



An
Bord
Pleanála

Inspector's Report 05E.247546.

Development	Construction of a one and three quarter dwelling connecting to existing public services and all associated works.
Location	Ballymacarry Lower, Bunrana, Lifford PO, Co Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	16/50450
Applicant(s)	Michael & Breege King
Type of Application	Permission
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Pauric Og & Charlene O'Flaherty.
Date of Site Inspection	17/1/17
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1. The site is located at Ballymacarry Lower, Buncrana, Lifford PO, Co Donegal. The site fronts the R238 on the southern outskirts of Buncrana, but is several metres higher than the regional road. The site is accessed from the regional road, via a right of way which will replace an existing gateway access to the road.
- 1.2. The site faces west towards Lough Swilly which extends almost to the regional road.
- 1.3. To the north of the site there is a small housing development, accessed from a local road to the east, with westward facing housing served by an estate road running parallel with the R238. This area is some meters higher than the regional road. To the south, lower ground, similar to the level of the regional road, adjoins the site. This area appears to have been quarried for sand. To the east there are two detached houses on higher ground, one is owned by the applicant's parents.
- 1.4. The site is long and narrow with the long axis running parallel to the northern boundary.
- 1.5. The site area is given as 0.167ha.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of what is described as a one and three quarter storey dwelling connecting to existing public services and all associated works. The dwelling is 15.045m x 10.500m at its maximum extent and 8.083m maximum height. The main axis runs parallel to the northern boundary. It is stated to be 217 sq m in floor area.
- 2.2. The application is accompanied by a letter from Cllr John Ryan stating that the applicants qualify under CDP chapter five policy RH-P-5. One of the applicants was born and raised in the family home adjacent to their site. After marrying they moved to Cluain Mhuire, Buncrana where they have lived since.
- 2.3. In response to a further information request, requesting:
 - 1 - documentary evidence of legal interest.
 - 2 - revised site layout plan: dwelling to be moved a minimum of 7m to east, accurate RoW, revised communal entrance, increase in site

area and lateral separation from side boundaries, route of existing sewer and arrangements for its protection.

- 3 - third party consent as necessary to revise the communal access arrangements etc

the following information was submitted

- 2.4. A setback of 7m is impractical, due to slope to rear, and restricted rear area, 40m front garden, but only 4.5m private space.
- 2.5. The development in the 2005 permission, with the front building line protruding 13m in front of the established building line of Loch View had a setback of only 18m from the road edge.
- 2.6. The drawings submitted show the accurate location of the site and RoW and they attach a copy of the folio map. There may be a discrepancy in the digital version which is being corrected.
- 2.7. Amended site layout showing single communal entrance, the additional grazed area will assist separation distances. 13/90002 has not been built to date; the route of the sewer is shown and the protection of same is assured.
- 2.8. Attached to the response are:

A letter from Michael King and Jamie Friel, directors of Juneford Ltd, owners of site, consenting to application;

A letter from Bosco & Sheila Reid consenting to: block off the existing entrance gates and open a replacement communal entrance, to provide filling of any lands over the right of way, carrying out of protection and cover works to any potential third party sewer within the right of way and maintenance arrangements to same, and to provide a reduced access road of 6m with grazed areas to remaining RoW;

A layout map of proposed guest house development 05/90006; and

Land registry map.

3.0 Planning Authority Decision

3.1. Decision

3.2. The planning authority decided to grant permission subject to 9 conditions, including:

2 - occupancy

3 - entrance details

4 - frontage drain

5 - visibility splays

3.3. Planning Authority Reports

3.3.1. Planning Reports

- planner's report requesting further information on 3 points. The planner is satisfied with the applicant's bona fides from information ascertained during pre-planning discussions and therefore the principle of development is acceptable within the scope of policy H-P-29.
- House should be relocated eastwards to integrate, by 7m, acceptable relationship with adjoining.
- Appears to propose a new entrance. A single access point would be preferable, a reduction in the width of road from 9m to 6m, irrespective of the width of the RoW to be preserved, would be more orderly.
- Site could benefit in increase in width and reduction in width of the RoW.
- Issues raised by third party are addressed.
 - In relation to the item that the proposal as submitted will result in overshadowing and a loss of light, this is noted and sustained. However the requested relocation will address this issue.
 - Building scale and footprint are excessive - noted and sustained in part, the dwelling is over-scaled but the lateral separation distances could be improved upon and this is addressed in further information.
- Further information recommended and request issued on three points:

- 1 - documentary evidence of legal interest.
- 2 - revised site layout plan: dwelling a minimum of 7m to east, accurate RoW, revised communal entrance, increase in site area and lateral separation from side boundaries, route of existing sewer and arrangements for its protection.
- 3 - third party consent as necessary to revise the communal access arrangements etc.

Second planner's report recommending permission

- all matters of the further information request have been satisfactorily addressed in a compliant manner, except for one issue which concerns the building set back. The applicant has not relocated the dwelling and has asked that this be reconsidered principally on the basis that (1) it would result in excessive front garden space and limited amenity space, (2) it is unreasonably contrary to the approved building line and (3) it would and reduce the amenity space to the extent that it would not be practical or viable.
- I am persuaded on re-examination that the proposed building line is not disorderly, it is evident that it is consistent with the established building to the north relative to the adjoining regional road and does not on review justify the requested relocation of the dwelling house.
- Re overshadowing - the house maintains a greater separation distance from the adjoining third party property than that property and the other dwellings within the parent development.

3.3.2. Other Technical Reports

- Roads and transportation – conditions.

3.4. **Third Party Observations**

3.5. AI Architects submitted an observation on behalf of Pauric Og and Charlene O'Flaherty including:

3.6. Application:

Applicants are not legal owners as stated. Juneford Ltd owns DL54482F and Michael King, and Sheila Reid owns DL61584F, copies of land registry maps are attached.

A valid planning permission exists within the site, not stated: 13/90002 retention and completion of new foul sewer network to serve 21 caravans (under previous permission ref. 04/25).

The eastern facing window to the living room is not shown on any submitted elevation or section.

- 3.7. Boundaries – no blue line showing full ownership. Boundaries do not correlate with the land registry map.
- 3.8. Location of right of way (RoW) does not correlate with the land registry map.
- 3.9. Third parties living room, kitchen and 1st floor bedrooms have south facing windows and a glazed patio door in the living room. The large one and a quarter storey dwelling, with a ridge height of 8.400m above finished ground floor level, measuring 15.045m in length and located 2m from the site boundary will affect the daylight and overshadow the property, damage residential amenity and loss of any private amenity to render the property dark and constantly in shadow.
- 3.10. A future detached garage will have similar effect.
- 4.0. Windows and a side door will overlook the living room, kitchen, first floor bedrooms and south facing garden affecting their amenity and privacy.
- 4.1. Scale and footprint is overdevelopment of a small site.
- 4.2. The existing right of way has a foul sewer serving 21 caravans, permitted under 13/90002. The level of the RoW is to be raised so the applicant can gain access to their site. The location of the existing sewer has not been detailed on the drawings and no provision has been made for access or protection to this amenity. No letter of consent has been submitted.
- 4.3. The ground has been built up by 2.0m with loose fill as dug out material and will be prone to movement unless property restrained. At present the boundary is defined by a post and rail fence. The level difference is between 100 -300mm along its length. It is the applicant's intention to reduce the ground level by between 600-900mm along its length which will result in a difference, between the properties, of 945 to 1.326.

They are anxious that the existing ground condition, coupled with differential height and inappropriate boundary retention could cause movement and damage their property.

- 4.4. AI Architects submitted an observation on behalf of Pauric Og and Charlene O'Flaherty in response to the further information submission, including:
- 4.5. The argument made that by moving the house back it would have a reduced back yard indicates that it is not suitable for a dwelling. They reiterate objections previously expressed.

5.0 Planning History

- 5.1. None stated in the planning report or application form.

PP4657 pre -planning

The site is zoned agricultural/rural in the Buncrana and Environs Development Plan, 2014-2020. Policy H-P-29 allows for the development of appropriate one-off rural housing for persons with a demonstrated need and who can prove that they or their parents resided in the area for at least seven years. On the basis of your established housing need and the location of your parental home place, the principle of development is acceptable.

There are challenging site levels. Building at the level of the regional road or comparable with the established residential development to the north. Narrow site, dropping sharply at the southern boundary, a two-storey dwelling and the proximity of the dwelling to the southern boundary risks appearing very strident. If there is control over adjoining land mitigation could be proposed. Increasing the distance between southern boundary and the dwelling, grading of levels and landscaping, desirable.

Access is questioned, where from.

13/90002 retention and completion of new foul sewer network to serve 21 caravans (under previous permission ref. 04/25).

05/90006 Outline planning permission, granted in Oct. 2005 for a two storey guest house, expired in 2010.

6.0 Policy Context

6.1. Development Plan

The Buncrana & Environs Development Plan 2014 – 2020 is the operative plan. Relevant provisions include:

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.

H-P-29 It is the policy of the council to facilitate an appropriate provision of one-off housing in 'Agricultural/Rural' areas where the applicant can demonstrate that they need a new house at this location and can provide evidence that they, or their parents, have resided in those areas for a period of at least 7 years. All proposals shall be subject to all relevant material considerations, relevant policies of the Buncrana & Environs Development Plan 2014 – 2018, other Regional and National guidance and relevant Environmental Designations.

6.2. Guidelines

Sustainable Residential Development In Urban Areas

Overshadowing will generally only cause problems where buildings of significant height are involved or where new buildings are located very close to adjoining buildings. Planning authorities should require that daylight and shadow projection diagrams be submitted in all such proposals. The recommendations of 'Site Layout for Daylight and Sunlight: A Guide to Good Practice' (B.R.E. 1991) or B.S. 8206 'Lighting for Buildings, Part 2, 1992 Code of Practice for Daylighting' should be followed in this regard.

6.3. **Natural Heritage Designations**

Lough Swilly SAC, site code 002287, extends close to the regional road opposite the site.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

7.2. AI Architects has submitted an appeal on behalf of Pauric Og and Charlene O'Flaherty, who live adjacent to the site to the north. The grounds of appeal include:

7.3. Validity –

Applicants are not legal owners as stated. Juneford Ltd part owned by Michael King owns folio DL54482F, and Sheila Reid owns folio DL61584F.

A valid planning permission exists within the site, which has not been stated:

13/90002 retention and completion of new foul sewer network to serve 21 caravans (under previous permission ref. 04/25)

7.4. Boundaries –

Accurate information has not been provided.

The Red line is misleading as it includes a right of way for a new foul sewer. The proposed embankment now covers the route of the retained approved underground services, general maintenance and emergency access will be prohibited within this landscaped area which is poor planning.

The planning authority have proposed a revised communal entrance and a reduced access road from 10m to 6m.

7.5. Planner's Report 14th Oct

The further information (item 2 (c)) requested the applicant to move the dwelling 7m further back in the site to improve the relationship with the dwelling to the north. The applicants did not move the house because it would restrict the private back yard and prevent the construction of a domestic garage at a later stage and result in a large front garden.

The setback would have been similar to the established distances of the dwellings to the north. The third party purchased their dwelling from a developer who had the house designed to maximise the natural light available from their southern aspect. The proposed dwelling will reduce the levels of natural light dramatically. The design incorporates a deep plan which increases the potential overshadowing. A shadow path drawing to illustrate is supplied.

The planner's report compares the overshadowing with the approved dwelling separation. The third party's dwelling, although part of a larger housing scheme was designed to utilise the southern aspect and has southern facing windows and doors. It is odd that a refusal was not contemplated.

2(b) Reduced access width of 6m maximum; issues re. RoW

2(c) an increase in the proposed site area and in lateral separation distances have not been addressed. Applicants have not addressed raised and not submitted the information requested. The length and breadth of the dwelling is too great for the narrow site.

Reference to approval of a guest house in 2005 should be disregarded as the permission has lapsed, and been superceded by the reviewed CDP and more recent permission.

The third parties' adjoining property will be overshadowed for 6 months of the year.

The proposed dwelling has a ridge height of 8.400m above finished floor level, 15,045m in length and 2m from the site boundary, will damage the residential amenity by overshadowing and loss of privacy. The adjoining property will be dark and constantly in shadow. The future detached garage will have similar dimensions and will have similar effect.

The proposed windows will overlook the living room, kitchen, first floor bedrooms and south facing garden.

The ground has been built up by 2.0m with loose fill as dug out material and will be prone to movement unless property restrained. The boundary is defined by a post and rail fence. The level difference is between 100 -300mm along its length. It is the applicant's intention to reduce the ground level by between 600-900mm along its length which will result in a difference of 945-1.326 between the properties. They are

anxious that the existing ground condition, coupled with differential height and inappropriate boundary retention could cause movement and damage their property.

7.6. Drawings and copies of drawings which appear to be taken from previous planning files are attached to the appeal.

7.7. **Applicant Response**

7.8. Harley Planning Consultants Ltd have responded on behalf of the first party, to the grounds of appeal, including:

The site measures 0.167, with a frontage to R238 main road to Derry. Aerial photographs showing context are supplied. Outline planning permission was granted in Oct. 2005 for a two storey guest house, this expired in 2010. The site is located at the northern end of the agriculture/rural zoning, surrounded by established development zones.

First Party's parents have lived in their house to the east since 1992 and in 2003 bought the site; policy H-P-29 is complied with and was not questioned in the grounds.

Response to grounds:

Re. - Legal title – the site is in the process of being transferred. Letters of consent from owners and persons with RoW were submitted and the PA were satisfied.

Re. - Extant permission for sewer - the PA is aware of this, the developers have no objection. The required clarification was submitted.

Re. - Failure to comply with further information request. The planning authority has carried out a comprehensive assessment of the proposal. Regarding the 7m setback requested, and an increase in the lateral separation distances, they did not agree with the request and offered a rationale for doing so. They did not agree that their proposed dwelling overshadowed the third party's dwelling, the building line is maintained, and the reduction in private space would be significant. The PA accepted the argument.

Re. - The width of the RoW. The applicant fails to see how the reduction in width could impact on the appellants. The agreed reduction in width increases the effective site area available. The 4m additional site area will be landscaped. The 2m

separation distance to the northern site boundary remains the same, this is considered ample.

Re. - Overshadowing, the response refers to the ministerial guidelines which contains information in relation to overshadowing; referring to buildings of significant height or located very close to existing. This is not the case here. The guidelines advise that the 'Site Layout for Daylight and Sunlight: a Guide to Good Practice' (BRE 1991) or BS 8206 'Lighting for Buildings, Part 2, 1992 Code of Practice for Daylighting' should be followed in assessing impacts.

The response refers to a drawing no. 2159, enclosed with the response, which demonstrates that the angle of lines from the centre of the lower windows extend over the 25 degree limit, recommended by the guidelines. The response states that in accordance with the guidelines the daylight / sunlight enjoyed by the dwelling will not be impaired.

To avoid overshadowing the outdoor space, the guidelines recommend that they should receive at least 2 hours of daylight on the spring equinox. Drawing no. 2159 provided, shows at least 6 hours totally unobstructed.

Re. overlooking – it is proposed to install obscured glazing.

The rear door will also have obscure glazing and they welcome a condition. It is also possible to erect a wall of sufficient height along the northern boundary which will screen any overlooking from ground floor openings, and the applicants would have no problem with the erection of the wall being imposed as a condition.

Re. Overdevelopment – the Development Plan does not impose plot ratio limits for residential development, it proposes a balanced approach to promote higher density development in suitable locations and that it can be informed by spatial characteristics; H-P-15 density appropriate to its location. The ministerial Guidelines suggest density of less than 15-20 dwellings per ha. The plot ratio equates to 1:12.7, residential development in the vicinity such as the appellant's is 1:6.3. with a density of under 6 per ha it is considered that it does not constitute overdevelopment.

Re. – that the development threatens the stability of appellant's property – a duty of care applies. They do not accept that the excavation will threaten stability or damage the adjoining property, and will take any precautionary steps.

7.9. **Planning Authority Response**

The Planning Authority have responded to the grounds of appeal stating that the matters raised were addressed in planner's reports and the Board is referred to those reports.

7.10. **Further Responses**

7.11. AI Architects on behalf of the third party have submitted a response to the first party response to the grounds of appeal, including:

Regarding the site measuring 0.167ha, the overall site area which includes the RoW owned by Bosco and Sheila Reid measures 0.167ha, the site owned by Juneford Ltd and forms the subject site measures 0.10142ha.

They reiterate that the initial application is incorrect and misleading and they attach a map outlining the ownership of lands.

Re. overshadowing the document 'Site Layout for Daylight and Sunlight: A Guide to Good Practice' BS 8206 Part 2, 1992 has been withdrawn from use. The use of the 25 deg. rule is somewhat outdated and much more sophisticated software as used by them gives a much more detailed assessment. They have provided sun path diagrams giving impact during the winter solstice period when the sun is at its lowest path, the applicant has opted to provide a similar assessment but during the spring equinox when the sun is higher and therefore, giving a reduced shadow. They include another diagram.

The third party dwelling enjoys solar gain. The third party works from home and uses her living room as her office. The proposed development will have a major impact on yearly running costs, reduced light and heat, and make it unviable to work from home.

8.0 **Assessment**

8.1. The issues which arise in relation to this appeal are appropriate assessment, the principle of the proposed development, residential amenity, ownership and right of way, further information request of building line setback and ground conditions and the following assessment is dealt with under these headings.

8.2. **Appropriate Assessment**

8.3. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

8.4. **Principle of the Proposed Development**

Notwithstanding that the site is located within the development boundary of the town of Buncrana as set out in the Buncrana & Environs Development Plan 2014 – 2020, the zoning is Agricultural / Rural: which requires that the applicant can demonstrate that they need a new house at this location and can provide evidence that they, or their parents, have resided in those areas for a period of at least 7 years. The application was accompanied by a letter from Cllr John Ryan stating that the applicants qualify under CDP chapter five policy RH-P-5. In the planning report the planner states that he is satisfied with the applicant's bona fides from information ascertained during pre-planning discussions, and therefore the principle of development is acceptable within the scope of policy H-P-29.

It appears clear from the documentation on file that the applicant's parents have resided in the area for the requisite time. There is no evidence presented as to the applicant's housing need.

In the response to the appeal it is stated that the first party's parents have lived in their house to the east since 1992 and bought the site in 2003, that policy H-P-29 is complied with, and further that it was not questioned in the grounds.

It is also worth noting that a previous permission, now expired, permitted a two storey guest house on this site.

This issue has not been raised in the grounds of appeal. On balance having regard to the history of the site and that the issue of compliance with housing need is confirmed in the pre-planning report and reiterated in the planner's report on the application, I consider that in principle the proposed development is acceptable.

8.5. **Residential Amenity**

8.6. The third party has concerns that impact on daylight and sunlight and loss of privacy will adversely affect the residential amenity of the adjoining property.

- 8.7. They have submitted sunpath diagrams for the 21st December and have responded to the first party's response with further diagrams.
- 8.8. The first party has responded referring to the ministerial guidelines Sustainable Residential Development In Urban Areas which contains information in relation to overshadowing; referring to buildings of significant height or located very close to existing. This is not the case here. The guidelines advise that the 'Site Layout for Daylight and Sunlight: a Guide to Good Practice' (BRE 1991) or BS 8206 'Lighting for Buildings, Part 2, 1992 Code of Practice for Daylighting' should be followed in assessing impacts.
- 8.9. The response refers to a drawing which they enclosed, which demonstrates that the angle of lines from the centre of the lower windows extend over the 25 degree limit recommended by the guidelines and therefore they state that in accordance with the guidelines the daylight / sunlight enjoyed by the dwelling will not be impaired.
- 8.10. The Daylight 25⁰ rule as referred to in the BRE document states that: if any part of the new building measured in a vertical section perpendicular to a main window of an existing building, from the centre point of the lowest window, subtends an angle of more than 25⁰ to the horizontal, then the diffuse daylighting of the existing building may be adversely affected. If not there will still be potential for good daylighting in the interior.
- 8.11. The third party's response is that the use of the 25 deg. rule is somewhat outdated and much more sophisticated software as used by them gives a much more detailed assessment. They have provided sun path diagrams giving impact during the winter solstice period when the sun is at its lowest path, the applicant has opted to provide a similar assessment but during the spring equinox when the sun is higher and therefore, giving a reduced shadow and a further diagram is supplied by them in this regard.
- 8.12. While the Board may consider best practice advice or guidance in this or any other matter, the guidelines 'Sustainable Residential Development In Urban Areas' refer to the 1992 B.R.E. document and it is appropriate for use in this case. I am satisfied on the basis of the information on the file, that there will still be potential for good daylighting in the interior of the third party's dwelling if the proposed dwelling is developed.

- 8.13. In relation to sunlight, sunlight could be an issue since the new development is situated within 90° of due south of the main window wall of the existing dwelling; however the 25° test again applies, therefore access to sunlight is not of concern.
- 8.14. In relation to the amenity provided by the rear garden, the B.R.E. document states that no more than 40% (two/fifths) and preferably no more than 25% (a quarter) of ground area should be prevented by buildings from receiving any sun at all on 21st March; if an existing garden does not meet this standard as a result of development and in addition the area that can receive some sun is less than 0.8 of its former value, the loss of sunlight would be an issue.
- 8.15. The shadow diagrams for that date provided in the first party response indicate that these tests are met.
- 8.16. Re. overlooking - the third party has expressed concerns that the windows and a side door will overlook their living room, kitchen, and first floor bedrooms and their south facing garden.
- 8.17. The first party response is that it is proposed to install obscured glazing in the windows and rear door and that they welcome the imposition of a condition in this regard. They further state that it is also possible to erect a wall of sufficient height along the northern boundary which will screen any overlooking from ground floor openings, and the applicants would have no problem with the erection of the wall being imposed as a condition.
- 8.18. I am satisfied that residential amenity is not a reason to refuse permission.
- 8.19. **Ownership and Right of Way**
- 8.20. The third party has expressed concern that accurate information has not been provided, that the red line is misleading as it includes a right of way for a new foul sewer; that the proposed embankment now covers the route of the retained approved underground services, and that general maintenance and emergency access will be prohibited within this landscaped area which is poor planning.
- 8.21. The first party response regarding legal title is that the site is in the process of being transferred. Letters of consent from owners and persons with rights of way were submitted and the planning authority were satisfied.

- 8.22. Re – the extant permission for a sewer, the first party response is that the planning authority is aware of this, the developers have no objection, and the required clarification was submitted.
- 8.23. I am satisfied that these matter has been examined to the extent necessary in relation to a planning application and that the issues of ownership and right of way should not be reasons to refuse planning permission.
- 8.24. **The Further Information Request**
- 8.25. The first planner's report stated that the house should be relocated eastwards by 7m to provide an acceptable relationship with the adjoining dwelling; and that the site could benefit from an increase in width and a proportionate reduction in the width of the RoW and this has been raised as an issue by the third party.
- 8.26. In the response to the planning authority the first party argued that the setback was unnecessary and would reduce the space to the rear of the proposed dwelling. In relation to the site width vis a vis the RoW the first party stated that the drawings submitted show the accurate location of the proposed site and RoW. The second planner's report found these responses acceptable. The third party states that the setback would have been similar to the established distances of the dwellings to the north and refers to impact on amenity; that the planner's report compares the overshadowing with the approved dwelling separation; and that, although part of a larger housing scheme, their dwelling was designed to utilise the southern aspect. They consider it odd that a refusal was not contemplated.
- 8.27. The third party states that an increase in the proposed site area and in lateral separation distances have not been addressed and that the length and breadth of the dwelling is too great for the narrow site.
- 8.28. The first party response is that the planning authority has carried out a comprehensive assessment of the proposal. Regarding the 7m setback requested, and an increase in the lateral separation distances, the planning authority accepted their argument and rationale for not setting back the dwelling, that their proposed dwelling did not overshadow the third party's dwelling, that the building line is maintained, and that the reduction in private space which it would involve would be significant.

- 8.29. In my opinion the building line as proposed is acceptable and is compatible with the dwellings on the sites to the north. To achieve this building line the proposed dwelling already has a very large front garden relative to the size of the rear garden. In the case of the dwellings to the north similar spacing provides a front garden, an access roadway and a green strip alongside. In my opinion any further setback of the building line is unnecessary and undesirable.
- 8.30. In my opinion although the site is narrow, the proposed development can be accommodated without adverse impact on the future residents, adjoining properties or the visual amenities of the area. Notwithstanding that the width of the site vis a vis the right of way is established, the right of way will provide breathing space for the proposed building.
- 8.31. **Ground Conditions**
- 8.32. The third party has concerns that the ground has been built up by 2.0m with loose fill as dug out material and will be prone to movement unless property restrained. The level difference in level along the boundary defined by a post and rail fence, is between 100 -300mm along its length. The proposed reduction in ground level by between 600-900mm which will result in a difference of 945-1.326 between the properties. They are anxious that the existing ground condition, coupled with differential height and inappropriate boundary retention could cause movement and damage their property.
- 8.33. The first party response is that a duty of care applies. They do not accept that the excavation will threaten stability or damage the adjoining property, and will take any precautionary steps.
- 8.34. As the planning authority stated at pre-planning stage there are challenging site levels at this location. The proposed development involves cut and fill to improve existing site levels. The existing ground conditions, whether sand or fill material, will require an appropriate response. I accept that a duty of care applies. In my opinion the issues regarding ground conditions are not such that planning permission should be refused for this reason.

9.0 Recommendation

- 9.1. In accordance with the foregoing assessment I recommend that planning permission be granted for the following reasons and considerations and in accordance with the following conditions.

10.0 Reasons and Considerations

It is considered that subject to the following conditions the proposed development would be in accordance with the provisions of the Buncrana & Environs Development Plan 2014 – 2020 would not unduly impact on the amenities of adjoining properties or the visual amenities of the area and would accordingly be in accordance with the proper planning and development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 26th day of August 2016 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the

planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. The applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this area is appropriately restricted in the interest of the proper planning and sustainable development of the area.

Reason:

- 3 Details of the site entrance, roadside fence line and access roadway shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of traffic safety.

- 4 All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water shall discharge onto the public road or adjoining properties.

The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

- 5 Prior to the commencement of development permanent visibility splays of 70 m in each direction shall be provided from a point 2.4m back from the road edge at the location of the entrance to the regional road.

Reason: In the interest of traffic safety.

- 6 External finishes shall be agreed with the planning authority prior to the commencement of development and shall include the use of obscured glazing in the north facing windows and door and roofing in blue-black slate or tiles.

Reason: In the interest of visual amenity

- 7 The developer shall pay to the planning authority a financial contribution of €2,500 (two thousand five hundred euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000

that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Planning Inspector

7 February 2017

Appendices

- 1 Photographs
- 2 Extracts from Buncrana & Environs Development Plan 2014-2020
- 3 Sustainable Residential Development In Urban Areas