



An
Bord
Pleanála

Inspector's Report PL05E.249345



Development	Construction of dwellinghouse
Location	Killygordon, Lifford, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	17/51196
Applicant(s)	Kieran McBrearty & Amy Nelis
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Pat Lafferty
Observer(s)	None
Date of Site Inspection	07/12/2017
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located on the eastern side of a narrow country road running northwards out of the village of Killygordon. Killygordon is located to the north of the N15 in central Donegal. The subject site currently forms the northern part of the garden of a single storey bungalow. Further south of the bungalow is an industrial premises. To the north of the site is an access to farmland. To the west of the site is a large one-off dwelling with two access points.
- 1.1.2. Photographs from the site visit are appended to this report.

2.0 Proposed Development

- 2.1.1. Permission was sought for the construction of a dwelling house (158.08sq.m.) on a site of 0.133ha, with a septic tank WWTS. The application was accompanied by a Site Suitability Assessment, Traffic Survey Report and a Traffic & Transport Statement.
- 2.1.2. One objection to the proposed development was submitted to the Council.

3.0 Reports on file following submission of Application

- 3.1.1. **Environmental Health Officer:** No objection subject to conditions.
- 3.1.2. **Planning Report:** Principle of development is acceptable. Within a defined urban area not every development must be developed in a sequential manner from the centre outwards. Proposed development is not a rural house, proposed design, character and scale are acceptable. Road is sufficiently wide; some hedgerow will be required to be removed. Derogation regarding sightlines is accepted due to low traffic speeds demonstrated in traffic report. No significant adverse impacts will arise. Recommendation to grant permission.

4.0 Planning Authority Decision

- 4.1. **Decision**
 - 4.1.1. On the 12th October 2017 the Planning Authority issued a notification of intention to **grant** permission subject to 13 no. standard conditions. Condition no. 2 requires permanent visibility splays of 50m on either side of the proposed entrance and the provision of a new timber fence 5m from the centre line of the public road.

5.0 Planning History

- 5.1.1. None on file.

6.0 Policy Context

6.1. Donegal Development Plan 2012-2018

- 6.1.1. The subject site is located within the settlement boundary of Killygordon, a tier 4 settlement, as shown on Map 22 of Appendix A: Settlements Framework. The development plan states that such small villages have an identifiable settlement structures. There is limited social and community infrastructure while physical waste water treatment and water capacities are not available. Consideration will be given to examining how the deficiencies in water and wastewater systems can be remedied and it is essential that these small towns are recognised and promoted for their existing cultural heritage and rural settings. The plan will protect and consolidate these villages against further inappropriate expansion and will aim to protect special character of cultural heritage.
- 6.1.2. The Core Strategy of the plan states that Tier 4 Settlement land is not zoned but there is a requirement to develop sequentially from the core outwards. Policy **CS-P-3** It is the policy of the Council that within the boundaries of Tier 4 settlements, applications for development will be assessed in the light of all relevant material planning considerations including land use zonings, availability of infrastructure, relevant policies of the Development Plan, other regional and national guidance/policy, relevant environmental designations and particularly the Council's Policy **WES-P-10**.
- 6.1.3. **WES-P-10** It is a policy of the Council to ensure that waste water generated is collected and discharged in a safe and sustainable manner that is consistent with the combined approach outlined in the Waste Water Discharge (Authorisation) Regulations 2007 and with the objectives of the River Basin Management Plan and in doing so the following will apply:
- (1) For a single dwelling (or equivalent) with a population equivalent less than or equal to 10 in an un-sewered area: Proposals for a single dwelling (or equivalent) in an un- sewered area will only be permitted where the planning authority is satisfied that the development, when considered in addition to existing and previously

approved development, would not adversely affect the ability to meet the objectives set out in the North Western International River Basin Management Plan. When making a planning application the applicant must submit information on the type of on-site treatment system proposed and evidence as to the suitability of the site for the system proposed. Site suitability assessors must carry out all assessments in accordance with the guidance provided in the Code of Practice and should submit a completed Site Characterisation Form as contained in Appendix B of the Code of Practice. The following are also required:

- a) The waste water treatment system must comply with the latest revision of the Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses (p.e. \ 10) published by the Environmental Protection Agency and the system must be selected, designed and installed in accordance with this Code of Practice.
- b) Proprietary treatment systems where required must have Irish Agrément Board Certification or meet a recognised independent verifiable standard.
- c) Prior to occupation of the dwelling a certification of performance, based on post construction testing and completed by a competent agent must be submitted.
- d) Prior to occupation, owners shall have in place a programme of regular operation and maintenance for the waste water system installed.

7.0 The Appeal

7.1.1. A third party appeal against the Councils decision to grant permission was received by the Board on the 4th October 2017. The grounds of appeal can be summarised as follows:

- The following questions should be asked: If residential development was granted sequentially, would the subject site be the last suitable site for development? Are there more suitable sites closer to services and the settlement centre
- The Board is requested to consider the context of the rural application on a village edge. The sprawl of the village will decrease the vitality and

sustainability of businesses and will increase car journeys. Sites closer to the town are better serviced and enjoy a better road network.

- The appellant's business is beside other successful industrial enterprises. If an LAP was prepared for the area, the lands would be zoned Employment / Enterprise (suggested zoning map submitted).
- More residential development around these areas will gentrify the area which will ultimately jeopardise the business operations.
- Policy Ed-P-16 of the County Development Plan states that any proposals for economic development must be compatible with surrounding land uses and must not harm the amenities of nearby residents. This buffering requirement should be applied around existing businesses. The proposed development is contrary to proper planning as it juxtaposes existing land uses with new development.
- The subject site is close to a 90° bend in the road. The road is 5.1m wide and has high hedges on either side. The proposed access is opposite an existing residential access, close to an agricultural access and close to an existing residential and agricultural access. Traffic concerns were not adequately considered as the planning decision was made without a roads engineer. The Applicants drawing of a 9m wide road is incorrect as it does not account for the hedges. Accurate drawing submitted which shows vision lines passing over third party lands. Vertical alignment to the north is limited. The development is premature pending the provision of a footpath to the town.
- The site of 0.133ha is insufficient to accommodate two dwellings with two effluent treatment systems. A separation distance of 10m as required by the EPA is shown, but Environmental Health Inspectors require a 20m separation to a dwelling or 12m within the same landholding. The proposed percolation area of 15sq.m. is inadequate.
- The cumulative effect of the proposed WWTS and the plethora of septic tanks in the vicinity on the stream abutting the site which feeds in to the River Finn SAC must be considered. The AA carried out by the Planning Authority did not assess the cumulative effects. Third parties were not consulted.

- The septic tank and drains serving the existing dwelling are outdated. It is submitted that no-one knows where the percolation area for this dwelling is and therefore the required separation distances cannot be achieved. Appendix V of the appeal demonstrates that the subject site is likely to be the percolation area for the existing dwelling.
- The rationale for the proposed dwelling being within a settlement boundary must be that it is supported by proper services.
- The Board is requested to refuse permission for the proposed development.

7.2. Planning Authority Response

- 7.2.1. The overall objective of the Development Plans Core Strategy is to 'protect and consolidate' Tier 4 small villages. It is submitted that the development of a single dwelling within the settlement framework will serve to further consolidate the town and will not compromise existing commercial business in the area.
- 7.2.2. The Planning Authority was guided by the submitted Site Assessment and the report of the Environmental Health Officer. The Planning Authority considered the speed limit at the proposed entrance, the low traffic speeds on the road and shown in the traffic report. The Planning Authority is satisfied with the proposed 50m vision lines at the proposed site entrance. Condition no. 3 of the Council's decision requires the removal of the roadside boundary along the entire road frontage and a new timber fence shall be provided 5m from the centre line of the public road.

7.3. Applicants response to Appeal

- The site is located within the settlement of Killygordon in the current and Draft development plan. The lands are unzoned and acceptable for development.
- The wider area is not industrial and the proposed development will not concern or be concerned by the adjoining concrete business. The majority of land uses in the immediate area are one-off houses. The small village is supportive of population to support local schools and businesses.
- The Planning Authority are satisfied with the achievable vision lines at the proposed entrance.

- The proposed development complies with EPA requirements for waste water disposal.
- The proposed development is for a family home on family lands at a distance from the appellant's property.
- The Board is requested to grant permission.

7.4. **Observations**

7.4.1. None on file

8.0 **Assessment**

8.1. **Principle of Development**

8.1.1. The subject site is located within the boundary of the settlement of Killygordon.

Lands within settlement boundaries are unzoned. The core strategy of the Donegal County Development Plan states that there is a requirement to develop sequentially from the core outwards. The planning report of the Planning Authority states that "it is not accepted that every development (including single houses) proposal must be developed in a sequential manner from the centre outwards within a defined rural area. This is not my reading of the core strategy. In my view, the strategy is clear and unambiguous – there *is* a requirement to develop sequentially from the core outwards. The strategy does not provide scope for flexibility for single houses or any other form of development.

8.1.2. The subject site is in the very edge of the village boundary, on a site with no services. As a location for residential development, it is not the optimum site within the village, however it is preferable to a more rural location that would not comply with local and national policy to consolidate existing settlements. The existence of backland industrial development to the south of the subject site does not preclude residential development on the site, nor would it prejudice future development of the existing business. Subject to normal planning constraints, the proposed development is considered acceptable in principle.

8.2. **Proposed Disposal of Waste Water**

8.2.1. The application was accompanied by a site characterisation form. The report notes the site overlays a regionally poor aquifer of extreme vulnerability, with a

ground water protection response of R2¹. The report states that as the aquifer is poor, there may be a hydraulic issue on site and both groundwater and surface water are potential at-risk targets. A 2.25m trial hole encountered ground water at 2m. the trial hole assessment states that no iron pan or mottling was observed and that the presence of rootlets, small gravelly extract and fragments indicates good percolation. Therefore, the hydraulic issue should not arise. The T-test result was 28.19 and the P-test result was 29.17. A WWTS with PE capacity for 5 persons, sand polishing filter (12.5sq.m.) and percolation area of 15sq.m. is proposed. Section 5 of the report recommends a gravel filled land drain upground of the dwelling to protect the area from surface water run-off. Discharge will be to the stream to the east of the site.

- 8.2.2. The report of the Environmental Health Service section of the HSE to the Council recommends that four conditions be attached. The proposed development complies with the requirements of the report in terms of separation distances and proposed size of sand polishing filter and percolation area. I am satisfied that the proposed development complies with policy WES-P-10 of the county development plan.

8.3. Traffic Safety

- 8.3.1. It is proposed to use an existing agricultural entrance for the proposed dwelling. The existing dwelling on site has an entrance further south.
- 8.3.2. A traffic and transport statement was submitted with the application. The statement provides details of a survey undertaken on the 14th July 2017. The statement notes that the road-bend to the south of the site encourages slow moving traffic, with an average speed of 39.81km recorded. 13 no. vehicles were recorded over a one-hour period. The engineering department of the Council did not comment on the proposed development.
- 8.3.3. The drawing 'Site Layout and Location Maps' shows 50m visibility lines to the north and south of the proposed entrance. The sight lines do not cross third party lands as submitted by the Appellant. On the date of my site visit, only agricultural traffic was encountered. I consider the proposed 50m sight lines to be acceptable along this low-trafficked local road within the settlement boundary of a village.

8.4. **Appropriate Assessment**

- 8.4.1. The subject site is 0.47km north-east of the River Finn SAC (site code 002301). A stream runs to the east of the site, the ultimate discharge point of which has not been defined.
- 8.4.2. The NPWS states that the River Finn SAC contains good examples of the Annex 1 habitats lowland oligotrophic lakes, blanket bog, transition mires and wet heath. Water quality of the lakes is good, as is that in most of the rivers and streams (majority classified as unpolluted). The Finn is an important system for *Salmo salar*, being an excellent grilse river with extensive spawning habitats. The Finn system sustains one of the only stable spring salmon populations in the country. The rivers and lakes support important populations of *Lutra lutra*. The upland habitats support a number of important bird species, notably *Falco peregrinus* and *Falco columbarius* (Annex I species) and *Lagopus lagopus* and *Turdus torquatus* (both Red Data Book species).
- 8.4.3. The qualifying interests for the SAC are 1106 Salmon *Salmo salar*, 1355 Otter *Lutra lutra*, 3110 Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*), 4010 Northern Atlantic wet heaths with *Erica tetralix*, 7130 Blanket bogs (* if active bog) and 7140 Transition mires and quaking bogs. There are six conservation objectives for the SAC, which are as follows:
1. to restore the favourable conservation condition of Oligotrophic waters in the River Finn,
 2. To restore the favourable conservation condition of Northern Atlantic wet heaths with *Erica tetralix*
 3. To restore the favourable conservation condition of Blanket bogs (*if active bog)
 4. To restore the favourable conservation condition of Transition mires and quaking bogs
 5. To maintain the favourable conservation condition of Atlantic Salmon
 6. To maintain the favourable conservation condition of Otter *Lutra Lutra*
- 8.4.4. I am satisfied that no likely significant impact will arise for either Oligotrophic waters and the Otter, given the distance between the subject site and the waters of interest (map 3 of the NPWS Conservation Objectives) and the otter commuting sites (map

4). I am satisfied that significant effects on the conservation objectives for both Oligotrophic waters and Lutra Lutra can reasonably be ruled out. Likewise, the urban location of the subject site and the distance of the proposed development from any North Atlantic wet heath, blanket bog, transition mire and quaking bog is such that a likely significant effect on these qualifying interests can be reasonably ruled out.

8.5. Having regard to the nature of the proposed development and receiving environment, I consider that the potential impacts on the SAC are primarily related to impairment of water quality during construction or operation. I do not consider that any loss of, or disturbance to, habitats or species are likely to occur, having regard to the nature of the appeal site in an urban location, adjoining an industrial site. It is considered that having regard to the on-site conditions observed at the time of inspection, to the results of the on site assessment which were consistent with the observations made at the time of site inspection and to the detailed specification of the proposed on-site treatment system including the construction of a gravel filled land drain and the land drainage programme proposed (Appendix 5 of the Site Characterisation Form), that the proposed development is not likely to result in ground water pollution or contamination.

8.5.1. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, 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. 002301, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

9.1.1. I have read the submissions on file, visited the site, and have had due regard to the provisions of the Donegal County Development Plan 2012-2018 and all other matters arising. I recommend permission be GRANTED subject to the following conditions:

10.0 Reasons and Considerations

Having regard to the zoning objectives for the area and pattern of development in area, it is considered that subject to compliance with the conditions set out below,

the proposed development would not seriously injure the amenities of the area or property in the vicinity and would be acceptable in terms of traffic safety, public health and convenience. The proposed development would therefore be in accordance with the proper planning and sustainable 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, 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. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

4. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 27th day of July, 2017, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection

Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

- 5 The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the establishment of a hedgerow along all side and rear boundaries of the site. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

6. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

7. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay rubble or other debris on adjoining roads during the course of the works.

Reason: In the interest of residential amenity

8. The developer shall pay to the planning authority a financial contribution 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, as amended. The contribution shall be paid prior to 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. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Gillian Kane

Senior Planning Inspector

22 December 2017