



**An
Bord
Pleanála**

Inspector's Report
300538-18

Development	Dwelling house, domestic garage and ancillary site works including connection to main sewage network.
Location	Kiltoy, Letterkenny, Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	17/51593
Applicant	Aine and Sean McGee
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions.
Type of Appeal	Third Party v Grant
Appellant	Janet Doherty
Date of Site Inspection	22 nd March 2018
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The subject site is an irregular shaped infill site of .267hetares located within a suburban enclave north east of Letterkenny town in Co. Donegal. The site is accessed off an approx. 275m access road off the Kilty Road. The access road is described as public from the junction with the Kilty Road and then it is described as private for about 150m. This access road serves about 13 properties over its entire length and at about 275m it provides access to an old (and seemingly former) farm yard directly south of the site. This includes a small complex of sheds and cottage.
- 1.2. The houses plots are all varying styles and plot shapes and the site is adjoined to the west by a detached two-storey property facing eastwards towards the site. Its tarred driveway bounds the site to the north and west where the boundary is defined by a neat low hedge. To the east the site is adjoined by a two storey house facing north east towards the access road.
- 1.3. The site includes a narrow strip extending between the development site and the access road and between the rear boundary of the dwelling to the east and the farm farmhouse/yard to the south. The frontage is about 7.5m and adjacent at right angles to the existing gated farm entrance.
- 1.4. While urban in setting the environs are characterised by mature trees and hedgerow associated with the original farmland and supplemented with domestic landscaping.

2.0 Proposed Development

- 2.1. Permission is sought for construction of a two storey detached dwelling house (198 sq.m.), two storey detached domestic garage 36.34sq.m. footprint), vehicular access and ancillary site services. It is proposed to connect to the mains sewage line at Kilty.
- 2.2. The planning application was accompanied by layout and house design drawings. The line of the foul sewer follows the proposed driveway.
- 2.3. Unsolicited information was submitted in respect of clarification of legal entitlement, sightlines from the proposed entrance.

2.4. In the response to the grounds of appeal the drainage layout is modified indicating connection through lands to the south and this is accompanied with letters of consent.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1. The planning authority decided to grant permission subject to 16 conditions

- Condition 1 – compliance with revised plans
- Condition 2- Construction method and plan
- Condition 3- omit first floor gable windows of garage
- Condition 4- restriction principal residence
- Condition 5 and 6– entrance and sightlines details
- Condition 7 and 8- control of surface water
- Condition 9- cabling, fuel storage and roof materials
- Condition 10 – domestic garage construction and use
- Condition 11, 12, 13 site boundary treatment and landscaping – 12 semi-mature trees, planting of hedgerow, retention of sound trees
- Condition 14 water supply as in application form Q20
- Condition 15- wastewater to public sewer as in application form Q20
- Condition 16 €1510.50 contribution

3.2. **Planning Authority Reports**

3.2.1. Planning Report: The principle of a dwelling is acceptable in the context of the development plan policies and pattern of development. The proposed design of both house and garage are generally considered to integrate well into the site, subject to modification to the garage upper level windows. The matter of legal entitlement was discussed with the applicant and further unsolicited information was submitted in this regard. The planning authority is accordingly satisfied that the applicant can assert sufficient legal interest.

3.2.2. There are no public health concerns with respect to the proposed public services connections.

3.2.3. On the basis of an AA report it is not considered that the development will have any significant effect on any Nature 2000 site.

Following points raised by the Roads department, a drawing with details of sightlines was lodged on 4th December and this was incorporated into the condition of permission. While the concerns of the executive engineer are noted in respect of road alignment the traffic issues are not considered to be significant.

3.2.4. Roads Department: (executive engineer) It is noted that the entrance is adjoining an existing entrance and there is no evidence of vision lines at this proposed site entrance. It is also noted that the development is served by a private road which joins a public road at a sharp corner which would be tight for traffic and [the proposed development] would also intensify use of this road. While these observations are made no recommendation is made in respect of the decision. A condition of permission is recommended in relation to storm water attenuation considering increased hard surface area.

3.2.5. Appropriate Assessment Screening Report

- The site is located 900m west of Lough Swilly SAC (site code 002287) and Lough Swilly SPA (site code 004075) and accordingly triggers the need to consider potential effects.
- In view of the nature of the proposed development being a single house with public sewer connection, the separation distance from the Natura sites and the absence of any direct loss or fragmentation of either site the planning authority is of the opinion that the proposed development would not have a significant effect on either Natura 2000 site. Further assessment is therefore not deemed to be required.

Objection: One letter of objection

4.0 **Planning History**

Planning authority reference 02/5360 refers to a permission granted for a house on the same site in 2003. This permission was not implemented. Detail of this permission are contained in pouch at the back of the file.

5.0 Policy Context

5.1. The Donegal County Development Plan 2018-2024 has been reviewed and is in the process of being adopted and this includes development policy and land-use maps for Letterkenny. In this, the sites are located within land categorised as 'established Development'.

5.2. The 2009-15 LAP has not been replaced and similarly categorises the lands as established development.

5.3. In both plans the object is to both protect residential amenity while allowing for sustainable growth.

5.4. Natural Heritage Designations

5.4.1. Lough Swilly SAC and Lough Swill SPA are .9km east of the development site.

6.0 The Appeal

6.1. Grounds of Appeal

- Insufficient title to applicant to carry out development in respect of the vehicular access/use of road.
- The access road is substandard due to the acute bend and unsuitable for intensification of traffic.
- Foul drainage has not been addressed
- Potential adverse impact on Lough Swilly SPA and SAC
- Planning conditions relate to submissions outside relevant dates for such submission and therefore invalid.
- Development cannot be carried out in accordance with lodged plans.
- Compliance with entrance requirements not demonstrated and may not be possible.

- Storm water not addressed and flooding may arise.
- No details of landscaping submitted.

7.0 First Party Response

- The applicant submitted a letter from a solicitor setting out the position of title and this was acceptable to the planning authority. A dispute in this regard is a civil matter.
- An engineer's report concludes grounds of appeal do not stand up in view of the negligible intensification of traffic movements and rather the bend has been an effective traffic calming measure. (The road serves 13 dwellings.)
- Foul drainage: Drainage 17-25-03 shows drainage connection to existing sewers serving the adamant Dun Ard scheme.
- The drainage route connection from the proposed dwelling to sewer has been modified to be more direct.
- Storm water will be collected and discharged as part of this drainage scheme rather than a soakaway. The relevant written consent area attached.
- European site: as the site is serviced there is no potential of impact on any European site. The AA carried out for the Planning authority addresses.
- All information is available to the appellants for comments
- The Board can invite comment by appellant on first party response.
- It is considered that vehicular access can exit the driveway safely from the proposed house site.
- The applicant is agreeable to engaging a landscape architect – the details of which can be agreed by way of a condition of permission.

8.0 Assessment

8.1. Issues

- 8.1.1. This proposal is for a single house in an infill site in an established development area in the peripheral environs of Letterkenny Town. The planning authority has no

substantive issues with the development, either in principle or in detail. The third-party grounds of appeal raise a number of issues which are disputed by the applicant. Having regard to these submissions, the issues relate to:

- Legal Entitlement
- Traffic Safety
- Drainage
- Other matters - Conditions
- Appropriate assessment

8.2. Entitlement

8.2.1. The appellant makes the case that the development site does not have a right of way by reference to many registered folios and details of transfer of title. In a letter from a solicitor on behalf of the applicant it is explained that the vehicular access is proposed onto a roadway which runs from the original homestead to the public road and has done so for a long time. These lands were owned by Mr Ramsey as described by reference to folios. It is stated that the roadway represents a right of way for all purposes to and from the public highway and to the benefit of folios 24697 and 24698. The road now forms a part of multiple folios by reason of subdivision of the Ramsey lands. It is further stated that as part of the purchase of lands from Ramsey a right of way formed part of the transfer of property for all purposes of the site to the public road. It is stated that the transfer lawfully entitles the site to access and written permission of any other party required for the purpose of gaining lawful access.

8.2.2. The applicant further clarifies that this was accepted by the planning authority and that any dispute is a matter for civil resolution in the courts and I concur with this position. I would further clarify that a grant of permission does not override other rights or legislation in this regard and therefore do not consider there to be any substantive reason to refuse permission based on insufficient rights to access.

8.3. Traffic Safety

8.3.1. The appellant highlights the inadequacy of the road network serving the proposed development and the absence of ameliorative measures. In support of this, the observation in the council engineer's report is cited - 'the current bend is very sharp and it is difficult to achieve forward visibility on the approach'. Concerns are also

raised regarding intensification of adjoining road and reduced forward visibility at adjoining a 90-degree bend.

- 8.3.2. In response the applicant has submitted a detailed report by chartered engineers (civil.) This report is cognisant of the design standards and guidance for road layout and safety. Specific reference is made to the caveat that geometric standards are not always applicable in every scenario and accordingly, the results of a traffic survey are used to describe the context in this case. It is demonstrated that the design speed and radius of the alignment permits an additional dwelling entrance. The report states that 'considering the 85th percentile speed of 20km/h as listed above and relating these to the relevant design standards, DMURS stipulates centreline horizontal radius of 11m which is achieved at the existing right-angled bend as indicated in enclosed drawing 18-002-001.'
- 8.3.3. I consider the appraisal by the planning authority which concludes that development of a further single dwelling would not give rise to significant intensification and would be acceptable subject to conditions (relating to construction management and optimal visibility at entrance) is reasonable.
- 8.3.4. The planning authority has made the house conditional on the provision of visibility splays in condition 5. It is a fair point by the appellant that the requirement of this 70m sight line in a northern direction may not be achievable with a 2.4m setback as it is likely to be reliant on alterations to the neighbouring boundary. I note that the applicant has not submitted details of how this may be fully complied with having regard to the topographical features. However, in view of the location of the entrance at the end of this quite straight stretch of road I am inclined to accept the engineer's conclusion that vehicular traffic can exit the driveway of the proposed site safely. I do not therefore consider there is sufficient basis to refuse permission for the proposed dwelling on grounds of traffic hazard.

8.4. **Drainage**

- 8.4.1. It is proposed to connect the site to existing public foul and storm sewers (separate systems). The proposed connection layout is modified in the response to the grounds of appeal insofar as the connection is re-routed along a more direct route through the adjacent farm and letters of consent are attached. It is also explained

that a soakaway will be used for paved areas where required. The appellant makes the case that the foul drainage has not been addressed. However, the planning authority has not raised any objection in this regard either in the course of its initial appraisal of the proposal or by way of comment on the grounds of appeal. In the first instance I note that the previous permission was for drainage by an independent treatment on-site treatment system and accordingly the proposal now to connect to a sewer is an improvement considering groundwater protection. I consider the routing of this to be a matter of detail and am satisfied that the applicant has demonstrated sufficient entitlement to carry out these works. Permission in any event is contingent on the availability of these services. I do not consider public health to constitute grounds for refusal.

8.4.2. The appellant also raises concerns of flooding by a soakaway usage. The site is quite large by urban standards which should reasonably contain run-off. In any event the site is to be serviced by a storm water connection to a public sewer. I consider these issues are matters of detail that can be addressed by condition. A condition relating to the control of run-off into adjacent sites could be added to further protect the adjacent properties although I think this would be superfluous.

8.5. Other Matters - conditions

8.5.1. The appellant is concerned about third party right being comprised by the inability to comment on unsolicited information which is deemed to inform the decision by the planning authority. There is also concern expressed about the nature of conditions which facilitate further details for agreement such as with access, drainage and landscaping.

8.5.2. In view of the nature of the issues which relate to matters of detail that would ordinarily be agreed as part of condition of permission and to this end a grant of permission does not require to be contingent on complying with any revised plans, I do not consider that third party rights in this case have unduly compromised. It is open to the Bord to further circulate the response submission but in view of the content I do not consider there to be any substantive new material to warrant this circulation.

8.5.3. Finally, I would make the point that the layout with the house located at the northern end of the site leaves a relatively restricted back garden. Its amenity is further diminished by the siting of the large garage and car parking. This is perhaps due to the original layout which relied on septic tank provision. In any event I consider a curtailing of the exempted development provisions to be appropriate having regard to the limited back garden and to its relative prominence for surrounding development in this back-land location.

8.6. **Appropriate Assessment**

8.6.1. Having regard to the nature and scale of the proposed development on a serviced site in a built-up area, there is an absence of any significant source pathway receptor linkage between the site and Lough Swilly 900m east. The only potential connection would be from associated works and contamination of surface water run-off but this would be controlled by standard construction methods adhering to best practice. The proposed development is unlikely to have any significant impact on the receiving environment.

8.6.2. It is reasonable to conclude that the proposal, individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites Lough Swilly SAC (site 002287) and Lough Swilly SPA (site code 004075) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 **Recommendation**

9.1. In accordance with the foregoing assessment I recommend that planning permission be granted subject to the following conditions and based on the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to the provisions of the Development Plan, the pattern and development of the area, the planning history of the site and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and 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. The gable windows at attic level in the proposed garage shall be omitted.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential amenity.

3. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

a) Contoured drawings to scale of not less than [1:500] showing –

- (i) a survey of all existing trees and hedging plants on the site, their variety, size, age and condition, together with proposals for their conservation or removal
 - (ii) a continuous hedge of indigenous species (e.g. holly, hawthorn, beech or field maple) planted along the site boundary
 - (iii) at least 12 number trees planted to the along the site boundary of the [dwelling] [building] in informal clusters and groups
 - (iv) any hard landscaping works including boundary structures.
- b) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established
- c) A timescale for implementation which shall provide for the planting to be completed before the dwelling/building is first made available for occupation.

Deciduous trees shall be planted at not less than 2 m in height and evergreen species at not more than 750mm in height. Species to be used shall not include either *cupressocyparis x leylandii* or *grisellinia*. Any plants which die, are removed or become seriously damaged or diseased, within a period of [5] 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.

4. The proposed garage shall be used solely for domestic use ancillary to the dwelling house, and shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the garage in the interest of residential amenity.

5. 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. In this regard no surface water from the site shall not be permitted to discharge to the private road adjacent driveway. Details demonstrating compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health.

6. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 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.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including traffic management, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

8. The proposed vehicular access shall be recessed with splayed wingwalls designed to maximise visibility.

Reason: In the interest of traffic safety.

9. 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.

10. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending

them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall be erected within the rear garden area, without a prior grant of planning permission.

Reason: In the interest of amenity of adjacent residential development.

10. The proposed entrance including details fo splayed wing walls shall be designed to the satisfaction of the planning authority to ensure maximum visibility.

Reason: In the interest of traffic safety.

11 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.

Suzanne Kehely

Senior Planning Inspector

17th May 2018

