



An
Bord
Pleanála

Inspector's Report

ABP-314033-22

Development	Construction of 50 two-storey dwellings.
Location	Cluain darach, Daingean road, Tullamore, Co. Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	21314
Applicant	Joseph Doran
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	Joseph Doran
Observers	Catherine Birmingham Daingean Road Residents Eoin O'Connell Ray & Bridget Farrell Philomena & John Dooley.
Date of Site Inspection	19 th August 2022
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located to the east of Tullamore town center, south of the Daingean Road and to the rear of four houses that front onto the main road. Cluain Darach, a residential estate, comprising mainly two storey, semi-detached housing of recent origin, is to the east and north. Whitehall Estate, an established housing development of bungalows, is to the west. The site is bounded to the south by the Tullamore River and to the west by the Barony Stream which separates the site from the Whitehall housing development. There are linear mounds, for flood protection, within the site.
- 1.1.2. The site is given as 5.98ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the erection of 50 no. two-storey dwellings comprising:
2no. 4-bedroom semi-detached houses,
16no. 3-bedroom semi-detached houses and
8no. blocks of terraced houses containing 4no. 4-bedroom houses, 15no. 3-bedroom houses and 13no. 2-bedroom houses.

The development also consists of the provision of 2no. car parking spaces per dwelling, visitor parking, landscaping works, public lighting, surface water drainage and attenuation works, foul sewerage network and foul pumping station and all ancillary site development works in order to cater for the development.

The proposed access is via the road serving the residential estate at Cluain Daragh.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority (PA) decided to refuse planning permission for 3 reasons:

1 The proposed development is located on land zoned 'Open Space / Amenity / Recreation in the Offaly County Development Plan 2021-2027. The proposed development would therefore materially contravene the Offaly County Development

Plan 2021-2027 Objective LUZO-01 which states that the Council seeks to ‘Ensure that development progresses in accordance with the land use zoning objectives as set out in Section 12.4 and the Land Use Matrix contained in Table 12.1’. The proposed development being residential use, would therefore materially contravene the zoning objective of the County Development Plan on these lands LUZO-10 for Open Space, Amenity and Recreation zoned lands which provides for lands to protect and improve the provision, attractiveness, accessibility and amenity value of public open space, amenity and recreation. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2 It is considered that the proposed development would not comply with the Settlement Strategy for County Offaly and would be a material contravention of the Offaly County Development Plan 2021-2027. The proposed development would, by providing greater growth for Tullamore than assigned in the Core Strategy, contravene policy CSP-01 of Offaly County Development Plan to implement the Core Strategy for Offaly in order to be consistent with policies at a national and regional level, in particular population targets and distribution and would, therefore, be contrary to the proper planning and sustainable development of the area.

3 Having regard to the proximity of the site to the Tullamore River and the risk of failure of the earthwork berms which protect the site, the planning authority considers that the proposed development is in an area which is at risk of flooding. It is therefore considered that the proposed development would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. There are two planning reports on the file. The first planning report, 15th July 2021, recommended a further information request, which issued 15th July 2021, on 12 points under the headings: Planning, Appropriate Assessment, and Water Services / Environment.

3.2.3. Observations are recorded and summarised.

3.2.4. The assessment was set out under the headings:

National / Regional Policy- NPF (National Framework Plan, RSES regional Spatial & Economic Strategy for the Eastern and Midlands Region, development plan policies (Tullamore Town & Environs Development Plan 2010-2016 as extended); planning guidelines; Part V / housing; roads and traffic safety; car parking standards; public health & services; flooding; appropriate assessment; other screening and conclusions.

3.2.5. The site is located within an area zoned for residential use; multiple residential development is 'normally permitted'.

3.2.6. Other Technical Reports

Road Design, 2/7/2021 – further information recommended.

Municipal engineer, 2/7/2021 – further information recommended.

Architects Dept, 23/6/2021 – referring to pre-application consultations, suggesting some amendments and stating that the proposed scheme is suitable for the subject site.

3.3. Further Information Response

3.3.1. A response to the further information request was submitted on 21/04/2022; and notices on 17/05/2022.

3.4. Further Reports

3.4.1. Road Design, 31/05/2022– recommending refusal.

3.4.2. Architects Dept, 31/05/2022– recommending further information.

3.4.3. Housing Department re. Part V Compliance - 31/05/2022 – stating that the requested further information has not been submitted.

3.4.4. Water Services and Environment, 01/06/2022 - recommending conditions.

3.4.5. Municipal Engineer, 01/06/2022 – concerned regarding zoning and flooding.

3.4.6. The second planning report, 09/06/2022 - recommending refusal, includes:

Offaly County Development Plan 2021-2027 which came into effect 22nd October 2021, replaced the Tullamore Town & Environs Development Plan 2010-2016 (as extended) and the Offaly County Development Plan 2014-2020.

CSO-03 Where any ambiguity arises between the Core Strategy of the County Development Plan and residential proposals on land zoned to accommodate residential development in Local Area Plans, the County Development Plan shall take precedence, including during the transitional period before the variation of Local Area Plans.

CSO-04 It is an objective of the Council to make Local Area Plans for Tullamore and Birr during the plan period of the County Development Plan 2021-2027. During the transition period between adoption of this County Development Plan and the adoption of the Local Area Plans for Tullamore and Birr, the objectives (including zoning objectives), policies and standards in this County Development Plan shall apply to Tullamore and Birr.

Section 2.1.3 - The purpose of the Core Strategy is to articulate a medium to longer-term quantitatively based strategy for the spatial development of the county and in so doing to demonstrate that the Development Plan and its objectives are consistent with national and regional development objectives set out in the NPF, the RSES, and specific planning policy requirements in Section 28 Guidelines. The amount of land and the level of housing for the Plan period that is identified in the Core Strategy must be in line with that specified for County Offaly.

The Core Strategy provides a transparent evidence-based rationale for the amount of land proposed to be zoned residential and a mix of residential and other uses in the Development Plan. It identifies the quantum, location and phasing of development for the Plan period linked back to a county population target, in the form of a settlement hierarchy.

CSP-01 It is Council policy to implement the Core Strategy for Offaly in order to be consistent with policies at a national and regional level, in particular population targets and distribution.

The proposed lands do not form part of the lands considered for housing as part of the Core strategy of the current development plan. The proposed development would not be in accordance with the settlement strategy of the Plan. If permitted the proposed development would be a material contravention of the Development Plan and would not be in accordance with policy CSP-01.

The site is located on lands zoned 'Open Space, Amenity and Recreation' as per the Tullamore Town Plan contained in Volume 2 of the Offaly County Development Plan 2021-2027.

Open Space, Amenity and Recreation

The use of land as 'Open Space' shall be taken to include the use of land for: parks, public woodland, pedestrian routes and greenways, riparian zones, housing estate open spaces, development incidental to the enjoyment of open space (including playgrounds, outdoor recreation centres and sports centres, civic/market square, village greens, landscaped areas, shelters, sanitary conveniences, play equipment, dressing rooms and similar facilities). It also provides for the use of such land or such facilities for games, educational and recreational purposes. High standards of accessibility are essential.

Table 12.1 (p372*) Land Use Zoning Matrix - Residential – multiple (two or more units) is not normally permissible in this zoning.

Flooding Risk – the Area Engineer and Roads Design reports have indicated that the earthwork berms, which protect the site from flooding, are at risk of compromise by the proposed construction works. The Planner considers that the berms have a risk of failure in flood events in addition to the potential for the proposed construction works to damage the berms; deemed to be a serious issue of concern notwithstanding the site specific flood risk assessment report and attendant flood justification test submitted by the applicant as a further information response.

3.5. Third Party Observations

3.5.1. Third party observations on the file have been read and noted.

4.0 Planning History

Ref: PL19.235974, PA Reg Ref 09/469, on foot of the PA's decision to refuse permission for 80 No. dwellings, the Board refused for two reasons:

- 1 The site is located within the flood plain of the Tullamore River and is in an area at risk of flooding. It is considered that the applicant has not provided sufficient information to demonstrate compliance with the Justification Tests in 'The Planning System and Flood Risk Management Guidelines for Planning

Authorities, November, 2009', and with the Options/Mitigation Measures as put forward in the 'Tullamore Flood Risk Assessment and Management Study, Final Report June 2008'. The proposed development would, therefore, constitute an unacceptable risk of flooding, conflict with the said Ministerial Guidelines and be contrary to the proper planning and development of the area.

2. Having regard to the design and layout, it is considered that this proposal would result in a monotonous form of development, with inadequate surveillance of the Barony stream, substandard in linkages and distribution of open space. The proposed development would, therefore, seriously injure the amenities of future and adjacent occupiers and be contrary to the proper planning and sustainable development of the area.

Reg.Ref.07/1689 – Permission refused by the PA for the construction of 54no.detached houses with access off Daingean Road and including all ancillary site and drainage works and flood preventative measures for reasons of prematurity pending the completion of a Flood Study for Tullamore by OPW, the location of the piping of the Barony Stream/ adjoining residential area being prejudicial to public safety.

PL19.226925, PA Reg.Ref.06/1615 – on foot of the PA's decision to refuse permission for 55 No. dwellings, with one access point off Daingean road, the Board refused for two reasons:

1 The site is located within the flood plain of the Tullamore River and is at risk of flooding. In the absence of an adopted Flood Study of the Tullamore River, it is considered that the developer has failed to satisfactorily establish that the works proposed in the development are adequate and satisfactory to mitigate the flood risk to the proposed development and that the layout proposed would be compatible with an overall strategy to minimise flood risks to the town of Tullamore. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the pattern of development in area, it is considered that the proposed layout for the development along the western boundary of the site, involving the culverting of the stream, the creation of a fenced off wayleave, and the limited separation distance between adjoining single storey

development and the proposed two-storey houses with short rear gardens, would provide an unsatisfactory layout which would seriously injure the amenities of the area and of property in the vicinity. Furthermore, having regard to the topography of the area, the substantial flow in the Barony Stream and the extent of its catchment, it is considered that the proposal to culvert the Barony Stream would be unacceptable as regards the risk of flooding and would be contrary to the sustainable development of the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Reg.Ref.02/861 – Permission granted subject to conditions by the PA for 46 no. houses and 1 no. community facility with associated site works and drainage/pumping station. Outline permission granted for 55 no. serviced sites and associated siteworks. The 46no. houses and community facility have been constructed and that these form ‘Cluain Darach’ estate to the east and north of the subject site. The former outline permission represents the subject site.

5.0 Policy Context

5.1. Development Plan

Offaly County Development Plan 2021-2027, adopted on 10th September 2021, which came into effect 22nd October 2021, is the operative plan.

Land Use Zoning Objective for the site – Open Space, Amenity and Recreation

It is an objective of the Council to:

LUZO-10 Protect and improve the provision, attractiveness, accessibility and amenity value of public open space, amenity and recreation.

The site is zoned ‘Open Space, Amenity and Recreation’ which provides for lands to protect and improve the provision, attractiveness, accessibility and amenity value of public open space, amenity and recreation.

The site and surrounding development, including the residential areas of Cluain Darach, and Whitehall are also designated ‘constrained land uses’. These are flood risk areas. The designation limits new development but will facilitate existing uses involving small scale development such as small extensions.

SSP-06 It is Council policy to strategically prioritise the development of Tullamore to underpin its role as a designated Key Town and driver of economic development for the county.

SSP-07 It is Council policy to require sustainable, compact, sequential growth and urban regeneration in Tullamore by consolidating the built-up footprint through a focus on regeneration and development of town centre infill and brownfield sites, and encouraging regeneration of underutilised, vacant and derelict lands for residential development and mixed use to facilitate population growth.

Appendices to the plan include:

Strategic Flood Risk Assessment for the Offaly County Development Plan 2021-2027.

5.2. Flood Risk Management Guidelines

5.2.1. The Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009 require the planning system at national, regional and local levels to:

Avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere;

Adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk; and
Incorporate flood risk assessment into the process of making decisions on planning applications and planning appeals.

Flood zones ignore the presence of defences. Areas that benefit from an existing flood relief scheme or flood defences have a reduced probability of flooding but can be particularly vulnerable due to the speed of flooding when overtopping or a breach or other failure takes place. Because this residual risk of flooding remains, the sequential approach and the Justification Test apply to such defended locations

In Flood Zone A, in which the site is located:

There is a high probability of flooding. 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. Only water-compatible development, such as docks and marinas, dockside activities that require a waterside location, amenity open space, outdoor sports and recreation, would be considered appropriate in this zone.

5.3. Natural Heritage Designations

- 5.3.1. Charleville Wood SAC site code (000571), located c2.4km to the west, is the closest Natura site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. 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 first party appeal has been submitted by Farry Town Planning Limited. The grounds include:
- The site was earmarked for housing purposes from the last century up to the year 2021 and there are no actual physical, functional, aesthetic, engineering, ecological, amenity or environmental reasons as to why this land cannot be developed in the manner proposed.
 - To the degree that two of the three objections relate to housing policy, with the final concern, on drainage, being resolvable by planning condition, insurmountable obstacles do not exist so as to prevent this development from proceeding.

- The Council granted permission for 98 houses on this land, under Reg 99/904 and although consent was subsequently withheld by the Board, or the Planning Authority, for similar schemes, these later reasons for refusal which relate to the floodprone nature of this site, have subsequently been addressed by OPW works.
- To the degree that the Council's final reason for refusal relates to the possibility of earthwork berms being affected by construction activity, they consider that such concerns can be addressed by condition.
- Two remaining concerns relating to the zoning of the site, they state, overlap. To the degree that these combined arrangements apply over a 6 year time horizon, they do not believe that the land-use policies, which relate to both Tullamore and to this site, adequately respond to government policy, especially publications which promote new residential development, such as Housing for All. The zoning provision of a development plan are not issued ex cathedra and are rarely based on precise scientific or technical considerations. Land use decisions take political factors into account. It is important to avoid treating such land-use arrangements as if they always have a planning rationale.
- Two of the three reasons for refusal stem from a change in policy which took place after the submission of this application and it is axiomatic that the land use and housing objections would not have materialised if the proposal was determined at an earlier stage. They consider that some of the issues raised in the request for further information could have been addressed by condition, with the effect of reducing the time needed to respond to these queries.
- An Bord Pleanála is not legally bound by the provisions of a development plan. They consider that it is open to the Board to grant permission notwithstanding the colour of the ink on the map, if it concludes that this proposal otherwise accords with proper planning and sustainable development.
- It is their view that the Board can legitimately take account of the history of this site; and they reference *Frank Harrington v An Bord Pleanála* in this regard. In the context of the ongoing national housing emergency, they invite

An Bord Pleanála to consider the beneficial impact of the proposed development on society, to the degree that it would accommodate 52 households who are in need of accommodation and some of whom may be homeless, or in undesirable housing.

6.2. Planning Authority Response

6.2.1. The planning authority have responded referring the Board to the reports on file.

6.3. Observations

6.3.1. Observations have been received from four parties.

6.3.2. Philomena & John Dooley submitted an observation, which includes:

They are very concerned as this area was flooded previously on a number of occasions. They feel the extra buildings and roadway will add to the possibility of flooding again.

6.3.3. Ray & Bridget Farrell submitted an observation, which includes:

Detailing flooding concerns, privacy concerns, traffic concerns, and concerns about the proposed river walk and bridge.

6.3.4. Daingean Road Residents submitted an observation, which includes:

Responding to the arguments in the grounds about housing need; detailing concerns regarding loss of zoned open space; the only above average population surge in Offaly has been in the tip of East Offaly; there are already many developments in the town.

Stating flooding concerns; concerns regarding the proximity of the play area to the fast flowing waterway; and concerns regarding road width / safety.

6.3.5. Catherine Birmingham submitted an observation, which includes:

Flooding concerns - the Strategic Flood Risk Assessment for the Offaly County Development Plan 2021-2027 states:

Fluvial flood risk in the town is presented by the Tullamore River and its tributary the Corndarragh Stream. The area has been subject to detailed CFRAMS assessment and mapping that has taken into account relevant flood risk management measures

(see Section 2.2). Flood risk indicator boundaries coincide with topography and flood paths. The CFRAMS mapping identifies the fluvial flood risk in lower lying areas. Although most of the Plan area and the established envelope of the settlement are on higher ground and avoid the flood plain, some areas that have been previously developed are within areas at high or moderate risk of flooding. Two bridges have the potential to affect upstream water levels and conveyance capacity.

The proposed development is upstream of these two bridges.

Appendix I: Summary of the requirements of the Flood Guidelines for land uses in Flood Zones states:

Avoid development in areas at risk of flooding. If this is not possible, consider substituting a land use that is less vulnerable to flooding. Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.

Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.

Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

Quoting the 'SEA Environmental Report for the Offaly County Development Plan 2021-2022'

4.9.8 Flooding Certain areas across the County are at risk from groundwater, pluvial and fluvial flooding.

Tullamore is top of the list.

4.11.2 Land - The Plan seeks to assist with the reuse and regeneration of brownfield sites thereby contributing towards sustainable mobility and reducing the need to develop greenfield lands and associated potential adverse environmental effects.

They note sections from a previous refusal (09469).

The observation attaches a photograph of the flooded site, taken on 30th December 2015.

- 6.3.6. Farry Town Planning Limited submitted an observation on behalf of Eoin O'Connell, which includes:

Supporting the first party appeal.

Referring to the report of an inspector, a copy of which is attached, which refers to a decision to grant permission in contravention of the local plan, because the Council are currently unable to demonstrate a five-year housing land supply and the shortfall is serious. They point out that the inspector was able to overlook the restrictions imposed by planning policy in the light of the benefits to the community, in terms of the provision of residential development; which approach they recommend to the Board. The report is by an inspector appointed by the Secretary of State in the UK, regarding a site in West Sussex.

7.0 **Assessment**

- 7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, material contravention, flood risk, change in policy affecting the site and the plan and proper planning, and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

7.3. **Material contravention**

- 7.3.1. Section 37 (8) sets limitations imposed on the Board in a case where a planning authority has decided to refuse planning permission for a reason which includes material contravention of the development plan:

(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 spatial and economic strategy 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.

7.3.2. Reasons 1 and 2 of the planning authority's decision state that the proposed development would be a material contravention of the Offaly County Development Plan 2021-2027.

7.3.3. In this regard it can be stated that the proposed development is not of strategic or national importance; the objectives in the development plan are clearly stated and are not conflicting insofar as the proposed development is concerned; there are no provisions in the Regional Spatial and Economic Strategy, no guidelines under section 28 of the Act or Policy Directives under section 29 of the Act, no statutory obligations of any local authority in the area, or any relevant policy of the Government, the Minister or any Minister of the Government; and nothing in the pattern of development or permissions granted in the area since the making of the development plan, which suggest that permission should be granted in this case. Accordingly the Board is precluded from granting permission.

7.4. Flood Risk

7.4.1. As part of the application the developer submitted a Flood Risk Assessment Report. This stated that, as a defended area, the part of the site to be developed was in flood zone C.

7.4.2. In response to the further information request to submit a Flood Risk Assessment/Justification test a document titled Site Specific Flood Risk Assessment Report, was submitted, which includes:

As a result of the flood defence works undertaken in the Tullamore River (Tullamore) Drainage Scheme, the part of the subject site which is proposed for the housing development is classified as a 'Defended Area' on the current Tullamore CFRAM Study Map No. S25TLM_EXFCD_F1_03.

They give it a flood zone B classification.

They justify the development on the basis of the zoning, that the finished floor level would be above the flood level, and that the development would not contribute to flooding.

7.4.3. Flood Risk is of concern to observers.

7.4.4. The Strategic Flood Risk Assessment carried out as part of the Development Plan preparation in October 2021, includes a series of maps in which lands, which include this site, are identified as at risk of flooding.

7.4.5. In relation to drainage and defences (flood relief scheme works), the Strategic Flood Risk Assessment states that various measures have been implemented in County Offaly that will contribute towards flood risk management. These include: the culverting of various streams and rivers in many urban areas; the Tullamore Flood Relief Scheme; flood remediation work on the Bog Road, Portarlinton; and flood defence walls at Shannonbridge.

7.4.6. In relation to Tullamore, the FRMP states that:

A flood relief scheme has been implemented for Tullamore as described in Section 2.6.7. No additional measures specific to Tullamore are proposed. Of the Tullamore Flood Relief Scheme, the FRMP states that: 'The Tullamore Scheme was initiated in 2008 and was constructed from 2012 to 2013. The Scheme comprises flood defence walls and embankments along the Tullamore River and the Barony Stream and provides protection against a 1% AEP (100 year) fluvial event for 100 properties.' The Scheme protected Whitehall Estate and ongoing developments (at the time this included Cluain Darach and Church Hill) from a 1% AEP event. A weir was also removed which provides some protection from smaller floods including to a commercial premise at Cloncollog.

The provision of flood protection measures can significantly reduce flood risk. However, the Ministerial Guidelines require that the presence of flood protection structures should be ignored in determining flood zones. This is because of risks relating to failure and severe flood events that exceed design capacity (the risk of severe events is exacerbated with climate change). Notwithstanding this, new development can proceed in areas that are at elevated levels of flood risk subject to the Justification Test provided for by the Guidelines being passed, which takes into account proposals to manage flood risk, such as the development of defences. Although insurance can be challenging to attain in these instances.

- 7.4.7. The FRMP has informed the development plan zoning.
- 7.4.8. The Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009, state that development should be avoided in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere.
- 7.4.9. The Guidelines state that flood zones ignore the presence of defences. Areas that benefit from an existing flood relief scheme or flood defences have a reduced probability of flooding but can be particularly vulnerable due to the speed of flooding when overtopping or a breach or other failure takes place. Because this residual risk of flooding remains, the sequential approach and the Justification Test apply to such defended locations.
- 7.4.10. In relation to flood risk, the grounds of appeal state argues that the Council granted permission for 98 houses on this land, under Reg 99/904 and although consent was subsequently withheld by the Board, or the Planning Authority, for similar schemes, these later reasons for refusal relate to the floodprone nature of this site, which have subsequently been addressed by OPW works. They argue that the possibility of earthwork berms being affected by construction activity can be addressed by condition.
- 7.4.11. The flood defences which were provided in this area are intended to protect existing development. Additional vulnerable development, unless it has passed a valid

justification test¹, should not be put at risk of flood impact, by being located in this greenfield, flood prone area. This is a reason to refuse planning permission.

7.5. Change in Policy affecting the site.

- 7.5.1. The grounds of appeal states that two of the three reasons for refusal stem from a change in policy which took place after the submission of this application and that the land use and housing objections would not have materialised if the proposal was determined at an earlier stage. They consider some of the issues raised in the request for further information could have been addressed by condition, with the effect of reducing the time needed to respond to these queries.
- 7.5.2. The previous plan zoned these lands for residential use and the current plan, adopted during the course of the planning application, excludes such use.
- 7.5.3. The Board will be aware that the outcome of the plan-making process cannot be pre-determined.
- 7.5.4. The plan-making process is one in which the Board has no direct role. As set out earlier in this assessment, the Board is bound by the adopted development plan.

7.6. The Plan and Proper Planning

- 7.6.1. The grounds of appeal urge the Board to give weight to the need for housing and to consider that such need has not been adequately considered in the development plan, such that the Board, who should consider the proper planning of the area, is entitled to grant permission in contravention of the zoning.
- 7.6.2. An observation from Eoin O'Connell supporting the first party appeal, refers to a decision to grant permission in contravention of a local plan, which gave as the reason for the departure the serious housing shortfall; and because that Council were unable to demonstrate a five-year housing land supply.
- 7.6.3. The limitations of the Board's power to grant permission, where a proposed development would materially contravene the development plan, have been referred to earlier in this assessment.

¹ The justification test submitted with the application relied mainly on the zoning, which no longer applies.

- 7.6.4. The core strategy in the Offaly County Development Plan 2021-2027 considers the land required for housing need, projected over the plan period, and provides for such need in the zoning.
- 7.6.5. The site referred to in the observation is in West Sussex, in the UK, which is in a different state, subject to different legislation and which follows different policies and guidance. The final paragraph of the document submitted is worth noting, in which it is stated that *'in this instance material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan.'*
- 7.6.6. As previously stated, there is no plan or policy affecting the site which would indicate that permission should be granted in the circumstances of this case. There are no Section 28 guidelines of Section 29 Policy Directives which would indicate that permission should be granted. On the contrary, the guidelines of most relevance to the assessment of this appeal, 'The Planning System and Flood Risk Management Guidelines for Planning Authorities', 2009 are clear that development should not be permitted.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that permission should be refused, for the following reasons and considerations.

9.0 Reasons and Considerations

- 1 The proposed development is located on land zoned Open Space / Amenity / Recreation in the Offaly County Development Plan 2021-2027, where housing development is not normally permissible. The proposed development would therefore materially contravene the County Development Plan and be contrary to the proper planning and sustainable development of the area.

- 2 The proposed development is in an area which is at risk of flooding, and notwithstanding the flood defence works carried out to protect existing development in the area, an unacceptable residual flood risk remains for the development, its occupants and adjoining property, accordingly to permit the proposed development would be contrary to the proper planning and sustainable development of the area.

Planning Inspector

23rd August 2022

Appendices

Appendix 1 Photographs

Appendix 2 Offaly County Development Plan 2021-2027, extracts

Appendix 3 The Planning System and Flood Risk Management Guidelines for Planning Authorities, 2009, extracts

Appendix 4 Strategic Flood Risk Assessment for the Offaly County Development Plan 2021-2027, extracts.