



An  
Bord  
Pleanála

## Inspector's Report 306086-19

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<b>Development</b>	Retention of site development works and erection of a house with septic tank
<b>Location</b>	Ballykerran, Kilmacrennan, Letterkenny, Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	19/50064
<b>Applicant(s)</b>	Anthony McElwee
<b>Type of Application</b>	Retention planning permission and planning permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Nigel McCutcheon
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> February 2020
<b>Inspector</b>	Louise Treacy

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.98 ha and is located approximately 1.4 km to the south-east of the village of Kilmacrenna, Ballykerran, Co. Donegal. The site forms part of a larger agricultural field which has been subject to development works and is characterised by disturbed soil and stony material which is dispersed throughout and deposited in a number of mounds.
- 1.2. The roadside boundary is formed by large boulders and 2 no. agricultural gates. The eastern site boundary comprises a fragmented tree line, while the northern and western site boundaries are undefined and form part of the adjoining agricultural field.
- 1.3. Significant stands of water were present on the site at the time of the inspection, particularly at the roadside boundary, and the site was substantially wet underfoot throughout. An open drain extends along the north-eastern boundary of the wider agricultural field, with further open drains noted on the adjoining lands to the north of the application site.
- 1.4. The lands in the vicinity are generally agricultural in nature, with dispersed rural dwellings. A children's playground and football pitch are located to the north-east of the application site.

## 2.0 Proposed Development

- 2.1. The development consists of the retention of site development works and the erection of a dwelling house with septic tank.
- 2.2. The site development works relate to the infilling of the site. No supporting material is provided with the planning application to explain the requirement for these works.
- 2.3. The dwelling house as originally proposed comprised a dormer-style, detached 4-bedroom dwelling of 305 m<sup>2</sup>. The dwelling had an overall height of 7.64 m and had 2 no. projecting gable bays to the front elevation facing the public road.
- 2.4. The building was redesigned as a 2-storey, 4-bedroom dwelling of 251 m<sup>2</sup> by way of the applicant's Further Information Response of 19<sup>th</sup> August 2019. The overall building height was also increased to 8.13 m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission subject to 17 no. conditions issued on 7<sup>th</sup> November 2019.
- 3.1.2. Condition no. 2 restricts the occupancy of the dwelling for a period of 7 years.
- 3.1.3. Condition no. 3 requires the entire roadside boundary to be removed and replaced with fencing and a native hedgerow.
- 3.1.4. Condition no. 9 requires permanent visibility splays of 90 m to be provided at the site entrance.
- 3.1.5. Condition no. 11 requires the site preparation and construction to conform to the Inland Fisheries Ireland Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites.
- 3.1.6. Condition no. 10 requires post construction surface water run-off to be treated via serviced sediment and oil interceptor traps prior to discharge to the open drain to the north.
- 3.1.7. All other conditions are generally standard in nature.

### 3.2. Planning Authority Reports

- 3.2.1. **Planning Reports (8<sup>th</sup> March 2019, 6<sup>th</sup> June 2019, 29<sup>th</sup> August 2019 and 1<sup>st</sup> November 2019)**
- 3.2.2. Donegal County Council's Planning Officer recommended that Further Information be requested on 8<sup>th</sup> March 2019 in relation to the following:
  - (1) A revised house design demonstrating the omission of the front gable projections and their replacement with a flush front elevation and centrally located porch;
  - (2) The site entrance, the setting back of the roadside boundary and the achievement of 90 m sightlines, and comprehensive landscaping proposals for the site; and,
  - (3) The location of the required visibility splays on third party lands, including letters of consent and details of all remedial works necessary to achieve same.

- 3.2.3. The applicant submitted a Further Information Response on 15<sup>th</sup> May 2019 which included a revised site layout and the significant extension of the site area. On that basis, Donegal County Council's Planning Officer determined that it was not possible to formally consider the response (report dated 6<sup>th</sup> June 2019 refers).
- 3.2.4. The applicant submitted a revised Further Information Response on 19<sup>th</sup> August 2019, which I note was outside of the statutory 6-month period. Donegal County Council's Planning Officer's determined that the revised house design to a 2-storey dwelling constituted significant additional information and new statutory notices were published (report dated 29<sup>th</sup> August 2019 refers).
- 3.2.5. The Planning Officer considered the amended development to be acceptable in principle and it was recommended that planning permission be granted as per the Notification of the Decision to Grant Permission (report dated 1<sup>st</sup> November 2019 refers).
- 3.2.6. **Other Technical Reports**
- 3.2.7. **Roads and Transportation Planning Department (5<sup>th</sup> February 2019):** No objection subject to conditions.
- 3.2.8. **Environmental Health Department (27<sup>th</sup> February 2019 and 27<sup>th</sup> May 2019):** No objection subject to conditions.
- 3.3. **Prescribed Bodies**
- 3.4. **Irish Water (14<sup>th</sup> February 2019):** No objection subject to conditions.
- 3.5. **Department of Culture, Heritage and the Gaeltacht:** None received.
- 3.6. **An Taisce:** None received.
- 3.7. **The Heritage Council:** None received.
- 3.8. **Third Party Observations**
- 3.8.1. Three submissions were made on this application by Mr. Nigel McCutcheon (appellant). The points of objection contained in the submissions reflect the third party appeal.

## 4.0 Planning History

- 4.1. **Planning Authority Reg. Ref. 07/50330:** Outline planning permission granted on 7<sup>th</sup> August 2007 for the erection of a dwelling and with individual sewage treatment system.

## 5.0 Policy and Context

### 5.1. National Planning Framework (NPF)

- 5.1.1. In planning for the development of the countryside, the NPF acknowledges that there is a need to differentiate between demand for housing in areas under urban influence and elsewhere, as per the following objective:

- 5.1.2. **National Objective 19:** Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

### 5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

- 5.2.1. The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF). These include: (i) **rural areas under strong urban influence** (close to large cities and towns, rapidly rising population, pressure for housing and infrastructure); (ii) **stronger rural areas** (stable population levels within a well-developed town and village structure and in the wider rural area; strong agricultural economic base and

relatively low level of individual housing development activity); (iii) **structurally weaker rural areas** (persistent and significant population decline and weaker economic structure); and, (iv) **areas with clustered settlement patterns** (generally associated with counties of the western seaboard).

5.2.2. Development Plans must tailor policies that respond to the different housing requirements of urban and rural communities and the varying characteristics of rural areas.

### 5.3. **Donegal County Development Plan 2018-2024**

#### 5.4. **Rural Housing**

5.4.1. The application site is located within a Stronger Rural Area, with such areas comprising those with a relatively stable population, within a well-developed town and village structure and in the wider rural area around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas.

#### 5.4.2. **Rural Housing Objectives**

5.4.3. **RH-O-1:** To distribute the projected need for housing units in the rural area in line with the Core Strategy.

5.4.4. **RH-O-2:** To support a balanced approach to rural areas to retain vibrancy and ensure the sustainability of established rural communities while having proper regard to environmental considerations

5.4.5. **RH-O-2:** To support a balanced approach to rural areas to retain vibrancy and ensure the sustainability of established rural communities while having proper regard to environmental considerations.

5.4.6. **RH-O-3:** To ensure that new residential development in rural areas provides for genuine rural need.

5.4.7. **RH-O-4:** To protect rural areas immediately outside towns from intensive levels of residential development and thus safeguard the potential for incremental growth of the towns and their potential beyond the plan period; to utilise existing physical and social infrastructure; and to avoid demand for the uneconomic provision of new infrastructure.

- 5.4.8. **RH-O-5:** To promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape having particular regard to the Landscape Classifications illustrated on Map 7.1.1 and contained within Chapter 7 of this Plan.
- 5.4.9. **RH-O-6:** To promote compliance with the environmental objectives and strategies of the North West International River Basin Management Plan and with the requirements of Article 6 of the EU Habitats Directive.
- 5.4.10. **Rural Housing Policies**
- 5.4.11. **RH-P-1:** The following requirements apply to all proposals for rural housing:
- (1) Proposals shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;
  - (2) Proposals shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas. Proposals shall also be located so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views, including views covered by Policy NH-P-17;
  - (3) Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District Plan;
  - (4) Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P15;
  - (5) Any proposal which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;
  - (6) Proposals shall be subject to the flood risk management policies of the Plan;
  - (7) In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

5.4.12. **RH-P-2:** It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:

- (1) A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;
- (2) A proposed dwelling shall not create or add to ribbon development;
- (3) A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;
- (4) A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;
- (5) A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development.

5.4.13. **RH-P-3 Stronger Rural Areas:** It is a policy of the Council to consider proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area, provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P2, where the applicant can demonstrate that they comply with one or more of the following:

- (1) Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base;
- (2) Persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate

family members, or by reason of providing care to a person who is an existing resident (7 years minimum);

(3) Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

This policy shall not apply where an individual has already had the benefit of a permission for a dwelling on another site, unless exceptional circumstances can be demonstrated. An exceptional circumstance would include, but would not be limited to, situations where the applicant has sold a previously permitted, constructed and occupied dwelling, to an individual who fulfils the bonafides requirements of that permission. New holiday home development will not be permitted in these areas.

## 5.5. Landscape

5.5.1. Map 7.1.1 of the development plan confirms that the site is located within an Area of High Scenic Amenity. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.

### 5.5.2. Landscape Policies

5.5.3. **NH-P-7:** Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.

5.5.4. **NH-P-9:** It is the policy of the Council to manage the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.

5.5.5. **NH-P-13:** It is a policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it can be accommodated into the receiving landscape. In this regard the proposal must be considered in the context of the landscape classifications, and views and

prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.

## **5.6. Natural Heritage Designations**

5.6.1. The site is located approximately 280 m to the south-east of the Leannan River SAC.

## **5.7. EIA Screening**

5.7.1. Having regard to the nature and scale of the proposed development, comprising 1 no. residential dwelling, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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. A third-party appeal has been lodged by Mr. Nigel McCutcheon of No. 41 A Pettigo Road, Dooraanorth, Kesh, Co. Fermanagh, the grounds of which can be summarised as follows:

- The site has been infilled with contaminated material without planning permission and after retention permission was sought. This infilling activity contradicts Class 2, Schedule 2, Part 3 of the Planning and Development Act;
- Article 9 and the amended Section 4 provides that development shall not take place if an EIA is required. An EIS should have been required in this case;
- The development is adjacent to a children's play area;
- The area is congested with septic tanks with contamination of ground water. The River Lennon (Leannan) SAC is close to the site;
- Given that the site is a wetland, the planning authority should have required the foundations of the dwelling to sit on piles.

## 6.2. Applicant Response (31<sup>st</sup> December 2019)

6.2.1. The applicant's response can be summarised as follows:

- An Article 27 notification from the EPA shows the type, source and nature of the material used to fill the site;
- An EIA is not required in this case and the development will comply with the requirements of Donegal County Council's Environmental Health Service;
- The proposed development will have no impact on the neighbouring children's play area;
- The proposed development will not cause contamination of ground water and there will be no impact on the River Lennon (Leannan);

## 6.3. Planning Authority Response (7<sup>th</sup> January 2020)

6.3.1. The planning authority submits that the issues raised in the appeal have been addressed in the reports of the Planning Officer.

## 6.4. Observations

6.4.1. None.

## 7.0 Assessment

7.1. I am satisfied that the main issues for consideration in this case include:

- Rural Housing Need
- Domestic Wastewater Treatment
- Appropriate Assessment

7.2. Each of these issues is addressed in turn below.

### 7.3. Rural Housing Need

7.3.1. Policy RH-P-3 of the development plan identifies the categories of housing need for the development of rural dwellings in Stronger Rural Areas. Prospective applicants must comply with one or more of the identified categories in order for their proposals

to be considered. In this case, the applicant has confirmed his compliance with category no. 2 of this policy, which relates to persons with a vital link to the rural area by reason of having lived in the community for a minimum period of 7 years, or by the existence in the rural area of long established ties (7 years min.) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years min.).

7.3.2. The Supplementary Rural Housing Form indicates that the applicant has lived in the area for 25 years and that the proposed dwelling will be used as his primary, permanent residence. A letter of support is included from Cllr. Michael McBride of Donegal County Council who submits that the applicant has been known to him all his life, is of sound character and is indigenous to the area. No further documentary evidence is provided to demonstrate the applicant's link to the rural area.

7.3.3. Donegal County Council's Planning Officer considered that the planning application material had failed to establish the applicant's rural housing need and intrinsic link to the area (report of 8<sup>th</sup> March 2019 refers). On foot of the foregoing, the Planning Officer contacted Cllr. McBride who confirmed the applicant's existing address and circumstances of housing need. No further detail is provided in the Planning Officer's report in relation to this matter. As such, I consider that the circumstances of the applicant's housing need have not been adequately clarified by way of documentary evidence to demonstrate compliance with policy RH-P-3 of the development plan. In my opinion, retention permission and planning permission should be refused on this basis.

#### **7.4. Domestic Wastewater Treatment**

7.4.1. The appellant submits that the area is congested with septic tanks resulting in the contamination of ground water and notes the proximity of the site to the Leannan River SAC.

7.4.2. The relevant standard for domestic wastewater treatment is the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (2009). The applicant's Site Suitability Assessment Report records a T-value of 43.22 which is within the range of 3 – 50 as identified in table 6.3 of the EPA Code of Practice as being suitable to accommodate a septic tank system or a secondary treatment system discharging to ground water. While the report notes that the on-site

conditions are suitable for the efficient disposal of effluent, the installation of a mechanical wastewater treatment unit with soil polishing filter is recommended given the proximity of the site to the Leannan River SAC. In assessing the proposal, the Environmental Health Department of Donegal County Council noted the shallow subsoil depth on the site, but no objections arose to the proposed development subject to compliance with conditions relating to the installation of the treatment system.

- 7.4.3. The applicant's Site Suitability Assessment Report records the soil/subsoil in the location where the T-test was carried out as peat at a depth of 0.1 - 0.3 m. This reflects the site information shown in photograph no. 7 of Appendix C. The on-site vegetation is identified as predominantly heathers and grasses, with occasional thistle and ferns along the boundaries. The ground condition is described as dry and firm underfoot on the day of the inspection, with no surface water ponding visible.
- 7.4.4. In my opinion, the information which is contained in the Site Suitability Assessment Report does not accurately reflect the site characteristics and ground conditions I observed during my site inspection. As described in section 1.0 of this report, the site was characterised by disturbed soil and stony material throughout, with no evidence observed of any peat remaining on the site. This is supported by the applicant's appeal response which includes correspondence from the EPA indicating that 1,500 m<sup>3</sup> of this material has been deposited on the site. I also noted significant stands of water on the site, with the ground conditions being substantially wet underfoot throughout.
- 7.4.5. On the basis of this contradictory information, I am not satisfied that the planning application documentation demonstrates that domestic effluent arising within the site will be adequately treated such that it will not give rise to surface or ground water pollution. In my opinion, retention permission and planning permission should be refused on this basis.

## 7.5. **Appropriate Assessment**

- 7.5.1. The subject site is located approximately 280 m to the south-east of the Leannan River SAC (European Site No. 002176) which is selected for the following habitats/species: Oligotrophic Waters containing very few minerals [3110]: Oligotrophic to

Mesotrophic Standing Waters [3130]; Freshwater Pearl Mussel [1029]; Atlantic Salmon [1106]; Otter [1355]; and, Slender Naiad [1833].

- 7.5.2. The conservation objectives for this SAC include: (1) to restore the favourable conservation condition of oligotrophic waters containing very few minerals of sandy plains; (2) to restore the favourable conservation condition of oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or of the *Isoeto-Nanojuncetea*; (3) to restore the favourable conservation condition of Freshwater Pearl Mussel; (4) to restore the favourable conservation condition of Atlantic Salmon; (5) to maintain the favourable conservation condition of Otter; and, (6) to restore the favourable conservation condition of Slender Naiad (*Najas flexilis*).
- 7.5.3. The planning application is not accompanied by an Appropriate Assessment (AA) Screening Report or Natura Impact Statement. The AA screening undertaken by Donegal County Council's Planning Officer determined that an AA of the proposed development was not required. In reaching this conclusion, I note that the Planning Officer considered that no significant impacts on water quality would arise, with regard being had to the favourable report of the Environmental Health Department in respect of on-site wastewater treatment.
- 7.5.4. As discussed in Section 7.4 of this report, I am not satisfied that the planning application documentation demonstrates that domestic effluent arising within the site will be adequately treated such that it will not give rise to surface or ground water pollution based on the current ground conditions on site. I also note the presence of an open drain which extends along the north-eastern boundary of the wider agricultural field, with a further open drain extending in a south-west/north-east direction across the northern portion of the site as indicated on the Site Layout Plan submitted to Donegal County Council on 19<sup>th</sup> August 2019 (drawing no. 02 refers). Open drains were also noted on the neighbouring lands to the north of the site.
- 7.5.5. Having regard to foregoing and noting the importation of a significant quantity of fill material onto the site, I consider that the planning application documentation has not sufficiently demonstrated the absence of any hydrological connection between the site and the River Leannan SAC based on the source-pathway-receptor concept. In my opinion, retention permission and planning permission should be refused on this basis.

## 8.0 Recommendation

- 8.1. I recommend that retention planning permission and planning permission be refused for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the soil and ground conditions noted on site, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.
- 9.2. It is considered that insufficient evidence of a demonstrable economic or social need to live in this rural area has been provided as required under Policy RH-P-3 of the Donegal County Development Plan 2018-2024 and National Objective 19 of the National Planning Framework. Thus, the proposed development would contribute to the encroachment of rural development in this area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 9.3. On the basis of the information provided with the application and appeal, the Board cannot be satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on European site no. 002176 (River Leannan SAC), in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

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Louise Treacy  
Planning Inspector

20<sup>th</sup> March 2020