



An  
Bord  
Pleanála

## Inspector's Report ABP 307785-20

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<b>Development</b>	73 dwellings
<b>Location</b>	Dromin, Cloghroe, Tower, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	19/5413
<b>Applicants</b>	Paul Coburn & Kevin McDonnell
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	Rosalind & William Crowley
<b>Observers</b>	(1) Colm & Madeline O'Sullivan (2) Fiona Kearney & Willie Carey

(3) Dr. John O’Riordan

(4) Lynn Canham

(5) An Taisce

**Date of Site Inspection**

28/10/20

**Inspector**

Pauline Fitzpatrick

## 1.0 Site Location and Description

**Note 1:** This comprises the 2<sup>nd</sup> appeal for a residential development on the appeal site. File ref. ABP 302594-18 refers. Save for the inclusion of a greater extent of road boundary the site is the same as detailed on the said previous appeal.

**Note 2:** The site is now within the jurisdiction of Cork City Council.

- 1.1. The site is located on the south-western outskirts of Tower to the north west of the junction between R579 (Ballincollig to Kanturk) and R617 (Cloghroe to Blarney) at Cloghroe. This site is 3.9 km to the north west of Ballincollig and 3.9 km to the west of Blarney. A small complex of shops, a church and a national school are adjacent to the junction. Traffic calming measures including a pedestrian crossing have been carried in the vicinity. There are three small housing estates in the vicinity; Woodlands and Fairways on the eastern side of the R617 and Senandale on the western side. This latter housing estate is immediately to the east of the appeal site. Three houses with associated outbuildings which front onto the regional road bound the site to the south-west. The first of these is accompanied by a plot to the rear, which the site adjoins on three of its four sides.
- 1.2. The site includes a stretch of the regional road and adjoining lands either side of the site entrance within the site boundary. The site has a stated area of 6.28 hectares.
- 1.3. The site is irregular in shape composed of three fields, the boundaries of which are, in the main, delineated by tree lined hedgerows or vegetated mounds. The first of the fields to the south east, is subject to gentle gradients, which rise in a north westerly direction, the second, to the north east, is subject to gentle/moderate gradients, which rise in a westerly direction, and the third, to the north west, is subject to moderate gradients, which rise in a northern/north western direction. The site thus rises progressively over the first, second, and third fields.
- 1.4. A stream flows along the eastern site boundary. The said stream is culverted under the regional road and discharges into the Owennagearagh River on the southern side of the R579. A solid timber fence denotes the rear boundaries to residential properties in Senandale.

## 2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on 30/05/19 with further plans and details received 20/03/20 and 09/06/20 following requests for further information (FI) and clarification of FI dated 19/07/19 and 16/04/20 respectively.
- 2.2. Unsolicited FI was submitted 18/07/19
- 2.3. The proposal is for 73 dwellings consisting of:
  - 5 no. detached 5 bedroom (house type A)
  - 15 no. detached 4 bedroom (house type B)
  - 46 no. semi-detached 3 bedroom (house types C, D & E)
  - 7 no. semi-detached/terraced 3 bedroom (house type F)
- 2.4. The layout is comparable to that proposed in the previous application. The proposed dwelling houses would be sited in the second and third of the fields described above. The proposed entrance to the site would be sited just to the west of the existing agricultural access. The on-site access road would pass through the first of the fields to serve the proposed dwelling houses beyond. This field and land over the southern and eastern portions of the second field would be laid out as public open space and existing vegetation along the site boundaries and along the majority of the internal field divisions would be retained and augmented.
- 2.5. The application is accompanied by:
  - Planning Statement
  - Infrastructure Report
  - Flood Risk Assessment (addendum submitted by way of FI)
  - Screening Report for Appropriate Assessment
  - Traffic and Transport Assessment
  - Stage 1 Road Safety Audit
  - Outdoor Lighting Report and Lighting and Power Specification

- Consent from the landowners and from Cork County Council (and subsequently from Cork City Council) to include the public road and adjoining lands within the site boundary.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Grant permission for the above described development subject to 60 conditions. Of note:

*Condition 5:* following details to be submitted to planning authority (Cork City Council):

- (a) detailed design of surface water/flood infrastructure for written agreement with City Council and OPW.
- (b) phasing plan including provision of flood defence infrastructure. Surface water/flood defence structures to be completed prior to commencement of development on any dwellings.
- (c) full written legal consent from all landowners to construction and carrying out of the flood defence scheme.
- (d) full written legal consent from all landowners to maintain the scheme.
- (e) detailed future long term maintenance plan.
- (f) plan for managing future legal liability associated with flood relief measures.

*Condition 6:* Before commencement of development applicant to obtain consent under Section 50 of the Arterial Drainage Act 1945.

*Condition 7:* Applicant to maintain proposed flood defence measures until such time as they become the responsibility of the local authority.

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

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

The *1<sup>st</sup> Area Planner's* report dated 19/07/19 notes that the density and scheme layout is largely comparable to that subject of the previous application. In terms of

flood risk concerns have been highlighted given the complexity of the proposed measures and the detail submitted. FI recommended on flood risk, roads and footpaths layout, parking, boundary treatments and public lighting.

The *Senior Planner's* report dated 19/07/19 details the comments from the Council's Senior Executive Engineer regarding the concerns re. flood risk in which it is stated that the design needs to be at the standard that will be acceptable to OPW which can be a slow process and there are concerns that there could be significant changes to the proposed scheme. The preference would be for the applicant to withdraw the scheme until discussions have taken place with OPW. The *Senior Planner* recommends that a deferral would be the most appropriate course of action but that assurances from the applicants are required that OPW is satisfied with the mitigation measures and that such measures will not make other areas more prone to flooding.

The *2<sup>nd</sup> Area Planner's* report dated 14/04/20 following FI recommends clarification of further information in line with the recommendations of the Coastal and Flood Projects Department report dated 14/04/20 summarised below. The *Senior Planner's* report 16/04/20 endorses the recommendation.

The *3<sup>rd</sup> Area Planner's* report dated 03/07/20 & 06/07/20 following clarification of FI notes that this is a unique situation in that the application before the County Council is now within the jurisdiction of the City Council. Landowner consent to submit the application, only, has been submitted with no evidence of consent to carry out the works. Section 34(12) of the Planning and Development Act 2000, as amended, is noted in this regard. Appropriately worded conditions to be agreed with the City Council and other respective agencies. Grant of permission subject to conditions recommended. The *Senior Planner's* report dated 03/07/20 considers the response in relation to flood risk management and infrastructure to be deficient and, in normal circumstances may warrant a recommendation to refuse permission. Due to the site now being within the administrative area of the City Council it is a matter for the said authority to finalise it to its satisfaction in partnership with OPW. The recommendation of the Area Planner is endorsed.

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

*Area Engineer's* report has no objection subject to conditions.

*Housing Officer* has no objection.

*Water Services* has no objection subject to conditions.

*Environment Section* has no objection subject to conditions.

*1<sup>st</sup> Public Lighting Report* dated 02/07/19 recommends FI. The *2<sup>nd</sup> report* dated 31/03/20 following FI has no objection subject to conditions.

*1<sup>st</sup> Estates* report dated 18/07/19 recommends FI. *2<sup>nd</sup> report* dated 07/04/20 following FI has no objection subject to conditions.

The *Engineering* report dated 01/04/20 following FI states that from an area point of view he is satisfied with the addendum to the FRA report. It should be examined by the Flood Projects Department. No objection subject to conditions.

*RPS (commissioned by Cork County Council to review the planning application)* in its report dated 10/04/20 notes:

- the OPW may consider that the flood flows may be underestimated and that this must be addressed as part of the Section 50 approval process.
- the diversion of the stream must be agreed with IFI.
- full engineering detail of the flood defence scheme must be submitted and agreed with the planning authority.
- the flood defences must be substantially complete before any of the houses are occupied.

Otherwise the general strategy for addressing the wider flood risk in the Cloghroe area as part of the application is reasonable. It is recommended that any grant of permission should be subject to full detailed engineering design of the defences ie. embankments, culverts and any ancillary works. This engineering design should be completed and agreed to the satisfaction of the County Council and, if appropriate, OPW prior to any development commencing.

*Coastal and Flood Projects Department* in a report dated 14/04/20 following FI reiterates the conclusions in the RPS review summarised above. The decision with regard to this application depends on the permission to construct and the future maintenance and liability for the extensive flood defence scheme on public and other lands. Without same it will not be possible for the applicants to deliver a flood

compatible scheme. Their current proposal assumes the transfer of extremely onerous liabilities on Cork City Council. Further information recommended.

The 2<sup>nd</sup> report from *Coastal and Flood Projects Department* dated 02/07/20 following clarification of FI considers:

- Landowner consent to submit the application, only, has been presented. This is insufficient to allow the application to proceed given that the extensive flood works proposed on public lands are critical to ongoing public safety.
- Transfer of maintenance liability has not been presented and the City Council not consulted. The applicant reference to policy cannot be accepted in the absence of consultation and agreement.
- Acquiring a section 50 or detailed design and specification will not address legal liability. The liability is likely to require an extremely large and long term bond.

In view of the above a refusal of permission recommended.

### 3.3. Prescribed Bodies

3.3.1. *Irish Water* has no objection subject to conditions.

3.3.2. *Inland Fisheries Ireland* requests that conditions require that there is no interference with bridging, draining or culverting of the adjacent stream or any watercourse which may be fish bearing without the prior approval of IFI.

3.3.3. *An Taisce* considers that the application needs to address the overarching government policy through 'DoECLG Planning Policy Guidelines' January 2015 which set out a range of considerations on climate and the 49 Action recommendations in the target based Department of Transport 'Smarter Travel – A New Transport Policy for Ireland'.

### 3.4. Third Party Observations

Objections received by the planning authority are on file for the Board's information. The issues raised relate to:

- Amenities of adjoining residential property



- Flooding
- Traffic

## 4.0 Planning History

**ABP 302594-18** – permission refused for 74 dwellings on the site on appeal in February 2019 for following reason:

The southern portion of the proposed development is located in an area which is at risk of flooding. Having regard to ‘The Planning System and Flood Risk Management Guidelines for Planning Authorities’ issued by the Department of the Environment, Heritage and Local Government in November, 2009, it is considered that the proposed development would be premature pending the carrying out of works to mitigate flooding along the R579. The proposed development would, therefore, be contrary to public safety and to the abovementioned Guidelines and would seriously injure the amenities of future residents. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## 5.0 Policy Context

### 5.1. Development Plan

*Blarney Macroom Municipal District Local Area Plan 2017*

The site is within the development boundary of Tower which is identified as a key village.

Objective No. DB-01 - encourage the development of up to 182 additional dwelling units within the development boundary during the plan period.

The southern portion of the site is within Flood Risk Zones A and B.

Section 4.8.17 – any development on the lands to the south west of the village will require the preparation of a comprehensive flood risk assessment of those lands and their environs showing clearly that any development will not give rise to flood risk to adjoining properties and include proposals to address existing flooding issues in the area.

## 5.2. **Natural Heritage Designations**

None in the vicinity.

## 5.3. **Environmental Impact Assessment**

Having regard to the nature and extent of the proposed development within the development boundary of Tower, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an 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**

The 3<sup>rd</sup> Party appeal by Rosalind and William Crowley, which is accompanied by a number of supporting reports, can be summarised as follows:

#### 6.1.1. ***Flood Risk***

- Their property is just off the R579 with a strip of ground owned by one of the applicants between their property and the road. The flood mitigation measures to the southern side of the road are close to their property and liable to endanger their property in the event of flood in a way that they are not currently exposed to.
- There has been no meaningful analysis about the flood risk to their property.
- The correct procedure has not been followed as outlined in the Flood Risk Management Guidelines for Planning Authorities in that only when a development is considered to be essential and cannot be located outside Zones A and B does the justification test apply.
- There is a level of assumption being applied in terms of design and extent of proposed mitigation measures, as well as ownership and liability. There should have been consultation with Cork City Council. The lack of clarity regarding mitigation measures gives further reason to question the issues of

ownership and where liability lies without prior agreement. This presents an area of legal uncertainty over whom would be accountable should the flood defence scheme be deemed unsatisfactory as a result of a major flood event.

- The proposed works will include the alteration of riverbanks. It is queried how this will impact the existing river flow and ecology of the area. The design merits of the said defence is open to interpretation.
- In the context of letters of consent from 3<sup>rd</sup> parties and the potential for works required elsewhere the validity and enforceability of condition 5 is questioned. In absence of the relevant consents the application can be considered invalid (legal submission in support).
- In the absence of the nature and extent of the development in terms of location of anticipated essential works given in the public notices the application is considered to be invalid.
- A precautionary approach comparable to that taken by the Board in file ref. ABP 302783-18 is recommended. This is further strengthened by the comments in the planner's report. The change of jurisdiction from County Council to City Council does not amount to unique circumstances that justify overlooking the deficiencies.

#### **6.1.2. Access and Traffic**

- There are shortcomings in the traffic solutions being proposed
- The roadway is substandard and does not allow for a right turning hatched box into the proposed access to the new development. Without a right hand turning lane/box there will be congestion and build-up of traffic at peak times. This will generate hazardous conditions.
- The proposal will have poor connections to the existing settlement of Cloghroe.
- The existing footpath along the regional road is substandard.
- The internal layout of a series of cul-de-sacs and absence of cycle facilities is contrary to DMURS principles.

- There are no bus stops in the vicinity of the site with the nearest located 750 metres away.
- New accesses onto regional roads outside the 50kph speed limit should only be considered where there are no alternatives and for there to be an exceptional need.
- Alternative access through other zoned residential lands closer to existing services could be provided.

## 6.2. Applicant Response

The response can be summarised as follows:

### 6.2.1. General

- The proposal is justified on the basis of the urgent requirement for houses within Cork County and the renewal of residential populations within established key settlements.
- The previous refusal by the Board was on the basis that the proposal would be premature pending the carrying out of works to mitigate flooding along the R579, only. These works are included with the proposed development

### 6.2.2. Flood Risk

- The dwellings are not within Flood Zone A. The access road lies within the flood zone. Nonetheless a Justification Test Statement was submitted and accepted by the planning authority as it was in the previous application.
- The proposal will introduce mitigation and attenuation measures that will help alleviate flood risk in the immediate area. This has not been contested by any professional assessment.
- The further information submission is definitive in concluding and demonstrating that there will be no flood risk impact on the appellant's property.
- The proposal has been the subject of a detailed flood risk assessment in both 1D and 2D modelling. The FRA has incorporated threshold flood risk analysis under OPW guidance, it has been subject to review by the consultants

retained by the County Council, with the permission granted strictly premised on condition of successful Section 50 application to the OPW.

- Matters of prematurity and the timing of the delivery of the flood defence infrastructure works are comprehensively and successfully addressed by way of conditions attached to the decision.
- There is no requirement for, or planned alteration to the river, the river bank or ecology of the area. The Board is directed to the ecology report accompanying the application.
- The detailed design and maintenance responsibility will be discussed, agreed and clarified with the relevant local authority and OPW through two further and separate statutory processes; Section 50 of Arterial Drainage Act 1945 and Section 180 of the Planning and Development Act, 2000 as amended. This is the appropriate approach to take.
- Section 50 process is currently being progressed.
- There are no implications to the change of jurisdiction in terms of consideration of the proper planning and sustainable development of the area.
- The planning authority considered the application to be valid.
- The consents from the landowners within the red line accompany the application. All works proposed and required are within the said red line (legal submission in support).
- Provided a development has been completed in accordance with the relevant planning permission a local authority is required to initiate procedures under section 11 of the Roads Act 1993 to take a development in charge if requested to do so by an appropriate party.
- With regard to maintenance liability the said statutory process will have to be concluded prior to agreement with regard to the transfer of maintenance liability. It would be premature to propose such an agreement prior to detailed specification being assessed and approved under Section 50.
- The photograph accompanying the appeal submission is misleading and is located 163 metres east of the proposed entrance.

### 6.2.3. Access and Traffic

- This matter was addressed in the previous application and appeal. The Inspector considered that the regional road would be capable of accommodating the development subject to street lighting.
- A Road Safety Audit and Traffic Impact Assessment accompany the application. Their conclusions reinforce the Inspector's determination of the previous appeal.
- It is estimated that at the busiest period (am peak in 2035) an RFC of 0.18 would occur which indicates minimal queuing. The need for a right hand turn hatched box would not arise.
- The adjacent junction of R579 and R617 would not be significantly affected by traffic generated by the development ie. additional traffic movements would be well below the threshold of 5% during AM and PM peaks.
- A number of conditions attached to the decision address matters of traffic generation and road safety.
- Since the previous application significant urban improvement works have been carried out in the vicinity of the site including new footpaths and junction calming works at the nearby T-junction and a new controlled zebra crossing connecting the site to local services, the church and the school.
- The TTA commented on the future proposed cycle improvements for the area as shown in the Cork Cycle Network Plan objective for Blarney and Tower. Significant cycle improvement plans in the vicinity of the site were highlighted with cycle greenways between Cloghroe to the City Centre detailed.
- The Road Safety Audit Stage 1 highlights 4 potential problems. The applicant undertakes to address 3. The 4<sup>th</sup> has been resolved.

### 6.3. Planning Authority Response

None

## 6.4. Observations

Observations have been received from:

1. Colm & Madeline O'Sullivan
2. Dr. John O'Riordan
3. Fiona Kearney & Willie Carey
4. Lynn Canham
5. An Taisce

The submissions can be summarised as follows:

- The flood mitigation measures are not described in sufficient detail to reassure that future flood events will not lead to new hazards.
- No details are given on plans for future maintenance.
- Insufficient detail is provided on the height, extent and finish of the proposed embankment and its visual impact.
- The proposal will exacerbate traffic hazard and congestion during peak times at the junction of R617 and R579 with increased pollution.
- There is no right lane for vehicles accessing the site which will exacerbate traffic congestion and safety.
- The footpath is too narrow with issues arising for pedestrian safety.
- There is no easy pedestrian route to the nearest bus stop on Tower Hill which is almost a 1km away.
- The proposal will lead to increased use of the private car contrary to national plans for transport and population health.
- There are no provisions for cyclists
- The proposed access from the R579 ignores the village context and makes no contribution to the setting of Tower village. A more suitable access would be from the R617.
- The Board could consider requesting an Environmental Impact Statement relating to public safety.

- The site is at a significant remove from the town centre with inadequate access to services and public transport. The proposal represents a substandard development.

## 6.5. Section 131

Cork City Council was invited to make a submission on the appeal.

It has no comment.

## 7.0 Assessment

### *Overview*

- 7.1. This constitutes the 2<sup>nd</sup> application and subsequent appeal for a residential development on the subject lands. Save for a reduction in the number of dwelling units sought by 1 to 73 and changes in the red line boundary to include lands along the regional road both in private and public ownership to allow for the proposed flood relief works, the development as proposed is largely the same as that previously assessed by the Board under ref. ABP 302594-18
- 7.2. The policy context and documents against which the previous application was assessed remain the same. On this basis, therefore, I consider that the issues arising in terms of suitability of the site for residential development, density, design, housing mix, layout including open space provision and amenities of adjoining property have been previously assessed by both the Inspector and the Board in their assessment of the earlier appeal and which were considered to be acceptable. I also note that the site is serviced with no capacity issues arising in terms of water supply or sewerage. On this basis I do not propose to revisit the aforementioned issues in this assessment.
- 7.3. The proposed access arrangements onto R579 remain as previously proposed with the road environment in the immediate vicinity unchanged. I would advise the Board that consequent to its decision in February 2019 improvements works have been carried out in the vicinity of the local neighbourhood centre and the junction of the R579 and R617 to the east including traffic calming measures and provision of a pedestrian crossing.



- 7.4. The Traffic and Transport Assessment and Stage 1 Road Safety Audit which were submitted with the applicant's response to the previous appeal have been amended to reflect the minor changes in the development. The Inspector in his assessment of the appeal gave due regard to the traffic that would be generated by the proposal in addition to the vehicular and pedestrian environment. I concur with his conclusions that the traffic that would be likely to be generated by the proposal would be capable of being accommodated on the R579 and that the proposed access onto the regional road would be capable of being operated satisfactorily without the need for a RHT hatched box. This access would be served by the requisite sightlines. The Board did not detail any concerns in terms of access and traffic in its decision. On this basis I do not propose to revisit the issue of access and traffic in this assessment.
- 7.5. The Board is also advised that consequent to the lodgement of the application with Cork County Council the changes to the administrative boundary between the County Council and the City Council were enacted. The site is now with the City Council area. The City Council was invited to make a submission on the appeal by way of a section 131 notice to which it had no comment.

### ***Flood Risk***

- 7.6. I consider that the substantive issue arising in the case relates to flood risk and the ancillary matters arising.
- 7.7. To set in context, the proposed development is located c. 20 metres to the north of the Owennagearagh River which is located on the opposite side of the R579. The site's eastern boundary is delineated by the Dromin stream that flows into the Owennagearagh River immediately to the south east of the site. Other drainage channels are located on the northern and north-west boundaries of the site.
- 7.8. The Owennagearagh River has been investigated as part of the Lee CFRAM with detailed hydraulic modelling and flooding mapping available. The modelling indicates potential flooding from the river extending into the south-eastern corner of the site with flooding along a significant section of the R579 extending to the church junction with the R617. The CFRAM indicates that the floodwaters influence the Dromin stream along the eastern site boundary. This is confirmed by the Flood Risk

Assessment accompanying the application which also suggests that the channel condition and culverts exacerbate flooding in this corner of the site.

- 7.9. The LAP shows the southernmost portion of the site, including the proposed access from the R579, as lying within Flood Zones A and B and notes that recorded fluvial flooding from the Owennagearagh River has resulted in flood events at the junction of the R579 and the R617 to the east of the said access. The plan is quite explicit in stating that any development on lands to the south west of the village will require the preparation of a comprehensive flood risk assessment of those lands and their environs showing clearly that any development will not give rise to flood risk to adjoining properties and include proposals to address existing flooding issues in the area.
- 7.10. As in the previous application whilst the dwelling houses would be sited on the more elevated sections of the site that are not the subject of fluvial flood risk the proposed access to the site and the initial portion of the proposed on-site access road would pass through portions that are. The previous application provided for flood relief measures within the site, only. In same the applicant acknowledged that the R579 is the subject of 1 in 100-year storm event flood risk at points to the east and to the west of the proposed access. Accordingly, during such events the applicant proposed the preparation of an emergency plan where access/egress to the site may become impassable. This was not considered acceptable and, as noted earlier, the Board refused permission on the basis of the development being premature pending the carrying out of works to mitigate flooding along the R579.
- 7.11. The current proposal effectively includes a flood relief scheme for Cloghroe along the R579 to the junction with the R617 and the properties within the Senandale Estate adjoining the site to the east.
- 7.12. As noted, the application is accompanied by a Flood Risk Assessment Report with an addendum to same submitted by way of further information.
- 7.13. The scheme comprises:
- 410 metre flood defence embankment along the southern side of the R579 adjacent to the river.
  - New c 2m x 0.9m culvert under R579.

- 270 metre defence embankment internally along the eastern boundary of the site with Senandale housing estate.
- Culvert, stream overflow structure and 3m wide overflow channel within site.
- Compensatory flood storage within the site.
- Conveyance improvement works, cleaning and debris removal at Currabeha Bridge.

7.14. The flood plain storage volume occupied by the proposed road is up to 400m<sup>3</sup> depending on the flood water level. To offset the loss of this storage it is proposed to provide compensatory storage by lowering the ground levels in the south-eastern section of the site to provide up to 1000m<sup>3</sup> of storage and which will be retained as open space. It is concluded that the proposed works will not adversely impact the peak river flows further downstream.

7.15. The proposed embankments are to be constructed in accordance with OPW design requirements with the height ranging between 1 and 1.5 metres above local ground level. The works will require a Section 50 consent from OPW.

7.16. While the proposed dwellings are to be sited on the more elevated portions of the site that are not the subject of fluvial flood risk, the proposed access to the site and the initial portion of the proposed on-site access road would pass through portions that are. On this basis the Justification Test that is set out under Box 5.1 of the Planning System and Flood Risk Management Guidelines is considered applicable.

7.17. Item 1 of the Test refers to the zoning of the site. As noted previously this matter was assessed and adjudicated on in the previous appeal. I conclude that there is no objection in principle to the proposal on land use grounds.

7.18. Item 2(i) refers to the need to ensure that flood risk is not increased elsewhere and to, where practicable, reduce overall flood risk. It is acknowledged that the proposed access and the on-site access road would reduce the area of the site, which functions as a flood plain. However, as noted above the area of the site to the east of this road would be lowered to afford equivalent compensatory space and an additional 600m<sup>3</sup> cubic metres of space. In addition defence embankments are proposed both along the eastern boundary to the Dromin Stream and along the R579 by the Owennagearagh River. Hydraulic modelling of both pre and post

development scenarios was undertaken for both the 1%AEP and 0.1%AEP events. Flood extent mapping is presented for all scenarios which extends downstream of Currabeha Bridge to the school. These show that the extent of flooding on the R579 is significantly reduced as the flood waters are contained by the defences and the existing ground profile.

- 7.19. Item 2(ii) refers to the need to minimise flood risk. Appendix B of the addendum report includes a survey of threshold levels for 27 no. local properties within the flood zone with a comparison with the hydraulic modelling water level output (1% AEP MRFS event) for both existing and defenced scenarios. Although the results for the defended analysis indicates an increase to water levels, particularly towards the southern side of the Senandale estate it will be contained within the defences and therefore these properties are protected. Those outside of the Senandale Estate are predicted to above 1% AEP MRFS flood level for both the existing and defenced scenarios.
- 7.20. I consider that the substantive concerns arise in terms of compliance with items 2 (iii) and (iii) of the justification test which require that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and that the development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design.
- 7.21. As evident throughout the documentation on file there is a lack of consensus as to the adequacy of the detailed design and means for implementation of the measures. As noted previously the works will be subject to a Section 50 application to OPW. The applicant has advised that the said application has been lodged however there is no guarantee that the scheme design will be acceptable or that material changes would not arise. In terms of the Council's assessment of the application concerns in this regard were raised by both the Area Planners and the Coastal and Flood Projects Department with a review of the FRA and measures proposed sought from an external consultancy (RPS). The report from the latter notes that limited information is provided in relation to the detailed engineering of the proposed embankments and that it is intended to address these issues within the detailed design phase during the Section 50 approval process. It also notes that the OPW

may consider that the hydrological estimation and methodologies used by the applicant underestimate the flood flows in the catchment and may result in increased flood defence heights and culvert dimensions. In terms of the former this would have ramifications in terms of the physical environment along the road and the eastern boundary of the site.

- 7.22. I consider that in view of the purpose of the proposed flood relief works so as to allow for the appropriate development of the area and the absence of the finalised detailed design, the outcome of the section 50 application process and/or views of the OPW should be a prerequisite. Despite the work undertaken by the applicant a level of uncertainty as to the adequacy of the proposed measures remains. Whilst I acknowledge the national imperative in terms of increasing housing provision, there are other lands within the development boundary which are not subject to flood risk constraints which could be developed for residential purposes in line with the growth envisaged for this key village. As such exceptional circumstances which could be used to justify the acceptability of the level of uncertainty does not arise in this instance. On this basis I submit that the precautionary approach as advocated in the guidelines is appropriate in this instance. I submit that the proposal remains premature pending the carrying out of works to mitigate flooding along the R579.
- 7.23. I do not consider that the change in the administrative responsibility from the County Council to the City Council is of material import in terms of assessing the acceptability or otherwise of the project within the context of the proper planning and sustainable development of the area, however the City Council's input into matters pertaining to the flood relief measures including maintenance and legal liability which would, most likely fall to it, would have been beneficial. Notwithstanding, I note the planning authority did not avail of the opportunity afforded by way of the section 131 notice to comment on the appeal.
- 7.24. I also note that whilst landowners' consent refers to the lodgement of the application, only, with no explicit reference to permission for the carrying out of the proposed flood relief works, I do not consider this to be fatal deficiency and note the provisions of section 34 (13) of the Planning and Development Act, 2000, as amended, whereby a person shall not be entitled solely by reason of a permission to carry out any development. I also consider that the nature and extent of development as given

in the public notices is acceptable with specific reference made to the flood relief measures.

### ***Appropriate Assessment***

- 7.25. An appropriate assessment screening report accompanies the application taking account of the proposed flood defence measures

### *Project Description and Site Characteristics*

- 7.26. The site is as described in section 1 above with the project description summarised in section 2.

### Natura 2000 Sites, Qualifying Interests and Conservation Objectives

- 7.27. The nearest designated sites are:

1. Cork Harbour SPA (site code 004030) c. 17.5 km to the south-east. The qualifying interests include 23 wetland bird species.
2. Great Island Channel SAC (site code 001058) c. 22.5km to the south-east. The qualifying interests include two aquatic habitats.

- 7.28. Detailed conservation objectives have been drawn up for both sites. The overall aim is to maintain or restore the favourable conservation status of the qualifying interests.

### *Assessment of Likely Effects*

- 7.29. The site is not within or adjacent to any designated site. Therefore, no direct impacts would arise.
- 7.30. Storm water from the site would discharge to the River Owennagearagh River, which flows into the River Lee. Accordingly, there is a source/pathway/receptor route between the site and Cork Harbour SPA.
- 7.31. There is no direct hydrological pathway linking the site to the SAC. Hydrodynamic modelling of Cork Harbour has shown that the Great Island Channel is influenced by tidal flows with little influence on this area of the harbour by freshwater inputs from the River Lee.
- 7.32. During the construction phase, including the installation of the flood defence measures, best practice construction methods would be used to prevent contaminated surface water run-off from the site. During the operational phase, the

proposed storm water drainage system would be fitted with attenuation tanks, flow control manholes, and hydrocarbon Class 1 bypass interceptors, all of which would be standard construction methods integral to the design of the project. Accordingly, the rate of flow would be controlled, and pollutants would be intercepted. Thus, the amount and quality of water in the Owennagearagh River would be safeguarded.

7.33. The seabirds which are identified as the qualifying interests for the aforementioned SPA are unlikely to use the site for roosting and foraging, due to its distance from Cork Harbour and the surrounding hilly terrain. Thus, the loss of agricultural land entailed in the proposal would not have a significant effect on these interests.

7.34. In terms of cumulative effects, I am not aware of any plans or projects which could give rise to cumulative effects.

#### *Screening Statement and Conclusions*

7.35. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects, would not be likely to have a significant effect on European sites nos. 001058 and 004030 or any other European site, in view of the sites' conservation objectives and Appropriate Assessment (and submission of a NIS) is not therefore required.

The determination is based on the distance of the proposed development from the European Sites and lack of meaningful ecological connections to those sites.

7.36. In making this screening determination no account has been taken of any measures intended to avoid or reduce the potentially harmful effects of the project on the European Sites.

## **8.0 Recommendation**

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations subject to conditions.

## 9.0 Reasons and Considerations

Having regard to 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November, 2009, 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 be premature pending the carrying out of works to mitigate flooding along the R579. The proposed development would, therefore, be contrary to public safety and to the abovementioned Guidelines and would seriously injure the amenities of future residents and of existing property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**November, 2020**