



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321661-25

<b>Development</b>	Construction of a house and all associated site works.
<b>Location</b>	Bridge Street, Ballylongford, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	24188
<b>Applicant(s)</b>	Mossie Kavanagh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Mossie Kavanagh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14 <sup>th</sup> March 2025
<b>Inspector</b>	Ronan O'Connor

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision.....	3
3.1. Decision.....	3
3.2. Planning Authority Reports .....	3
3.3. Prescribed Bodies.....	5
3.4. Third Party Observations .....	5
4.0 Planning History .....	5
5.0 Policy Context .....	5
5.1. Development Plan .....	5
5.2. Natural Heritage Designations .....	6
5.3. EIA Screening.....	6
6.0 The Appeal.....	6
6.1. Grounds of Appeal.....	6
6.2. Planning Authority Response.....	7
6.3. Observations .....	7
7.0 Assessment.....	7
8.0 AA Screening .....	13
9.0 Recommendation .....	13
10.0 Reasons and Considerations .....	13
Appendix 1 – Form 1: EIA Pre-Screening	

## **1.0 Site Location and Description**

- 1.1. The site is located at the western edge of Ballylongford village, off the R551 Road. The area of the site is 0.09 Ha. The site is access from the public road. There are detached dwellings sited to the north, west and south of the site. A residential estate is located to the north of the site.

## **2.0 Proposed Development**

- 2.1. Construction of a house and all associated site works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission [decision date 12<sup>th</sup> December 2024] for 1 no. reason as follows:

1. The proposed dwelling is located in a site at high risk of flooding. Based on the CFRAM Flood Maps the site is designated as being in a Flood Zone with a significant proportion of the site with a high probability of Flooding (Flood Zone A). As the site is potentially liable to flood events, and taking into account the provisions of the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009, the Planning Authority is not satisfied on the basis of submissions made in connection with the planning application, 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**

Planning Reports

- 3.2.1. The Planner's Report [dated 4<sup>th</sup> July 2024] is summarised below:
- Notes the site is zoned mixed use/principle of residential is acceptable.

- FI Required in relation to sightlines and Flood Risk, surface water details, landscaping scheme, cross section drawings.

3.2.2. Further Information was requested on 4<sup>th</sup> July 2024 in relation to the above issues. Further Information was received on 8<sup>th</sup> November 2024. I would note that the FI submitted consisted of the following documentation:

- Landscape Plan (dated 04/11/2024) and associated cover letter (dated 05/11/2024)
- Site Specific Flood Risk Assessment (dated 18/11/2024)
- Site Layout Plan (Revised) (stamped 08/11/2024)
- Road Elevation East-West Direction (stamped 08/11/2024)

3.2.3. The Planner's Report [dated 3<sup>rd</sup> December 2024] is summarised below].

- Sightlines shown.
- Landscaping Scheme submitted.
- Cross-section drawing submitted.
- Notes Flood Impact Assessment has been submitted/Notes response from the Coastal and Flooding Unit (see below)
- Notes that the site is located in an area designated medium risk from Coastal Flooding. The Coastal and Flooding Unit are recommending a refusal of planning permission as the dwelling is proposed in Flood Zone A. A residential dwelling cannot be considered in such a flood zone.
- Recommends refusal.

3.2.4. Other Technical Reports

Flooding, Coastal & Marine Unit

3.2.5. Notes that the dwelling is located in a site at high risk of flooding/significant proportion in Flood Zone A/Residential development is considered inappropriate and should be avoided/Flood Relief Scheme for Ballylongford is identified under the OPW's CFRAM Programme/will be a number of year before this scheme, if deemed viable, will be progressed/may not go ahead/Recommends refusal

## Roads Report

3.2.6. Recommend a Grant subject to conditions.

### **3.3. Prescribed Bodies**

3.3.1. None.

### **3.4. Third Party Observations**

3.4.1. None.

## **4.0 Planning History**

4.1.1. No recent planning history.

## **5.0 Policy Context**

### **5.1. Development Plan**

#### **Kerry County Development Plan 2022-2028**

Vol 6 1.5.4 Residential Development Design Standards

#### **Listowel Municipal District Plan 2020-2026**

Ballylongford Settlement – Site is Zoned M4 – Built up area of mixed use -  
Residential is open for consideration

BD-GO-02 Ensure that all development shall have regard to the scale and setting of the existing village in an attractive rural landscape

BD-GO-05 Encourage the development of a compact and sustainable town structure by ensuring that new development is contiguous with existing development and makes effective use of backland and infill sites.

BD-GO-10 Ensure that applications within the town boundary shall be subject of an appropriate Flood Risk Assessment in accordance with the DoEHLG's 2009 guidelines – The Planning system and Flood Risk Management: Guidelines for Planning Authorities.

## **Section 28 Guidelines**

The Planning System and Flood Risk Management: Guidelines for Planning Authorities' (November 2009).

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

- 5.2.1. The site is located 65m south of the Lower River Shannon SAC (site code 002165). However, having regard to the minor nature and scale of the proposed development, noting in particular the proposed wastewater connection to the existing sewer network, and the nature of the receiving environment, it is my opinion that no Appropriate Assessment issues arise and that the development proposed for retention would not be likely to have had a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

### **5.3. EIA Screening**

- 5.3.1. See completed Form 2 on file. Having regard to the nature, size and location of the proposed development, and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

## **6.0 The Appeal**

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

- 6.1.1. A first-party appeal against the refusal of permission was submitted on 15/01/2025. The main issues in the appeal are summarised below:
- Client complied with the FI request for a Flood Risk Assessment (FRA) at considerable expense.
  - Passes the Development Management Justification Test.
  - Primary measure to mitigate against coastal flood risk is to raise the finished floor levels of the proposed dwelling to 4.24m OD. This will not cause the

displacement of coastal waters and will not increase the risk of coastal flooding to nearby receptors.

- Run off from rainfall will be adequately disposed of.
- Footprint and removal of minor area of coastal floodplain will not increase flood risk to any neighbouring properties.
- No existing preferential flow pathways will be severed resulting in increased risk of pluvial flooding.
- FRA clearly considered the CFRAM Maps/concluded 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.
- A number of planning permissions were granted in the nearby area.
- Why did KCC request a FRA then ignore its findings/conclusions?

Encl: Copy of Flood Risk Assessment; Drgs including Land Registry Compliant Map; Planning Pack Map; Site Layout Plan (Revised); Road Elevation East-West Direction; A22 Measurements in MM's; A22 Measurements in MM's

## **6.2. Planning Authority Response**

6.2.1. None received.

## **6.3. Observations**

6.3.1. None received.

## **7.0 Assessment**

7.1. I consider the main planning issue that are of relevance to this appeal are as follows:

- Flood Risk.

### **7.2. Flood Risk**

7.2.1. The Planning Authority's sole reason for refusal relates to Flood Risk, noting that a significant proportion of the site was located within Flood Zone A. The reason for refusal would not appear to reference the flood risk to the property itself but rather

the concern lies with the impact on the flood regime of the surrounding area, and impact of same on the amenities of properties in the surrounding area.

7.2.2. I would note that a Site-Specific Flood Risk Assessment (SSFRA) was submitted by the applicant, following a Further Information request. A revised Site Layout Plan was also submitted which shows a raised FLL, relative to the original site Layout Plan submitted with the original application. The SSFA notes that the revised proposed finished floor level (FFL) of the proposed dwelling is shown as being equivalent to 3.63m OD.

7.2.3. Reference is made to historical flood events within Ballylongford, with flooding occurring within the town centre on 1<sup>st</sup> and 2<sup>nd</sup> February 2002, with an estimated 10 no. properties impacted. Some minor works were carried out following the flooding by Kerry County Council. Reference is made also to the possible construction of an embankment along the left bank of the river to minimise the risk of any future breach by the river, but it is not confirmed whether these works have been undertaken to date. It is set out in the SSFRA that the proposed development is classed as 'highly vulnerable' development, and as the site is located within Flood Zone A/B, a Justification Test is required. The SSFRA sets out that, with reference to CFRAM mapping, that a significant proportion of the site is located within Flood Zone A with respect to coastal flood risk (i.e. at risk during 0.5% AEP, 1 in 200 year) with the remainder of the site shown to be in Flood Zone B i.e. at risk of coastal flooding during a 0.1% AEP, 1 in 1000 year). The predicted extreme water levels associated with tidal peaks (current scenario) are indicated at CFRAM Node AGHA01\_0000u are as follows:

- 1 in 10 year (10% AEP) = 3.12m OD
- 1 in 200 year (0.5% AEP) = 3.49m OD
- 1 in 1000 year (0.1% AEP) = 3.69m OD

7.2.4. In relation to fluvial flooding, reference is made to CFRAM mapping which has indicated that a small area inside the western site boundary is deemed to be at risk of fluvial flooding. However, it is set out that no works are proposed in this area. Fluvial flooding is ruled out as a risk factor in the SSFRA and is not considered further. Proposed Finished Floor Levels (FFLs) for the ground floor is set out as being equivalent to 4.25m OD, which is approximately 1m above existing ground



levels, and 610mm above the FFL stated in the originally submitted site layout drawing.

- 7.2.5. The SSFRA sets out local flood protection measures have been previously completed in 2015, and included construction of new embankments and raising of existing embankments, the construction of a flood defence wall and the construction of a flapped chamber. These works were undertaken at Bridge Street, Rusheen and Quay Street, and it is stated within the SSFRA that the scheme has proven successful in reducing flood risk to properties in Ballylongford.
- 7.2.6. Site specific measures are set out in Section 7.3 of the SSFRA and relate to waterproofing of entry points for pipes and cables, stormwater disposal to a soakaway, and non-return valves for wastewater disposal (which is connected to the main sewerage network). Measures to emergency vehicle access are set out in Section 7.4 and an Emergency Evacuation Plan is set out in Section 7.5. It is noted that the nature of coastal flooding is such that flood defence measures do not result in a loss of available floodplain storage, and as such the measures proposed under this application will not increase the risk of coastal flooding. It also set out that the soakaway on site, and the existing boundary treatments which will remain unaltered will ensure that local private properties will not be affected by the proposed development.
- 7.2.7. Section 8 of the SSFRA contains the Development Management Justification Test, prepared in line with the requirements of the Flood Risk Guidelines, for highly vulnerable development located within Zones A and B. It is set out therein that the proposal is in accordance with the zoning objectives for the site (Zoned M4 – Built Up Area). For the reasons as set out above, it is stated the proposal will not increase flood risk elsewhere, and surface water runoff will be disposed of appropriately, and the design of the proposed development is appropriate.
- 7.2.8. With reference to the information on file, and with reference to flood mapping on Floodinfo.ie, it is clear that coastal flooding is the main risk factor to this site, as set out above, and the majority of the site is within Flood Zone A, with a small portion within Flood Zone B, with respect to coastal flooding. I would note that the SSFRA makes reference to some flood defence works that have taken place, and it is set out that these have proven successful in preventing flooding. However, the report of the

Flooding, Coastal & Marine Unit [dated 04/12/2025] has not made reference to same, and within same report it is noted that the OPW Flood Relief Scheme for Ballylongford may take some years to realise, if it is realised at all, and on this basis the application should be assessed assuming the absence of same.

7.2.9. The Planning System and Flood Risk Management: Guidelines for Planning Authorities' (November 2009) (the Flood Risk Management Guidelines) note, in relation to coastal flooding, such flooding is dynamic in nature that other types of flood events, and often presents a greater risk to life than river flooding. Key principles as set out in the guidelines, are set out as follows:

- 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.

7.2.10. As such in the first instance, development should be avoided. However, in relation to same I would note that the site is zoned for development, and as such the Planning Authority has accepted that some form of development is appropriate in this area. I would note that the site is zoned for Mixed Use M4. To my mind, this would indicate that there is scope for a 'less vulnerable use' within this site, notwithstanding that the M4 zoning states that residential is 'open for consideration'. However, if the Board are of the view that the principle of a residential use should be considered on the site in question, there is a need to apply the Development Justification Test, as the proposed development is a highly vulnerable use within Flood Zone A/B. In relation to same, the Board must be satisfied that the following criteria are met. I have set out my assessment of same below.

*Part 1 The subject lands have been zoned or otherwise designated for the particular use or form of development in an operative development plan, which has been adopted or varied taking account of these Guidelines*

- 7.2.11. The lands are zoned M4, Mixed Use, with residential uses ‘open for consideration’. To my mind, that would imply that there are other factors to be considered when considering the principle of development on such sites. Such factors generally relate to how the development is compatible with any other relevant objectives of the operative Development Plan. In relation to same, the relevant Plan is the Listowel Municipal District Local Area Plan 2020-2026 (“the LAP”). Therein it is noted that lands within Ballylongford have been identified under the CFRAM Study as being at risk of flooding. This plan has taken cognisance of the identified risk and consequently, no known lands identified as a flood risk have been zoned for residential use, or flood vulnerable uses in this plan (Page 78 of the Plan refers). As such, while residential is ‘open for consideration’ under the M4 Zoning generally, the LAP would appear to exclude residential uses in areas that have been identified as at risk of flooding within the town of Ballylongford. As such, I do not accept that the Part 1 criteria has been complied with, notwithstanding the view to the contrary as set out in the applicant’s SSFRA. As such, I am of the view that the development does not meet the criteria of Part 1 of the Justification Test, and should be refused on this basis.

- 7.2.12. In relation to the criteria as set out in Part 2 of the Justification Test, I would note the following:

*Part 2 (i) The development proposed will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk.*

- 7.2.13. Notwithstanding the view of the Planning Authority on this matter, I am of the view that the proposal is unlikely to increase flood risk elsewhere, noting the nature of coastal flooding, as cited in the applicant’s SFFRA, in which it is set out that the flood defence measures do not result in a loss of available floodplain storage, and as such the measures proposed under this application will not increase the risk of coastal flooding. I am not of the view that the proposal has any elements that would reduce overall flood risk however.

*Part 2 (i) The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible.*

*Part 2 (ii) The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management measures and provisions for emergency services access;*

- 7.2.14. In relation to Part 2(i), the development has incorporated measures to minimise flood risk, most notably a raised finished floor level which is higher than predicted flood depths. In relation to Part 2(ii) The SFFRA sets out measures to manage the residual risks including, but not limited, to an emergency evacuation plan. However, the principle of locating a residential dwelling within the flood plain is not appropriate in the first instance, in my view, having regard to the core principles as set out in the Flood Risk Management Guidelines, noting in particular the non-compliance with the criteria of Part 1 of the Justification Test, as set above.

*Part 2(iii) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.*

- 7.2.15. I have no objections to the design of the proposed development and would be of the view that it would contribute to the streetscape.

## **Conclusion**

- 7.2.16. The principle of locating a highly vulnerable use, such as that proposed here, with Flood Zone A/B is only acceptable if the Development Management Justification test is passed, as per the provisions of the Flood Risk Management Guidelines. In relation to same, the proposed development does not meet the criteria of Part 1 of the Justification Test, noting that, while residential use is 'open for consideration' within the M4 mixed use zoning, the Listowel Municipal District Local Area Plan, would appear to exclude residential uses in areas that have been identified as at risk of flooding within the town of Ballylongford. As such, the proposal is contrary to the principles of the 'The Planning System and Flood Risk Management: Guidelines for Planning Authorities' (November 2009) and I would be of the view that the application should be refused on this basis.

## 8.0 AA Screening

- 8.1. The site is located 65m south of the Lower River Shannon SAC (site code 002165). However, having regard to the minor nature and scale of the proposed development, noting in particular the proposed wastewater connection to the existing sewer network, and the nature of the receiving environment, it is my opinion that no Appropriate Assessment issues arise and that the development proposed for retention would not be likely to have had a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 9.0 Recommendation

I recommend that permission be **Refused** for the reasons and considerations below.

## 10.0 Reasons and Considerations

1. Noting the nature of the proposed use as a 'highly vulnerable use', and the location of the site within Flood Zones A and B, with respect to coastal flood risk, and noting the need to apply the Development Management Justification Test for such proposals, the Board is of the view that the proposed development does not meet the criteria as set out in Part 1 of the Justification Test, noting that, while residential use is 'open for consideration' within the M4 mixed use zoning, the Listowel Municipal District Plan excludes residential uses in areas that have been identified as at risk of flooding within the town of Ballylongford. As such, the proposal would represent an inappropriate form of development within an area identified as being at risk of coastal flooding, and is therefore contrary to the principles of the 'The Planning System and Flood Risk Management: Guidelines for Planning Authorities' (November 2009).

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Rónán O'Connor  
Senior Planning Inspector

22<sup>nd</sup> April 2025

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-321661-25		
<b>Proposed Development Summary</b>	Construction of a house and all associated site works.		
<b>Development Address</b>	Bridge Street, Ballylongford, Co. Kerry		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)	<b>Yes</b>	X	
	<b>No</b>		
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>	X	Class (10)(b)(i) of Schedule 5 Part 2 Construction of more than 500 dwelling units;  Class (10)(b)(iv) Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere	Proceed to Q3.
<b>No</b>			
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			

<b>No</b>	X		Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>	X	<p>Class (10)(b)(i) of Schedule 5 Part 2 Construction of more than 500 dwelling units;</p> <p>Proposal is for 1 no. dwelling unit.</p> <p>Class (10)(b)(iv) Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.</p> <p>Applicable threshold is 20 ha. Site area is 0.09 Ha.</p>	Preliminary examination required (Form 2)

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>	x	<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<b>Yes</b>		

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_



## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	<b>ABP-321661-25</b>
<b>Proposed Development Summary</b>	Construction of a house and all associated site works.
<b>Development Address</b>	Bridge Street, Ballylongford, Co. Kerry
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<p><b>Characteristics of proposed development</b></p> <p>(In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The proposed development is for a dwelling house. There are existing dwelling houses in proximity to the site. The proposed development would therefore not be exceptional in the context of the existing environment in terms of its nature.</p> <p>The proposed dwelling is a single storey dwelling house. The development would generally be consistent with the scale of surrounding developments and would not be exceptional in scale in the context of the existing environment.</p> <p>The development would not result in the production of any significant waste, emissions or pollutants.</p>
<b>Location of development</b>	The development would not have the potential to significantly impact on an ecologically

<p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>sensitive site or location. There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors). The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other urban developments.</p> <p>Given the nature of the development and the site/surroundings, it would not have the potential to significantly affect other significant environmental sensitivities in the area. It is noted that the site is not designated for the protection of the landscape or natural heritage and is not within an Architectural Conservation Area.</p>
<p><b>Types and characteristics of potential impacts</b></p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>There would be no significant cumulative considerations with regards to existing and permitted projects/developments</p>
<p><b>Conclusion</b></p>	

Likelihood of Significant Effects	Conclusion in respect of EIA	
There is no real likelihood of significant effects on the environment.	EIA is not required.	

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**DP/ADP:** \_\_\_\_\_

**Date:** \_\_\_\_\_

(only where Schedule 7A information or EIAR required)