



An
Bord
Pleanála

Inspector's Report

ABP-312575-22

Development	New storey and a half/dormer style two storey house and garage utilising existing site entrance together with all associated site works. Significant further information/revised plans submitted on this application.
Location	Tower Cross, Mornington, Co. Meath.
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	211341
Applicant(s)	Michael Fields
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Michael Fields
Date of Site Inspection	31 st April 2022

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.095 hectares, is located in the settlement of Mornington on the eastern side of the R151. The appeal site is a vacant infill site located between existing residential development with a dormer dwelling located to the south and a single-storey dwelling to the north. To the east is the garden area associated with an existing dwelling fronting Tower Road to the north of the site. The site is defined by wooden fencing along the western, northern and eastern boundaries and a wall along the southern boundary.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a new storey and a half/dormer style two-storey house and garage utilising existing site entrance together with all associated site works. The dwelling has a floor area of 241.3sqm (detached garage 21.7sqm) and a ridge height 7.745m. The dwelling features a pitched roof and external finishes of smooth plaster, some natural stone and blue/black slates.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on one reason....

1. It is the policy (INF POL18) of the Meath County development Plan 2021-2027, "To implement the "Planning System and Flood Risk Management – Guidelines for Planning Authorities" (DoEHLG/OPW, 2009) through the use of the sequential approach and application of Justification Tests for Development management and Development Plans, during the period of this Plan" and policy (INF POL 20), "To require that Flood Risk Assessment is carried out for any development proposal, where flood risk may be an issue in accordance with the "Planning System and Flood Risk Management – Guidelines for Planning Authorities" (DoECLG/OPW, 2009). This assessment shall be appropriate to the scale and nature of risk and from the potential development and shall consider the impact of climate change".

The applicant has failed to address the proposed development as a highly vulnerable development in accordance with the “planning System and Flood Risk management – Guidelines for Planning Authorities” (DoEHLG/OPW, 2009). The Justification Test has not been satisfied in accordance with the aforementioned guidelines. Therefore, the proposed development, if permitted, would be contrary to the aforementioned Ministerial Guidelines and would materially contravene policies INF POL 18 and INF POL 20 of the Meath County Development plan 2021-2027.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (06/09/21): Further information required including requirement to address concerns about flood risk and provide a justification test based on national guidelines.

Planning report (16/12/21): It was deemed that the applicant had failed to address the fact the site is subject to flood risk and the proposal is for a type of development that is highly vulnerable. The proposal was deemed to materially contravene policies regarding flood risk.

Technical Reports

Water Services (06/08/21): No objection subject to conditions.

Irish Water (10/08/21): No objection.

Transportation (31/08/21): No objection subject to conditions.

3.3. Prescribed Bodies

None.

3.4. **Third Party Observations**

3.4.1 None.

4.0 **Planning History**

4.1 LB/181111: Permission refused for a dwelling and associated site works. Refused based on issues concerning flood risk.

5.0 **Policy Context**

5.1. **Development Plan**

The relevant Development Plan is the Meath County Development Plan 2021-2027.

The appeal site is zoned A1 Existing Residential with a stated objective “to protect and enhance the amenity and character of existing residential communities”.

INF POL 18

To implement the “Planning System and Flood Risk Management – Guidelines for Planning Authorities” (DoEHLG/OPW, 2009) through the use of the sequential approach and application of Justification Tests for Development Management and Development Plans, during the period of this Plan.

INF POL 20

To require that a Flood Risk Assessment is carried out for any development proposal, where flood risk may be an issue in accordance with the “Planning System and Flood Risk Management – Guidelines for Planning Authorities” (DoEHLG/OPW, 2009). This assessment shall be appropriate to the scale and nature of risk to and from the potential development and shall consider the impact of climate change.

5.2 National Policy

Flood Risk Management – Guidelines for Planning Authorities” (DoECLG/OPW, 2009).

Circular PL 2/2014 of the Flood Risk Management Guidelines for Planning Authorities.

4.27a In some instances, particularly in older parts of cities and towns, an existing land use may be categorised as a “highly vulnerable development” such as housing, be zoned for residential purposes and also be located in flood zone A/B. Additional development such as small scale infill housing, extensions, or changes of use that could increase the risk or number of people in the flood-prone area can be expected in such a zone into the future. In these instances, where the residential / vulnerable use zoning has been considered as part of development plan preparation, including use of the Justification Test as appropriate, and it is considered that the existing use zoning is still appropriate, the development plan must specify the nature and design of structural or non-structural flood risk management measures required prior to future development in such areas in order to ensure that flood hazard and risk to the area and to other adjoining locations will not be increased or, if practicable, will be reduced. Planning authorities should consider the issues and opportunities raised in section 4 of Appendix B (Technical Appendices) in this regard, and may consider including certain objectives or conditions as part of the zoning.

5.28 Applications for minor development, such as small scale infill, small extensions to houses or the rebuilding of houses, and most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises, 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 existing buildings or 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, floodplain or flood protection and management facilities.

These proposals should follow best practice in the management of health and safety for users and residents of the proposal

5.3 Natural Heritage Designations

None within the zone of influence of the project.

5.4 EIA Screening

The proposal for one dwelling unit and is below the mandatory threshold for EIA. The nature and the size of the proposed development is well below the applicable thresholds for EIA. I would note that the use proposed is similar to predominant land uses in the area and that the development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The site is not subject to a nature conservation designation and does not contain habitats or species of conservation significance.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by Michael Fields. The grounds of appeal are as follows...

- The development is in an area protected by 200 year coastal event by existing flood defences constructed c.2011 and the Planning Authority appear to be erring on the side of extreme caution. The existence of the flood defences should be taken into account.
- The proposal includes further precautionary measures including a raised floor level to protect against flooding up to a 1 in 1000 year fluvial and coastal events.
- Permission was previously granted for a dwelling on site in 2008.

- The site is an appropriate site for residential development being a zoned infill site in a residential area and with huge demand for new housing currently. The site is a vacant underutilised site that has a negative visual impact.
- Development of the site would allow for the provision of a footpath along the road frontage that would be beneficial for pedestrians in the area and improve sightlines at the junction to the north of the site. .

6.2. Planning Authority Response

6.2.1 Response by Meath County Council

- The PA request that the Board uphold the decision to refuse permission.

7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development, design, scale and layout

Flood Risk

37(2)(b)

7.2. Principle of the proposed development, design, scale and layout:

7.2.1 The proposal is for construction of a dormer style dwelling, detached garage and associated site works on an infill site in the urban area of Mornington. The appeal site is zoned A1 Existing Residential with a stated objective “to protect and enhance the amenity and character of existing residential communities”. The pattern of the development at this location is for existing detached dwellings with existing dwellings to the north and south similar in scale and pattern of development. The overall design and scale of the proposed development is consistent with the pattern of development at this location, the design and scale would be acceptable in the context of the visual amenities of the area, the amenities of adjoining properties and is an appropriate scale and type of development at this location.

7.2.2 The proposed development would also be satisfactory in the context of traffic safety with sufficient sightlines available at the proposed entrance and the site located within the urban speed limit zone of Mornington.

7.3 Flood Risk:

7.3.1 The proposal was refused based due to issues concerning flood risk with it determined that the applicant has failed to address the proposed development as a highly vulnerable development in accordance with the “Planning System and Flood Risk management – Guidelines for Planning Authorities” (DoCHLG/OPW, 2009) and that the Justification Test has not been satisfied in accordance with the aforementioned guidelines. The proposal was determined to be contrary to the aforementioned Ministerial Guidelines and would materially contravene policies INF POL 18 and INF POL 20 of the Meath County Development plan 2021-2027.

7.3.2 The applicant submitted a Flood Risk Assessment. There are two on the file, one submitted on the 13/07/21 with the application and one submitted on the 19/10/21 in response to further information. The Assessment refers to Circular PL 2/2014 and revised Section 5.28 of the Flood Risk Management Guidelines for Planning Authorities and applications for small scale infill, small extensions to houses or rebuilding of houses.

7.3.3 The assessment outlined potential sources of flooding with the potential for fluvial and coastal flooding classified as high. Based on the CFRAM flood mapping the appeal site is in an area that benefits from flood defences up to a 1% AEP fluvial flood event due to a flood defence scheme having being completed in the area. In terms of tidal flood risk the site is also classified as being a defended area and is protected up to a 0.5% AEP tidal event. It is noted that the proposal must be assessed in absence of flood defences or in the event of their failure and that the site is located in Flood Zones A and B for the purposes of both fluvial and tidal flood

events. The assessment notes that the risk of pluvial flooding is low. The assessment identifies a number past flood events within 2.5km of the site.

7.3.4 The assessment indicates that the development is classified as highly vulnerable development as per Table 3.1 of the guidelines. The assessment refers to Section 5.28 of Circular PL 2/2014 in relation to application for small scale infill, small extension to houses or rebuilding houses and the fact that the sequential approach cannot be used to locate them in lower-risk areas and the justification test won't apply. However a commensurate assessment of risks of flooding should accompany such applications. A Commensurate Assessment is included and a Justification test carried out alongside such to address the terms of the further information request. The commensurate assessment outlines that the proposal is unlikely to impact the existing floodplain or impede access to a watercourse, is unlikely to have significant impact on flood events, exacerbate flooding and is in an area that is protected by flood defences, an increase in finished floor level is unlikely to exacerbate flooding elsewhere. The assessment includes an estimation of flood levels for both fluvial and tidal flood events (no account of flood defences) and an adjustment for climate change. The finished floor level of the dwelling will be above the levels for fluvial (1%AEP and 0.1%AEP) and tidal events (0.5% AEP and 0.1%AEP). There is potential for the road and access to the site to flood in the case of flood event however such is likely to still remain accessible. A number of mitigation measures are proposed including finished floor level, flood risk resilient materials, sealed manholes, ramped up and raised driveway and implementation of Flood Emergency Manual.

7.3.5 The Justification Test was carried out based on the criteria of Box 5.1 of the guidelines with it noted the site is zoned for residential development, is located in an area protected by flood defences, finished floor levels having regard to worst case scenario flood events and the site will still be accessible in the event of a flood event. The applicant is of the view the proposal passes the justification test.

7.3.6 In my view the provisions of Section 5.28 of the Flood Planning System and Flood Risk Management – Guidelines for Planning Authorities (DoCHLG/OPW, 2009) do apply as amended by Circular PL 2/2014. The proposed development would constitute small scale infill and would be unlikely to raise significant flooding issues either by impacting existing drainage characteristics or exacerbating flooding elsewhere. This section of the guidelines note that the “since such applications concern existing buildings or 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, floodplain or flood protection and management facilities”. I am of the view that there is sufficient information provided in the applicants Flood Risk Assessment to address the requirement for a commensurate assessment and that such demonstrates the proposal would not impact existing flood risk or exacerbate such and provides adequate mitigation measures to protect the future occupants of the site from the impact of flooding. Notwithstanding such the fact the site is located in an area that has been provided with flood defences to defend the area in question should also be taken into account. I would be of the view that proposal would be satisfactory in the context of flood risk and the applicant has met all obligations that would be required under the recommendations of the Flood Planning System and Flood Risk Management – Guidelines for Planning Authorities (DoEHLG/OPW, 2009).

7.4 Section 37(2)(b):

7.4.1 The proposal was refused on the basis of being a material contravention of the Development plan and specifically objectives INF POL 18 and INF POL 20

Under Section 37(2)...

(2) (a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of section 34 (10), indicate in its decision the main reasons and considerations for contravening materially the development plan.

7.4.2 Objective INF POL 18 requires implementation of the Planning System and Flood Risk Management – Guidelines for Planning Authorities (DoEHLG/OPW, 2009) and Objective INF POL 20 requires the carrying out of a Flood Risk Assessment. I would consider that the applicant has complied with both objectives with a Flood Risk Assessment submitted and the development assessed in the context of the recommendations of the guidelines. I would be of the view the proposal is compliant with Development Plan policy and would not constitute a material contravention of Development Plan policy.

7.4.3 Notwithstanding such I would consider that the proposal would meet the criteria set out under Section 37(2)(b)(iii) in the that the proposal is compliant with Section 28 guidelines in the form of the Planning System and Flood Risk Management –

Guidelines for Planning Authorities (DoCHLG/OPW, 2009) with such outlined in previous sections of this report. I would also consider that Section 37(2)(b)(iv) also applies having regard to long established residential pattern of development in area and the fact the site is an infill site in a residential area zoned for such use.

8.0 Appropriate Assessment

8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

9.1. I recommend a grant of permission subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the design and scale of the proposed development and zoning of the site, the proposed development would be consistent with development Plan land use zoning and acceptable in the context of the pattern of development of the area, the visual amenities of the area, the amenities of adjoining property and traffic safety. The proposed development despite being located in an area subject to historic flood risk, is consistent with the recommendation of the Flood Planning System and Flood Risk Management – Guidelines for Planning Authorities” (DoCHLG/OPW, 2009). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and as amended by the revised plans submitted on the 19th day October 2022, 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

3. A footpath shall be provided along the road frontage of the site, the details and specification of such shall be agreed in writing with the Planning Authority prior to the commencement of development.

Reason: In the interests of orderly development.

4. All mitigation measures specified in the Flood Risk Assessment and plans submitted shall be implemented.

Reason: In the interest of orderly development.

5. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Any relocation of utility infrastructure shall be agreed with the relevant utility provider. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

6. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the detailed requirements of the planning authority for such works and services.

Reason: In the interest of public health and surface water management

7. The developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interests of clarity and public health.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of amenities, public health, and safety.

9. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, 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. Reason: In order to safeguard the residential amenities of property in the vicinity.

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

referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Colin McBride
Senior Planning Inspector

03rd May 2022