



An
Bord
Pleanála

Inspector's Report 05E.247571.

Development	Two semi-detached dwelling houses with connection to existing effluent treatment unit & associated site works.
Location	Cloghbolie, Ballyshannon, Donegal PO, Co Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	16/51355
Applicant(s)	Creavy & District Community Development Co-op
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	Stephen Menarry John Menarry
Date of Site Inspection	17/1/2017
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1. The site is located in a rural area c 5km west of Ballyshannon, Co Donegal. The site is located a few hundred metres from the Atlantic coast in an area with a dispersed housing pattern. Some of the houses have the appearance of holiday homes. The site is located within a field within which there is a large industrial type building with three full height roller shutter doorways in the front elevation and with the floor space at the rear of the building, divided into two floors of accommodation. The building is finished in plaster with metal cladding for the roofing and the upper portion of the gable wall. A wide access driveway serves surfaced parking areas to the side and front of the building. The land rises steeply from the road, from 50m at the roadside to 59.5m at the north east corner. A platform has been excavated for the building and associated car parking. The subject site comprises the entire field within which the shed is situated. The dwellings are proposed to be located to the west of the existing building, with access provided from the existing access.
- 1.2. The local road from Ballyshannon forks immediately north of the site entrance, running west to the seashore and north as a short spur to serve some houses.
- 1.3. The site (field) is given as 1.0176ha.

2.0 Proposed Development

- 2.1. The proposed development is the construction of two semi-detached dwelling houses with connection to existing effluent treatment unit & associated site works. The dwellings would have a finished floor level of 53.5m relative ground levels at the building footprint ranging from in excess of 54.5m to in excess of 52.5m, per contour map.
- 2.2. The proposed dwellings have 2 bedrooms, a living room kitchen, a front porch and rear store, and are clad in local stone to the front and side. The block comprising the dwellings is 21,978m long x 12,100m wide x 5,115m high. The floor area of each is given as 81.36m².

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 8 conditions including:

- 1 the houses shall be managed holiday accommodation which are available for short-term holiday letting only.
- 5 development contribution of €27,382.56
- 6 fire hydrant
- 8 pipework to waste treatment system.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The site is within an area designated as a stronger rural area and close to Creevy Pier. The pair of semi-detached houses are intended for holiday letting. In the planning authority's consideration of the acceptability of the proposal the policies RH-P-10 and Rh-P-11 are considered pertinent.

The resource on which the holiday cottages would be linked would be the nearby Creevy Pier and Atlantic Ocean, local flora and fauna and the Creevy Coastal walkway. As there is an existing boathouse on the site the site is considered to constitute a brownfield site. The design is acceptable and the scale would not be detrimental to the character of the area. The development is provided for under policy RH-P-10. The EHO report is cited.

3.2.2. Other Technical Reports

Roads and Transportation – no objection.

EHO – condition re effluent.

3.3. Third Party Observations

Third Party observations were received from:

Eileen Menarry

Stephen Menarry

John Menarry

Charlene, Kathleen & Karina Gavigan

Issues raised include:

Has not demonstrated rural need.

Townland has already 50% (60%) holiday homes well in excess of county development plan guidelines this results in the younger generation not being in a position to build or buy a house.

There are not only 1 full time farmer and 1 full time fisherman in the townland.

In the past the co-op has taken derelict houses and refurbished them at a benefit to the owners and the community at large. New builds are a departure from this excellent practice.

Should the co-op fold these buildings, as new builds owned by the co-op, will be sold to help defray outstanding debts and end up owned outside the area.

A boat house has been built already for a boat that has since been disposed of.

The sewage disposal has previously been deemed insufficient. The ground conditions, wet and soggy over much of the site, do not give good conditions for secondary disposal. There are two old drains which traverse the upper sections of the site and discharge onto an adjacent private laneway/observers property. Effluent could discharge there in rainy conditions.

The previous application was deemed to fall under RH-P-10 exempting the rulings in RH-P-8. Due to the fact that the ratios currently exceed by 3 times the 20% level set in RH-P-8; RH-P-8 cannot be ignored. It should be required to meet rural need, rather than perceived holiday home market demand.

Design will not blend with the landscape. The existing unviable commercial unit is obtrusive.

During winter water runs off the site, along the road and into properties, including observer's. The site already contains a commercial unit and environment does not sustain any growth that would assist soakage of waste water.

Increased traffic on a congested road would be a danger. There have been many near misses on the single carriageway road due to traffic to and from Creevy Pier.

4.0 Planning History

- 4.1. 16/50589 Two semi-detached dwelling houses with connection to existing effluent treatment unit & associated site works at Cloghbolie, Ballyshannon, Donegal PO, Co Donegal, planning permission refused:

The proposed development of two holiday homes would connect to an existing treatment system that is already treating a permitted boathouse facility, where the treatment system does not have adequate capacity to cater for the existing boathouse and additional loadings the two houses would generate. It is a policy of the County Development Plan, 2012 – 2018 (as varied) that any proposal for a new rural dwelling which does not connect to a public sewer shall provide for the safe and efficient disposal of effluent in a manner that does not pose a risk to public health, and accords with Environmental Protection Agency codes of practice (Policy RH-P-1 part 5 refers). Accordingly, to permit the proposed development would be contrary to Policy RH-P-1 of the County Development Plan, 2012-2018 (as varied) would be prejudicial to public health, and would thereby be contrary to the proper planning and sustainable development of the area.

11/20418 amendments to permitted development (90/20473), addition of a laundry, disabled WC and meeting room to the ground floor and change of use of 3 no. storage areas at first floor to use as office/meeting room, kitchen and store and the provision of effluent treatment unit and percolations and all associated works. (Condition no 2: treatment plant shall be suitable for a population equivalent of 9 pe).

11/20275 advertisement sign, permitted.

09/20473 permission granted for erection of a boathouse and associated site works.

99/3650 permission granted for erection of a boathouse and compound incorporating offices, compound, septic tank and associated site works.

PP4616 – rural area type 2 stronger rural area, landscape character area Donegal Bay Drumlins. Rural housing policy 9.

5.0 Policy Context

5.1. Development Plan

The Donegal County Development Plan 2012-2018 is the operative plan. Relevant policies include:

RH-P-8

In rural areas, a single holiday home will be considered (subject to all other planning constraints) and in doing so, the Council will seek to ensure a balance between the number of holiday homes and the number of permanent homes. In implementing a balance between holiday/permanent homes, the proposed holiday home shall not be permitted if it would result in the total number of existing and permitted holiday homes to represent more than 20% of the total existing and permitted housing stock within the townland that the proposed site is situated within. In the case of townlands that adjoin a specific settlement framework boundary, the 20% balance shall apply to the totality of the townland area that is considered to be outside the settlement boundary.

RH-P-10

It is the policy of the Council that holiday home development will be considered without the application of a restriction in terms of the balance between holiday homes and permanent homes (Policies RH-P-8 and RH-P-9 refers), subject to environmental and heritage designations and amenity considerations and:

- (1) Where policy referring to 'resource related tourism projects' can be demonstrated by the applicant. This policy may be demonstrated within settlement frameworks in (?) or in the wider rural area or
- (2) Where the applicant can demonstrate that the site is a brownfield site within the urban fabric of a settlement framework and its development for holiday

home purposes is of a size and scale that would not be detrimental to the character of the settlement...

RH-P-11

Development to accord with the Design Guidelines in appendix B.

RH-P-2

Stronger Rural Areas – it is the policy of the Council to facilitate an individual in need of housing within an area defined as Stronger Rural Area, providing 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) 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.

5.2. **Natural Heritage Designations**

Donegal Bay SPA site code 004151 is about 250m from the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

6.2. Two third party appeals have been made against the decision.

6.3. A third party appeal has been made by Stephen Menarry, which includes:

Too many holiday homes in the area, more than 50%, this results in the younger generation not being in a position to build or buy a house. There is only 1 full time farmer and 1 full time fisherman in the townland.

Ground conditions - The sewage disposal to currently installed system has previously been deemed insufficient. Given the varied usage of the boat house, which from time to time have in excess of 40 people on site for a day, this could lead to overloading of the system, and reduce residence time, giving the possibility of carry over.

The ground conditions, wet and soggy over much of the site, do not give good conditions for secondary disposal. There are two old drains which traverse the upper sections of the site and discharge onto an adjacent private laneway. Effluent could discharge there in rainy conditions.

6.4. A third party appeal has been made by John Menarry, which includes:

The proposed development would contravene housing and environmental policies set forth in the current county development plan.

RH-P-8

Rural need has not been demonstrated.

It would increase the imbalance between permanent homes and holiday homes. The townland has 60% holiday homes well in excess of the 20% limit in the county development plan. Of the 28 houses 17 are non-permanent.

The previous application was deemed to fall under RH-P-10 exempting the rulings in RH-P-8. Due to the fact that the ratios currently exceed by 3 times the 20% level set

in RH-P-8, RH-P-8 cannot be ignored. It should be required to meet rural need, rather than perceived holiday home market demand. The Creevy Co-op website is quoted it 'is felt vitally important to preserve the area from despoliation by the over development of holiday homes which upset the natural balance'.

Design will not blend with the landscape. The existing unviable commercial unit, which isn't being used, is obtrusive.

Environmental Impact:

Third party questions the drainage capabilities of the site for waste treatment. In winter due to the soakage in the area and natural sloping, water runs off the site, along the road and into properties. The site already contains a commercial unit and the environment does not sustain any growth that would assist in soakage of waste water.

The applicant has advised that the existing sewage system would be sufficient for a maximum of 8 persons in the two cottages with an additional 5 persons in the boathouse. Third parties believe this number to be considerably underestimated if consideration is taken of the previous planning application 11/20418, which added a laundry room, disabled WC, change of 3 storage areas to offices and meeting room. In that application it was advised that there would be 3 full-time and 6 part-time staff. There are over 60 members in the co-op at present there could be more than 12 persons on site which means the current system would not suffice.

Donegal County Council refused 16/50589 on the grounds that the wastewater was insufficient.

The sewage treatment is within 10m of a piped stream that runs directly into the sea at a popular bathing area. If the WWT fails, there is a considerable public health risk.

Increased traffic alongside a commercial unit on a congested road would be a danger. There have been many near misses on the single carriageway road due to traffic to and from Creevy Pier.

6.5. Applicant Response

Allan Curran Architects Ltd, on behalf of the first party have responded to the grounds of appeal, including:

RH-P-10 - The proposed development is a resource related tourism project, therefore under RH-P-10 of the CDP it may be considered without the restriction in terms of the balance between holiday and permanent homes.

Environmental Impact - The polishing filter is constructed of imported soil to ensure the proper treatment of all effluent generated on site.

A report on the existing effluent treatment unit and polishing filter was prepared and submitted with the planning application.

The occupancy load of the boathouse is based on actual loading confirmed by Creevy & District Community Development Co-operative Society Ltd's manager.

The report confirms that the effluent treatment unit and polishing filter have the capacity to treat both the existing and proposed effluent, including the effluent under 16/51355.

The Senior Environmental Health Officer concurs.

The Executive Roads Engineer has no objection to the proposed development.

6.6. **Planning Authority Response**

6.7. The planning authority's response, refers the Board to the planner's report.

7.0 **Assessment**

7.1. The assessment made,

7.2. The issues which arise in relation to this appeal are appropriate assessment, the principle of the proposed development, visual appearance, effluent treatment and traffic, and the following assessment is dealt with under these headings.

7.3. **Appropriate Assessment**

7.4. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site;

there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment.

7.5. Donegal Bay SPA site code 004151 is about 250m from the subject site.

The features of interest are:

Great Northern Diver

Light-bellied Brent Goose

Common Scoter

Sanderling

Wetland and Waterbirds

7.6. The conservation objectives for the waterbird special conservation interest species can be summarised as, that the:

Long term population trend is stable or increasing. There should be no significant decrease in the range, timing or intensity of use of areas by each of the special conservation interest species, other than that occurring from natural patterns of variation.

7.7. The conservation objectives for the Wetland and Waterbirds can be summarised as, that:

The permanent area occupied by the wetland habitat should be stable and not significantly less than the area of 10,461ha other than that occurring from natural patterns of variation.

7.8. Donegal Bay SPA is a large, mostly shallow, sea bay which extends from Dooring Point in the north to Tullaghan Point in the south, a distance of approximately 15km along its north-east / south-west axis. The site varies in width from about 3km to over 8km.

7.9. A NIS has not been prepared and appropriate assessment or screening for appropriate assessment was not carried out by the planning authority.

7.10. The subject site is located reasonably proximate to the European site, on sloping ground which drains to the European site. There is potential for impact on the

European site from runoff from the construction and from the on-site effluent treatment. No details of any mitigation have provided. In my opinion the Board does not have sufficient information to enable it to carry out appropriate assessment.

7.11. In light of the assessment of other issues under the following headings I do not recommend that further information be sought. The inability to determine that likely significant effects on the European site Donegal Bay SPA, site code 004151 and other European sites, cannot be ruled out, based on the information available, is a reason to refuse permission, and this is a reason to refuse permission.

7.12. **Principle of the Proposed Development**

7.13. Policies in the Donegal County Development Plan 2012-2018 are referred to in the planner's report and also by the first party in support of the application and by the third parties in opposition to the application.

7.14. One of the main policies of relevance is RH-P-8 which provides for the consideration of single holiday homes in rural areas, subject to the objective of seeking to ensure a balance between the number of holiday homes and the number of permanent homes. No more than 20% of the total existing and permitted housing stock within the townland should be holiday homes. In the present case the number of holiday homes in the townland is stated by one of the third parties to be 'in excess of 50%' and by the other third party to be '60%'. This imbalance has not been challenged by the first party or in the planning authority response to the grounds of appeal. I am satisfied that policy RH-P-8 does not apply in this case.

7.15. The other main policy of relevance is RH-P-10, which relieves the foregoing restriction on holiday home development, set out in RH-P-8, in certain situations:

Where to 'resource related tourism projects' can be demonstrated by the applicant. This policy may be demonstrated within settlement frameworks or in the wider rural area - RH-P-10 (1), or

Where the applicant can demonstrate that the site is a brownfield site within the urban fabric of a settlement framework and its development for holiday home purposes is of a size and scale that would not be detrimental to the character of the settlement - RH-P-10 (2).

- 7.16. The planner's report states that 'the "resource" on which the holiday cottages would be linked would be the nearby Creevy Pier and Atlantic Ocean, local flora and fauna and the Creevy Coastal walkway'. RH-P-10 (1).
- 7.17. The argument that the proposed development is associated with a tourism product and therefore complies with CDP policy is very tenuous. The Atlantic Ocean extends around the very extensive coastline of Donegal. Local flora and fauna exist everywhere. The location of the Creevy Coastal walkway is not specified but it is extensive. Creevy Pier is a stand-alone facility unconnected with any other facilities or services. None of these features are immediately adjacent to or connected with the subject site.
- 7.18. In my opinion it would not be appropriate to link the proposed development with any of the listed items, as an associated resource related tourism project, and in my opinion RH-P-10 (1) does not apply in this case.
- 7.19. The planner's report states that as there is an existing boathouse on the site, and therefore the site is considered to constitute a brownfield site, RH-P-10 (2). The site is a large field within which there is an existing building, an associated access roadway and hard surfaced areas. The remainder of the field has never been developed. The location of the proposed development is rough grazing. The site could not in my opinion be described as a brownfield site.
- 7.20. The site is located in an area defined in the County Development Plan as a Stronger Rural Area. Stronger Rural Areas are areas where population levels are generally stable within a well-developed town and village structure and in the wider rural area around them.
- 7.21. Rural housing policy RH-P-2 refers to such areas:

It is the policy of the Council to facilitate an individual in need of housing within an area defined as Stronger Rural Area, providing 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) 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.

7.22. The proposed development does not comply with the restriction on housing in areas such as this.

7.23. In my opinion the principle of the proposed development has not been established and this is a reason for refusal.

7.24. **Visual Appearance**

7.25. The subject site, is located within a field, where the existing building in the field has the appearance of a large industrial structure. This existing industrial building and the proposed development would each stand alone as separate buildings, not complementing each other in appearance or use. The proposed development would not form a grouping with the existing building and the only visual link would be the shared entrance and roadway. In my opinion the setting would offer a poor visual context for the proposed semi-detached holiday homes. I consider that the siting is inappropriate for holiday accommodation and taken with the existing development on the site would not appear to be part of a cluster of complementary developments but rather an incongruous relationship of forced association.

7.26. In visual terms it does not in my opinion provide an appropriate context for the development of holiday homes for rent, and this is a reason to refuse permission.

7.27. **Effluent Disposal**

7.28. The issue of effluent disposal has given rise to concerns in each of the third party appeals. Concern is expressed as to the suitability of the site for the disposal of effluent. The soil's poor drainage characteristics are pointed out; the wet and soggy conditions over much of the site, are considered not to give good conditions for secondary disposal. It is of concern that two old drains which traverse the upper

sections of the site, discharging onto an adjacent private laneway, could allow effluent to discharge there in rainy conditions. It is also pointed out that the sewage treatment is within 10m of a piped stream that runs directly into the sea, at a popular bathing area, where failure of the treatment system would lead to considerable public health risk.

- 7.29. The capacity of the treatment plant is also raised as an issue, designed for 12 p.e., the proposed development would add a loading of two four person households (8 p.e.) to the existing population of users (estimated at 1 p.e. (or 1.66 p.e. BoD)) a BoD loading of >10 is assumed in the application for the combined existing and proposed developments. The application estimate of current usage of the existing development is a maximum of 5 staff.
- 7.30. Third parties point out that there is very varied usage of the boat house. They refer to, in excess of 40 people being on site for a day from time to time. They state that the previous planning application 11/20418, which added a laundry room, disabled WC, change of 3 storage areas to offices and meeting room, stated that there would be 3 full-time and 6 part-time staff. There are over 60 members in the co-op at present and there could be more than 12 persons on site which they argue means the current system would not suffice.
- 7.31. It is also pointed out that in the recent, previous application (16/50589), the sewage disposal was deemed insufficient.
- 7.32. The planning authority has responded that the Environmental Health Officer has approved the proposed additional loading of the system.
- 7.33. I note the comments made by third parties that the existing commercial unit which comprises the greater part of the boathouse is not currently being used, and is described as unviable. It is however conceivable and likely that it will return to some form of use. No explanation has given as to why the existing treatment system was designed with such excess capacity that it is currently able to serve the considerable additional loading now proposed.
- 7.34. I also note that in the 2011 permission (11/20418) which permitted the addition of a laundry, disabled WC and meeting room to the ground floor and change of use of 3 no. storage areas at first floor to use as office/meeting room, kitchen and store and the provision of effluent treatment unit and percolation area and all associated works;

condition no. 2 required that the treatment plant be suitable for a population equivalent of 9 pe.

7.35. In my opinion the existing loading, which has been used to prove the availability of spare capacity, does not take any account of potential usage if the currently unused unit returned to use. Wastewater from the unit would discharge to the on-site treatment system without the need for further consent, therefore, in my opinion, notwithstanding the use of a package treatment plant and constructed percolation area, the proposed development would be prejudicial to public health and this is a reason to refuse permission.

7.36. Traffic

7.37. The increase in traffic to which the proposed development would give rise has been raised as a concern by one of the third parties. It is stated that the road is congested and that the additional traffic it would cause danger and that there have been near misses road due to traffic to and from Creevy Pier. In my opinion the existing access is more than adequate to serve the limited additional traffic which would be generated by the proposed development. The Roads and Transportation Section of Donegal County Council have no objection to the proposed development. In my opinion this is not a reason to refuse permission.

8.0 Recommendation

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

9.0 Reasons and Considerations

1 The proposed development, in a townland where currently more than 20% of the total housing stock is in use as holiday homes, does not comply with RH-P-8 of the County Development Plan, which provides for the consideration of single holiday homes subject to a restriction on the proportion of such houses in a given area; in addition it does not comply with RH-P-10, which would relieve the foregoing

restriction in situations where either it can be demonstrated to be a resource related tourism project or development of a brownfield site; neither would it comply with the policy (RH-P-2) to control housing development in Stronger Rural Areas; accordingly the proposed development would be contrary to the policies of the Donegal County Development Plan 2012-2018.

2 On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site no 004151, or any other European site, in view of the site's conservation objectives. In such circumstances the Board is precluded from granting permission.

3 The Board is not satisfied, on the basis of the information submitted, that the proposed on-site effluent treatment and disposal system would not cause water pollution.

4 The siting of the proposed development taken with the existing development on the site would be inappropriate for holiday homes for rent and would create an incongruous visual relationship between the buildings and be contrary to the proper planning and sustainable development of the area.

Planning Inspector

9th February 2017

Appendices

- 1 Photographs
- 2 Extracts from County Donegal Development Plan 2012-2018
- 3 Site Synopsis, Donegal Bay SPA, site code 004151