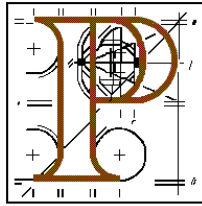


# An Bord Pleanála



## Inspector's Report

**Appeal Reference:** PL05E.245498

**Development:** Retention of repositioning of house granted under Reg. Ref: 06/72405, as well as minor modifications and permission for wastewater treatment plant at Tullyarvan, Bunrana, Lifford P.O., Co. Donegal.

### Planning Application

Planning Authority Donegal County Council  
Planning Authority Reg. Ref. 15/50888  
Applicant: Roseleen Callaghan  
Type of Application: Retention permission/ permission  
Planning Authority Decision: Grant retention permission/ permission

### Planning Appeal

Appellants: Sarah Barr  
Type of Appeal: Third Party  
Observer(s): None  
Date of Site Inspection: 30<sup>th</sup> November 2015

**Inspector:** Donal Donnelly

**Appendices:** Photographs and maps

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The appeal site is located in the townland of Tullyarvan in northern Co. Donegal approximately 2km north of Bunrana. Tullyarvan is located on elevated land on the western slopes of the Crana river valley. This area is semi-rural in character with low density and dispersed suburban style dwellings located along local roads either side of the R238 Regional Road.
- 1.2 The dwelling on the appeal site is situated above the level of the local road and surrounding dwellings to the east. There are approximately 27 dwellings within 200m of the site boundary. An existing gravel access road from the local road continues west for a distance of approximately 150m up-gradient to the location of the as-built dwelling on site. This road also provides access to two other dwellings. An adjoining dwelling and garage to the east of the site are accessed via a separate laneway to the north.
- 1.3 The appeal site is an irregular shape and has a stated area of 0.45 hectare. The site includes the dwelling curtilage and lands either side of the access lane on the approach. A separate dwelling under construction to the south appears to use this part of the site for access. The dwelling on the appeal site is now completed and occupied.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The proposed development comprises the following main elements:
- Retention of repositioning of dwelling house from that approved under Reg. Ref: 06/72405;
  - Retention of minor modifications to the front elevation providing hipped roof over front bedroom windows, external chimneys to both gables and slight modifications to window fenestration;
  - Permission for installation of a wastewater treatment plant, soil polishing filter and site development works.

## **3.0 TECHNICAL REPORTS**

- 3.1 The recommendation to grant permission, as outlined within the Planning Report, reflects the decision issued by the Planning Authority.
- 3.2 The Case Planner highlights that the planning history of this site is of particular relevance. This is a repeat application of an earlier refusal that has been revised somewhat in its presentation. The garage has been omitted from the application and is not under assessment at this time. Consents have now been provided and it is considered that the previous reason for refusal in this regard has now been addressed.

- 3.3 It is also stated that the “as built” and “as permitted” drawings are now satisfactory for the purposes of assessing the application. The Case Planner considers that the change in footprint of the as-built dwelling in physical distance/ measurement terms is not significant.
- 3.4 The Case Planner found that the separation between the dwelling and the property to the south, together with the garage on third party lands and semi-mature hedge planting, would substantially serve to protect the amenity of the third party property. It is also considered that overlooking will not be an issue, as the single gable end window serves an en-suite and has frosted glass.
- 3.5 The other notable change is the 2-storey projections which were previously deemed unacceptable. However, it is noted that the dwelling is located on a private site, bounded by mature vegetation and is not overly visible in the surrounding environment.
- 3.6 There are no issues of validity of the planning application occurring to the Case Planner and it is stated that any further contestation of land ownership is a civil matter.

#### **4.0 PLANNING AUTHORITY’S DECISION**

- 4.1 Donegal County Council issued a notification of decision to grant permission for the development/ proposed development subject to seven conditions.
- 4.2 Condition 2 states that the dwelling shall not be used as a holiday home and under condition 4 visibility splays of 70m are required from the site access. Other conditions are attached relating to finishes, landscaping, drainage, and wastewater treatment and disposal.

#### **5.0 APPEAL GROUNDS**

- 5.1 A third party appeal against the Council's decision was submitted on behalf of Sarah Barr, the owner of the property adjoining the appeal site to the east/north. The grounds of appeal and main points raised in this submission can be summarised as follows:
- Permission for retention is virtually identical in material issues to the refused application Reg. Ref: 14/51253 with the exception of a garage which has been omitted.
  - Site layout drawing does not include dimensions of structures to boundaries as required by Regulations – this is a primary concern given that the application is for retention.
  - There is no timeframe of an application to the Land Registry or evidence produced to give credence to the “mapping discrepancy” – unauthorised garage should be a material consideration.

- Question 10 of the planning application form relating to site ownership has not been answered properly – this is grounds for invalidation.
- As-built drawing is inaccurate as there are two projecting hip roofs to the front elevation that are not shown.
- Change in location along with rotation of dwelling has seriously reduced the residential amenity of appellant’s dwelling – there is no screening and the dwelling is imposing and strident.
- Planner gave guidance under Reg. Ref: 06/70038 for a single storey gable end dwelling that will integrate with the topography of the site and other single storey dwellings in the vicinity.
- Case Planner stated when assessing Reg. Ref: 14/51253 that *“applicant is advised that the Planning Authority retains very significant concerns in relation to the departure from the approved drawings in relation to siting, finished floor levels and design. Accordingly, if permission is to be considered it is likely that the retention of the development as constructed will not be favourably considered as proposed. This matter will however be formally considered on receipt of response to the further information request and this advice is at this time without prejudice to same.”*
- Planner stated on 18<sup>th</sup> May 2015 that *“the alteration to the character of the dwelling is not minor and the resultant character is that of a heavily suburban influenced dwelling... there are no mitigating measures/ screening measures available due to the lack of ownership of available lands... therefore it is recommended that the subject application is refused.”*
- Refusal also came with advice that was more forceful than the advice on the further information in relation to departure from approved plans and the very clear pre-planning advice regarding siting and design.
- There appears to be a complete about face with the decision to grant the current permission given planning history of the site.
- Siting, floor level and design has a serious cumulative detrimental effect on the residential amenity of the appellant.

## 6.0 RESPONSES

### Second Party

5.2 The Planning Authority responded to the third party appeal with the following comments:

- Retention permission for garage is not sought under this application and is not a material consideration – this building remains open to separate enforcement action.

- Planning Authority is satisfied that the applicant has provided legal documentation confirming ownership as well as letters of consent.
- As-built elevation drawings show the two projecting hip roof details.
- Footprint of dwelling as-built overlaps with that permitted – Planning Authority remains of the opinion that slight variation to the siting does not have a detrimental impact on adjoining residential amenity.
- Extent of changes made to design of dwelling are cumulatively minor and do not significantly alter the overall design.

*First Party*

6.1 The applicant responded to the third party appeal with the comments below:

- Dwelling is not prominent in any long distance or near distance views, as the site is generally flat and benefits from the screening of a dense copse of trees to the northern and western boundaries of site.
- Site for development is included within the Buncrana & Environs Plan boundary and is not rural, as insisted by the appellant.
- Dwelling relocated to enable relocation of foul drainage system to the front to make it more feasible to connect to the new foul drainage mains system.
- Garage may be subject to enforcement action and the applicant will abide by the outcome of that procedure.
- Building already exists and demarcation of distances to boundary was not relevant – amended site plan submitted with appeal show distances to boundaries.
- It is unreasonable that the issue of the garage should prevent the applicant from regularising the planning status of her dwelling.
- Minor inaccuracy in side elevation drawing does not alter the presentation of amended dwelling.
- Dwelling is within suburbs of Buncrana and there was every reason to expect a dwelling to incorporate suburban design details.
- Apart from citing past assessments, the appellant has not presented any tangible rationale for the objection to the design of the dwelling.
- It is inconceivable how the design of the dwelling can adversely impact on the amenities of the appellant's dwelling.
- Difference in floor area (107.2m AOD and 107.3m AOD) is negligible.

- Repositioning of appellant's dwelling only marginally places part of the dwelling closer to the appellant's dwelling and that part is located directly behind the appellant's garage.
- There is a 25m separation distance between the applicant's and appellant's dwellings.
- Photographs attached with the submission give a true reflection on the view from the applicant's dwelling.
- Applicant has planted laurel hedging along the eastern boundary and is willing to erect a close boarded timber fence on top of the low concrete block wall – this could be a condition of a grant of permission.
- Planning Authority or appellant did not raise any issue with the wastewater treatment plant and percolation area, or visibility from the access onto the main road.
- Relationship with and impact on adjoining dwellings is substantially the same as with the dwelling already permitted.

Third party

6.2 The appellant's agent submitted the following comments on the applicant's response:

- Site located in Buncrana Rural and not within the town council area at the time of the original application in 2006. Planning context which the application must be considered is the County Development Plan.
- Drawings were found to be wrong and this is acknowledged by the fact that new drawings have been submitted to the Board.
- Garage is within development site, should have been a material part of the application, and was grounds for invalidation.
- Applicant did not state legal interest on planning application form.
- Relocation and reorientation has the effect of eliminating the screening by the appellant's garage of the new dwelling.
- Proposal to erect a fence on top of the wall is unacceptable to the appellant.
- No issues with effluent treatment plant and percolation area.

Second party

6.3 The Planning Authority has no further comment on the submission made to the Board on behalf of the applicant.

## 7.0 PLANNING HISTORY

### Donegal County Council Reg. Ref: 06/72405

- 7.1 Permission granted for the erection of a dwelling house in October 2007. The permitted dwelling faced south and had a front and rear building line similar to the existing garage/ shed on adjoining lands to the east. The permitted wastewater treatment system was to be located to the rear of the site at the location of the now constructed garage. The finished floor level of the dwelling was to be 107.3m OD and the ridge height of the dwelling as applied for was 9.175m.
- 7.2 Following a request for further information, the height of the dwelling was reduced to 8.33m. Subsequent further information was submitted to amend the dwelling to a traditional gable design with ridge height of 8.45m. The floor area of the dwelling is 269.1 sq.m.
- 7.3 Correspondence on file subsequent to the grant of permission states that the applicant intends to apply for a minor amendment to have the house changed in line with Reg. Ref: 07/70537, which was granted on an adjoining site.

### Donegal County Council Reg. Ref: 14/51253

- 7.4 Permission refused for:
- Retention of repositioning of dwelling house from that approved under Reg. Ref: 06/72405 and minor modifications to front elevation, namely providing hip roof over front bedroom windows, external chimneys to both gables and slight modifications to window fenestration.
  - Retention of garage/shed constructed on site, and
  - Installation of a wastewater treatment plant, soil polishing filter and site development works
- 7.5 The first reason for refusal referred to the garage, wastewater treatment system and part of the vehicular access being located outside of the applicant's legal control, and that evidence of consent or legal entitlement to retain and carry out these developments have not been submitted with the application.
- 7.6 The second reason states that the applicant has not properly presented the "as permitted" versus the "as-built" position, levels and details of the dwelling.

### Donegal County Council Reg. Ref: 07/70537

- 7.7 Permission granted for the erection of 1 no. dwelling with detached garage, sewage treatment tank and removal of existing site entrance and replace with new entrance at a site approximately 130m to the south-east of the appeal site fronting the local road.

## 8.0 DEVELOPMENT PLAN

### Buncrana & Environs Development Plan, 2014-2020

- 8.1 The part of the site containing the dwelling to the north is within “Established Development” lands where it is the objective *“to ensure the protection of the character and biodiversity of established areas and to allow for new development that is both appropriate and orderly in the context of the established area.”*
- 8.2 The south-western part of the site is zoned *“Agricultural/ Rural - to provide for a spatial development pattern that is sustainable and related in form and scale to the level of existing physical and social infrastructure in the area and that can be integrated and absorbed into the landscape.”*

## 9.0 ASSESSMENT

- 9.1 Planning permission is sought for retention of relocation of a 2-storey dwelling house permitted in October 2007 (Reg. Ref: 06/72405), together with amendments to the permitted design, incorporating hips above 2-storey frontal projections, external chimney stacks and revised fenestration detailing. Planning permission is also sought for the provision of a relocated wastewater treatment system and percolation area.
- 9.2 This application follows a similar application that also sought the retention of a garage on site and which was refused permission for reasons relating to legal entitlement and the quality of information submitted with the application.
- 9.3 Donegal County Council issued notification of decision to grant permission and retention permission for the current proposal and a third party appeal has been lodged by the owner of the adjoining dwelling to the east/ north. Having considered the contents of the planning application, grounds of appeal, planning history and site context, I consider that this appeal should be assessed under the following:
- Development principle;
  - Impact on residential amenity;
  - Design and visual impact;
  - Wastewater treatment and disposal.

### Development principle

- 9.4 The application that was permitted on site was assessed under the Development Plan in place at the time and the current proposal, as far as it relates to the development in question, shall be assessed under the Buncrana & Environs Development Plan, 2014, which was adopted prior to the making of the current application.



- 9.5 The appeal site is partly zoned “Established Development” and “Agricultural/Rural” within the Development Plan. The dwelling itself has been constructed in the part of the site zoned “Established Development”. Notwithstanding this, the principle of 2-storey dwelling at this location has already been established under the permission granted under Reg. Ref: 06/72405.
- 9.6 The appellant has raised a number of issues concerning the validity of the planning application. It would appear, however, that the information before the Board is now sufficient to make a proper assessment of the application. I would also be satisfied that third parties have been given an opportunity to view this information.
- 9.7 I consider that the omission of the as-built garage from the retention application is a reasonable approach for the applicant to take pending the outcome of ownership issues regarding same.

*Impact on residential amenity*

- 9.8 The appellant’s dwelling is situated to the east of the as-built dwelling on lower ground. The separation distance between both dwellings is approximately 25m. There is a large garage on the appellant’s property between both dwellings.
- 9.9 In my opinion, any possibility of overlooking of the appellant’s property would occur from the rear amenity spaces of the appeal site, as there are no first floor windows within the gable of the dwelling facing this direction other than an en-suite opaque opening. The re-orientation and setting back of the dwelling would have the effect of marginally reducing the private space to the rear. However, I consider that any changes in terms of overlooking arising from the repositioning of the dwelling will be negligible.
- 9.10 Similarly, there will be no significant change from the appellant’s property with regards to overshadowing or overbearing impacts. The finished floor level and height of the dwelling are significantly the same. The side elevation of the as-built dwelling will be more visible from the amenity space to the rear of the appellant’s property; however, there is still a reasonable degree of separation to militate against overbearing impacts.
- 9.11 Overall, I do not consider that the amendments to the dwelling in terms of positioning and height are to an extent that would warrant a refusal of permission. I also note that there appears to be a double boundary wall and planting along the party boundary. In general, I would have no substantial concerns regarding the impact on residential amenities from the as-built dwelling if it was being assessed as the original proposal.

*Design and visual impact*

- 9.12 The slight alteration of the dwelling design is most notable on the front elevation where the originally permitted traditional style now takes on a more contemporary appearance. Sash windows have been replaced with windows

with more vertical emphasis and frontal projections now have hipped roof sections overhead.

- 9.13 In my opinion, the amended details are more appropriate for the large scale of the dwelling, in particular the vertical fenestration, which I consider to be more proportionate than traditional windows given the extent of the façade. However, I would be of the opinion that these changes relate more to finer detailing rather than a fundamental change in architectural styles.
- 9.14 There is no apparent change in the relative bulk and scale of the proposed dwelling, either in actual terms or due to its repositioning and re-orientation. The finished floor levels, width and height of the structure are essentially the same and I would be satisfied that the dwelling is no more prominent when viewed in the immediate vicinity or wider area.
- 9.15 I consider the presence of mature trees in the foreground and as a backdrop allow the dwelling to integrate well within its surrounding environs notwithstanding its height above the public road. I would also be of the opinion that the re-orientated dwelling better addresses the corner location along the laneway. The permitted dwelling would have been more parallel with the laneway and the gable of the structure would have been more visible on the approach, rather than the façade.
- 9.16 In general, I consider that the as-built dwelling represents an improvement over the permitted dwelling in terms of design and positioning. However, these changes are only perceptible within the site and on the laneway as the dwelling comes into view.

#### Wastewater treatment and disposal

- 9.17 The permitted wastewater treatment plant and percolation area was to be situated to the north of the site at the location of the as-built garage. It is now proposed to provide a Biological Aerated Filter packaged wastewater treatment system and soil polishing filter to the south of the dwelling. This is shown to connect to the storm drain. The reason given by the applicant for the relocation of the system is to make it more feasible in future to connect to new foul drainage mains.
- 9.18 I note that there is a high concentration of existing dwellings being served by septic tanks within the vicinity of the site. However, there is no issue with respect to cumulative loading in this case as the proposal essentially seeks to relocate a permitted wastewater treatment system.
- 9.19 It also appears that the proposed location of the wastewater treatment system is no less suitable than the permitted location. No rock or water table were encountered within the 2m deep trial hole and it should also be noted that a well is shown at a distance of less than 10m from the permitted location of the percolation area.
- 9.20 I would therefore conclude that there are no issues with respect to wastewater treatment and disposal over and above the existing. It would appear that

wastewater from the dwelling is currently being disposed at a location external to the site. Water supply is from public mains.

### Appropriate Assessment

- 9.21 The appeal site is located as close as 670m from the Lough Swilly SAC (site code: 002287). Having regard to the nature and scale of the proposed development, which involves minor amendments to a permitted development, and/or nature of the receiving environment and/or proximity to the nearest European site, 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.

## **RECOMMENDATION**

I have read the submissions on file, visited the site and paid due regard to the provisions of the current Donegal County Development Plan and Buncrana Development Plan. I recommend that planning permission and retention permission be granted for the development based on the reasons and considerations hereunder and subject to the conditions set out below.

## **REASONS AND CONSIDERATIONS**

Having regard to the design and layout of the proposed development and to the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual or residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **CONDITIONS**

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application 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 as outlined under the condition, and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The dwelling 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. 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 development is used as the principal residence of the applicant and not as a holiday home.

3. 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.

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

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

5. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years upon completion and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of completion of the treatment system, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

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**Donal Donnelly**  
**Inspector**

22<sup>nd</sup> December 2015