



An
Bord
Pleanála

Inspector's Report ABP-300211-17

Development	Dwelling house, WWTP and site works
Location	Mountain Park, Carlingford, County Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	16/778
Applicant(s)	Niall Donnelly
Type of Application	Planning appeal
Planning Authority Decision	Refuse permission.
Type of Appeal	First v Refusal
Appellant(s)	Niall Donnelly
Observer(s)	None
Date of Site Inspection	10 th February 2018
Inspector	Karla Mc Bride

1.0 Site Location and Description

- 1.1. The appeal site is located in Carlingford in County Louth and the surrounding area comprises a mix of low density housing, agricultural fields and mountainous lands which are accessed via a network of narrow local roads. The site is located on the elevated W edge of Carlingford and to the E of a local road (L-70592). It comprises two agricultural fields that are located on the N side of an unsurfaced access track that is used by walkers and people on horseback. The access track slopes down steeply from W to E towards a small stream and the site occupies an elevated position relative to this track. The field boundaries are defined by fences and hedges and the site is bound by agricultural fields with the mountains beyond to the N and NW. There are several detached houses to the S and SE that are accessed of the surrounding local roads.
- 1.2. Photographs and maps in Appendix 1 describe this relationship in more detail.

2.0 Proposed Development

- 2.1. Permission is being sought to construct a 219.8sq.m. house on a 0.2840ha site:
- The proposed 2-storey house would be 219. 8sq.m and c.8.3m high.
 - The amended (FI) split level house would be 209.5sq.m. c.5.0m to 7.1m high.
 - Install a wastewater treatment system with percolation area.
 - Vehicular access via an upgraded track off the L-70592).
 - All associated site works.

3.0 Planning Authority Decision

3.1. Further Information

Further information was requested and submitted in relation to the following matters:

1. **Rural housing need:**

- a. Verify the relationship between the applicant and the former landowner and clarify compliance with local needs criteria in relation to being the son or daughter of a qualifying landowner & that they have not owned a house in the rural area for the previous 5 years - *provided*.
- b. Clarify compliance with the rural housing policy & local needs criteria in relation to living for a minimum of 10 years in the local area - *provided*
- c. Submit a place map showing the applicant's qualifying homestead as Mountain Park - *provided*.

2. Revised house design:

- a. Provided revised details of a low profile house design - *provided*.
- b. Submit a site survey showing how the house can be integrated into the landscape - *provided*.
- c. Provide cross section drawings through the site - *provided*.

3. Vehicular access & sightlines:

Submit a revised site plan showing the achievement of sightline requirements of 3m x 75m over a height of 0.6-1.05m above road level where the laneway joins the local road - *provided*.

4. Legal interest (site):

Submit a formal legal agreement and a map showing the extent of the lands affected outside the site boundary together with the details of any legal agreement with any third party landowners - *site owned by applicant*.

5. Legal interest (access)

Provide written proof that all necessary rights and/or permissions from third party landowners in relation to the access arrangements - *no land registry details available*.

6. Access road details required:

- a. The gradient should not exceed 2% for the first 5m from the entrance of the driveway to the private laneway and where the laneway joins the public road - *provided*.
- b. Entrance gates should be set back 5.5m from the laneway edge, there should be a 45-degree splay and inward open gates – *provided*.
- c. Longitudinal and cross section details of the laneway with a width of 4.8m - *provided*.
- d. On site drainage arrangements – *provided*.
- e. Boundary walls along the laneway should be of stone - *provided*.

7. WWTP details:

- a. Name of the person who will supervise installation - *provided*.
- b. Arrange to have supervised percolation tests carried out – *provided*.

8. WWT & water supply:

- a. Explain purpose of water holding tank in the NW corner.
- b. Confirm the invert level of percolation pipe.
- c. Confirm that a well is proposed.
- d. Mark all drains/streams adjacent to or close to the site boundaries & distance between the percolation area and the nearby stream.

9. Revised public notices required - *provided*

3.2. Decision

Following the receipt and consideration of the FI response, the planning authority decided to refuse planning permission for 4 reasons related to:

1. Non-compliance with rural housing policy and housing need criteria (Policies SS18, SS19, RD29 & R33).
2. Failure to demonstrate that the necessary stopping sight distances / minimum sightline requirements can be achieved for the relevant survey speeds on this public road - endanger safety, traffic hazard & obstruction of other road users.
3. Failure to demonstrate that works to the proposed access road will not adversely impact the residential amenities of the house to the S of the access lane closest to the public road - injury to amenity & property devaluation.
4. Failure to demonstrate that the applicant has sufficient legal interest in the lands or legal agreement to carry out works on adjacent lands to achieve the minimum visibility sightlines onto the public road from the access laneway - endanger public safety, traffic hazard & obstruction of other road users.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The first report of the planning officer requested FI and the second report recommended that planning permission be refused for the reasons summarised in section 3.2 above

3.3.2. Other Technical Reports:

Infrastructure: requested FI in relation to several matters and then recommended refusal of permission following receipt of FI.

Environment: requested FI in relation to several matters and then had no objection subject to conditions following the receipt of FI.

3.3.3. Submissions

One observation received which raised concerns about the impact of the works to the proposed access laneway on the residential amenities of his nearby house.

4.0 Planning History

None.

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines for PAs 2005

The site is located within an Area that is under Strong Urban Influence.

5.2. Louth County Development Plan 2015 to 2021

Zoning:

The site is located within a rural area outside the Level 3 Settlement of Carlingford.

Zone 2: The site is mainly located within Development Control Zone 2 which seeks “To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community”.

Zone 1: The W portion of the site and adjoining lands to the W, NW and S are located with Development Control Zone 1 which seeks “To preserve and protect the natural unspoilt physical landscapes.”

Rural housing policies & standards:

Policy SS18: seeks to permit rural generated housing in order to support and sustain existing rural communities and to restrict urban generated housing in order to protect the visual amenities and resources of the countryside, subject to the local needs qualifying criteria set out in S.2.19.

Policy SS19: requires that applicants for one-off rural housing demonstrate compliance with the local needs qualifying criteria for the relevant Zone.

Policy RD29: seeks to apply a presumption in favour of granting permissions to bone-fide applicants for rural generated housing where the qualifying criteria set

down in Chapter 2 are met and where standards in relation to inter alia siting, design, drainage and traffic safety are achieved.

Policy RD33: seeks to permit only essential resource and infrastructure based developments and developments necessary to sustain the existing local rural community, including limited one-off rural housing, subject to compliance with Section 2.19.1.

Section 2.19.1: Applicants for one-off rural housing are required to demonstrate compliance with the Local Needs Qualifying Criteria for the relevant Zone.

Zone 2:

1. Applicants are the son or daughter of a qualifying landowner.
2. Applicants who have lived for more than 10 years in the local rural area.
3. Applicants who are actively engaged in agriculture.
4. Applicants who are actively engaged in rural enterprises.
5. Applicants are providing care for an elderly person(s) or a person(s) with a disability who lives alone in an isolated rural area.

Rural housing standards:

Policy SS51 & Table 2.9: requires that new dwellings in Zone 2 should have a minimum site area of 0.2ha and a maximum cumulative gross floor area of 220sq.m.

Section 2.20: sets out the rural housing design and siting criteria.

Roads & traffic standards:

Policy SS59: requires that access to the public road will not prejudice road safety of significantly inconvenience the flow of traffic by demonstrating compliance with the appropriate visibility and traffic safety standards as set down in S.7.3.6.

Policy SS60: requires that new accesses are located so as to minimise the impact on existing road boundaries.

Section 7.3.6: requires the provision of a suitable and safe entrance to facilitate traffic flow and movement and to protect the safety of road users, and DMURS shall be applied in all urban roads and streets (speed limit of 60km or less).

Table 7.4: sets out minimum visibility standards.

Road category	Sight distance	Visibility requirement over ground	Distance back from edge of carriageway
Local Class 3	75m	0.6-1.05m	3.0m 2.4m difficult circumstances
Where the 85 th percentile speed on a Local Class 3 road is shown to be below 50km/hr, the minimum sight distance requirements in the NRA - DMR&B applies.			

Table 7.5: requires a gradient of 0% to 2% for at least 5m for domestic accesses.

5.3. Natural Heritage Designations

The site is located in close proximity to the following sensitive sites:

- Carlingford Mountain SAC & pNHA to W & NW
- Carlingford Shore SAC & Carlingford Lough SPA & pNHA to the E and NE

6.0 The Appeal

6.1. Grounds of First Party Appeal

Reason no.1: Contrary to SS18, SS19, RD29 & RD33 & Local Needs Criteria

- The applicant (Niall) meets local needs qualifying criteria as he lived in the rural area for 10 years.
- He lived in Mountain Park from 1997-2012 with his mother (Anne) who was the head of the household after his father (Eamon) died in 1997.
- Anne had permission for a house on family lands in 1999 (Edonlee Lodge).
- Applicant inherited the appeal site lands from his uncle (Liam) in 2012 who in turn inherited the lands from his parents (applicant's grandparents).

- Applicant now lives at no.8 Ard Cullen, Omeath Village (rented out until recently) which is not within a rural area.
- The house at Edonlee Lodge was sold in 2012.
- Compliance with Qualifying Criteria:
 - Confirmation that he has not owned a house in the rural area.
 - PO account details and letter from Post Master.
 - Utility correspondence.
 - Letter from Local Councillor.
 - Copy of Birth Certificate.
 - Letter from the local parish.
 - P60 for 2003-2004 addressed to Edonlee Lodge, Mountain Park.
 - Mortgage letters dated 12/02/09 & 12/10/12 to same address.

Reason no. 2: Stopping distances/sightlines

- The Road Engineer report (12/10/17) incorrectly refers a reference to DMURS in the Consulting Engineers report (Appendix B).
- Consulting Engineer's report attached:
 - Table 7.4 requires a visibility standard of 75m x 3.0m x 1.05m/0.6m, except where the speed limit is shown to be below 50km/hr and the NRA standards apply (85th percentile).
 - The L70592 survey confirms that traffic flows and speeds are low with an average 2-way flow of 30 veh/day and average speeds less than 30km/hr.
 - The 85% speed is significantly lower than 50km/hr and the NRA standards therefore apply.
 - The appropriate design speed is 26.82km/hr and 24.21km/hr.
 - The applicable NRA (DMRB) design standards are DN-GEO-03060 "Geometric Design of Junctions" and DN-GEO-03031 "Road Link Design".

- No standards are provided in these documents for a design speed of less than 42km/hr and therefore the 85% footnote to Table 7.4 is not relevant.
- DMURS contains design standards for roads with low design speeds, and although for use on urban roads (c.60km), it is reasonable to assume its relevance to rural roads with low operation and design speeds.
- Table 4.2 of DMURS sets an SSD of 23m for a design speed of 30km/hr & provision of 23m x 2.4m x 1.05/0.6m as per the FI drawings is reasonable.
- The report concluded that visibility complying with all possible interpretations of the design standards can be achieved at the site entrance and this reason for refusal is no longer valid.

Reason no.3: Impact of access road on residential amenity

- No impacts on adjoining property.
- There is a natural stone wall between the access lane and the property.
- It is proposed to clean down the laneway and apply a new gravel finish.
- The Road Engineer's report states that FI Drawing PL-002 fails to outline how the access roadway impacts on the adjoining residential boundary walls.
- The laneway is specifically shown on the drawing and on site at a distance in excess of 7m from the boundary with the property to the S, and tapering to the first corner on the laneway with is in excess of 15m from the public road.
- The level at the centre of the entrance of the laneway off the public road is 90.04 and 89.13 at 10m in, and the level at 5m in is 89.50.
- The level required to meet a maximum 2% gradient would be from 90.04 to 89.94mm, this would require fill to a maximum level of 440mm (89.96-89.50)
- The fill will be tapered each side and bears no real impact on the existing boundary walls.

Reason no.4: Sufficient legal interest

- Site is owned by the applicant, it was previously owned by his uncle and has been in the family for several generations.
- The access laneway is used as a public right of way by adjoining landowners to gain access to their lands and members of the public.
- Letter from applicant's aunt confirms that the lane was used by his uncle and several generations of his family.
- Land Direct website demonstrates the laneway is not registered to anyone and it is not possible to obtain legal agreement for the works.
- No visibility agreement is required at the entrance off the public road as the sightlines do not traverse adjoining landowner's property.
- In any event, this would be a civil matter.

6.2. Planning Authority Response

Reason no.1:

- Submitted documentation submitted appears to tie the applicant to the address at Edonlee Lodge, Mountain Park which was part of the settlement of Carlingford under the previous Plan, but is now in Zone 2 of the current Plan.
- Confirmed that he is not the son/daughter of a qualifying landowner but seeks to comply on the basis of being a long standing resident of the local area.
- The applicant has clarified a number of pieces of confusing documentation and satisfied that Reason no.1 no longer applies.

Reason no.2:

- Consultant Engineer referred to DMURS in the FI submission and again in their argument for relaxed visibility standards in the appeal submission.
- Applicant has demonstrated that due to the low speed recorded on the L-70592 sight line requirements of 2.4m x 26.25m are required.
- However, sightlines of 2.4m x 20.5m in the E direction are only achievable.

Reason no.3:

- Concerns remain with regard to impact on neighbouring properties.
- Proposal to clean down the laneway, apply new gravel and then fill to a maximum of 440mm tapered to the sides, should have been accompanied by a cross section showing all heights/levels.

Reason no.4:

- Applicant has demonstrated the site has long been in family ownership.
- Adequate legal consents to carry out works on the access lane cannot be obtained as there is no actual registered owner.
- Acknowledge lack of remit in adjudicating on land registry title matters.

Conclusion:

- Continue to recommend the refusal of planning permission based on the fact that the proposed development is considered a traffic hazard and contrary to the proper planning and sustainable development of the area.

6.3. Observations

None received.

6.4. Prescribed Bodies

Case not circulated.

7.0 Assessment

The main issues arising in this case are:

- Principle of development & housing need
- Design, layout & visual amenity
- Vehicular access & traffic hazard
- Environmental services
- Appropriate assessment

7.1. Principle of development and housing need

The appeal site is located within a rural area that is covered by the Louth County Development Plan 2015 to 2021. The elevated site is located on the W side of Carlingford and outside the Level 3 Settlement Zone. The main part of the site is located within Development Control Zone 2 which seeks “To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community” whilst the narrow W portion of the site along with the adjacent lands to the W and NW are located within Zone 1 which seeks “To preserve and protect the natural unspoilt physical landscapes.”

Policy SS18 of the Development Plan seeks to permit rural generated housing in order to support and sustain existing rural communities and to restrict urban generated housing in order to protect the visual amenities and resources of the countryside, Policy SS19 requires that applicants demonstrate compliance with the local needs qualifying criteria for the relevant Zone, Policy RD29 seeks to apply a presumption in favour of granting permissions to bone-fide applicants for rural generated housing, and Policy RD33 seeks to permit only essential resource and infrastructure based developments and developments necessary to sustain the existing local rural community, including limited one-off rural housing, subject to compliance the local needs qualifying criteria which are set out in section 2.19.1.

There are five local needs qualifying criteria for Zone 2 which allow for the consideration of one off housing proposals in the area. The first relates to sons or daughters of a qualifying landowner, the second relates to applicants who have lived for more than 10 years in the local rural area, the third and fourth relate to applicants who are actively engaged in agriculture or rural based enterprises, and the fifth relates to applicants who care for an elderly or disabled relative.

Reason no.1 of the planning authority's decision to refuse planning permission stated that the applicant had not successfully demonstrated compliance with the Local Needs Qualifying Criteria for Zone 2. The applicant has now submitted documentary evidence to demonstrate compliance with the Zone 2 Qualifying Criteria as part of their appeal submission. This relates to item no.2 with respect to having lived for a minimum period of 10 years in the local rural area, has a rural housing need and does not already own a house or owned a house within the rural area of the county for a minimum of 5 years prior to making an application. The applicant has also confirmed in the appeal submission that he resided for a least 12 years with his mother at the family home to the E of the appeal site at Edonlee Lodge until recently, and that he inherited the appeal site lands from his uncle.

It is noted that the applicant's former family home at Edonlee Lodge is located outside the Level 3 Settlement of Carlingford and within Zone 1 which seeks "To preserve and protect the natural unspoilt physical landscapes" in the current Development Plan. This house was also located outside the Level 3 Settlement of Carlingford and within Zone 1 in the previous Development Plan 2009 to 2015, and outside the settlement boundary of the Carlingford Local Area Plan 2002.

It is also noted that the applicant already owns a house in the Village to Omeath to the NW of Carlingford which is a Level 3 Settlement. The Local Needs Qualifying Criteria specifically state that an applicant should not already own a house or have previously owned a house within the rural area of the county for a minimum of 5 years prior to making an application. Section 2.19.2 of the Plan defines Local Rural

Area as “being a radius of 6km from the qualifying rural family residence” and it excludes those lands which lie within Level 1, 2, 3 and 4 Settlements inclusive.

Having regard to all of the foregoing, and notwithstanding the fact that the applicant already owns a house in Omeath, I am satisfied that the applicant has demonstrated compliance with the Local Needs Criteria as it applies to Development Control Zone 2 of the Development Plan with respect to item no.2.

7.2. Design, layout and visual amenity

The proposed 2-storey house would occupy an elevated position to the W of Carlingford and the surrounding area rises steeply towards the mountains. The lands to the N and NW are rural and mountainous in character and although there are several single storey low density houses in the surrounding area, they are mainly located to the S of the appeal site. The design and layout of the proposed house on the c.0.284ha site was amended by way of a Further information response to take account of the prominent elevated position and the sloping nature of the site which rises from E to W from c.66mOD to c.71mOD.

Original proposal:

The original c.219.8sq.m. 2-storey house would be located in the W section of the site and it would be set back c.17m from the S site boundary with the access track and c.21.5m from the N site boundary. The proposed house would be c.8.3m high with a suburban style design, “T” shaped layout, extensive glazing and pitched roof.

Amended proposal:

The c.209.5sq.m. house as amended by way of FI would be part single and part 2-storey house would it would be located in the W section of the site, slightly to the N of the original proposal. It would be set back c.23m from the S site boundary with the access track and c.17m from the N site boundary. The split-level house would be c.5.0m to 7.1m high with a contemporary design and partially curved roof profile.

Discussion:

As previously stated, the proposed house would be located within Development Control Zone 2 which seeks “To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community.” The house would also be located immediately adjacent to Development Control Zone 1 which seeks “To preserve and protect the natural unspoilt physical landscapes.” A high standard of design is therefore required in order to protect the visual amenities of the surrounding scenic landscape.

Policy SS51 and Table 2.9 of the Development Plan require that new dwellings in Zone 2 should have a minimum site area of 0.2ha and a maximum cumulative gross floor area of 220sq.m. whilst new dwellings in the adjacent Zone 1 should have a maximum cumulative gross floor area of 160sq.m. Section 2.20 of the Plan sets out rural housing design and siting criteria.

The appeal site has a stated area of c.0.284ha which exceeds the minimum 0.2ha requirement and is therefore acceptable. Both house types would have a stated floor area of c.219.8sq.m. and c.209.5sq.m which complies with the maximum floor area requirement of 220sq.m. However, given the proximity of the site to the visually sensitive and mountainous Zone 1, and having regard to the prevailing pattern of low rise development in the surrounding area, in my view a reduced scale, single storey structure with a smaller floor area would be preferable at this transitional location.

Conclusion:

Having regard to the foregoing, I am satisfied that the amended house type would have a more attractive and less suburban style design than the original proposal which would take account of the sloping character of the site. However, I remain concerned that a reduced scale, single storey structure would be more appropriate for this visually sensitive upland location. The Board may wish to address this issue by way of a planning condition or a further information request, in the event that it is satisfied with all other aspects of the proposed development.

7.3. Vehicular access and traffic hazard

The proposed development would be located to the W of Carlingford and the surrounding road network is characterised by a warren of narrow, winding, third class local roads. The appeal site is located to the E of the L-70592 which is also substandard in width and alignment and the proposed access off this road is located between two sharp bends. The site is located on the N side of a narrow access track that slopes down steeply from W to E which is used by pedestrians and people on horseback, and it could not be described as either a road or a laneway. The L-70592 junction with this access track is funnel shaped, currently overgrown with two pathways on either side of the funnel, and the N section runs parallel to the site boundary with the neighbouring house the E. The main part of the access track is narrow, the uneven surface level is located well below the level of the adjoining lands and it also appears to function as a drainage channel to a small stream located at the E end of the track, which is crossed by stepping stones.

The applicant proposes to upgrade and widen the access track and junction with the L-70592 in order to provide vehicular access to the site and adequate visibility and sightlines to the W and S along the local road. The applicant accepts that the proposed arrangements would not follow the NRA DMRB standards, however they would accord with DMURS standards for urban roads. The applicant submits that this would be reasonable having regard to the low operational use of the road and the low speeds encountered during a 7-day survey period.

I would concur with the applicant in relation to the low level of use and the low speeds along this section of the L-70592 and that the application of DMURS standards would be reasonable for this location, notwithstanding the fact this is not an urban area. However, the Council's Roads Engineer is not satisfied that adequate visibility and sightlines could be achieved at the junction with the L-70592 in accordance with either set of standards. As previously stated, the L-70592 is narrow, steep and winding, it is substandard in width and alignment, and the proposed entrance would be located in between two sharp bends in the road. Furthermore, the change in levels between the L-70592 and the access track over a

very short distance is extreme, based on my examination of the site and the surrounding area. Therefore, I am not satisfied that the proposed access arrangements would not give rise to a traffic hazard or endanger the safety of other road users.

The concerns raised by the planning authority in relation to the proximity of the access to the neighbouring rear boundary and legal interest over the adjacent lands are noted. However, the residential amenity concerns could be addressed by way of planning conditions and the application of best construction practices, and legal interest concerns are civil in nature and beyond the Board's jurisdiction.

7.4. Environmental services

The application was accompanied by a Site Characterisation Report which stated that the system would be located an acceptable distance from nearby houses, existing WWTPs and wells, and that the attenuation tank in the NW section of the site is now redundant. An appropriate range of tests were carried out and the report concluded that the site was suitable for a secondary wastewater treatment system with polishing filter and discharge to ground water, via a percolation area.

The proposed secondary wastewater treatment system and percolation area would be located in the NE section of the site which would be located at a lower level than the house. The ground was firm underfoot, there was no sign of surface water ponding and I did not observe any water tolerant vegetation on the site. The proposed treatment system would be located c.12m from the proposed house and c.10m and c.25m from the E and N site boundaries, whilst the proposed percolation area would be located along the E site boundary and within and c.80m of a small stream to the E of the site that ultimately drains into Carlingford Lough.

The proposed arrangements are considered acceptable subject to compliance with Council requirements and the proposed house would be served by a well.

7.5. **Appropriate assessment screening**

The proposed development would be located in between the Carlingford Mountain SAC to NW and the Carlingford Shore SAC and Carlingford Lough SPA to the E and NE. It would be located c.0.4km downhill of the Carlingford Mountain SAC which would not be affected by the proposed works, and c.0.8km uphill of the Carlingford Shore SAC and Carlingford Lough SPA. Although the proposed development would be located within 80m of a small stream that ultimately discharges to Carlingford Lough via a network of watercourses, the proposed development would not affect these European sites, having regard to the established built up character of the intervening lands.

8.0 **Recommendation**

Arising from my assessment of this appeal case I recommend that planning should be refused for the proposed development for the reasons and considerations set down below.

9.0 **Reasons and Considerations**

1. The proposed development would be located along an unsurfaced access track which is inadequate in width, alignment, gradient and structural conditions and would, therefore, endanger public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a substandard Local Tertiary road at a point where sightlines are restricted in both directions. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Karla Mc Bride

Planning Inspector

28th February 2018