



An  
Bord  
Pleanála

## Inspector's Report ABP-308780-20

---

<b>Development</b>	To construct a house.
<b>Location</b>	Castleinch, Bridge Road, Listowel, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20/814
<b>Applicant(s)</b>	Maeve Fitzgerald & Seamus Beasley
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party -v- Decision
<b>Appellant(s)</b>	Maeve Fitzgerald & Seamus Beasley
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> April 2021
<b>Inspector</b>	Hugh D. Morrison

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	4
5.0 Policy and Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations .....	5
6.0 The Appeal .....	5
6.1. Grounds of Appeal .....	5
6.2. Planning Authority Response .....	7
6.3. Observations .....	7
6.4. Further Responses.....	7
7.0 Assessment .....	7
8.0 Recommendation.....	12
9.0 Reasons and Considerations.....	13
10.0 Conditions .....	13

## 1.0 Site Location and Description

- 1.1. The site is located within an existing area of housing, which abuts the southern side of Listowel town centre and which is encompassed within a sweeping bend in the River Feale. This area comprises several small estates, which are served off a spine road which is accessed off Bridge Road (N69). Two of the estates lie to the east of this spine road, “The Lodge” and “The Corporals”, and two lie to the west, “The Paddocks” and “The Meadows”. Each estate is composed of single, one-and-a-half, and two storey detached dwelling houses.
- 1.2. The site lies within “The Corporals”. It is of regular shape and it extends over an area of 0.01 hectares. This site is undeveloped, and it appears to be in use as a garden. Access is by means of an agricultural gate on the outside of a bend in the cul-de-sac that serves “The Corporals”. This gate is sited towards the north-eastern corner of the site. Insofar as site boundaries are defined, they are denoted by means of a timber post and rail fence and hedgerows.
- 1.3. To the south-east of the site lies a dormer bungalow on “The Corporals”, to the north-west lies a bungalow, which is accessed off the spine road and to the south lies another bungalow, which is also accessed off the spine road. Fields to the east and to the south separate this latter bungalow from the River Feale.

## 2.0 Proposed Development

- 2.1. Under the proposal, a one-and-a-half storey detached dwelling house (180 sqm, 4-bed/4-person) would be sited towards the centre of the site. This dwelling house would be of rectangular form under a double pitched roof. It would have northerly and southerly single storey elements that would project from the western portions of the main front and rear elevations. Rooflights would be installed in either roof plane along with a half-dormer window on the rear roof plane.
- 2.2. The existing access to the site would be reconfigured as a recessed domestic gateway, complete with a pair of gates and splayed wing walls. A drive-in/parking area would be laid out to the north of the dwelling house, along with a small front garden. A more extensive garden would be laid out to the rear and to the sides.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for the following reason:

*Having regard to the location of the proposed development in an area which has been identified as potentially liable to flood events, and to the provisions of the Planning System and Flood Risk Management Guidelines..., the Planning Authority is not satisfied on the basis of submissions made in connection with the planning application, and in the absence of a Flood Impact Assessment, that the applicant has demonstrated satisfactorily that the proposed development would not negatively impact on the flood regime of the surrounding area or result in serious injury to the amenities of property in the vicinity as a result of this. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

See decision.

#### 3.2.2. Other Technical Reports

- Irish Water: No objection, standard observations.
- Kerry County Council:
  - Roads: Further information requested with respect to proposed drainage arrangements and application of The Planning System and Flood Risk Management Guidelines to the proposal.

## 4.0 Planning History

Site:

- 09/404015: Outline for dwelling house: Refused on the grounds of flood risk and material contravention of previous permission granted to application ref. no. 678.

- 12/404005: Outline for dwelling house: Refused at appeal PL67.240483 on 7<sup>th</sup> November 2012 on the grounds that, in the absence of a flood impact assessment, the Board was not satisfied that the proposal would not negatively impact on the flood regime of the surrounding area or result in serious injury to the amenities of property in the vicinity as a result of this.

Sites in the vicinity:

No. 7 The Paddocks

- 18/1221: Dwelling house: Refused by the Planning Authority on the grounds of flood risk and permitted by the Board, under appeal ABP-303922-19.

Nos. 43/44 The Meadows

- 19/957: 2 dwelling houses: Permitted.

## **5.0 Policy and Context**

### **5.1. Development Plan**

Under the Listowel Town Development Plan 2009 – 2015 (as amended by Variation No. 3), the site is zoned “existing residential”, wherein it is the policy of the Planning Authority to facilitate development that supports in general the primary land use of the surrounding existing built-up area. Development that does not support or threatens the vitality or integrity of the primary land use of these areas shall not be permitted.

### **5.2. Natural Heritage Designations**

- Lower River Shannon SAC (002165)

## **6.0 The Appeal**

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

- The applicants live and work in Listowel and Maeve’s parents reside in the adjacent dwelling house to the west. Her father has owned the application site

for the last 50 years, during which time it has not been flooded. She has written a letter of support to the appeal, which outlines her family's circumstances and how the current application was prompted by the Board's decision under ABP-303922-19 and the associated re-assessment of flood risk.

- The Planning Authority's reason for refusal is critiqued on the basis that if a Flood Impact Assessment was needed, then this should have been the subject of a further information request.
- None of the existing 8 dwelling houses on "The Corporals" cul-de-sac have/were required to install any flood mitigation measures.
- Under the TDP, the site is zoned existing residential and so there is no in principle land use objection to the construction of a dwelling house.
- As the site is the last house plot on "The Corporals", no precedent would be set by the proposal.
- Precedents for the proposal arise from permission granted by the Planning Authority, under 19/957, for 2 dwelling houses at 43/44 The Meadows, and from permission granted by the Board, under 18/1221 & ABP-303922-19, for a dwelling house at 7 the Paddocks.
- Attention is drawn to the Board's aforementioned decision, which relates to a site which is comparable to the current application site. The inspector's report states that the site does not lie in Flood Zone A and it states that there is a lack of clarity over whether it lies in Flood Zone B. The same could be said of the application site. The report also states that the Planning Authority displayed a lack of consistency in refusing the subject proposal, while permitting comparable ones nearby.
- Flood risk is minimal at 0.1% AEP and the TDP provides for developments wherein flood risk can be managed. The absence of any flooding history on the site is reiterated.

## 6.2. Planning Authority Response

- Attention is drawn to the planning history of the site: Permission for a dwelling house on which was refused to previous applications, one of which was refused at appeal.
- Attention is also drawn to the absence of any flood risk assessment by the applicant.

## 6.3. Observations

None

## 6.4. Further Responses

None

## 7.0 Assessment

7.1. I have reviewed the proposal in the light of national planning guidelines, Kerry County Development Plan 2015 – 2021 (CDP), Listowel Town Development Plan 2009 – 2015 (as amended by Variation No. 3) (LAP), relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use, development standards, and amenity,
- (ii) Access,
- (iii) Water, and
- (iv) Appropriate Assessment.

### **(i) Land use, development standards, and amenity**

7.2. Under the LAP, the site is zoned “existing residential”, wherein it is the policy of the Planning Authority to facilitate development that supports in general the primary land use of the surrounding existing built-up area, which in the case of the site is residential and so its development to provide a residential use would be appropriate under this zoning.

- 7.3. The proposed dwelling house would provide 4-bed/4-person accommodation over two floors with a combined area of 180 sqm. This size of dwelling house exceeds those addressed under Table 5.1 of the Quality Housing for Sustainable Communities: Best Practice Guidelines. For comparative purposes, these Guidelines recommend that two-storey 4-bed/7-person dwelling houses should have a minimum area of 120 sqm. Accordingly, the proposed dwelling house would be of ample size for its type and specification.
- 7.4. The proposed dwelling house would be orientated roughly north/south, and its main elevations would reflect the front and rear building lines of the adjacent dormer bungalow to the east. As a detached dwelling house, it would have habitable room openings within each of its elevations and so lighting and ventilation would be good.
- 7.5. The separation distance between the proposed dwelling house and the adjacent dormer bungalow to the east would be 10m. The presenting westerly side elevation of this bungalow is blank and the common boundary between the two sites is denoted by means of a timber post and rail fence. Neighbour privacy would be capable of being safeguarded on the basis of planting to this boundary. A condition to this effect should be attached to any permission.
- 7.6. The separation distance between the proposed dwelling house and the adjacent bungalow to the north-west is a minimum of 17m. The separation distance between this dwelling house and the adjacent bungalow to the south is c. 32m. Provided key existing planting is retained to the western and southern boundaries of the site, neighbour privacy would be capable of being safeguarded. A condition to this effect should be attached to any permission.
- 7.7. Under the third heading of my assessment, I discuss the need for flood mitigation measures for the site, which would include the construction of walls to its boundaries. The relationship between such walls and existing/proposed planting would need to be worked out in a comprehensive manner so that both flood mitigation objectives and residential amenity objectives could both be met.
- 7.8. I conclude that the proposal would be appropriate from a land use perspective, it would establish a satisfactory standard of amenity for future occupiers, and it would be compatible with the residential amenities of the area.



## **(ii) Access**

7.9. Under the proposal, the existing access to the site would be reconfigured for domestic use. This access is on the outside of a bend to the cul-de-sac, known as “The Corporals”, and it enjoys good sightlines to the north, as far as another bend in the cul-de-sac, and to the west.

- Drivers egressing would have reasonable visibility to manoeuvre.
- Drivers accessing the site would nearly always do so from the north and so they would undertake a right-hand turning manoeuvre. Forward visibility would be available along the remainder of the cul-de-sac once the boundary wall to the residential property on the inside of this bend is cleared. The presence of a public footpath would facilitate such visibility. While this is not ideal, I note that given the double bend format of the cul-de-sac, vehicles speeds would be slow and beyond the site there are only 6 dwelling houses and so traffic movements would be low in number. In these circumstances, I do not consider that objection would be reasonable.

7.10. The site would be laid out to provide 2 car parking spaces and associated manoeuvring space.

7.11. I conclude that the proposed access arrangements would be satisfactory.

## **(iii) Water**

7.12. The proposal would be connected to the existing public water mains and public foul and surface water sewerage system, which serve “The Corporals” housing estate. Irish Water has raised no objection to the new connections that would be required in these respects. The Area Engineer draws attention to an inaccuracy in the submitted plans with respect to sewer connections that should be corrected: A condition would suffice in this respect.

7.13. Under the OPW’s Flood Maps, the site is shown as lying within an area that has a medium fluvial flood risk, i.e. 1 in 100-year storm event or AEP 1%. Under the Planning System and Flood Risk Management (PSFRM) Guidelines, the site lies within Flood Zone B, where the probability of fluvial flooding is moderate, i.e. between 0.1% or 1 in 1000 and 1% or 1 in 100. This risk would arise from a combination of the topography of the area and the proximity of the River Feale.

7.14. Under the OPW's Flood Plans, flood relief projects for the River Feale are identified, which would be likely to have a bearing on the future risk level within the area in question, including the site. These projects are identified as E19 & E19D and they would entail the following:

- *Increase the height of 0.9km of existing embankments and raise approximately 30m of road in order to eliminate flood risk to the properties within the 1% AEP event.*
- *Flood forecasting to allow the community/local authority to ensure that the amenity walkway along the river is cleared and appropriate pedestrian diversions are in place.*
- *Existing maintenance regime for the Feale along with a maintenance programme for the improved and existing defences.*

These projects are also discussed in Section 7.4.3 of the OPW's Flood Risk Management Plan: River Basin (23) Tralee Bay – Feale (2018), entitled Listowel AFA Measures, and they are shown in Appendix G (mapped items EM01 – 03 embankment raising) of this Plan.

7.15. The proposal is for the provision of a dwelling house on a site within an existing housing estate. As a residential use, it would be a highly vulnerable development. As indicated above, the site would be within Flood Zone B, and so the question arises as to whether the proposal needs to be the subject of the Justification Test set out in Box 5.1 of the PSFRM Guidelines. In this respect, the small-scale infill nature of the proposal means that it would be a "minor development" for the purposes of the revised Paragraph 5.28 of these Guidelines, which states:

*Applications for minor development...are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances. Since such applications concern...developed areas, the sequential approach cannot be used to locate them in lower-risk areas and the Justification Test will not apply. However, a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, flood plain or flood protection and management facilities...*

7.16. The planning history of the site is that the Board refused outline permission (PL67.240483) for a dwelling house on flood risk grounds, prior to the introduction of the above cited revised Paragraph 5.28 to the PSFRM Guidelines. The Planning

Authority, in refusing the current application, has effectively reproduced the Board's previous reason for refusal.

- 7.17. The applicants have appealed the Planning Authority's decision on the grounds that their proposal would be comparable to another one on the neighbouring housing estate, The Paddocks, which was permitted by the Board under appeal ABP-303922-19. They state that their site has been in the ownership of Maeve's parents, who reside in the adjacent dwelling house to the west, for the last 50 years, during which time it has not been flooded. They state, too, that this dwelling house is one of eight on "The Corporals" residential cul-de-sac, none of which was required to install flood mitigation measures. The site itself would be the last available housing plot on this cul-de-sac and so its development would not establish an adverse precedent.
- 7.18. During my site visit, I observed that the site is within "The Corporals" residential cul-de-sac and so it is surrounded by existing dwelling houses on this cul-de-sac and an additional one that is independently accessed off the spine road that serves "The Corporals" and the other housing estates in the overall residential area. I observed that, while the site of the appeal case cited by the applicants is in the neighbouring housing estate known as "The Paddocks", it is similar to the current site, insofar as there does not appear to be any significant difference in site levels, although this is further from the River Feale than the current site.
- 7.19. In terms of the revised Paragraph 5.28, the proposal would not "obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances." While this proposal is not accompanied by any Flood Risk Assessment (FRA), I did not observe any evidence on-site that it would have "adverse impacts or impede access to a watercourse, flood plain or flood protection and management facilities."
- 7.20. The Planning Authority has responded to the applicants' grounds of appeal by emphasising the absence of a FRA. While under revised Paragraph 5.28 a "commensurate assessment of the risks of flooding" is advised, the triggers for such an assessment are absent from the site. Under ABP-303922-19, the applicant did propose the following flood mitigation measures, i.e. flood gates, non-return valves and walled site boundaries. The current applicants have not proposed such measures. They contend that, as such measures have not been installed elsewhere

on “The Corporals”, they should not be required of them. By way of response, I note that the majority of the dwelling houses on this cul-de-sac have been in-situ for an appreciable number of years and so they do exemplify a contemporary approach to flooding. I note, too, that the applicants in all other respects rely upon the precedent of ABP-303922-19 to establish their case. To omit flood mitigation appears to be inconsistent. I, therefore, consider that if the Board is minded to grant permission, then flood mitigation measures should be the subject of a condition.

7.21. I conclude that, subject to a correction in the submitted plans, the proposed connections to existing infrastructure would, in principle, be satisfactory. I conclude, too, that, while the site is the subject of a moderate fluvial flood risk, the proposal would be for “minor development” and so revised Paragraph 5.28 of the PSFRM Guidelines is applicable. Furthermore, its location within an existing residential area and the recent planning history of this area are such, that objection to this proposal would be unwarranted, provide flood risk mitigation measures are conditioned.

#### **(iv) Appropriate Assessment**

7.22. The site is within a fully serviced area of housing that is encompassed by fields leading up to the River Feale to the east, south, and west, which is included within the Lower Shannon SAC. This site would be fully serviced by existing infrastructure and it is not the subject of any source/pathway/receptor route across the intervening fields to the River.

7.23. Having regard to the nature, scale, and location of the proposal, the nature of the receiving environment, and the proximity to the nearest European Site, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## **8.0 Recommendation**

That permission be granted.

## 9.0 Reasons and Considerations

Having regard to the Planning System and Flood Risk Management Guidelines, as revised, the Kerry County Development Plan 2015 – 2021, the Listowel Town Development Plan 2009 – 2015 (as amended by Variation No. 3), and the planning history of the surrounding residential area of the site, the Board considers that, subject to conditions, the proposal would constitute a small-scale, residential, infill development that would comply with the zoning of the area. This proposal would afford a satisfactory standard of amenity to future occupiers and it would be compatible with the amenities of the area. Access and parking arrangements would be satisfactory, too. The proposal would be capable of being served by the existing infrastructure in the area and it would not add to the existing flood risk that this area faces. This proposal would, therefore, accord with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) The submitted site plan denoted as sheet No. 2 shall be revised to show the proposed foul water and surface water connections to the existing foul water sewer and the existing surface water sewer, respectively.</p>

	<p>(b) The site shall be the subject of flood mitigation measures, which shall include the installation of non-return valves, the construction of walls to the site boundaries, and the installation of a flood gate to the site entrance.</p> <p>(c) The site shall be the subject of a comprehensive scheme for the boundaries of the site, which shall show existing key planting to be retained and the augmentation of such planting, all in a manner that is consistent with the construction of walls as required by item (b).</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of public health, in order to reduce the risk of flooding, and in order to safeguard the amenities of the area.</p>
3.	<p>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.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
4.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
5.	<p>Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>

7.	<p>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.</p> <p><b>Reason:</b> 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.</p>
----	---

---

Hugh D. Morrison  
Planning Inspector

14<sup>th</sup> May 2021