



An
Bord
Pleanála

Inspector's Report PL05E.248889.

Development	Dwelling house, detached garage and septic tank.
Location	Carrowen, Speenogue, Burt, Co. Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	17/50217.
Applicant(s)	Jonathan and Nicola Bourke.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Gerald Kelly.
Observer(s)	None.
Date of Site Inspection	02 nd of November 2017.
Inspector	Karen Hamilton.

1.0 Site Location and Description

1.1. The site is a large rural field located within the townland of Carrowen, north of the N13 the main road Letterkenny and Derry. The site rises to a height away from the main road and the majority of the lands around are flat. The site is accessed from a narrow local road and there is an existing agricultural access into the field. There is a mature hedgerow and roadside ditch along the front of the site, facing onto the road and the remainder of the field is surrounded by mature trees and hedgerow. An old railway embankment runs adjacent to the south of the site and is separated by mature trees. There is a substantial amount of one-off rural dwellings in the immediate vicinity which are modest, single storey, storey and half dwellings adjacent to the site to the north and further south there are a number of large two storey dwellings.

2.0 Proposed Development

2.1. The proposed development is for a new dwelling which may be summarised as follows:

- Construction of a new 2 storey one-off dwelling (277m²),
- Construction of a new 1 and half storey garage (96m²),
- New access onto non-national road,
- Packaged wastewater treatment system and percolation area.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 14 conditions of which the following are of note:

C 2- Occupancy condition for the applicant or other such persons who fall in the same category to comply with housing need as per Policy RH-P-5.

C 3- Submission of details to indicate visibility splays of 70m in each direction at a point of 2.4m back from the road edge.

C 4- Prior to development, the roadside drain shall be piped with concrete pipes.

C 5- The existing roadside boundary shall be removed along the road frontage of the site and replaced with a new dark stained tantalised timber fence and back planted with native hedgerow species.

C 11- Water supply shall be from the public water mains.

C 12- Compliance with the EPA code of Practice for Wastewater Treatment and Disposal Systems Severing Single Houses, 2009.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following the submission of further information on the following;

- Submission of details to indicate compliance with Table 23 of the County Development Plan 2012-2018, whereas the applicant submitted a traffic speed survey to confirm an 85th percentile speed of 49kph and provision of 70m sightlines on this basis.
- Revised house and garage plans provided to indicate an increase in the floor space of the proposed house, change in roof profile and windows.

The planners report refers to a letter from a local councillor confirming local links to the area, and the characteristics of the surrounding area.

3.2.2. Other Technical Reports

Roads Department- No objection subject to conditions.

3.3. Prescribed Bodies

Health Service Executive- No objection subject to conditions in relation to the EPA COP, 2009.

3.4. Third Party Observations

One observation was received from the appellant and the issues raised have been addressed in the grounds of appeal.

4.0 Planning History

05A.222973 (Reg Ref. 06/71681)

Permission refused for Margaret Campbell for the construction of a dwelling for reasons of proximity of the site to a road junction and the limited visibility of that junction from the proposed access which would endanger public safety by reason of traffic hazard.

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005).

5.2. Donegal County Development Plan 2012-2018

The site is located within Map 7 as an “*Area Under Strong Urban Influence*”.

Section 5.3.3: Areas Under Strong Urban Influence. Those with a genuine “rural generated housing need” will be facilitated.

Policy RH-P-1: Rural Housing Policy

1. Best Practice design and compliance with Appendix B
2. Integration with areas of scenic quality and European Site
3. No negative impact on protected areas of the River Basin District Plan,
4. Site access in compliance with T-P-15
5. Compliance with EPA codes of practice
6. Compliance with flooding policy F-P-8
7. S47 Occupancy

Policy RH-P-2; Location and Design of dwelling

1. No suburban pattern
2. Will not create or add to ribbon development,
3. Would not be detrimental to amenity of adjoining residents,

4. Would not be prominent in the landscape,
5. Needs to blend into the landform and retain the natural features

RH-P-5: Areas Under Strong Urban Influence

Where an individual has demonstrated that they need a new dwelling house in this rural area, it may be favourably considered if the individuals can provide evidence that they or their parents have resided in the area for at least 7 years

Ribbon Development (Policy RH-P-2)

- In general, 5 houses on any one side of 250m road frontage.
- Other circumstances will be considered such as infill, local circumstances etc.

Sightlines

Table 23: Vision Lines at access to non-national roads (measured from 2.4m (x))

- Speed limit: 50 kph /y distance 70m
- Speed limit: 160kph /y distance 160m

Letterkenny/ Derry rail line embankment

- **T-P-29:** Support for the provision of a rail link between Letterkenny/ Derry.
- **T-P-30:** Protect established/ historic railway corridors firstly, for strategic infrastructure and secondly for recreational development.

5.3. Natural Heritage Designations

The subject site is located 600m from the edge of the Lough Swilly SPA (004075) and 800m from Lough Swilly SAC (002287)

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted from the owner of the dwelling to the north of the site and the issues raised may be summarised as follows:

- Residential Amenity- A previous planning application was refused by the Board for reasons of impact on the appellant's amenity.
- Septic Tank- The site is unsuitable for a septic tank and the area which is indicated as a percolation area is subject to flooding. If the percolation area is built on the flooding will be moved onto the appellant's site. The information submitted incorrectly shows the neighbours percolation area.
- Derry/Letterkenny link: The information submitted is incorrect and does not show the screen route of the old railway line, in addition there was an old bridge in the front of the site at the road. Objective T-O-6 requires the protection of the corridors and rail links and T-O-7 supports a rail link to Letterkenny/ Derry. Policy T-P-3, Transportation Policy, does not permit development which would prejudice the implementation of a transport scheme identified in the development plan. The construction of the rail line would impinge the sightlines of the appellant to the south east.
- Walking and cycling: The dwelling would seriously impinge any development of a cycle or walking route for the same reasons as above. T-P-40 encourages long distance walking routes as an alternative to the car.
- Access: The exit onto the road is dangerous, the S bend is within 35m of a road junction and the road is subject to flooding at this location. An engineer's report questions the traffic survey submitted by the applicant.
- House Design: The proposed house design does not comply with Appendix B of the development plan in relation to good house design and integration into the countryside.
- Supporting documentation from Carr and Company Civil Engineers: which states that the required sightlines cross over into the appellant's ownership and the submitted traffic assessment should have been carried out by road tubes or radar rather than observation, in order to allow for a subjective assessment.

6.2. Applicant Response

The response from the applicant may be summarised as follows:

- The previous refusal by the Board on the site, in 2007, has little relevance to this case.
- The Council, in granting permission, have assessed the application under RH-P-2 and determined the dwelling will not create a suburban type expansion and there is adequate separation distance.
- There are no issues on the site in relation to storm water run-off from other dwellings. The waste water treatment system will function sufficiently without a separate reserve percolation area.
- The surface water flooding at the junction, submitted by the appellants, are old photographs, taken over 10 year ago and the Council have undertaken roadside gullies and improvements since.
- There is no recorded flooding on the site.
- The proposed location of the septic tank meets all the separation distances required by the EPA CoP and there is adequate provision for the collection of storm water.
- There are no plans at present to introduce a rail link between Derry and Letterkenny and there are no plans for a walking or cycling.
- The traffic assessment was carried out in accordance with correct guidance and the public road (L7891-1) is a low trafficked road and vision lines in accordance with Table 23, access onto non-national roads, in the development plan. The traffic assessment indicates 85th percentile of 49.14km/hr, equating to 70m in each direction which are achievable.
- The proposed design complies with Policy R-H-P-2 and Appendix B of the development plan and there are no first floor window overlooking into the adjoining properties.

6.3. Planning Authority Response

A response from the planning authority may be summarised as follows:

- The previous refusal on the site by the Board was based on traffic safety and the applicant has submitted a Traffic Speed Survey which established the

average speed of vehicles and the provision of vision lines can comply with Table 23 of the development plan.

- The site suitability assessment submitted with the application has received a favourable report by the Environmental Health Officer.
- The old railway line is submitted outside the application site and will not be directly impacted upon.
- The applicant submitted an amended design following a further information request which omitted the original suburban features.

7.0 **Assessment**

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of development
- Impact on Visual Amenity
- Access
- Water and Waste Water
- Derry/Letterkenny Rail Link
- Difference between the proposed development and previous planning application
- Appropriate Assessment

Principle of Development

7.2. The proposed development includes a new dwelling within the townland of Carrowen. The site is located within an area defined as “Area Under Strong Urban Influence” where it is necessary to manage the extent of development whilst facilitating those with genuine “rural generated housing need”.

7.3. The Sustainable Rural Housing Guidelines refers to the need to direct new housing to villages and smaller settlements in area defined as Areas Strong Urban Influence and the planning authority should use a criterion for assessing applications in relation to evidence of housing need and an applicant’s links to the area in question. Policy RH-P-5 of the development plan provides acceptable criteria which can

support one-off rural generated housing in this area where an individual has demonstrated that they need a new dwelling house in this rural area, it may be favourably considered should the individuals provide evidence that they or their parents have resided in the area for at least 7 years.

- 7.4. The Supplementary Housing Application Form, submitted with the planning application, lists the applicant with an address in Letterkenny and a supporting letter from a local councillor confirms that the applicant's father has lived in the area for over 7 years and therefore can comply with Policy RH-P-5. The planning authority have accepted this as evidence of links to the area.
- 7.5. RH-P-5 requires that the applicants demonstrate, in the first instance, that they have a need to live in this area and in the second instance to provide evidence they have links for over 7 years. I note the applicant has not submitted any supporting information to support the requirement to live in this area. Having regard to the lack of information as evidence of the applicants need to live in this area under strong urban influence and their current address in Letterkenny, I do not consider the applicant complies with the requirements of Policy RH-P-5.
- 7.6. The site is located in the middle of 7 houses along a 0.5km stretch of the road. Ribbon development, being the location of 5 houses on any one side of a 250m road frontage, has already occurred along the road and the site may be considered as an infill site. Having regard to the existence of a substantial amount of one-off rural houses in the immediate vicinity of the site, I would consider there is a significant amount of development pressure in this area.
- 7.7. Having regard to the definition of Area Under Strong Urban Influence in the Sustainable Rural Housing Guidelines and the requirements for compliance with Policy RH-P-5 of the development plan and the failure of the applicant to prove a rural housing need linked to this rural area, I do not consider the principle of the proposed development is acceptable.

Impact on Visual Amenity

- 7.8. The subject site is located in a rural setting and there is a significant amount of one-off dwellings in vicinity of the area. The dwellings adjacent to the site to the north are modest in size and design. Other one-off rural dwellings further south east of the site

include large two storey suburban style dwellings. The grounds of appeal submit the proposed dwelling will have a negative impact on their amenity.

- 7.9. The overall design of the dwelling was amended following a further information request to amend the gable ended pitch roof, provide a vertical emphasis on the fenestration and changes to the chimneys to provide an internal arrangement. The floor space of the redesigned dwelling increased from 257m² to 277m², where the size of the rear conservatory was increased. A double garage (96m²) is also proposed to the rear of the site.
- 7.10. Policy RH-P-2 and Appendix B of the development plan, "Building a House in Rural Donegal- A Location Siting and Design Guide" refers to the integration of the site into the landscape and surrounding environment and the detailed design should be traditional in style with a simple palate of materials, vertical emphasis on the windows and two storey dwellings will be preferable over dormer. In addition, the annexes and garage should be subordinate to the main dwelling. The proposed development includes the splitting of an existing rural field, inclusion of new boundaries and the removal of an existing mature hedgerow along the road, which I do not consider blends into the existing landform or respect the natural features of the site. I consider the two storey dwelling, suburban in nature, and is unacceptable in scale and mass and not comparable to those modest dwellings in the immediate vicinity of the site or the guidance in the development plan.
- 7.11. Having regard to Policy RH-P-2 and the guidance in Appendix B, I do not consider the proposed development compliments the existing landform and I consider the two storey dwelling with large rear annex and garage represents a suburban style dwelling which is not in keeping with the modest style in the immediate vicinity and is therefore unacceptable.

Access

- 7.12. There is an existing agricultural access to the north of the site. The proposed development includes an additional access adjacent and the removal of the mature hedgerow along the road off a narrow rural road (L7891-1). Table 23, of the development plan, "*Vision Lines at access to non-national roads*" requires the provision of 160m sightlines in areas where the speed limits are 160km/hr. A Traffic Survey Report was submitted on foot of a further information request requiring

comprehensive proposals for vision lines at 160m in each direction. The survey showed 85th percentile speed of vehicles using the road to be 49km/hr the equivalent of 70m sightline (Table 23) which are achievable from both the northern and southern side of the proposed vehicular entrance, which the planning authority accepted.

- 7.13. The grounds of appeal argue the submitted survey should not be accepted as it is only an observational survey and the access is only 35m from an S bend junction and it is subject to flooding. A previous refusal on the site (05A.222973) referred to the distance of the access point 35m from the junction to the south and the impact on public safety by reason of traffic hazard.
- 7.14. The revised site layout drawing, indicating 70m sightlines, illustrated compliance to the south east, as they are in the most part on the public road. Those sight lines to the north of the site are over an adjoining agricultural access, in the ownership of the current owner of the site but not the applicant and a letter of agreement to use these sightline has accompanied the planning application.
- 7.15. Therefore, having regard to the information contained in the traffic survey report, the required standards in Table 23 of the development plan, the sightlines provide and the letter of agreement from the owners of the adjoining site, it is considered the proposed development would not cause a traffic hazard.

Water and Waste Water.

- 7.16. The proposed development includes a conventional septic tank and raised percolation area (650mm above ground level) designed for 6 persons. The proposed development includes a connection to the public water supply. The grounds of appeal have stated the location of the proposed percolation area is subject to flooding and therefore the proposed development would have a negative impact on public health. The site is not identified as subject to flooding in the OPW Flood Maps.
- 7.17. The site is located in an area identified as poor aquifer with a “Extreme” vulnerability classification in the GSI Groundwater maps, representing a GWPR response of R2¹ under the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) (Annex B3). No karst features were noted in the site characterisation form within 500m.

- 7.18. The trial hole assessment submitted by the applicant encountered no bedrock/ water table at a depth of 1.35m. Section 3.2 of the site characterisation assessment indicates the base of the hole as 1.4m, a minimum of 2.1m is required. The site plan submitted within the characterisation form illustrates the location of the T tests within the percolation area which does not comply with Annex C of the EPA CoP. There were no trial holes available for inspection during a site visit and I noted the area around the proposed percolation area was waterlogged.
- 7.19. The submitted site characterisation records a T-test value of 35.44 min/25mm, which is within the acceptable range for a septic tank (Table 6.3) and would indicate good percolation. Section 3.2 of the site characterisation form notes the subsoil classification as "Clay/ Silt" suggesting low to moderate percolation, which would not correlate with the T test results. I do not consider the results of the T test and the on ground assessment in the site characterisation form co-ordinate sufficiently to permit a full assessment of the treatment of effluent on the site.
- 7.20. Table 6.1 of the EPA Code of Practice requires a minimum distance of the WWTS, 7m from the existing dwelling septic tank. The grounds of appeal (property to the north of the site) submit the location of their septic tank is within 10m of the proposed septic tank. The proposed septic tank is 10m from the edge of the boundary, to the north and the percolation area is 5m and I consider the distance from the boundary sufficient to comply with the EPA Guidance. A response from the Environmental Health Officer in the HSE has no objection to the proposal subject to conditions including compliance with the EPA CoP.
- 7.21. Having regard to the waterlogged percolation area, the unavailability of any trial holes to inspect and the poor percolation qualities on the site, I do not consider the site can be adequately drained or met with the requirements of the EPA Guidance. Therefore, I cannot conclude that the proposed development would not have a significant risk of ground water or surface water pollution.

Derry/ Letterkenny Rail Link embankment

- 7.22. An old rail line embankment runs along the south of the site. The grounds of appeal argue the proposed development at this location will have a detrimental impact on the retention of the embankment for provision of a rail link between Letterkenny/ Derry (Policy T-0-7). In addition, the grounds of appeal refer to Policy T-0-6 of the

development plan, which requires the protection of corridors and routes for necessary transport improvement projects and Policy T-P-36 refers to the protection of trails for walking and cycling routes. The response from the planning authority states that the old railway line is located outside the site boundary and will not have a direct impact on the protection of these routes for those objectives provided in the development plan, which I consider reasonable.

- 7.23. Therefore, based on the location of the old railway line and embankment outside the boundaries of the site, I do not consider the proposed development would be detrimental to the retention of this line for the provision of future strategic infrastructure or recreational development.

Difference between proposed development and previous planning application

- 7.24. A previous refusal for a house on the site (PL05A.222973) related to the unsatisfactory access into the site. For reasons of clarity, I have detailed the main differences between the previous application and the current proposed development.

Principle of Development: The previous applicant, a local farmer's wife, submitted information as evidence of qualifying criteria in relation to the need to have a retirement home at this location. I note the report of the Inspector raised concern in relation to the information submitted although this was not included as a reason for refusal.

Impact on visual amenity: The proposed dwelling was a for a two storey dwelling, with side conservatory located to the front of the site which is a different design and location to the current proposal.

Access: As stated above the previous refusal referred to the distance of the access point 35m from the junction to the south and the impact on public safety by reason of traffic hazard. As part of a further information request the applicant included a legal agreement for sightlines over adjoining lands i.e. farm entrance to the north. Whilst I note the junction to the south remains the same, it is considered that based on the acceptable sightlines and the speed of the traffic turning left from the junction towards the site, the access acceptable.

Water and Wastewater: The proposed septic tank and percolation area was located at the top of the site c. 20m from the rear of the dwelling, which is a different location to the current percolation and septic tank. No site characterisation form or on site

assessment was submitted. The impractical layout of the proposed on-site effluent treatment system and the impact on public health was raised in the Inspector's report although not included as a reason for refusal.

Derry/ Letterkenny rail link embankment: The report of the Inspector noted the remnants of the former bridge and did not consider these of sufficient heritage significance to affect the developmetn of the site.

Appropriate Assessment

7.25. The subject site is located approx. 600m west of Lough Swilly Special Protection Area (site code 004075) and 800m south of the Lough Swilling Special Area of Conservation (site code 002287), where it is a conservation objective to protect the structure and function of marine Annex 1 habitats including Estuaries. As stated above on the assessment of the water and waste water, in the absence of any trial holes to inspect and the waterlogged condition of the site, I do not consider the site can be sufficiently serviced by a packaged wastewater treatment system. Therefore, on the basis of this absence of information provided with the application and appeal, and in light of the distance from both Lough Swilly Special Protection Area (site code 004075) and Lough Swilling Special Area of Conservation (site code 002287), I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of these sites, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

8.0 Recommendation

- 8.1. Having regard to the failure of the applicant to prove a housing need in compliance national policy and Policy RH-P-5 of the development plan, for dwellings in "*Areas Under Strong Urban Influence*", the design of the dwelling, the location and waterlogged state of the percolation area and distance to a European Site and overall configuration of the proposed site, it is considered the proposed development would have a negative impact on the character of the rural area, the ground and surface water and the visual amenities of the area.
- 8.2. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

8.3. Reasons and Considerations

1. Having regard to the location of the site within "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with Policy RH-P-5 of the current County Donegal Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located within "Area Under Strong Urban Influence" as set out in the current Development Plan for the area, where emphasis is placed on the importance of designing with the landscape and of siting of development to minimise visual intrusion as set out in the current (Appendix B) Rural House Design Guidelines, which Guidelines are considered to be reasonable. Having regard to the topography of the site, the elevated positioning of the proposed dwelling, together with its depth and scale, the division of an agricultural field and the removal of the front boundary hedging, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set an undesirable precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

3. Having regard to the soil conditions on the site, the information contained in the site characterisation form and the waterlogged condition of the proposed percolation area, which indicate poor percolation, it is considered that the site is not suitable for the disposal of septic tank. The proposed development would, therefore, be prejudicial to public health. On the basis of this information relating to the inadequate treatment of wastewater, 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 Lough Swilly Candidate Special Area of Conservation and Special Protection Area, or any other European site, in view of the site's Conservation Objectives. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.

Karen Hamilton
Planning Inspector

06th of November 2017