and environmental considerations addressed below, the principle of constructing two houses on the subject suburban backland site, which is zoned 'existing residential', complies with relevant housing policies and zoning objectives contained within the Monksland / Bellanamullia Local Area Plan 2016-2022. Having regard to the nature, scale, layout and design of the proposed houses and the associated services and works, I am satisfied that the proposed development would not unduly impact on the visual amenities of the area and that undue overlooking, overshadowing or overbearing impacts would not arise for neighbouring residents.

Consequently, I consider the substantive planning issue arising from the grounds of appeal and in the assessment of the application and appeal, relates solely to flood risk.

7.2. Flood Risk

- 7.2.1. The eastern and northern boundaries of the appeal site are formed by the right bank of the Cross River channel, which drains lands from the northwest of the appeal site into the River Shannon, approximately 5.2km to the southeast. During their initial consideration of the planning application, the planning authority stated that the site is susceptible to flooding, and as a result a site specific flood risk assessment was submitted by the applicant. The grounds of appeal were accompanied by a flood risk assessment contesting matters raised within the applicant's site specific flood risk assessment, while asserting that the potential for increased risk of flooding to neighbouring lands has not been fully addressed in the application.
- 7.2.2. While no flood incidents are reported by the Office of Public Works (OPW) for the Cross River, historical mapping identifies that the appeal site and immediate lands were previously liable to flooding and geological surveys reveal that the site is underlain with alluvium, which are deposits of clay, silt, and sand left by flowing water. The Preliminary Flood Risk Assessment and Management Study (PFRAMS) identified the eastern side of the appeal site as being within an indicative flood zone, however, the subsequent detailed Catchment Flood Risk Assessment and Management Study (CFRAMS) identifies a reduced level and area of flooding on site.
- 7.2.3. The flood risk assessments undertaken by representatives of the applicant and the appellant, estimate differences in the flood water levels on site, the displacement volumes of water arising from the proposed development and the flood water flow rates. The applicant asserts that based on surveys and modelling only part of the footprint for the northern proposed house would be within flood zone B (1 in 1,000 year flood event extents). The appellant asserts that based on the OPW CFRAM maps and a 20% climate change factor, the site is partially within flood zone A (1 in 100 year flood event extent) and partially within flood zone B.

- 7.2.4. It is proposed to construct two houses within 4.5m and 8.4m of the Cross River, with their rear gardens backing onto the river bank. These houses would be connected to watermains and sewer along the local road, including a rising main to the sewer served by an overflow tank, a pump sump and a valve chamber. Surface water would be collected from hardstanding areas and directed to a fuel interceptor, an attenuation tank and a pump, prior to entering the adjoining watercourse. The finished-floor levels of the proposed houses would be approximately 1.3m above existing ground levels, and fill would be imported to the site to raise ground levels by approximately 0.6m to 1m across the entire site. Based on the cross sections included within Drawing No.2918-50 PP-25, a 1.7m-high retaining structure would also be constructed along the river channel.
- 7.2.5. The OPW document titled 'The Planning System & Flood Risk Management - Guidelines for Planning Authorities' emphasise that a precautionary approach should be applied to reflect uncertainties in flooding datasets and risk assessment techniques. Based on this and the information available, I am satisfied that a flood risk assessment of the proposed development should be undertaken based on the site being partially within flood zones A and B with a moderate to high probability of flooding. For the purposes of flood risk assessment housing developments, including their associated amenity and service areas, would be a 'highly vulnerable' category of development in flood zones A and B. Based on Tables 3.1 and 3.2 of the OPW Guidelines the proposed development must be justified in planning terms based on zoning and the associated flood risks.
- 7.2.6. The OPW Guidelines and policy 21 of the Local Area Plan require provision of development-free, riparian strips for river maintenance. A reservation along the river is not provided within the proposed development and this is not a matter that should be addressed by way of a planning condition attached to a permission, given the implications for the housing layout, including rear amenity areas. Application details relating to the retaining structure and the increase in levels across the site are lacking, which impacts on the potential to fully assess the flood risk associated with the proposed development, including residual risks to water quality associated with the construction works along the river channel.
- 7.2.7. The applicant acknowledges that some displacement of flood waters would take place as a result of the proposed development, but that this would have an

imperceptible impact on the Cross River water body. Furthermore, the applicant's flood risk assessment suggests that the amount of floodwater that could potentially be displaced solely relates to the cubic capacity directly below the footprint of the northern house and, therefore, excludes the cubic capacity associated with the additional extensive fill proposed to be imported onto the site. Consequently, I am satisfied that the site specific flood risk assessment does not duly consider the potential impact of the proposed development on neighbouring lands arising from the displacement of flood waters.

- 7.2.8. The proposed development fails to compensate for the loss of floodplain storage and no mitigation has been proposed to reduce the risk of flooding to neighbouring properties. Furthermore, the proposals would not appear to be sufficiently cautious with respect to climate change and other uncertainties. Without due consideration of the impacts of boundary treatments and other works on potential flood flow paths and the impacts arising from the narrowing of the conveyance capacity for the river channel, I am satisfied that the proposed development would increase the risk of flooding to properties downstream and upstream of the site. Accordingly, the proposed development should be refused permission for reasons relating to flood risk.

8.0 Appropriate Assessment – Stage 1 Screening

8.1. Introduction

- 8.1.1. The proposed development is described in section 2 of this report. Neither an Appropriate Assessment (AA) Screening Report nor a Natura Impact Statement (NIS) were submitted with the application or appeal. The northern and eastern boundaries of the site are formed by the Cross River, a tributary of the River Shannon with good water quality status northwest of the R446 regional road, 2.5km to the southeast of the site.

8.2. Description of European Sites

- 8.2.1. There are eight European sites within 10km of the subject site and these are listed in section 5.3 above. With the exception of the River Shannon Callows SAC (Site

Code: 000216) and the Middle Shannon Callows SPA (Site Code: 004096), I am satisfied that the other sites within 10km of the appeal site can be immediately 'screened out' on the basis that significant effects on these European sites could be ruled out as a result of the separation distance from the appeal site to the European sites or the location of the European sites upstream of the appeal site.

- 8.2.2. The River Shannon Callows SAC and Middle Shannon Callows SPA comprise almost the entire freshwater element of the River Shannon between Lough Ree (Athlone) and Lough Derg (Portumna). The following conservation objective is set for the River Shannon Callows SAC:

Table 2. Conservation Objective for the River Shannon Callows SAC (000216)

To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected:		
Code	Description	
6410	Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae)	
6510	Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis)	
8240	Limestone pavements (priority habitat)	
91E0	Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) (priority habitat)	
Code	Common Name	Scientific Name
1355	Otter	Lutra lutra

- 8.2.3. The following conservation objectives are set for the Middle Shannon Callows SPA:

Table 3. Conservation Objectives for Middle Shannon Callows SPA (004096)

To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:		
Bird Code	Common Name	Scientific Name
A038	Whooper Swan	Cygnus cygnus
A050	Wigeon	Anas penelope
A122	Corncrake	Crex crex
A140	Golden Plover	Pluvialis apricaria

A142	Lapwing	Vanellus vanellus
A156	Black-tailed Godwit	Limosa limosa
A179	Black-headed Gull	Chroicocephalus ridibundus
To maintain or restore the favourable conservation condition of the wetland habitat at Middle Shannon Callows SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.		

8.3. Is the project necessary to the management of European sites?

- 8.3.1. The proposed development is not directly connected with the River Shannon Callows SAC and the Middle Shannon Callows SPA, and it is not necessary to the management of these sites or any other European site.

8.4. Direct, Indirect or Secondary impacts

- 8.4.1. There is hydrological connectivity via the Cross River between the proposed works and the River Shannon Callows SAC and the Middle Shannon Callows SPA. Arising from this, the likely significant impacts, with reference to the River Shannon Callows SAC and the Middle Shannon Callows SPA sites' conservation objectives, would be solely through:

- deterioration of water quality via pollutants or sedimentation to ground or surface water (e.g. run-off silt, fuel oils, wastewater effluent) at construction and operational phases of the proposed development.

- 8.4.2. I note the concerns raised in my assessment above regarding the lack of details regarding the retaining structure along the riverside and the absence of a buffer strip along the riverside. I also note that construction and environmental management details to develop the site, including details of how materials to be imported to the site would be managed and details of how the retaining structure would be constructed, are also not fully addressed in the application. The conservation objectives of the River Shannon Callows SAC and the Middle Shannon Callows SPA aim to maintain or restore the favourable conservation condition of the otter and a variety of bird species, including regularly-occurring migratory waterbirds. Having regard to the downstream hydraulic connectivity between the appeal site and the River Shannon, there is potential for interdependence and interconnectivity between

surface water running along the appeal site and the habitats of regularly-occurring migratory waterbirds, bird species listed as being of Special Conservation Interest for the Middle Shannon Callows SPA and the otter. Furthermore, there are concerns that the proposed development would pose an unacceptable risk to groundwater. Therefore, it cannot be reasonably ruled out beyond scientific doubt that there would not be significant effects, either individually or in combination with other plans or projects, on these European sites on the basis of the information available.

8.5. Cumulative and In-Combination Effects

- 8.5.1. I do not consider that there are any specific in-combination effects that arise from the development when taken in conjunction with other plans or projects.

8.6. Appropriate Assessment Screening Conclusion

- 8.6.1. On the basis of the information provided with the application and in response to the appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Shannon Callows SAC (Site Code: 000216) and the Middle Shannon Callows SPA (Site Code: 004096), in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

9.0 Recommendation

- 9.1. I recommend that planning permission for the proposed development should be refused for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. The proposed development is in an area that is at risk of flooding. The Board is not satisfied, on the basis of the information lodged with the planning application and in response to the appeal, that the proposed development would not give rise to a heightened risk of flooding either on the proposed development site itself, or on other lands. The proposed

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

2. On the basis of the information submitted with the planning application and the appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the River Shannon Callows SAC (Site Code: 000216) and the Middle Shannon Callows SPA (Site Code: 004096), or any other European site, in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

Colm McLoughlin
Planning Inspector

29th November 2019