



An
Bord
Pleanála

Inspector's Report ABP-305624-19.

Development	Dwellinghouse and garage.
Location	Errity, Churchland, Manorcunningham, Letterkenny P.O., Co. Donegal. .
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	19/50506.
Applicant	Mark Boyle.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Brendan and Caroline Boyle.
Observer	None.
Date of Site Inspection	28 th November 2019.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is at the edge of the built up environs of the village of Manorcunningham in north-eastern Donegal. This is a small settlement which comprises a central core with a historic area and which has a small village character. In the immediate vicinity of the site there is a strong urban element defined by terraced and other housing. The site at the opposite side of the local road is within the rural area surrounding the village proper, where there is a small level of one-off residential development.
- 1.2. The subject site is of stated area of 0.2 hectares. It is one of three sites marked out for residential development. The overall plot is bounded by agricultural lands to the south / south-west and to the north-east by a house on a large and elevated plot. The overall land is wedge-shaped and has a narrow frontage onto the local road and at this location also meets with the junction of a private access road. The subject site has a key location insofar as it is at the entrance to the three potential residential sites and the defined site boundary lands include the entrance and part of the laneway.
- 1.3. Apart from the roadside trees, which are not of significant inherent value, there are no trees on the site. There is a small tarmac road at the site entrance. The site is undulating and rough, which I assume is related to the adjacent plot to the south-east (the appellant's house) where work on a permitted development including levelling of the lands has commenced.
- 1.4. Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

2.0 Proposed Development

- 2.1. Permission is sought for:
 - Construction of a detached one and a half storey dwellinghouse.
 - Domestic garage.
 - All site works.
 - Connection to public sewer.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to conditions including:

- To be in accordance with plans and particulars including revised site layout received on 27th August 2019.
- Restriction on occupancy and section 47 (condition 2).
- 70m visibility splays.
- Details of site boundary to include removing the entire road frontage and provision of dark stained tanalised timber fence planted with hedgerow species native to the area.
- Finished floor level of dwellinghouse not to exceed 1.442m above manhole public road adjacent to the entrance (condition 10).
- Conditions relating to detailing and landscaping.
- Payment of contribution under Donegal Development Contribution Scheme.

The decision to grant permission was preceded by a request for further information in relation to the orientation of the dwelling, alternative access to the public road and proof of adequacy of surface water drainage system. In this respect documents were received on 17th July 2019 but were not deemed to be adequate. A further submission received on 27th August 2019 was acceptable to the planning authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The original planning report states that the access to the site is proposed by a laneway approved under 15/50503 and that a right of way has been registered.

The main points in the planner's final report and recommendation dated the 6th of September 2019 include:

- Further information was considered.

- Having regard to the location and site in the rural area under strong influence to the bona fides of the applicant and the evidence submitted and to other matters the proposed development is in accordance with the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

The Roads and Transportation Planning report notes that the combined junction at the entrance could pose a problem and a single junction proposal would be beneficial.

The final report of the Executive Engineer considers that the revised junction layout proposed in the further information is acceptable.

The report of the Environmental Health Officer notes the connection to the public sewer and indicates no further comments.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

The ongoing court proceedings are referenced by the owners of the land and there is an objection to the planning application. There is a court order in place until this dispute is sorted and this prevents any works being carried out in the interim.

4.0 Planning History

There is an extant permission at the site to the rear for a detached dwellinghouse at the adjacent plot to the south-east. Planning reg. ref. 15/50503 refers. Full details are on this file.

The permitted house is a dormer dwellinghouse of stated area of 244m² and a domestic garage. There appears to be no overlap between the subject site and the current site. The western site boundary which adjoins the site of the current appeal is to be planted with a hedgerow. The finished floor area of the proposed house is given as 49.5m.

5.0 Policy Context

5.1. Development Plan

Under the Donegal County development plan 2018 – 2024 the site is located in an area designated as being under Strong Urban Influence under Rural Housing Policy RH-P-5.

5.2. Natural Heritage Designations

The nearest European sites are Lough Swilly SAC and SPA (site codes 002287 and 004075).

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the third party appeal relate to a dispute over part of the site which is identified in blue on a map attached to the appeal. The lands which are in the ownership of the applicant are smaller than shown and smaller than the site defined for the application. Under a court order no works are allowed pending resolution of the dispute.

6.2. Applicant Response

No response was received in relation to the appeal.

The Board by way of letter dated 27th of November 2019 and required the applicant care of his agent Gareth Rodgers to response to the appellant's assertion in the grounds of the appeal that you may not be able to assert sufficiently interest in the site or have the consent of the person or persons who consider such sufficiently interest. A response received related to the legal interest and included details of relevant mapping.

6.3. Planning Authority Response

The planning authority considers that the grounds of appeal relates essentially to civil matters and refers to section 34 (13) of the Planning and Development Act 2000 as amended.

6.4. Observations

None.

7.0 Assessment

7.1. Legal Interest

Taking into account the provisions in the Development Management Guidelines, the Board in this case has required the applicant to respond to the appeal on the basis that there is a requirement to demonstrate sufficient legal interest to make an application. In response the applicant has enclosed a solicitor's letter and an extract from the Property Registration Authority. Based on the information on the file I am satisfied that sufficient legal interest has been demonstrated for the purposes of this application. Separate legal proceedings are ongoing.

The provisions of section 34(13) of the Act clarify that a person shall not be entitled solely by reason of a permission to undertake development. I recommend that the Board determine this case and that the provisions of section 34(13) should be noted in the decision.

7.2. Access and laneway

There is one aspect of the proposed development which I consider raises planning issues and in relation to which there is potential overlap between the landowners and that concerns the details of the access and the adjacent part of the proposed private laneway, which is intended to serve also the sites to the rear. In this respect I refer the Board to the full history of the adjacent site where permission has been for a house for the appellant and to the site layout received by the planning authority on 27th August 2019, which is the relevant document for the purposes of the current

appeal. There is a registered right of way over the site of the current application which together with the site entrance which is proposed comprises part of the future shared access lane which will serve the sites to the rear. The planning report dated 29th of May 2019 states that the access to the site is proposed by a laneway approved under 15/50503 and that a right of way has been registered, which has been demonstrated by the applicant's recent submission. No part of the appeal submission including in relation to legal issues raises any issues in relation to the access road.

The fact that the site entrance and laneway are included within the site defined for this application has to be considered. The permitted access and laneway proposed under this application cannot be in conflict with any other extant permission which also shows works in this area. In those circumstances if both the current applicant and the current appellant decided to implement any permissions then there is a very real likelihood of conflict over who bears responsibility for the construction of the entrance and the initial zone of the access road. Further, if permission is granted for the current development and the appellant opts not to develop the lands then the question arises also in relation to who constructs the access and the part of the laneway serving the subject site.

On the site layout under the current application the access road is to be a gravel driveway which is to be separated from the dwellinghouse and garden by a post and rail fence back planted with hedgerow. On the permission for the adjacent house to the rear it is similarly finished. The site to the rear also includes as part of the defined site for the purposes of the application the relevant part of the access lane.

While there is an overlap between the subject site and part of the previously permitted road, there is no conflict between the details proposed and in particular it is relevant to note that neither development can be undertaken without construction of the relevant section of the road.

7.3. Sightlines and junction details

The site entrance would be within the 50kph speed limit of the village. It is the applicant's submission that the vision line of 70m at a point 2.4m from the road edge is suitable and complies with the development plan table 3 Appendix 3

In response to the request for further information issued by the planning authority and the applicant has provided a revised proposal, which addresses the junction of the existing road and takes into account the proximity of access to an existing lane.

I am satisfied that no traffic safety issues arise in this case having regard to the sightlines achieved in the development, the very low level of traffic likely at this location and the location of the site entrance within the 50kph speed limit.

7.4. Foul and Surface Water Drainage

The proposed connection of the dwellinghouse to the foul sewer appears to be acceptable in the absence of any indicated concerns relating to the detail or the capacity of the system.

In response to the request for further information issued by the planning authority the applicant has provided surface water drainage details, which confirm that the capacity of the existing stormwater outlet can accommodate the approved and the proposed houses. I consider that it is reasonably demonstrated that the land drain to which it is proposed to discharge surface water has the capacity for the extra loading which would be generated by the proposed development.

7.5. Site Layout and House Design

Regarding the location of the dwelling house on site this was revised in response to a request by the planning authority. The orientation of the house was thus shown on the further information site layout (17th of July) as more squarely addressing the public road. However, under the site layout of 27th of August it was orientated more towards the west. I consider that the differences are marginal in terms of their impact on the public realm and the relationship with the permitted development. The site layout of the 27th of July is acceptable and sufficiently in keeping with the pattern of development.

In terms of the design of the proposed house, I consider that it is acceptable in the context of the pattern of development of the area which is defined in the immediate site context by low density housing on relatively large sites. The permitted dwellinghouse to the rear (south-east) is of similar finished floor area. The finished

floor level at the current site is the same as that of the permitted house at the adjacent site.

7.6. Development plan policy

Regarding the development plan policy and the need for an occupancy condition and section 47 agreement as detailed in the decision of the planning authority, my considerations are as follows.

The applicant was required to demonstrate that for a period of at least seven years either they themselves or their parents or grandparents have resided at some time in the area in the vicinity of the application site. The applicant's submissions in this regard were considered by the planning authority to be acceptable.

The wording of the condition of the planning authority requires inter alia agreement under section 47 and I would describe it as being quite detailed. Having regard to the location of the site contiguous to an urban settlement, there might be an argument that the occupancy condition is not warranted. The requirement however is in accordance with the development plan policy and there is no reason to omit the condition attached by the planning authority in the circumstances of this case. I therefore recommend that the Board's standard condition be attached.

7.7. Appropriate assessment

The site would be hydrologically connected by way of a drain into which surface water would be discharged from the site and which appears in itself to be connected to the downstream European sites of Lough Swill SAC and Lough Swilly SPA. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the likely emissions arising from the proposed development, the availability of public water and sewerage in the area, and distance to the nearest European sites, 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.

8.0 Recommendation

- 8.1. I recommend that permission be granted for the reasons and considerations and subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the location of the site in an area where a 50kph speed limit applies and which is contiguous to the built up environs of Manorcunningham, to the submissions made as part of the application and the objectives pertaining to the site set out in the current development plan for the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 17th day of July 2019 and by the further plans and particulars received by An Bord Pleanála on the 27th day of August 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to

this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

4. Prior to commencement of construction, details of the materials, colours and textures of all the external finishes to the proposed house shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include

(a) details of hedgerow planting of semi-mature species native to the area and shall contain proposals for the planting of at least 12 no. semi-mature broadleaf trees at least half of which shall be forward of the front building line of the house.

(b) A timescale for implementation of the planting scheme which shall provide for the planting to be completed within six months of the occupation of the dwelling.

(c) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

6. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of traffic safety.

7. All public service cables for the development, including electrical and telecommunications cables shall be located underground throughout the site.

Reason: In the interest of visual amenity.

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

Reason: It is a requirement of the Planning and Development Act 2000, as

amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Mairead Kenny
Senior Planning Inspector

15th of January 2020