



An
Bord
Pleanála

Inspector's Report

ABP-308314-20

Development	Construction of 8 dwellings and associated works.
Location	Cois Abhainn, Caherweesheen, Tralee, Co.Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	20604
Applicant(s)	Griffin Brothers Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Griffin Brothers Construction Ltd.
Observer(s)	None.
Date of Site Inspection	20 th November 2020.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. This appeal relates to a site located within an established residential estate, Cois Abhainn on the southern side of Tralee, Co Kerry. The appeal site which has a stated area of 0.1473 hectares is rectangular in shape and is currently grassed and fenced off. It is bordered to the north, east and west by the Cois Abhainn estate roadway and to the south by two storey semi-detached dwellings. To the east of the site is an unnamed stream which flows into the River Lee.

2.0 Proposed Development

2.1. The proposal involves permission for the construction of 8 no dwellings and all associated services. The proposed dwellings comprise of a terrace of 4 no. 3 bed dwellings and 4 no 3 bed semi-detached dwellings. External finish comprises a plaster finish with slate roof and feature standing seam zinc finish to bay window and porch. Parking is provided to the front of the dwellings with private gardens to rear.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 2 September 2020 Kerry County Council issued notification of the decision to refuse permission for the following reasons:

1. The proposed development would materially contravene condition 2(a) of the existing permission on site Ref 00/2480 (PL08.125366) to provide a childcare facility at this location. It would also contravene objective SC-22 of the County Development Plan to “encourage, promote and facilitate the sustainable provision of quality affordable childcare facilities in accordance with national policy and relevant guidelines.” The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. In the absence of a flood risk assessment, the planning authority is not satisfied that the proposed development would not be at risk of flooding. The proposed development would therefore, by itself and its precedent, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's report refers to the planning history and considers that a comprehensive case for not proving a creche has not been demonstrated. The issue of flooding is not adequately assessed. Refusal recommended.

3.2.2. Other Technical Reports

3.2.2.1 Biodiversity Officer – Consideration should be given to landscaping with native species of Irish provenance and in consultation with recommendations from the All Ireland Pollinator Planning Code Guidelines.

3.2.2.2 County Archaeologist notes that there are no recorded monuments in close proximity and the site has been previously disturbed. No mitigation required.

3.2.2.3 Housing Estates Unit refers to a history of non-compliance with previous permissions. Application should be deemed premature pending the satisfactory completion of the Cois Abhann estate by the developer. Cois Abhainn estate was permitted 20 years ago and a cash bond is in place but the developer has not responded to recent emails regarding outstanding works. Issues arise with regard to underground services and the question arises as to whether the site is liable to flooding. Provision of parking spaces at the radii of the estate road is undesirable and compromises the safe functioning of these bends. Proposal shows footpaths being lowered outside the redline boundary.

3.3. Prescribed Bodies

3.3.1 Irish Water submission no objection subject to connection agreement and capacity requirements.

3.3.2 Transport Infrastructure Ireland submission - TII will rely on the planning authority to abide by official policy in relation to development on affecting national roads as outlined in DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities 2012.

3.4. Third Party Observations

3.4.1 A number of third-party submissions from the following local residents

Caoilte O Connor, 20 Cois Abhainn

Mary McQuinn Tubrid Abbeydorney.

Barbara Finlay, 61 Cois Abhainn

Paul Lyons, 17 Cois Abhainn.

Ken West 16 Cois Abhann

Riona Kennedy, 2 Cois Abhann on behalf of JP. O Connor, 1 Cois Abhainn. Tracey Tierney, 4 Cois Abhainn, Ailish McQuinn 18 Cois Abhainn, Paul Lyons 17 Cois Abhainn. Ken West 16 Cois Abhainn, Edward Duggan 15 Cois Abhainn, Maura 14 Cois Abhainn, Dominic Clifford 12 Cois Abhainn, Robert English 11 Cois Abhainn, Karl 13 Cois Abhainn.

Michael McAuliffe 82 Cois Abhainn.

Marie Kearney, 3 Cois Abhainn

Beverley K Casapar, 134 Cois Abhainn

Michael Crean 79 Cois Abhainn

James Curran 33 Cois Abhainn

Sinead Duffy 19 Cois Abhainn

Kathy & Adrian O Brien 132 Cois Abhainn.

Donie Foran 97 Cois Abhainn

Austin Cronin 23 Cois Abhainn

Mary Walsh 55 Cois Abhainn.

Daniel and Ann Burke 83 Cois Abhainn

James & Catherine Leetch, 7 Cois Abhainn.

3.4.2 The submissions raise common objections to the proposal which I have summarised as follows:

- Developer failed to construct a creche in accordance with the terms of the governing permission.
- Estate has not been completed to an adequate standard and the responsibility for maintenance and management of common areas has not been adequately addressed.
- Particularly difficulties arise with regard to the ongoing maintenance of the common areas within the estate.
- No grant of permission should be given in the absence of stringent conditions with regard to good estate management practices for current residents immediately as a matter of priority.
- Area is badly served in terms of amenities.
- Flood risk.
- Traffic hazard and safety issues, parking inadequate.
- Impact on ecology.
- Loss of green amenity to residents.
- Existing deficiencies in the storm and foul sewerage systems have not been rectified.
- Proposed dwellings break building line

4.0 Planning History

07/3017 Conditional permission for construction of a creche and associated site works. Not implemented.

05/3790 Withdrawn

PL08.125366 00/2480 An Bord Pleanála upheld a grant of permission for an application to build 150 houses together with all associated site works. Condition 2 of

the decision reduced the permission to by omitting 7 proposed houses on the appeal site and required that a childcare facility be provided in lieu of same.

5.0 Policy Context

5.1. Development Plan

5.1.1 The Tralee Municipal District Plan 2018-2024 and Kerry County Development Plan 2015-2021 refer.

The site is zoned R2 Existing Residential.

5.2. Natural Heritage Designations

5.2.1 The site is not within a designated area. There are a number of Natura 2000 sites within 15km of the site including

Ballyseedy Wood SAC Site Code 002112 1.3km to the east

Tralee Bay and Magharees Peninsula West to Cloghane SAC Site Code 002070 2km to west

Slieve Mish Mountains SAC (Site Code 002185) 2.5km to south

Castlmaine Harbour SAC 000343 10km South

Akeragh Banna and Barrow Harbour SAC (Site Code 000332) 2km west

Lower River Shannon SAC (Site Code 002165) 15km

Castlemaine Harbour SPA (Site Code 004029) 10km to south

Killarney National Park SPA

Stacks to Mullaghareirk Mounts West Limerick Hills and Mount Eagle SPA (Site Code 004161) 8km northeast

Tralee Bay Complex SPA 004188 2km west

5.3. EIA Screening

5.3.1 Having regard to the nature and scale of the proposed development there is no real likelihood of 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 The appeal is submitted by Frank Coffey Consulting Engineer, on behalf of the first party. Grounds of appeal are summarised as follows:

- Creche is financially unviable. 67 child unit for which permission was granted is too big and not the model of care required.
- Proposed houses could be delivered quickly and competitively.
- Site was stripped as part of the housing site works and consequently is low lying and prone to holding surface water. It has been fenced in securely and is currently classed as a brownfield site.
- Risk of flooding is low. If the appeal site was filled back up to construction formation levels the risk of flooding would be zero. Site is zoned for residential development.
- Photographs of flooding during storm desmond a cyclonic storm event. Notably existing houses were not flooded and the water was confined to the estate road.
- Issue of flooding was considered as part of the original application and floor levels fixed accordingly. The permission for creche permission granted without any reference to need for further flood risk assessment.
- Cois Abhainn estate is now semi mature with majority of children attending primary school and there is no demand for a creche. Accompanying letter from owner/manager of an existing childcare facility in the area expresses the view that the area is more than sufficiently catered for.
- Appeal site is in reality an infill site with a previous existing permission and not an expansion of new development. Requirements for sequential and justification tests in terms of the flood risk guidelines have already been met in earlier planning procedures.

- Construction of 8 houses on the site is the most sustainable use of the site. Services are in place.
- The Management Standards contained in the Development plan have been met. Design is appropriate.

6.2. Planning Authority Response

6.2.1 The response of the Planning Authority is summarised as follows:

- Conditions attached to a grant of permission do not expire after 5 years.
- The need for a creche extends to the surrounding hinterland
- The area is identified as a flood risk in the CFRAM study for Tralee.
- The Flood management plan for Tralee proposes to construct flood dense walls along the watercourse through the application site to mitigate flood risk.
- The application site and adjacent were extensively flooded on 5th December 2015. A significant number of dwellings in the general area were flooded. This was not a pluvial event but was a fluvial event. The resultant flooding was as a result of the adjacent watercourse flooding out of a bank inundating the application site.
- The CFRAM Flood Risk Management proposes flood defensive walls at this location on the watercourse preceding and through the residential estate to mitigate future fluvial flooding. This event closely matched the Q100 (1% AEP) event on the CFRAM study.
- In accordance with “the planning System and Flood Risk Management Guidelines” vulnerable development, including residential development should not be permitted on flood zone A (up to and including Q100 AEP and Flood zone B (up to and including 1000/0.1%AEP).
- The application site is identified as an area at risk in a 1% AEP event, therefore it is located in Flood Zone A.

7.0 Assessment

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site, and assessed the proposal and all submissions. I consider the key issues to be:

- Principle of development in the context of the planning history on the site
- Flooding
- Appropriate Assessment

7.2 Principle of Development in the context of the planning history on the site

7.2.1 I note that the Council in its first reason for refusal refers to the governing permission on the site PL08.125366 (00/2480) which required that rather than for residential development the appeal site be developed for use for a childcare facility within the context of the substantial number of houses being provided on the overall site and in line with development plan policies and national policy to provide for integrated childcare facilities in accordance with proper planning and sustainable development. I note that whilst the first party contends that there is no demand for such a facility no detailed analysis or evidence is provided to support such a claim. The first party asserts within the grounds of appeal that as the Cois Abhainn development is now semi-mature with a child age profile of 5+ therefore there is little demand for such a facility. I am not convinced by this argument.

7.2.2 I note Social Inclusion objectives as set out in Chapter 9 Social Infrastructure and Community Development of the Kerry County Development Plan 2015-2021, in particular SC-8 which seeks to “Ensure that all large scale residential developments take account of the need to provide appropriate community facilities such as childcare facilities and schools and community meeting spaces. Planning applications for large scale housing developments must be accompanied by an impact assessment of such facilities and provide for the phasing of developments to match community infrastructure. I consider that notwithstanding the current demand for housing, the reversion to single use housing on this site in the absence of detailed

information in terms of a community facilities audit would represent a sub optimal development of the site and would be contrary to the proper planning and sustainable development of the area.

7.2.3 Within the context of the planning history on the site, I note the significant concerns raised within the numerous third-party submissions to the local authority which outline ongoing issues with regard to the quality of completion of the development and the ongoing management of the overall site. Such matters are also raised in the report of the Housing Estates Unit which maintains that there are a number of issues regarding outstanding works and particular difficulties with regard to underground services. I note that the first party has failed to address these concerns and such matters should clearly be addressed prior to the granting of permission for further development on the site.

7.3 Flooding

7.3 The OPW's flood maps website shows the site as being at risk of both fluvial and pluvial flooding. The website <https://www.floodinfo.ie/> indicates that the locality of the site is under review for the purpose of flood risk assessment. Under the Planning System and Flood Risk Guidelines for Planning Authorities (November 2009), the site would be categorised as being in Flood Zone A where "Most types of development would be considered inappropriate in this zone. Development in this zone should be avoided and/or only considered in exceptional circumstances, such as in city and town centres, or in the case of essential infrastructure that cannot be located elsewhere, and where the Justification Test has been applied. A flood risk assessment is therefore necessary. I conclude that the application has failed to assess the flood risk and therefore refusal is merited.

7.4 Appropriate Assessment

7.4.1 While the site is not within a designated Natura 2000 site, an unnamed stream passes along the eastern boundary and flows into the River Lee, which in turn flows into Tralee Bay, which is designated as part of the Tralee Bay and Magharees Peninsula, West to Cloghane SAC (site code 002070) and the Tralee Bay Complex

SPA (site code 004188). There is therefore a clear source/pathway/receptor route between the site and these Natura 2000 sites, some 2.45 km away. The Conservation Objectives for the SAC in question are to either restore or maintain the favourable conservation condition of the qualifying interests of this SAC and the Conservation Objectives for the SPA in question are to maintain the favourable conservation condition of the qualifying interests. Given the hydrological connection route, I consider that the applicant should have undertaken a Stage 1 Screening Exercise for Appropriate Assessment. In the light of the concerns raised with regard to the adequacy of underground services and the need to safeguard water quality of the aforementioned unnamed stream, there is a dearth of information upon which to draw in undertaking a Stage 1 Screening Exercise for Appropriate Assessment. I conclude that, due to insufficient information, I am not in a position to undertake a Stage 1 Screening Exercise for Appropriate Assessment. I note that this is a new issue.

8.0 Recommendation

- 8.1. I recommend that the decision of Kerry County Council to refuse be upheld and that permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the identified high probability of fluvial and pluvial flooding attendant upon the site, which places it in Flood Zone A under the Planning System and Flood Risk Management Guidelines, the applicant has failed to demonstrate by means of a flood risk assessment that the proposal would not heighten the flood risk attendant upon the site and by extension the surrounding area. In the absence of a site-specific flood risk assessment the Board is not satisfied based on the details submitted that the proposed development would not have an adverse impact on lands outside the site by means of increased flood risk.

2. Having regard to the hydrological link between the site and the Natura 2000 sites in Tralee Bay, Tralee Bay and Magharees Peninsula Wet to Cloghane SAC (Site Code 002070) and Tralee Bay Complex SPA (Site Code 004188) the applicant has failed to submit sufficient information with respect to the risk to water quality in the stream passing the site, and the likelihood of significant effects upon the Conservation Objectives of the said Natura 2000 sites to facilitate the Board in conducting a Stage 1 Screening Exercise of the proposal for the purposes of Appropriate Assessment. Accordingly, to accede to the proposal, in these circumstances, would be contrary to the proper planning and sustainable development of the area.

3. Having regard to the planning history on the site and in particular grant of permission PL08.125366 (00/2480), which required that the site provide a childcare facility at this location its proposed development to provide for single use housing only would represent a sub-optimal outcome for the site and would be contrary objective SC-8 of the Kerry County Development Plan which seeks to ensure that all large scale residential development take account of the and to provide appropriate community facilities such as childcare facilities and schools and community meeting places and would therefore be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

30th December 2020