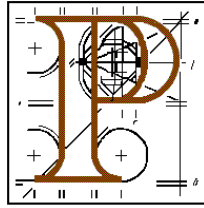


An Bord Pleanála



Inspector's Report

Development

Teach cónaithe agus dabhach shéarachais i Mín Doire Dhamh, Na Doirí Beaga, Co. Dhún na nGall.

Planning Application

Planning Authority: Comhairle Contae Dhún na nGall

Planning Authority Register Reference: 15/51045

Applicant: Nicole Ní Ghallachóir

Type of Application: Cead

Planning Authority Decision: Ceadú

Planning Appeal

Appellant(s): An Taisce

Type of Appeal: Tríú Páirtí

Date of Site Inspection: 28^ú Meitheamh, 2016

Inspector: Kevin Moore

1.0 APPLICATION DETAILS

- 1.1 There is a third party appeal by An Taisce against a decision by Donegal County Council to grant permission to Nicole Ní Ghallachóir for the construction of a house and septic tank at Míin Doire Dhamh, Na Doirí Beaga, Leitir Ceannainn, Co. Dhún na nGall.
- 1.2 The development comprises the construction of a two-storey house with a stated floor area of 330 square metres on a site area of 1.28 hectares. The application details included a Natura Impact Statement, a site assessment report relating to the proposed effluent disposal system, and a letter from the applicant's father (the owner of the site), stating he gives consent for the making of the application and for the provision and maintenance of necessary vision lines over his lands. The development would be served by mains water supply.
- 1.3 The reports to the planning authority were as follows:

Inland Fisheries Ireland set out the requirements to be complied with in the event of a grant of planning permission.

An Taisce noted the proposal was a repeat application which was previously refused. It was submitted that an evaluation is required that shows all issues are resolved that previously determined the site was unsuitable.

The Department of the Arts, Heritage and the Gaeltacht recommended that the mitigation measures set out in the Natura Impact Statement are implemented.

Irish Water noted water is available from the public supply and specified its requirements.

The Roads Engineer had no objection to conditions.

The Planner noted the planning history relating to the site. Reference was made to the principle of the development and the development was described as that which corresponds to a proposed development on an adjoining site. The Planner referred to planning policy for development in a Stronger Rural Area and it was considered the applicant complied with rural housing policy requirements. Reference was also made to Plan policy relating to site infilling and tree loss. It was considered that the development would require substantial filling and limits were required on the extent of same, while trees beyond the house location required to be retained. The form of the proposed house was regarded as acceptable but that its height and depth needed to be reduced and fenestration required revisions. It was submitted that adequate sightlines could be provided to serve the development. Having regard to test results recorded for the site, it was considered that the proposed development could be served by the means of effluent treatment proposed. Reference was made to the extent of the site lying within Fawnboy Bog and Lough Nacung SAC and to the content of the submitted Natura Impact Statement. Deficiencies in relation to the extent of the SAC within the site and the retention of habitat, the extent of filling on the site, provision of a settlement pond and drainage thereto, and the consequent impact on water quality in the SAC were raised. Further information was recommended on each of the issues previously raised.

- 1.4 On 1st October, 2015, further information was requested on matters relating to impact on the Fawnboy Bog and Lough Nacung SAC, surface water collection and discharge, revised house design, filling of the site and

tree retention. A response to the request was received from the applicant on 9th November, 2015.

- 1.5 The reports to the planning authority following receipt of the further information were as follows:

The Planner recommended clarification is sought on matters relating to the impact on the SAC, the house design, filling behind the proposed house and tree retention.

- 1.6 A request for clarification was issued on 18th December 2015 and a response was received on 29th January, 2016.

- 1.7 The reports to the planning authority were as follows:

The Planner noted the clarification received and considered the responses acceptable. A grant of permission was recommended.

The Planner's appropriate assessment of the proposal concluded that the development would not adversely affect the integrity of the Fawnboy Bog and Lough Nacung SAC.

The Senior Planner, in a note after the Planner's report, stated that the details submitted on foot of the requested further information were acceptable and reflected the advice given to the applicant's agent.

- 1.8 On 10th March, 2106, Donegal County Council decided to grant permission for the development subject to 13 no. conditions.

2.0 SITE DETAILS

2.1 Site Inspection

I inspected the appeal site on 28th June, 2016.

2.2 Site Location and Description

The site of the proposed development is located in a rural area approximately 4km from Bunbeg in County Donegal with frontage onto Regional Road No. R258. It comprises wooded land. The site slopes from north to south from the regional road to the banks of the River Clady. The river and adjoining lands form part of the Fawnboy Bog and Lough Nacung SAC (Site Code: 000140), resulting in the southern section of the appeal site lying within the SAC.

2.3 Donegal County Development Plan 2012-2018

Rural Housing

Map 7 of the Development Plan identifies Rural Area Types. This map appears to show the appeal site falling just beyond an area designated an 'Area under Strong Urban Influence' and lying within a 'Stronger Rural Area'.

Objectives include:

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

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.

Policies include:

RH-P-3 Stronger Rural Areas

It is a policy of the Council to facilitate an individual 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-P-2, where the applicant can demonstrate that they comply with one or more of the following:

- persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- 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);
- persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

Natural Heritage

Objectives include:

NH-O-3: To maintain the conservation value of all existing and/or proposed SAC's, SPA's and NHA's and RAMSAR sites including those plant and animal species that have been identified for protection.

Policies include:

NH-P-1 It is a policy of the Council to ensure development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance.

NH-P-2 It is a policy of the Council to ensure the protection of Natura 2000 sites in accordance with the EU Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of these Natura 2000 sites.

NH-P-4 It is a policy of the Council to require the consideration of Freshwater Pearl Mussel and any relevant Freshwater Pearl Mussel Sub-basin Plans in all development proposals that fall within their basin of catchment.

2.4 Planning History

P.A. Ref. 14/51493

Permission was refused for a house and septic tank for reasons relating to the proposed design, traffic safety and the impact on a Natura 2000 site.

3.0 THIRD PARTY APPEAL

3.1 The grounds of the appeal may be synthesised as follows:

Traffic Impact

- The proposed development alone, and in combination with planning ref. 15/51044, would set an undesirable precedent and would be contrary to the Rural Housing Guidelines in terms of access onto a Regional Road and would contravene policies laid out in the Donegal Development Plan pertaining to development along a Strategic Road network.
- The application failed to submit any proper traffic and transport assessment and road safety audit and is contrary to the policies laid out in the Development Plan.

Appropriate Assessment

- The Natura Impact Assessment is inadequate. The assessment failed to take into account the adjoining application ref. 15/51045, i.e. the cumulative effects.
- The data collected and presented in the NIS is inadequate and the assessment has not provided a strong basis for concluding the proposal would not have an adverse impact on the integrity of the adjoining SAC.
- The proposal may impact on the integrity of the SAC and would be contrary to Policy NH-P-2 and Objective NH-O-3 of the Development Plan.

Planning History

- The reasons for the previous refusal on the adjacent site, which determined the site unsuitable, also pertain to the subject proposal.

4.0 APPLICANT'S RESPONSE TO APPEAL

4.1 The applicant's response to the appeal may be summarised as follows:

- In reference to the Rural Housing Guidelines, it states that anyone wishing to build a house in rural areas suffering persistent and substantial decline will be accommodated.
- The Development Plan provisions relating to the Strategic Road Network has been superseded by Variation No. 1 (July 2013). The reference to R258 has been omitted and the road is excluded from the related policy.
- The NIA was carried out in accordance with Department guidelines and an appropriate study and screening was completed to the satisfaction of the Council.
- The works are located beyond designated protected areas and all mitigation factors are documented. It is noted that the lands on either side of the River Clady are overgrown with rhododendron.
- The proposal complies with Policy RH-P-3 of the Development plan as the applicant has resided in the rural area as demonstrated in the application.

5.0 PLANNING AUTHORITY'S RESPONSE TO APPEAL

5.1 The planning authority submitted:

- The development is located on the R258 and is not subject to restrictions required for developments accessing national routes as set out in Policy T-P-16 of the Development Plan.
- The development was subject to a rigorous assessment in relation to potential impacts on the adjoining SAC and specific revisions to the original proposal were made on foot of changes sought by the

planning authority. The planning authority's appropriate assessment concluded the development would not adversely affect the integrity of the SAC.

The Board was then requested to consider the report of the Planner thereafter.

6.0 ASSESSMENT

6.1 Introduction

6.1.1 I consider the planning issues of relevance to this appeal relate to:

- The need for the development,
- The impact on a Natura 2000 Site,
- The landscape and visual impact, and
- Traffic impact.

6.2 The Need for the Development

6.2.1 The site of the proposed development is located in an area designated by the planning authority in the Donegal County Development Plan as a Stronger Rural Area. The rural housing policy applicable under the Plan is Policy RH-P-3. This policy seeks to facilitate individuals in need of housing provided they demonstrate that they can comply with all other relevant policies of the Plan. The applicant is required to demonstrate that he/she is a person whose primary employment is in a rural-based activity with a genuine need to live in the locality, is a person with a vital link to the rural area by reason of having lived in the community for a substantial period of

their lives, or is a person who needs to reside in an area due to exceptional health circumstances.

- 6.2.2 In considering the above, it is first observed that at no time has the applicant demonstrated that she has a need for a house. There are no details in the application to detail where she resides at present, what the nature of her work is and what her personal circumstances are that require her at this time to have a need for a house in the countryside. Thus, it is evident from the content of the application that the applicant has failed to demonstrate any need for a house, as is required by Policy RH-P-3 of the Donegal County Development Plan.
- 6.2.3 It is then noted that the applicant is accepted by the planning authority as having demonstrated that she is a person who has a vital link to this rural area because she has lived in it for a substantial period of her life. The application is supported by a letter from a County Councillor who submits he knows the applicant, she lives in Cois Cláidí, she attended the local national and post-primary schools, that she and her ancestors lived in the district and that she works in the family business. The Councillor concludes that she has a desire to build her own house on family lands and to stay in the area. The application details provide no information that demonstrates how she has a 'vital' link to this area and why she now needs to live at this location. There is no information on the family landholding at this location, what the family business is and her involvement in it, and how she meets the Plan criteria to allow her to be considered in principle for a house in such a location. The Supplementary Planning Application Form states that she currently resides in the townland of Machaire Chlochair (Magheraclogher). The townland of Machaire Chlochair forms part of the built-up area of Bunbeg, some 4km from the proposed site. How the applicant has links to the area in which the proposed site is located is not known.

- 6.2.4 I put it to the Board that there are no circumstances, based on the details contained in the planning appeal file, that the Board could in any reasonable manner determine that the applicant has a need for a house, has adequately demonstrated she is from this location, and has a need to reside at this rural location distinctively separate and distant from Bunbeg. The proposed development can be seen to be contrary to the provisions of the County Development Plan as they relate to rural housing policy.
- 6.2.5 Finally, acknowledging that such policies seeks to follow the guidance set out in the provisions under *Sustainable Rural Housing: Guidelines for Planning Authorities* issued by the Department of the Environment, Heritage and Local Government, it is reasonable to ascertain that the applicant has not demonstrated that the proposed development constitutes a rural-generated development. The Guidance clearly references development that is not rural-generated as being best directed to rural villages and towns to enhance their sustainability.

The Board will note that this is not a new issue as the applicant has referred to this matter in the response to the appeal.

6.3 Impact on a Natura 2000 Site

- 6.3.1 The site of the proposed development is part of a larger wooded area that is immediately north of the banks of the River Clady. The river and lands abutting it are designated part of the Fawnboy Bog and Lough Nacung Special Area of Conservation (Site Code: 000140). The southernmost section of the appeal site lies within the SAC. The proposed development comprises a large two-storey dwelling, with four ensuite bedrooms, served by a proposed effluent treatment plant sited behind the house. The development would provide a driveway from the nearby regional road and

it would require the removal of trees and other vegetation, the filling of lands at the location of the proposed house and the provision of a significant apron on which the house and immediate curtilage would be developed. The proposed house would be sited approximately 45m from the SAC according to the submitted drawings. A surface water drainage system would be required to be provided, with associated bunding and the development of a settlement pond, all of which would be behind the proposed house.

6.3.2 According to the National Parks and Wildlife Service's information on the Fawnboy Bog and Lough Nacung SAC, the features of interest for this SAC are:

- Northern Atlantic wet heaths with *Erica tetralix* [4010]
- Blanket bogs (* if active bog) [7130]
- Depressions on peat substrates of the *Rhynchosporion* [7150], and
- *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]

The conservation objective for this Site is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected. The NPWS Data Form notes the site, particularly the River Clady, is very important for its populations of *Margaritifera margaritifera*.

6.3.3 I note the applicant's submitted Natura Impact Statement. I suggest to the Board that this report appears to replicate the findings on, and indeed appears as a report on, the adjoining site which is subject to appeal under Appeal Ref. PL 05E.246399. The 'Natura Impact Assessment Statement' section of the report refers to a proposed development for Katie Gallagher, to the demolition of a derelict dwelling and provides photographs that are of the adjoining site. This is a concern in such a

sensitive location and is a most deficient approach to assessing the proposed development by the applicant. There is also a particular focus on the impact on *Lutra lutra* (Otter), which is not a feature of interest for this SAC.

6.3.4 Notwithstanding the above, I note from this report some of the most relevant findings applicable to this location:

- The site, particularly the River Clady, is very important for its populations of *Margaritifera margaritifera*;
- The River Clady is vulnerable to nutrient input ;
- Site preparation and construction works have the potential to significantly damage/destroy the freshwater habitat of local *Lutra lutra* (otter population), *Margaritifera margaritifera* (fresh water pearl mussel) and *Salmo salar* (Atlantic Salmon); and
- Significant impact could arise due to increased siltation from entering the river environment ...

6.3.5 Further to identifying the sensitivities and vulnerabilities of the habitats and species of conservation value, there was no assessment in the applicant's report of the likely effects of the construction and habitation of the proposed development but rather there was an immediate scheduling of some standard mitigation measures. The report then concluded that the assessment has found that there would be no adverse effect on the local environment of SAC 00140.

6.3.6 It is my submission to the Board that the documentation provided as a Natura Impact Statement in this instance is wholly deficient and totally inadequate to allow for the drawing of conclusions by way of an Appropriate Assessment that the development would not adversely impact the integrity of the SAC. There was no assessment by the applicant of the

impacts of the proposed development on the Fawnboy Bog and Lough Nacung SAC. Clearly, the proposed development would have very serious indirect impacts due to its immediate proximity by way of vegetation clearance, site filling, construction, road laying, drainage and effluent disposal and this is setting aside the habitation of the development and potential disturbance and damage arising therefrom. The requirements of this proposed development effectively on the edge of an SAC for extensive filling, the need for a complex drainage system to be installed, and the provision of a treatment plant to be sited on land that has been demonstrated to be unsuited to its development causes great concern for this SAC. In relation to the proposed treatment plant, it is noted that there is clear evidence to suggest difficulties associated with a perched water table may arise. Peaty soils prevail on this site and there are shallow depths to rock. This has culminated in the applicant seeking to provide manufactured site conditions for effluent to be potentially treated to a satisfactory level. The bogland in which the treatment plant would be sited is clearly unsuited and this poses as definite pollution risk. Based upon what is proposed for this site, I conclude that the proposed development would most likely have significant adverse impacts for the River Clady due to siltation arising from site clearance and construction works, surface water drainage arrangements with outfalls to the river, and potential pollution from effluent disposal in wholly unsuitable ground conditions. The proposed development would most likely undermine the water quality of the River Clady and would have a notable impact for the habitat of the Annex II species *Margaritifera margaritifera*. These impacts could only be construed as being contrary to the conservation objective for the SAC. Furthermore, it is reasonable to consider that the wooded edge to the River Clady is an inherent facet of the SAC that is intrinsically linked to the protection of the river and which is essential for the protection of features of interest of the SAC and the maintenance of environmental quality and the natural environment. The proposed development would be a potential

significant intrusion on the natural environment that is not readily distinguishable from those lands that lie within the SAC so designated. Overall, it is reasonable to conclude that the proposed development individually would be likely to have a significant effect on the Fawnboy Bog and Lough Nacung SAC. This would be exacerbated when taken in combination with the adjoining proposed residential development immediately east of this site on the overall landholding.

6.3.7 Finally, with due regard to the above, it may reasonably be concluded that the proposed development would be contrary to natural heritage policies and objectives of the current Donegal County Development Plan. These provisions seek to maintain the conservation value of all existing SAC's (Objective NH-O-3), to ensure development proposals do not damage or destroy any sites of international importance designated for their wildlife/habitat significance (Policy NH-P-1), and to ensure the protection of Natura 2000 sites in accordance with the EU Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of these Natura 2000 sites (Policy NH-P-2).

6.4 The Landscape and Visual Impact

6.4.1 The proposed development would be sited in a highly sensitive location immediately north of the River Clady in a wooded location that is remote from any settlement. The first observation that requires to be made is that there is no demonstrable need for the imposition of a large house on such a sensitive site. Thus with this understanding, the proposed development would be an unwarranted intrusion into a very sensitive location, notwithstanding the ability of existing scrub and woodland to aid in the minimisation of the significant visual impact the proposed large structure would cause when viewed from the public realm.

6.4.2 With regard to the provisions of the Donegal County Development Plan, I note that no Landscape Character Assessment has been undertaken for the County and that there is an objective to undertake one (Objective NH-O-7). I note also that the Development Plan, in a very broad brush manner, identifies 'Areas of Especially High Scenic Amenity'. The site of the proposed development lies west of and beyond the nearest such area. The Plan also has an objective to protect the character of the landscape where and to the extent that the proper planning and development of the area requires it (Objective NH-O-8). The environmental damage that would be caused by the required site clearance, construction and functioning of this development at such a sensitive location could only reasonably be viewed as being contrary to this Plan objective.

6.5 Traffic Impact

6.5.1 The appellant's objection on traffic grounds is two-fold. Firstly, there is an acknowledgement of the provisions under the Rural Housing Guidelines as they relate to the need to protect non-national roads and, secondly, there is a submission that it is understood that Regional Road No. R258, onto which the proposed development would access, is designated as part of the county's Strategic Transport Network and the application details are deficient as a result.

6.5.2 Taking the latter issue first, I note Map 3A attached with Variation No. 1 to the Plan which identifies the Strategic Transport Network to which Policy T-P-16 of Plan applies. This is a policy restricting access onto this network. I acknowledge that the map excludes Regional Road No. R258 and it is, therefore, reasonable to conclude that the provisions relating to the Strategic Transport Network do not apply in this instance.

6.5.3 Regarding the former issue, I acknowledge the provisions of Section 4.4 of the Guidelines. Such provisions are particularly applicable where there is no demonstrated rural-generated housing need, as in this instance. I note the applicant has submitted a letter from her father stating he gives consent to provide and maintain vision lines over his lands. It is, however, important for the Board to note that this a dangerous stretch of regional road, which is a busy road where traffic speeds are high, where sightlines are restricted and where the road is demarcated by a continuous white centreline. The provision of a new vehicular access onto this road will pose a traffic hazard. I accept that the principle of permitting excessive levels of individual entrances on such roads interferes with the free flow of traffic on such rural roads and adversely impacts on traffic safety. The proposed development does not sit comfortably with the Guidelines.

7.0 RECOMMENDATION

I recommend that permission is refused for the following reasons and considerations:

Reasons and Considerations

1. The proposed development is located in a rural area remote from the settlement of Bunbeg in County Donegal, in an area designated a Stronger Rural Area in the Donegal County Development Plan 2012-2018. In accordance with the *Sustainable Rural Housing Guidelines for Planning Authorities* as published by the Department of the Environment, Heritage and Local Government, it is an overarching requirement for local need to be determined in assessing planning applications for rural housing. It is also an objective of the planning authority, as set out in the current Donegal County Development Plan, to ensure that new residential

development in rural areas provides for genuine rural need (Objective RH-O-3). Furthermore, it is a policy of the Plan to facilitate an individual in need of housing within an area defined as a Stronger Rural Area provided they demonstrate that they comprise a person whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, is a person with a vital link to the rural area by reason of having lived in the community, or is a person who, for exceptional health circumstances, has a genuine need to reside in a particular rural location. It is considered that the applicant has not demonstrated a rural-generated housing need at this location in accordance with the Guidelines. Furthermore, it is considered that the proposed development would contribute to the disorderly pattern of housing development in this remote, sensitive rural area, would constitute haphazard, one-off housing, would lead to demands for the uneconomic provision of further public services and communal facilities in the area, would set an undesirable precedent for similar development, and would seriously injure the amenities of this rural area. The proposed development would, therefore, conflict with the policy of the planning authority and would, thus, be contrary to the proper planning and sustainable development of the area.

2. The site of the proposed development is located within and adjoining Fawnboy Bog and Lough Nacung Special Area of Conservation (Site Code: 000140) and the location for the proposed development forms wooded lands lying immediately north of the River Clady. The features of interest of the Special Area of Conservation include blanket bog and Freshwater Pearl Mussel (*Margaritifera margaritifera*) and the conservation objective for this Site is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected. The River Clady is considered very important for its populations of *Margaritifera margaritifera*.

It is the objective of the current Donegal County Development Plan to maintain the conservation value of all existing SAC's (Objective NH-O-3) and it is the policy to ensure development proposals do not damage or destroy any sites of international importance designated for their wildlife/habitat significance (Policy NH-P-1) and to ensure the protection of Natura 2000 sites in accordance with the EU Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of these Natura 2000 sites (Policy NH-P-2). It is considered that the proposed development, by reason of removal of woodland and vegetation, site clearance, extensive filling of the site, the construction of the house on an expansive developed apron, the development of an extensive surface water drainage system, and the construction and servicing of the proposed dwelling by a private effluent treatment system on soils of poor drainage characteristics, would have significant adverse impacts on the ecological and aquatic importance of the European Site by way of damage and disturbance to important woodland on the fringe of the SAC and the pollution potential for the important watercourse in the immediate vicinity of the site. The proposed development would, therefore, result in an unacceptable degradation of protected habitat, with consequential impacts for Freshwater Pearl Mussel, would likely adversely affect the integrity of the European site in view of the site's Conservation Objectives, would contravene materially the objective as set out in the current Donegal County Development Plan, and would conflict with the Plan policies. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located alongside a heavily trafficked regional road at a point where the maximum speed limit applies for that road, where the road is substandard in alignment and

where the additional traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road.

Kevin Moore
Senior Planning Inspector
July, 2016