



An  
Bord  
Pleanála

## Inspector's Report PL05E.247115

---

<b>Development</b>	Detached dwelling house with use of attic space in the form of a wallplate dormer, separate boiler store building and associated works.
<b>Location</b>	Rossnowlagh Upper or Crockahany, Rossnowlagh, Donegal P.O., Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	16/50868
<b>Applicant(s)</b>	Karen Mallon
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Karen Mallon
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> October 2016
<b>Inspector</b>	Donal Donnelly

## **1.0 Site Location and Description**

- 1.1. The appeal site is located in Rosstown in southern Co. Donegal approximately 6km north of Ballyshannon and 13km south-west of Donegal town. Rosstown is a dispersed settlement comprising a mix of holiday homes, permanent residences and caravan parks. The settlement is situated sporadically and in clusters to the east of a 3km long blue flag beach (Belalt Strand).
- 1.2. Access to the site is via the R231 Regional Route which continues south from the N15 National Road to the village of Coolmore before re-joining the N15 further south. The local road onto which the site faces is the main access road to Belalt Strand. The appeal site sits to the west of a cluster of approximately 30 dwellings on the southern side of the road and east of the beach-fronting hotel. There is a caravan site to the north of this road.
- 1.3. The site has a frontage of c.15m and a stated area of 0.0945 hectare. This site and the adjoining site to the west form the rear part of the landholding associated with Hill House, a detached multiple-bay two-storey house on complex-plan, built c. 1800 and fronting onto Hollow Road to the south. The site rises from the level of the public road to the north up to the location of Hill House.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the construction of a detached dwelling house, with use of attic space in the form of a wallplate dormer, separate boiler store building and associated works.
- 2.2. It is proposed to discharge foul water to a public sewer and obtain a water supply from public mains.
- 2.3. The floor area of the proposed dwelling will be 182.5 sq.m. and the proposed ridge height is 7.1m. The dwelling will face north onto the public road set back from the road edge a distance of 13.5m.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Donegal County Council issued notification of decision to refuse permission for the proposed dwelling on the basis that it would contravene Development Plan Policy RH-P-9, which only allows for the consideration of holiday homes in settlement framework areas provided the total number of holiday homes, permitted during the lifetime of the Plan, does not exceed 20% of the total number of housing units within the framework area at the time of the adoption of this plan.

### **3.2. Planning Authority Reports**

- 3.2.1. The recommendation to refuse permission as outlined in the Planner's Report, reflects the decision of the Planning Authority.
- 3.2.2. The Case Planner understands that there is an anomaly in the wording of Policy RH-P-9 but the Senior Planner has directed that the intention of the policy is that if the proportion of houses within the settlement centre equals or exceeds 20% holiday homes at the time of adoption of the Development Plan, then no more holiday homes can be granted within the settlement centre over the life of that plan. It is stated that there is far in excess of 20% of housing stock within the Rossnowlagh settlement centre that are holiday homes at the time of adoption of the Development Plan.
- 3.2.3. It is noted that the proposed rear balcony would be only 9m from the eastern side boundary and would therefore give rise to undue overlooking.
- 3.2.4. The design of the proposed house is otherwise considered acceptable and appropriate vision lines are shown.

## 4.0 Planning History

Donegal County Council Reg. Ref: 16/50827 (PL05E.247114)

- 4.1. Concurrent appeal after issue of notification of decision to refuse permission on the adjoining site to the east for the construction of detached 2-storey dwelling house, a separate boiler house and all associated siteworks.

Donegal County Council Reg. Ref: 06/21581

- 4.2. Permission granted in January 2008 for the erection of 10 no. semi detached two storey houses, 12 no. detached two storey houses, all to have separate boiler houses to rear and associated site works on a site to the east.

- 4.3. An extension of duration of this permission was granted in December 2012 under Reg. Ref: 12/50707.

Donegal County Council Reg. Ref: 12/20055 (PL05.240703)

- 4.4. The Board upheld the Council's decision on 4<sup>th</sup> October 2012 to grant permission for a house at Rossnowlagh Lower approximately 640m to the north-west of the appeal site.
- 4.5. It was considered that the proposed development would be in accordance with the policies set out in the Rossnowlagh Local Area Plan 2005-2011, would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The appeal site is located within the Rossnowlagh Tier 4 Village Settlement Boundary on unzoned lands. This area is designated a "Stronger Rural Area".
- 5.1.2. Policy RH-P-9 states as follows:

*"Multiple and single holiday home units will be considered within settlement framework areas provided the total number of holiday homes permitted, during the*

*lifetime of the plan, does not exceed 20% of the total number of housing units that existed within the framework area at the time of the adoption of this Plan. Any application will also be assessed in the light of all relevant material planning considerations including land-use zonings, the availability of infrastructure, relevant policies of the county development plan and other regional and national guidance/policies, relevant environmental designations and the Council's policy WES-P-10. Such developments must have regard to the scale and form of the settlement."*

## **5.2. Natural Heritage Designations**

5.3. The site is located approximately 560m east of Donegal Bay SPA and 615m south-west of Durnish Lough SAC and Proposed Natural Heritage Area.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A first party appeal has been lodged on behalf of the applicant. The grounds of appeal and main points raised in this submission can be summarised as follows:

- Applicant has suffered serious illness and requires a modern, sanitary, dry and clean environment. Existing Hill House cannot be used by the applicant.
- Development of two dwellings at this location will provide a family meeting place, as the Hill House was for four generations – grant of permission will extend a lifelong ongoing association with Rossnowlagh for a further two generations.
- New homes will initially be second homes not holiday homes and would be used by the extended family as their spouses reach retirement – it is easily foreseeable that the homes would be used on a year round basis.
- Constraints to development (lack of infrastructure) have been removed and this is precisely the type of development envisaged under the Local Area Plan, 2005-2011 and its successor RH-P-9.

- Subject sites were within the “holiday boundary” in the 2005 LAP and are considered as suitable for dwellings not occupied on a permanent basis. Board referred to this Plan for guidance in support of its decision under Reg. Ref: PL05.240703.
- Agent has skill and proven ability to devise varied and interesting buildings to suit this area and environment.
- Planning Authority has failed to apply properly, reasonably or at all Policy RH-P-9 of the Development Plan – planning considerations outside the four corners of this policy have been adopted and a secret non-statutory interpretation has been applied.
- Importation of irrelevant considerations into Policy RH-P-9 involves an unlawful and improper purpose, namely the prevention of development of holiday homes in Rossnowlagh. Planning Authority has adopted a policy of encouraging applications under Policy RH-P-9 and then refusing them in bad faith.
- Planning Authority has acted unfairly and in breach of natural justice and contrary to Article 8 and Protocol 1, Article 1 of the European Convention of Human Rights.
- The applicant was one of the category of persons to whom Policy RH-P-9 applied and under that policy there was scope for further development of up to an additional 20% of the existing housing units as at 2012 when the policy came into force. Planning Authority has used a pre-2012 situation to justify no further holiday homes in Rossnowlagh when the policy adopted by the Council was to allow an extension of holiday homes to a figure of up to 20% above the existing housing units, which could properly be added to that stock as holiday homes.
- Planning Authority has sought to apply a policy of Nil Provision of holiday homes which is contrary to the intent of the Act and the Provisions of Policy RH-P-9.

- The ceiling level of plus 20% of housing stock has not been achieved/ surpassed in the Rossnowlagh area - plus 20% policy would permit the development of this site.

## 7.0 Assessment

### 7.1. Background

- 7.1.1. Donegal County Council has issued notification of decision to refuse permission for two dwellings on neighbouring sites on the basis of their non-compliance with Development Plan Policy RH-P-9, which relates to holiday home development.
- 7.1.2. Two first party appeals have been lodged against these decisions. This appeal relates to the dwelling to the north-west of the original landholding associated with Hill House, a detached multiple-bay two-storey house built c. 1800 and fronting onto Hollow Road to the south. The concurrent application (PL05E.247114) has been refused permission by the Planning Authority for the same reason.
- 7.1.3. Having considered the contents of the application, grounds of appeal and observations from my site visit, I consider that the matters to be assessed are as follows:
- Development principle;
  - Design and layout; and
  - Appropriate Assessment.

### 7.2. Development principle

- 7.2.1. Policy RH-P-9 of the Development Plan states that *“multiple and single holiday home units will be considered within settlement framework areas provided the total number of holiday homes permitted, during the lifetime of the plan, does not exceed 20% of the total number of housing units that existed within the framework area at the time of the adoption of this Plan...”*
- 7.2.2. Under the Council’s reason for refusal, it is highlighted that far in excess of 20% of housing units within Rossnowlagh are holiday homes, and therefore the proposal for the construction of a holiday home would contravene Policy RH-P-9.

- 7.2.3. According to the 2011 Census of Population, the percentage of holiday homes within the Ballintra Electoral Ward was 66.5%. Rossnowlagh is situated towards the western site of this electoral ward along the coast where holiday homes may be even more prevalent.
- 7.2.4. It is recognised in the Planner's Report that there is an anomaly in the wording of Policy RH-P-9 but that the intention of the policy is that if the proportion of houses within a settlement centre equals or exceeds 20% holiday homes at the time of adoption of the Development Plan, then no more holiday homes can be granted within the settlement centre over the life of that plan.
- 7.2.5. The appellant makes the argument that there was scope for further development of up to an additional 20% of existing housing units when the policy came into force in 2012. In this regard, it is submitted that the pre-2012 situation was to allow an extension of holiday homes to a figure of 20% above the existing housing units that could properly be added to that stock as holiday homes.
- 7.2.6. A holiday home is described as *"a secondary place of residence that does not form a principal and main residence. This excludes second homes occupied on an intermittent basis by persons who are returning emigrants."* The applicant submits that the new homes will initially be second homes and may in the future be used on an all year round basis. The applicant's address on the planning application form is Comber, Co. Down and it appears that Hill House belongs to the applicant's family. The proposed dwelling would therefore be considered as a holiday dwelling and I agree that the Planning Authority were correct to assess it as such. The applicant would otherwise be expected to demonstrate compliance with Development Plan Policies RH-P-1, RH-P-2 and RH-P-3.
- 7.2.7. In my opinion, the purpose of Policy RH-P-9 is to address the imbalance in an area between holiday homes and permanent residences. The policy explicitly states that a holiday home unit will be considered where the total number of holiday homes permitted during the period 2012-2018 remains fewer than 20% of all units in 2012. In the case of Rossnowlagh, as demonstrated from Census figures, there was not a situation when the Development Plan was adopted in 2012 whereby any capacity was available for holiday home development. Essentially, holiday home development is precluded from this area for the lifetime of the Development Plan

under Policy RH-P-9 unless compliance with other relevant Development Plan policies can be demonstrated. The applicant has not submitted evidence of compliance with any other policy and therefore I would agree with the Planning Authority that permission should be refused for the reason given.

### 7.3. Design and layout

- 7.3.1. The proposed development and the proposal for a dwelling within an adjoining site will essentially see the subdivision of lands associated with Hill House into three residential plots. The original site has the benefit of two road frontages with Hill House fronting onto the upper road and the rear boundary facing the main road to north. There is a height difference between the location of Hill House and the main road of some 10m.
- 7.3.2. Hill House is an historic dwelling listed on the National Inventory of Architectural Heritage, wherein it is described as *“an unusual building (that) is a modest addition to the built heritage of the local area, and makes a positive contribution to the scenic rural landscape to the west of Belalt Strand, Rossnowlagh. The simple rubble stone boundary walls and the metal pump to the south of the central block add to the setting and completes this composition.”* Hill House is not, however, a protected structure.
- 7.3.3. Notwithstanding the status of the building or site, I would be of the opinion that any proposed subdivision should respect the setting of the historic building. In this case, there is a natural separation in the form of the height difference, significant planting and the tapering nature of the site to the north. There is nonetheless a disused laneway along the eastern boundary of the original site that includes two gate pillars and I would agree that these are worthy of preservation. In my opinion, any proposal to develop the site should incorporate this access. It should be noted that adjoining accesses to the development sites are proposed in the centre of the existing frontage.
- 7.3.4. Overall, I would be no objection to the location, siting and design of both dwellings. Existing building lines and scales are respected and the design and detailing reflects the rural vernacular. In terms of location, the appeal site is a sequential addition to the existing built up area.

- 7.3.5. There would be potential for overlooking from the first floor rear balcony. Should the Board be minded to grant permission, I recommend that this balcony is omitted, made inaccessible or screened off.

#### **7.4. Appropriate Assessment**

- 7.4.1. The EU Habitats Directive (92/43/EEC) requires competent authorities to review planning applications and consents that have the potential to impact on European designated sites, i.e. Special Protection Areas (SPA's) and Special Areas of Conservation (SAC's).
- 7.4.2. The appeal site is located approximately 560m east of Donegal Bay SPA and 615m south-west of Durnish Lough SAC. The proposed development will be connected to mains drainage and water supply.
- 7.4.3. Having regard to the nature of the proposed 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 development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

- 8.1. I recommend that planning permission should be refused for the following reasons and considerations.

### **9.0 Reasons and Considerations**

It is a policy of the County Donegal Development Plan, 2012-2018 (RH-P-9) that *"...multiple and single holiday home units will be considered within settlement framework areas provided the total number of holiday homes permitted, during the lifetime of the plan, does not exceed 20% of the total number of housing units that existed within the framework area at the time of the adoption of this Plan..."*. This policy is considered reasonable. The proposal for the construction of a holiday home, in an area where the current proportion of holiday homes is well in excess of 20% of all housing, would contravene Policy RH-P-9 and would add to the quantum

of non-permanent dwellings in the settlement. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

Donal Donnelly  
Planning Inspector

11<sup>th</sup> November 2016