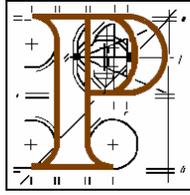


# An Bord Pleanála



## Inspector's Report

**An Bord Pleanála Reference 05B.233876**

**DEVELOPMENT:** House and creation of new entrance at Loughanure, Annagry. Co. Donegal.

### PLANNING APPLICATION

**Planning Authority:** Donegal County Council  
**Planning Authority Reg. No:** 09/30166  
**Applicant:** Margaret Ferry  
**Application Type:** Permission  
**Planning Authority Decision:** To Grant Permission

### APPEAL

**Appellant:** National Roads Authority  
**Type of Appeal:** Third Party  
**Date of Inspection:** August 4<sup>th</sup>, 2009  
**Inspector:** Breda Gannon  
**Appendix 1:** Annotated Photographs  
Site Plan/Extracts from Development Plan

## **INTRODUCTION**

This is a Third Party appeal against the decision by Donegal County Council to grant permission for the development.

## **SITE LOCATION AND DESCRIPTION**

The site is located northeast of Dunglow in Co. Donegal. It is accessed directly off the N56 National Secondary Road that connects Dunglow to the south with Gweedore to the north. The site is significantly elevated above road level and is open and exposed. Its terrain consists of rock outcrops and heath vegetation. With the exception of the roadside boundary that is formed by a concrete post and wire fence, the boundaries of the site are undefined. There is an existing gateway located at the southern end of the site frontage. There are three dwellings on elevated ground to the north of the site. The houses to the south are on lower ground.

The area is one of open and exposed undulating barren landscape with low ground cover vegetation. The terrain is uneven with many hillocks and lakes scattered throughout. Lough Anure lies on the opposite side of the national secondary road and beyond it lies the elevated ground of Cronaguiggy and Grogan More. With the exception of Loughanure village to the south and Crolly to the north, the settlement pattern is largely dispersed.

## **PLANNING APPLICATION**

The development proposes the construction of a one and a half storey dwelling on the site which has a stated area of 1.8 Ha. The house would be recessed by a distance of 103m from the public road. The house would have a ridge height of 6.5 m and would be elevated by 8.5 m above the adjoining road level. The external walls would be finished in a dry dash finish with a blue/black slate roof covering. Foul effluent from the house would be discharged to a waste water treatment system and percolation area prior to discharge to ground. A site suitability assessment was submitted in support of the application. The water supply would be from a public mains supply.

The application was accompanied by a letter from Pat The Cope Gallagher T.D stating that the land has been in family ownership for generations and that the applicant qualifies for a house in this location under Policy RH2 of the Plan. A letter from applicant's solicitor states that the land was transferred from applicant's father and has been in family ownership for c 50 years.

## **PLANNING HISTORY**

1. **08/ 30555** – Permission refused on the appeal site for a house with wastewater treatment system and percolation area on the grounds of visual obtrusiveness, inadequate vision lines and precedent.
2. **07/30238** – Permission refused for a house with septic tank on a site which includes part of the appeal site on the grounds of traffic hazard, unsubstantiated housing need, visual obtrusiveness and design.

## **PLANNING AUTHORITY REPORTS**

The **Planning Officer's** report of 8/5/09 considers that the principle of the development in this rural area is acceptable on the basis that applicant has demonstrated a bona fide need for a dwelling in this location. The site does not have alternative access onto a national road, vision lines of 215 m can be provided in each direction from the site entrance and the site has been in family ownership for over 50 years. It is considered that the development is in keeping with the county development plan policy for new accesses onto national secondary roads and the exceptions available.

The site consists of elevated lands over the N56. The FFL will be 8.5 m above road level. The height of the house at 6.5 m is modest and the revised location is considered suitable as it will have a lesser visual impact than the previously proposed location. The arch feature in the windows should be removed.

The **Donegal National Roads Design Office** in their report of 15/4/09 recommends refusal of the application on the basis that it is at variance with national policy with respect to frontage development along national roads. It continues stating that a certificate will be required stating that the junction/access is designed in accordance with NRA DMRB. Vision lines are in accordance with NRA DMRB.

## **PRESCRIBED BODIES**

The **NRA** in their report of 27/4/09 recommends refusal of the application on the basis that it is at variance with national policy in relation to frontage development on national roads.

The **Northern Regional Fisheries Board** in their report of 20/4/09 state that a site assessment in accordance with the Regulations and relevant EPA guidance should be documented to the planning authority. A further level of treatment to a conventional septic tank/percolation area may be required given the general sensitivity of the area and the specific sensitivity of the site. All minimum distance requirements to watercourses should be adhered to.

Work methods and materials must not impinge upon any nearby watercourse. Materials such as cement/concrete require careful management as they are highly toxic to aquatic life. Facilities should be put in place to buffer/treat discharges from the sit's paved areas.

The potential adverse effects that can arise from the cumulative impact of numerous individual developments should also be considered. This includes the volumes of surface water, leading to the increased flooding potential in the downstream catchment and effects on fish, habitats and fisheries.

The **HSE** in their report in their report of 11/4/09 raised no objection to the development subject to conditions.

The **OPW** in their report of 26/5/09 noted that the site is adjacent to Lough Connell and the OSI Map indicates that a flood level of 150.9 was recorded on 12/5/1905. In light of this the OPW would request that the developer carry out a flood risk assessment for the development and include any mitigating measures identified in the proposal.

## **PLANNING AUTHORITY'S DECISION**

The planning authority decided to grant permission for the development subject to 11 conditions. Apart from standard type conditions applied to a development of this type, the decision includes the following conditions of note.

**Condition No 1** – Enurement clause

**Condition No 6** – Full frontage and all roadside boundaries to be set back a minimum of 10 m from the centre of the national secondary road.

**Condition No 10** – Visibility splays of 215 m to be provided prior to commencement of the development as indicated on plans submitted on 24/3/09.

**Condition No 14** – Financial contribution.

## **APPEAL SUBMISSIONS**

### **3rd PARTY APPEAL**

It is considered that the grant of permission is inconsistent with the provisions of official policy on development management and access to national roads and is contrary to the provisions of the Donegal County Development Plan. The control of development along national roads, including national secondary roads such as the N56, is essential to protect the carrying capacity and safety of the network and to prevent its premature obsolescence. The Authority outlines the following points in support of the appeal:

- The proposed development, which involves the creation of a direct access onto the N56 National Secondary Road at a point where a speed limit of 100 km/h applies would endanger public safety by reason of traffic hazard because of the additional traffic movements including turning movements associated with the development and the access thereto.
- The proposed development would contravene national policy to protect the carrying capacity of National Roads and to protect public investment in these roads. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- Official policy in relation to development involving access to national roads and development along such roads is set out in the “*Development Control Advice and Guidelines*” and the “*Policy and Planning Framework for Roads*” published by the DoE respectively in 1982 and 1985. The “*Sustainable Rural Housing Guidelines for Planning Authorities*”, published by the DoEHLG in April 2005, reiterate that earlier policy position and go further in that the Guidelines require that the objectives and policies of the development plan should make it clear that direct access from future development should not be permitted to national roads outside the speed limit zones for towns and villages. Section 3.3.4 of the Guidelines state that “*Development control policy should, in the first instance, seek to channel traffic from new development onto existing local roads and in this way use establish access points to gain entry onto national road.*” The development permitted by the decision of Donegal County Council represents the creation of a direct private

access to the national road at a point where a 100 kph speed limit applies, which is contrary to official policy.

- The development is inconsistent with the provisions of the Donegal County Development Plan 2006-2012 as it is reliant on direct access to the N56, national secondary road. It is the goal of Chapter 3 to *'ensure provision of safe and effective transportation and communications systems into and within the Count.'* The goal is supported by a number of key objectives i.e. to promote and support the safe use of the road network and to safeguard the carrying capacity of National Roads and other strategic routes. In addition, Policy Reference TC 1- Strategic Road Network Development states that it is policy to improve and safeguard national roads in the county by guiding development on roads in accordance with Chapter 3.3 and Section and Section 2.2 of Appendix A.

It is the policy of the Plan to safeguard the carrying capacity of national roads in the county by restricting the number of new access points/ intensification of existing access points outside of the 60 kph limit (Appendix A) and through the implementation of the NRA's Traffic and Transport Assessment Procedures for all planning applications.

- Although Section 2.2, subsection 1 of Appendix A outlines a number of categories to which an exception to the restriction on access to national roads applies, such restrictions were not agreed in consultation with the NRA. No exceptional reason has been put forward that would justify a departure from standard policy and road safety considerations in this case. In such circumstances, the exceptions contained in the County Development Plan are not considered to be in accordance with paragraph 3.2.6 of the Policy Statement on Development Management and Access to National Roads.

The Authority highlights the emphasis throughout the Donegal County Development Plan 2006-2012 on achieving and maintaining a high standard of road safety on all roads, including national roads. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements that would be generated onto the N56 national secondary road at a point where a speed limit of 100 kph applies.

- The proposed development by itself or by the precedent, which the grant of permission for it would set would adversely affect the use and safety of the national road for road users.
- The Authority highlights the recommendation of Donegal County Council NRDO which recommends refusal of permission.
- The Authority highlights the planning history of the subject site (07/30238 & 08/30555 refer). The reasons for refusal, with reference to traffic safety are still relevant and have not been overcome in the subsequent application.
- The Authority highlights the decision of the Board to refuse permission for a dwelling house at Crohyboyle, Loughanure. Co. Donegal also providing for a direct access to the N56 where a 100 kph speed limit applies (PL 05B. 226683 refers)

## **RESPONSES TO GROUNDS OF APPEAL**

### **The Planning Authority**

- The principle of the development on the site is acceptable as it has been demonstrated that the applicant has a need for the proposed dwelling on family lands.
- Guidance in relation to new accesses on National Secondary Roads is set out in Policy TC 5-3.3. The applicant has submitted supporting evidence that she is the full owner of the land in question which has been in family ownership for circa 50 years.
- There is no non-national road access from the subject site. Vision lines of 215 m are provided in each direction and discussions with the NRDO have confirmed that the sight lines shown are acceptable. Third party consent has been submitted for achieving and maintaining said vision lines.
- A condition was imposed to ensure that the entrance is in accordance with the NRA's Design Manual for Roads & Bridges.
- The Planning Authority has considered the application in conjunction with the relevant adopted policies for Development on National Roads as outlined in the County Development Plan.

### **First Party**

- The site has as an existing access point onto the N 56. The NRDO visited the site and recommended that a new access point be provided in order to achieve the required vision lines. The existing access point will be closed up and the required vision lines in both directions will be achieved. The vision lines were considerable acceptable by the NRDO. Third party consent has been obtained to achieve and maintain the vision lines.
- The entrance has been designed in accordance with NRA DMRB to which all regulations regarding stopping distances and vision lines can be achieved.
- The roadside boundary set back required by Condition No 5 will provide a clear unobstructed view of any traffic entering/leaving the site, providing clear vision for all traffic (see attached plan).
- The proposal is to build a permanent house and this is the only site owned by the applicant. There are neighbouring dwellings on both sides with access onto the N56.
- There will only be a small volume of traffic associated with the house i.e. applicant's car.
- Site meetings were held to resolve the issues relating to the previous applications on the site that related to the location of the house on elevated grounds and access to the site.
- Both of these issues have been resolved in the current application. The house is located on lower ground with a reduced ridge height and finished floor level. The access has been relocated to achieve the required vision lines.

### **NRA's SUBMISSION ON FIRST PARTY RESPONSE**

- The Authority remains of the opinion that the proposed development is at variance with national policy.
- It remains the opinion of the Authority that no exceptional reason has been put forward which would satisfy a departure from standard policy and road safety considerations in this case.

- The exceptions put forward in the county development plan are not considered to be in accordance with paragraph 3.2.6 of the Policy Statement on Development Management and Access to National Roads, nor the exceptional circumstances outlined in the applicant's response to the grounds of appeal.
- Whilst it is stated in the submission that the new entrance was designed with advice from the NRA The Authority can confirm that the NRA has not had any direct correspondence with the applicant in relation to the agreement of entrance details. The applicant may not be familiar with the distinction between the NRA and the Donegal County Council NRDO (which are not part of the NRA's own structure).
- The existing access to the site served as an agricultural access whereas the proposed access is to serve a new residential use.
- The Authority highlights recent decisions by the Board to uphold objections to developments accessing the N56 where a speed limit of 100 kph applies (05B.230684 & 05B.229957).

## **POLICY CONTEXT**

Map 1 of the **Sustainable Rural Housing Guidelines for Planning Authorities Guidelines** (NSS Rural Area Types) published by the DoEHLG (April 2005) identifies the site lying with a 'Predominantly Dispersed Settlement Area'. The Guidelines state (3.2) that Map 1 is only an indicative guide and that further more detailed analysis is required at local level to incorporate this approach to identifying different types of rural areas in the development plan process.

The Guidelines make provision for local housing needs to be accommodated where they arise in all areas subject to good planning practice in terms of location, siting and design and includes safe vehicular access. It is recognised in (Section 3.3) that any proposed vehicular access should not endanger public safety by giving rise to traffic hazard

Section 3.3.4 of the Guidelines focuses on site access. It states that the objectives and policies of the development plan should make it clear that direct access from future development should not be permitted to national roads outside of the speed limit zones for towns and villages. Development control policy should seek to channel traffic from new development onto existing local roads and in this way establish existing access points to gain entry onto national roads. The development plan should make such policies clear in relation to the designated national routes in the planning authority's functional area.

The operative development plan is the **County Donegal Development Plan 2006-2012**. The policies of the Plan in relation to rural housing are set out in Section 5.7 of the Plan.

**Section 3.3** of the Plan focuses on guiding development on national roads and states:-

*'The Council will safeguard the carrying capacity of National roads in the County through:*

- *Restricting the number of new access points and intensification of existing access points outside the 60 kph limit (as outlined in Appendix A Development Guidelines and Technical Standards)*
- *Implementation of the NRA's Traffic and Transport Technical Standards'.*

**Section 2.2 of Appendix A** reiterates the policy restrictions on national roads and makes provision for certain exceptions.

## **ASSESSMENT**

The primary focus of this appeal relates to the unacceptability of the proposed development, on the basis that it conflicts with national policy in relation to frontage development onto a national route. I also intend to raise new issues with respect to visual impact and site drainage.

The NRA is the body charged with responsibility for securing the provision of a safe and efficient network of national roads. Its policy statements on the management of development on the national road network seeks to control both frontage development and development which would result in intensification of existing access points onto national roads. The control of development along national roads is considered essential to protect the substantial investment already made in the network, to improve carrying capacity and safety and to prevent the premature obsolescence of the network, all of which are considered reasonable.

This policy is repeated at local level under the provisions of the Plan (Section 3.3), which seeks to safeguard the carrying capacity of the national roads network through

*‘Restricting the number of new access points and intensification of existing access points outside of the 60 kph speed limit’ ( as outlined in Appendix A -Development Guidelines and Technical Standards)*

Under the provisions of Appendix A (Section 2.2)

*‘New accesses, developments requiring new accesses or which would result in the significant intensification of existing access points onto National Roads or roads treated to National Roads Standard outside 60 kph speed limit, will not be permitted’*

Notwithstanding this policy, I note under the provisions of the Plan that certain categories of development identified in Table 2 of Appendix A may be considered, subject to certain caveats. Category 5 of Table 2 facilitates the provision of a new residential access onto a National Secondary Route for a person who owned the land prior to 24<sup>th</sup> March 2000, or for their immediate family member subject to certain criteria being met. These include amongst other things, documentary evidence of the ownership of the site, that no alternative non national road access is available, compliance with required visibility standards and evidence that the access has been designed in accordance with NRA DMRB.

I note from the submissions on the file that the land is stated to be in family ownership for c 50 years and that this has been confirmed by a solicitor. It is on this basis that the applicant is deemed eligible to qualify for consideration for a house, which would involve direct access onto the adjoining national secondary road. I have in previous similar type appeals commented on this caveat and concluded that land ownership should not be a material consideration in assessing development with repercussions for road safety. It is also worth noting interesting that this policy was formulated without consultation with the NRA, the body charged with responsibility for securing a safe and efficient network of national roads.

The site is located on a narrow substandard section of the national secondary road where a speed limit of 100 km/h applies. The presence of a continuous white line in this location suggests poor forward visibility. The applicant proposes to improve visibility by relocating the vehicular access northwards and by setting back the roadside boundary by a minimum of 10 m from the centre of the N56. Whilst these measures will improve visibility at the site entrance, I do note that in order to achieve and maintain the visibility splays of 215 m in each direction, the consent of adjoining landowners is required. Whilst it is stated in the First Party response that consent has been agreed, these splays cannot be guaranteed in perpetuity as the land falls outside the site and the applicant's ownership/control. Similarly, any condition requiring that such splays be maintained in an agreed manner and in accordance with the NRA's DMRB would clearly be unenforceable for similar reasons.

The proposal cannot be justified on the basis of applicant's argument that an access to the site already exists. The gateway is for agricultural purposes, which would clearly not generate the same volumes of traffic associated with the proposed development. The development is contrary to national policy and should therefore be refused in the interests of traffic safety. National policy does not make provision for any type of exceptional circumstances, its focus is at all times on the need to maintain the safe and efficient operation of the road network with particular emphasis on national routes.

### **New Issues**

I have concerns with respect to the visual impact of the proposed development in this location. The finished floor level of the house will be elevated by 8.5 m above adjoining road level. Whilst it is argued that the height of the dwelling has been reduced from that originally proposed, it would nonetheless result in a high impact, visually incongruous feature in the landscape in this location. It is considered therefore that the development would be at variance with the objectives of the Location, Siting and Design (Appendix E) of the Plan in terms of the provision of low impact development in rural areas.

I also have concerns with respect to the proposed effluent treatment plant. I note that it will be located towards the front of the site and up gradient from a stream/drain located on the opposite side of the road, which ultimately discharges to Lough Anure. I note from the site suitability assessment submitted in support of the application that rock was encountered at 1.2 m below ground surface. It would appear that it was not possible to carry out T-tests and that the P tests value was 15. I note that it is proposed to use in situ soils to construct a percolation area. No evidence has been produced to suggest that these soils are in any way suitable to treat the effluent arising. In the absence of evidence to the contrary, it would appear that the effluent arising will pose an unacceptable risk to surface water quality and would therefore be prejudicial to public health. I also wish to point out to the Board that there are three houses constructed to the north of the site on similar terrain. The Northern Regional Fisheries Board has commented on the specific sensitivity of the site and the general sensitivity of the area and the cumulative impact of a number of effluent treatment systems on surface water quality in the area.

The Board may consider these to be new issues and avail of its powers under section 137 of the Act.

**Note:** It is unclear what potential risk is posed by flooding from Lough Connell to the southwest of the site. The Board will note that the report from the OPW was received

after the decision to grant permission had been made by the planning authority. Consequently, the flood risk assessment required by the OPW was not sought by the planning authority.

## **RECOMMENDATION**

Having considered the contents of the application, the decision of the planning authority, the provisions of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission for the development be refused for the reasons and considerations set out below.

## **REASONS AND CONSIDERATIONS**

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard due to the additional traffic movements that would be generated onto the heavily trafficked National Secondary Route (N 56) at a point where a speed limit of 100 km/h applies and the turning movements generated by the development would interfere with the safety and free flow of traffic on the public road.
2. Having regard to the topography of the site it is considered that the proposed development by reason of its elevated position would constitute an obtrusive feature in the landscape and would be at variance with the objectives of the Location, Siting and Design (Appendix E) of the Donegal County Council Development Plan 2006-2012 in terms of the provision of low impact development in rural areas. The proposed development would, therefore, seriously injure the visual amenities of the area and be contrary to the proper planning and sustainable development of the area.
3. Having regard to the ground conditions prevailing on the site consisting of rock outcrops and shallow soils and the slope of the site towards a stream/drain to the east of the site which discharges to Lough Anure, the Board is not satisfied on the basis of the information submitted in support of the application and the appeal that the site can be satisfactorily drained by means of a septic tank, notwithstanding the proposed use of a proprietary treatment system. The proposed development would pose an unacceptable risk to surface water quality and would therefore be prejudicial to public health.

Breda Gannon  
Inspectorate  
August 10<sup>th</sup>, 2009