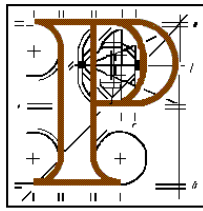


## An Bord Pleanála



## Inspector's Report

Development:	Foirgnimh stórala le cois oibreacha suíomh a tógadh gan cead a choinneáil: fíorgnimh stórala de stór amháin le díon cothrom atá tuairm agus 20m ar fhad agus 8m ar leithead, achar urláil iomlán de thart ar 160m <sup>2</sup> .
Location:	Retention of a store. Cnoc an Stollaire, An Bun Beag, Co. Dhún na nGall
Planning Application	
Planning Authority:	Donegal County Council
Planning Authority Reg. Ref.:	16/50601
Applicant:	Liam De Búrca
Type of Application:	Permission
Planning Authority Decision:	Refuse Permission
Planning Appeal	
Appellant:	Liam De Búrca
Observers:	Michael Weed & Fionnuala Bonner Weed
Type of Appeal:	1 <sup>st</sup> v Refusal
Date of Site Inspection:	24 <sup>th</sup> August 2016
Inspector:	Dolores McCague

## **1 IRISH LANGUAGE**

- 1.1 The published notice was in Irish and the site notice was also in Irish. All the other documentation in the application is in English and the appeal has been made in English. This report is therefore written in English.

## **2 SITE LOCATION AND DESCRIPTION**

- 2.1 The site is situated at Knockastollaire, Bunbeg, Co Donegal. This rural area has fine views over the Atlantic Ocean; being elevated with reference to the sea, there are long distance views over the sea inlets and the surrounding countryside. The area is characterised by widespread development of single houses, many of which are holiday homes. Outcropping rock and undergrowth occurs throughout the area and there is little evidence of agricultural activity.
- 2.2 The field which comprises the subject site is rectangular with almost 100m of road frontage, and is surrounded by hedges. There are dwellings to either side and on the opposite side of the road. Directly across the road is the house of the first party.
- 2.3 From a look at the general area and the outcropping rock within the site, it is likely that the site had similar shallow soils and rough grazing/undergrowth as found on adjoining lands. The site has been fully landscaped and planted with shrubs, lawns and some trees. The ground appears to have been re-profiled. There are gateways at either end of the road frontage. A gravel roadway runs from a gateway at the southern end of the road frontage in line with the perimeter boundaries, towards another gateway which is currently closed up. The roadway runs close to the site boundaries and accesses a building near the south eastern corner, a stables with boathouse permitted in 1999. There is a large parking area between the gateway and the building. The roadway accesses the subject building near the north western corner where there are a number of containment bays along the boundary formed by dwarf walls and a large circulation area alongside the building. The site rises to a high point between the

subject building and the public road. Pathways lead to a gazebo erected on the higher ground. Lelandii have been planted along the road boundary.

2.4 The site area is given as 0.56ha.

### **3 PROPOSED DEVELOPMENT**

3.1 The proposed development is described as the retention of a store.

3.2 It is described in the public notices and application form as 20m x 8m and 160m<sup>2</sup> in area. A letter accompanying the application gives the internal floor area as 116m<sup>2</sup> which is more accurate.

3.3 The application is for retention and the building is already in situ. It is a single storey building with a flat roof. An external concrete stairs with stone steps and with a shallow bounding wall, runs along the southern gable of the building and gives access to the flat roof. There is an entrance doorway to the building, finished externally in stone also on this gable. On the western elevation there are two lightweight timber double doors and three small windows. On the eastern elevation there are two shallow high level windows and a stone clad bay extension to the main wall. This bay is shown on the layout plan but within the building this area has been blocked up. A feature on the roof above this area was covered with a heavy slab on the date of inspection. There are two small rooms inside the southern entrance. These are indicated on plan as gardening equipment storage and power tool storage. Each has a small window. On the date of inspection there was what appeared to be a waste water pipe installed in one of these rooms; storage in the other room didn't permit a similar inspection.

### **4 PLANNING AUTHORITY DECISION**

4.1 The planning application was lodged on the 27<sup>th</sup> April 2016.

4.2 Planning Report 9/6/16:

Planning history 99/2511 permission for erection of stables with boar store – granted.

UD 1629 – enforcement notice issued in relation to erection of new block work structure and associated external blockwork staircase without the benefit of planning permission, issued on the 4<sup>th</sup> April 2016.

Pictures on the enforcement case clearly show that the openings on the SW side of the building had previously been fitted with windows and the building previously had a chimney. The planning authority cannot be satisfied that the proposed development would serve a bona fide domestic storage need. On the basis of the planning history and an inspection of the aerial photography available on mapinfo it is considered that the vehicular entrance at the NW corner of the site, the driveway leading to the development from both that vehicular entrance and the permitted boat shed do not have the benefit of planning permission and were not in existence prior to 2000. Accordingly, it is considered that the development is contingent on unauthorised development and that to permit the development prior to regularisation of said infrastructure would be premature/give rise to disorderly development.

4.3 A refusal of permission is recommended.

4.4 The planning authority decided - 9/6/2016 – to refuse planning permission for two reasons:

1 The driveway and vehicular entrance do not have the benefit of planning permission and the development is contingent on unauthorised development; to permit the development prior to regularisation of said infrastructure would be premature and disorderly development.

2 The planning authority is not satisfied that the development would serve a bona fide domestic storage need.

4.5 The decision was in accordance with the planning recommendation.

4.6 Observations on the file have been read and noted.

## **5 PLANNING HISTORY**

5.1 99/2511 permission for erection of stables with boat store – granted.

- 5.2 UD 1629 – enforcement notice issued 4<sup>th</sup> April 2016 in relation to erection of new block work structure and associated external blockwork staircase.

## **6 GROUNDS OF APPEAL**

- 6.1 Harley Newman Planning Consultants have appealed the decision on behalf of the first party.

- 6.2 The grounds can be summarised as follows:

- 6.3 The site is bounded to the northeast by the applicants own dwelling with adjoining garage. While the site is separated from the applicants dwelling by the lightly trafficked county road, it essentially serves as the front garden for the applicant and his family. Having regard to the sloping nature of the small garden immediately to the front of the applicant's house and its unsuitability for recreational purposes, the subject site, which has been extensively landscaped and modelled to provide high quality amenity space for the applicant and his family, effectively serves as the front garden for the dwelling. A garage/storage building has been erected on foot of permission. The applicant had insufficient storage capacity for all the family needs. Once made aware of the need to obtain planning permission he immediately sought retention. The building integrates discretely within the front garden and wider landscape. It does not interfere with the main views of the sea either from their dwelling or from the existing seated viewing area and gazebo centrally located within the garden.

- 6.4 The first party has decided to close off and remove the entrance and driveway referred to in the reason for refusal. It had been in existence for many years before the storage building was constructed. The sections of internal driveway that run throughout the site and which also serve the proposed storage building and adjoining storage areas for the boat trailer, lobster pots and turf stacks, were incrementally inserted throughout the years to facilitate the ongoing intensive landscaping of the front garden area for the enjoyment of the owners of the dwelling. The closing off and removal of the entrance and driveway, removes any impediment to consideration of the proposal.

- 6.5 The first party is willing, if necessary, to accept a condition that the shed not be used until permission has been obtained for the driveway. Regarding the second refusal reason, the relationship between the development and the first party's dwelling is referred to. The site is effectively and practically the front garden of the dwelling. The 'absence of a dwelling' referred to in the planning officer's assessment, is not a genuine reflection of the real life circumstances at this site. The most important consideration is the need for the shed. In addition to the boat store the first party has a domestic garage adjacent to the dwelling. The applicant needs additional storage because both sheds are at full capacity. The first party, in an attached letter, outlines his storage needs. The first party owns sufficient and substantial lands at their dwelling to accommodate such buildings without any adverse impacts on surrounding neighbours or the environment in general. The existing garage adjacent to the first party's house is a home gymnasium and laundry. The garage doors provide a mock elevation. Vehicles cannot be parked within this garage. The boat shed is used for a variety of purposes: boating equipment, bicycles and a vehicle. The building the subject of this application is solely for the storage of classic cars and associated maintenance equipment. The first party intends to pursue a life long ambition, into his retirement years, and store a number of classic cars safely within buildings on his own land. A bona fide domestic storage need has been demonstrated. Regarding the external staircase, the first party was advised to provide a permanent means of access to the roof which contains a number of storm water gullies that provide essential drainage for the building and must be regularly cleaned and cleared of debris to ensure that they function. The use of a ladder was not considered safe or practical.
- 6.6 The letter from the first party states that he is looking forward to retirement and the opportunity to pursue his hobbies, one of which is keeping and maintaining classic cars. These vehicles should not be left outside to deteriorate; keeping them inside also limits the possibility of theft. He has heavily invested to create a high quality landscaped amenity space which can comfortably accommodate the building.
- 6.7 A revised site layout plan, showing a post and rail fence in the location of the western gateway and landscaping provided on the line of the driveway, is enclosed with the the grounds of appeal.

6.8 Photographs are enclosed with the grounds of appeal.

## **7 OBSERVATION**

7.1 An observation to the appeal has been received from Michael & Fionnuala Weed, including:

7.2 Responding to the grounds – the road is a loop road L5463 off the R257, it connects to the L2473 which connects with the R257. Construction traffic added considerably to traffic on the road during construction of three buildings on another site belonging to the first party, adjoining the observer to the west. First party has gardens to the front and rear of his dwelling and a large level landscaped garden to the west of his house with frontage of approx. 38-40m. These gardens are ideally suited to recreational use and additional storage if needs.

7.3 The shed permitted as stables and boat store has not been used as a stable for many years. Two wings have been to this building. A satellite dish is attached. A phone line may be connected. Up until recently his sports car was housed there.

7.4 The observers disagree that the first party unwittingly commenced construction and refers to the first party's experience in construction.

7.5 The observers refer to 3 buildings constructed on a site adjoining them to the west and planning history in relation to two dwellings on that site. The observers site is between that site (to the west) owned by the first party and the subject site (to the east) owned by the first party.

7.6 The observers state that work on the subject development proceeded at pace after the first visit by a Council official, prior to the enforcement notice.

7.7 The observers state that they saw the roof being constructed of precast concrete slabs which they consider to be in excess of

what is normally needed for a flat roof construction. The flat roof doesn't fit in this area. It could easily support another storey with independent access via the external stairs.

- 7.8 The use of the shed was stated on the enforcement file to be as a garden store, it is now stated to be for storage of classic cars and associated equipment. The observers state that the building was never intended as storage for cars, that neither the original French doors, nor the current timber doors would be suitable for driving a car through and that the driveway around the building is too narrow.
- 7.9 A large warehouse style shed has been built in the south-eastern corner of the first party's site to the west, which could provide storage.
- 7.10 The observers state that site levels have been altered. Many loads of soil were put on the hill by a local contractor several years ago. The lands to the south west show original land levels. The observers have concerns regarding pipes from the subject site outflowing onto their site. The observers state that at least two S bends with grates were placed under the windows of the power storage and gardening equipment rooms.
- 7.11 The observers state that they witnessed the laying of sewer pipes around the front elevation of the building and in an easterly direction towards the stable/boat store.
- 7.12 The observers state that they have never seen lobster pots or turf on the site.
- 7.13 The observers state that they don't regard the closing up of the gateway or driveway as permanent.
- 7.14 The observers state that there is no verifiable and genuine need for a storage building. Their concern is that other use may be made of the building and they are concerned regarding discharge of effluent onto their site.



7.15 Photographs are enclosed with the observation.

## **8 RESPONSES**

### **8.1 Planning Authority**

8.2 The Planning Authority has responded to the grounds of appeal, including:

8.3 The Planning Authority is satisfied that the structure is severed from a domestic property.

8.4 The Planning Authority considers that the statements of need are not material and give rise to concerns in relation to over-development. The Planning Authority remains of the opinion that existing domestic structures cater for reasonable and commensurate domestic needs.

8.5 The Planning Authority considers the rationale given for the external staircase to not be sustainable and to bring into question the entire project.

8.6 A late response was received from the Planning Authority to the observation.

## **9 LEGISLATIVE and POLICY CONTEXT**

9.1 **The Donegal County Development Plan 2012 – 2018** is the operative plan.

9.2 Relevant provisions include: This area is identified as a rural area under strong urban influence. The settlement plan for Bunbeg-Derrybeg refers to the unique, dispersed nature of the settlement and the prevailing patterns of land ownership which do not facilitate the identification of lands for zoning for housing.

- 9.3 **The Planning and Development Act, 2000 (as amended)** requires that unless exempted, development requires planning permission.
- 9.4 Section 4(1) of the Act sets out exempted development and further exemptions are set out in the **Planning and Development Regulations 2001 – 2013**
- 9.5 Article 6 (1) of the regulations confers exemption on development types listed in Schedule 2, among which there is an exemption for works within the curtilage of a house: class 6.

Class 6 of Part 1 of Schedule 2 reads as follows:

- (a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.
- (b) Any works within the curtilage of a house for
  - i) The provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,
  - ii) The provision to the front or side of the house of a hard surface for the parking of not more than 2 motor vehicles used for a purpose incidental to the enjoyment of the house as such

This exemption is subject to certain conditions.

## **10 ASSESSMENT**

- 10.1 The main issues which arise in relation to this development are: curtilage of a house, purpose and function of the building, and appropriate assessment and the following assessment is addressed under these headings.
- 10.2 **Curtilage of a House**
- 10.3 The curtilage of a house has been considered by the Board in a number of referrals.

- 10.4 The curtilage of a house is the area of land attached to the house and forming one enclosure with it.
- 10.5 In the case of the subject site, the site is stated by the first party to be the front garden of a house which is located on the opposite side of the road. The house in question has grounds surrounding it and, having regard to its relatively recent construction, would have required planning permission which would have defined the planning unit and therefore the curtilage. The land within the subject site is not within the curtilage of any house and therefore any exemption with regard to class 6 works which could be relied on within the curtilage of a house do not apply here.
- 10.6 The first reason for refusal refers to the proposed development relying on development which does not have the benefit of planning permission, such that granting planning permission for the proposed development would lead to disorderly development which would be contrary to the proper planning and sustainable development of the area. I am satisfied that, notwithstanding the closure of the gateway and the implementation of certain landscaping works along the entrance driveway, having regard to the extensive landscaping and construction works which have been carried on within the site and the change of use of the site from agricultural to domestic use, this reason for refusal continues to apply.
- 10.7 **Purpose and Function of the Building**
- 10.8 The second reason for refusal refers to the fact that the planning authority was not satisfied that the development would serve a bona fide domestic storage need. The first party has responded outlining a need for storage space in connection with the hobby of classic car collection. The observers have listed storage buildings, which are available to the first party at various locations in the vicinity; and have also referred to features of the building, not now obvious on the ground, which inclines them to believe that the building is intended for a purpose other than storage.
- 10.9 In relation to the intended use of the building the Board should consider the photographs submitted by the observers showing glazed double doors with glazed side panels, since replaced by

timber doors, and the feature which was above the stone projection, referred to by the observer as a chimney, which has been removed. It is also relevant that on the date of inspection this inspector observed that there was what appeared to be a waste water pipe installed in one of the small rooms, which does not correspond with any feature on the layout plan, and also that the large stone projection (shown on plan as 3950 x 1580, external dimensions) is walled off on the inside of the building.

10.10 On the drawings submitted to the planning authority the building is referred to as a garden store, whereas in the grounds of appeal there is heavy reliance on the need to house classic cars.

10.11 I accept the argument made by the observer that the layout of the building and its placement with reference to the access roadway is not ideal for housing of cars.

10.12 In my opinion the intended use for domestic storage is questionable in this case. The erection of a building for domestic storage, which is not within the curtilage of a dwelling, would need to be supported by a very clear demonstration of need and a clear demonstration of its utility for the purpose intended, to be acceptable in planning terms. There appears to be ample space within the curtilage of the dwelling for any additional storage required. The retention should be refused for this reason.

10.13 **Appropriate Assessment**

10.14 The subject site is approx. 500m at the nearest point from the Natura site: Gweedore Bay & Islands SAC, which has the following features of interest:

Coastal lagoons

Reefs

Perennial vegetation of stony banks

Atlantic salt meadows

Mediterranean salt meadows

Embryonic shifting dunes

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)

Fixed coastal dunes with herbaceous vegetation (grey dunes)

Decalcified fixed dunes with *Empetrum nigrum*

Atlantic decalcified fixed dunes  
Dunes with *Salix repens* ssp. *argentea*  
Humid dune slacks  
Machairs (\* in Ireland)  
Oligotrophic to mesotrophic standing waters with vegetation of the  
*Littorelletea uniflorae* and/or *Isoeto-Nanojuncetea*  
European dry heaths  
Alpine and Boreal heaths  
Juniperus communis formations on heaths or calcareous  
grasslands  
Marsh Fritillary  
Otter  
Petalwort  
Slender Naiad

10.15 Site-specific conservation objectives have been defined for the protected site, with the general objective of maintaining or restoring the favourable conservation status of habitats and species of community interest, which are listed above and which include priority species and habitats.

10.16 Notwithstanding that development, other than the development the subject of the current application, has been carried out on the site, the proposed development is the retention of a building as a store, with no water or wastewater connections and no direct pathway to the protected site. Having regard to the nature and scale of the proposed development and 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.

## **11 RECOMMENDATION**

In accordance with the foregoing assessment, I recommend that planning permission be refused for the following reasons and considerations.

## REASONS AND CONSIDERATIONS

- 1 It appears to the Board that the proposed development relates to a site the use of which is unauthorised, where extensive work has been carried out to develop the site, which is not within the curtilage of a house, for domestic use, and that the proposed development would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.
  
- 2 On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that there is a genuine need for domestic storage as proposed or that the building is appropriate for such use or that domestic storage is the likely intended use, and accordingly the proposed development would be contrary to the proper planning and sustainable development of the area.

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Dolores McCague  
Inspectorate

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Date

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| Appendix | 1 | Map and Photographs   |
| Appendix | 2 | Extracts from the Donegal County Development Plan 2012 – 2018 |
| Appendix | 3 | Site Synopsis Gweedore Bay and Islands SAC site code 001141   |