



An
Bord
Pleanála

Board Order
ABP-316049-23

Planning and Development Acts 2000 to 2022

Planning Authority: Donegal County Council

Planning Register Reference Number: 2251009

Appeal by Residents of Ballaghderg care of Joe Dunne of Ballaghderg, Letterkenny, County Donegal against the decision made on the 16th day of February, 2023 by Donegal County Council to grant, subject to conditions, a permission to Gary and Rachel Friel care of Michael Friel Architects and Surveyors Limited of Creeslough, Letterkenny, County Donegal in accordance with the plans and particulars lodged with the said Council:

Proposed Development: Erection of a dwellinghouse with wastewater treatment system, Ballaghderg, Letterkenny, County Donegal. The proposed development was revised by further public notices received by the planning authority on the 22nd day of December 2022.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to: -

- (a) the location of the site in a rural area designated by the Donegal County Development Plan 2018-2024 as being under strong urban influence,
- (b) the provisions of development plan Policy RH-P-5, which states proposals for new one-off housing will be considered, subject to compliance with other relevant policies,
- (c) the provisions of National Policy Objective 19 of the National Planning Framework (2018), which states that in rural areas other than those identified as being under urban influence, proposals for single housing in the countryside should be facilitated 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, and
- (d) the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (2005), which state that in stronger rural areas the demand be accommodated for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these Guidelines,

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, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Leenan River Special Area of Conservation (Site Code: 002176) is the only European Site for which there is a possibility of significant effects and must therefore be subject to Appropriate Assessment.

Appropriate Assessment

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for this European Site, in view of the sites' Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following;

- (i) the site-specific Conservation Objectives for this European Site;
- (ii) the current conservation status, threats and pressures of the qualifying interest features;
- (iii) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects;
- (iv) the view of the Department of Arts, Heritage and the Gaeltacht; and

- (v) any mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the implications of the proposed development on the integrity of the aforementioned European Site, having regard to the site's Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Site, in view of the sites' Conservation Objectives, and there is no reasonable scientific doubt as to the absence of such effects.

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 received by the planning authority on the 26th day of October 2022, 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 unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. 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. The developer shall appoint a suitably qualified ecologist to monitor and ensure that all avoidance/mitigation measures relating to the protection of flora and fauna are carried out in accordance with best ecological practice. A report on the implementation of these measures shall be submitted to the planning authority and retained on file as a matter of public record.

Reason: To protect the environmental and natural heritage of the area.

4. All mitigation measures set out in the Natura Impact Statement and associated documentation submitted by the developer with the application, by way of further information and the appeal, shall be implemented in full except as may otherwise be required in order to comply with the conditions of this Order.

Reason: In the interest of clarity and to protect European Sites during the construction and operational phases of the development.

5. The window on the first floor on the south elevation shall be omitted and alternative proposals for roof lights may be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To prevent overlooking of adjoining residential property.

6. The developer shall enter into water and wastewater connection agreements with Uisce Éireann.

Reason: In the interest of public health.

7. The vehicular access, including visibility splays, shall comply with the requirements of the planning authority for such works and services, details of which shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of traffic and road safety.

8. The proposed wastewater drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice – Domestic WasteWater Treatment Systems (Population Equivalent ≤ 10)" – Environmental Protection Agency, 2021.

Reason: In the interest of public health.

9. 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 the following:

A plan to scale of not less than 1:500 showing –

- (i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native

species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder which shall not include prunus species.

- (ii) Details of screen planting which shall not include cupressocyparis x leylandii.
- (iii) A timescale for implementation including details of phasing, all planting shall be adequately protected from damage until established. 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 the interest of residential and visual amenity.

- 10. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

11. 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 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.



Stephen Bohan

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this  day of  2024.