



An
Bord
Pleanála

Inspector's Report ABP-300712-18

Development	Single storey two-bedroom dwellinghouse, garage, wastewater treatment system and associated works
Location	Kilcampbell, Kill, Dunfanaghy, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	17/51425
Applicant(s)	Charles Stewart
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party
Appellant(s)	Frazer Campbell
Observer(s)	None
Date of Site Inspection	23 rd April 2018
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1.** The appeal site is located in Kilcambell in the townland of Kill to the south of Dunfanaghy town and approximately 1km from the town centre. The site sits adjacent to a two-storey farmhouse and a cluster of agricultural outbuildings. The surrounding area to the north is characterised by agricultural fields bordered by stonewalls and gorse hedging, interspersed with rural housing, while lands to the south are characterised by upland areas, associated with Kill Mountain and flanked by rural housing.
- 1.2.** The site contains a stone wall agricultural building with a pitch roof and comprises c.0.22ha of agricultural land located along a private road. The private road comprises a hardcore track along the 75m frontage of the appeal site and terminates approximately 175m to the south of the appeal site, where it serves agricultural land. This private road connects with a local road (L-3243-1) approximately 350m to the north of the site and serves three dwellings, a large farmyard complex and agricultural lands, including the stated lands of the applicant and the appellant. A post and wire fence marks the roadside boundary, while a mix of stonewalls, trees, hedges and a drainage ditch mark the northeastern and southeastern boundaries of the site. There is approximately a 5m drop in levels from the northwest roadside boundary to the southeast rear boundary of the site along the drainage ditch. The site is situated against the backdrop of Kill Mountain, approximately 500m to the south.

2.0 Proposed Development

- 2.1.** The proposed development would comprise the following:
- demolition of an agricultural outbuilding,
 - construction of a two-bedroom detached single-storey dwellinghouse with a stated gross floor area (GFA) of c.108sq.m;
 - construction of a detached single-storey garage with a stated GFA of c.30sq.m;

- installation of a wastewater treatment system;
- vehicular access off a private road;
- connection to mains water supply;
- all associated groundworks and landscaping.

2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by a traffic survey and a site suitability assessment report addressing on-site disposal of effluent. Following a request for further information the applicant submitted an affidavit signed by a local representative relating to the applicant's housing need and correspondence from a legal representative referring to the legal entitlement to use the private road to access the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority issued a notification of a decision to grant permission for the proposed development subject to eight conditions of a standard nature, including the following:

Condition No.2 – occupancy clause;

Condition No.3 – visibility splays at the junction of the local road and private road.

3.2. Planning Authority Reports

3.2.1. Planning Report

The initial report of the Planning Officer (November 2017) noted the following:

- the site is within an 'area under strong urban influence' and the applicant needs to submit details to show compliance with policy for same;
- the existing barn building on site, proposed to be demolished, does not have protected status;

- the proposed house design and garage are acceptable;
- average surveyed traffic speeds of 50km/hr and 70m visibility in both directions along the junction with the local road to the north of the site are acceptable;
- the applicant should provide evidence to demonstrate entitlement to use the private road serving the site.

The final report of the Planning Officer (December 2017) reflects the decision of the Planning Authority and confirmed that the Planning Officer was satisfied with the further information submitted.

3.2.2. Other Technical Reports

- Environmental Health Officer - positive response received, according to the Planning Officer's report.

3.3. Prescribed Bodies

- None.

3.4. Third-Party Observations

- 3.4.1. During consideration of the application, one observation was received by the Planning Authority from Frazer Campbell of Kilcampbell, Kill townland, Dunfanaghy. The issues raised are covered within the grounds of appeal below.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. The Planning Officer's report refers to an application on the appeal site under Donegal County Council (DCC) Ref. 17/5119, which was invalidated in August 2017.

4.2. Surrounding Sites

- 4.2.1. There have been a number of planning applications for residential and agricultural development on the neighbouring lands, including the following recent applications:

- DCC Ref. 18/50736– Application for permission lodged by Charles Stewart in May 2018 for various works within farmyard complex c.260m to the northwest of the appeal site;
- DCC Ref. 17/51806 – Permission granted in January 2018 to Charlie Stewart for silage pit within farmyard complex c.260m to the northwest of the appeal site;
- DCC Ref. 17/50638 – Permission granted in June 2017 to Frazer Campbell for the widening of a c.170m stretch of private road, c.150m to the north of the appeal site;
- DCC Ref. 11/30123 – Extension of Duration Permission granted in May 2011 to Frazer Campbell for a dwellinghouse, garage and septic tank system along the private road, c.215m to the north of the appeal site;
- DCC Ref. 07/30748– Permission granted in August 2007 to Charles Stewart for various works within farmyard complex c.260m to the northwest of the appeal site;
- DCC Ref. 06/31564 – Permission granted in February 2007 to Frazer Campbell for sheep handling/dip tank within the farmyard complex c.80m to the northwest of the appeal site;
- DCC Ref. 05/30760 – Permission granted in March 2006 to Frazer Campbell for two agricultural sheds, within the farmyard complex c.80m to the northwest of the appeal site;
- DCC Ref. 04/2009 – Permission granted in March 2004 to Charles A. Stewart for dwellinghouse c.325m to the northwest of the appeal site.

5.0 Policy Context

5.1. National Guidance

National Planning Framework – Project Ireland 2040

- 5.1.1. Objective 19 of the National Planning Framework outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the

core consideration of a demonstrable economic or social need to live in the rural area.

Sustainable Rural Housing Guidelines for Planning Authorities

- 5.1.2. The Guidelines provide criteria for managing rural housing requirements, whilst achieving sustainable development. Planning Authorities are recommended to identify and broadly locate rural area typologies that are characterised as being under strong urban influence, stronger rural areas, structurally weak, or made up of clustered settlement patterns. The appeal site is located in an area under strong urban influence, as set out under Section 5.2 below. The Guidelines outline how rural-generated housing need for a Planning Authority area should be defined and gives examples of categories of persons that may be used to define same in the Development Plan.

5.2. Donegal County Development Plan 2012-2018

- 5.2.1. The policies and objectives of the Donegal County Development Plan 2012-2018 are relevant. The site is outside the settlement envelope for Dunfanaghy, as per Map 10 of the Plan. The following Plan objectives are relevant:

- RH-O-3: To ensure that new residential development in rural areas provides for genuine rural need.
- RH-O-4: To protect rural areas immediately outside towns from intensive levels of residential development and thus safeguard the potential for incremental growth of the towns and their potential beyond the plan period; to utilise existing physical and social infrastructure; and to avoid demand for the uneconomic provision of new infrastructure.
- RH-O-5: To promote high design quality and the successful integration into the landscape of new rural housing;

- 5.2.2. Map 7 of the Plan identifies the appeal site area as being within 'an area under strong urban influence'. Within such areas the Plan states that it is necessary to manage the extent of development, whilst facilitating those with a genuine rural-generated housing need. To demonstrate a rural-generated housing need, Policy RH-P-5 of the Plan, which was subject to Variation No.3 of the Plan, outlines that individuals must provide evidence that they, or their parents or grandparents, have

resided at some time within that rural area for a period of at least 7 years and proposals should be subject to compliance with other relevant policies of this plan, including RH-P-1 and RH-P-2.

5.2.3. Policies RH-P-1 and RH-P-2 provide guidance for rural housing particularly in relation to design, integration of proposals into the landscape, suburbanisation and the erosion of the rural character of an area.

5.2.4. Under Policy RH-P-2 the acceptability of a proposal will be guided by the following:

1. 'A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;
2. A proposed dwelling shall not create or add to ribbon development;
3. A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;
4. A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15.
5. A proposed dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration.'

5.2.5. Building a House in Rural Donegal: A Location Siting and Design Guide forms Appendix B to the Plan and includes technical and development management guidance for rural housing.

5.2.6. A Draft Donegal County Development Plan 2018-2024 is currently under preparation and the site currently would be located within a 'stronger rural area' based on the provisions of the Draft Plan. In considering proposals for rural-generated housing in stronger rural areas, under Policy RH-P-2 the Draft Plan outlines the need to 'avoid the creation or expansion of a suburban pattern of development in a rural area'.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. One third-party appeal was submitted by Frazer Campbell of Kill, Dunfanaghy. The issues raised can be summarised as follows:

Traffic Safety

- the private road serving the site is too narrow to allow two cars to pass and therefore does not have capacity to facilitate the development. A lay-by along the 385m stretch of private road would not be sufficient to alleviate traffic congestion problems;
- reference made to a recommendation under DCC Ref. 17/50638 requiring improvement of visibility sightlines at the junction of the private road with the local road and the need for same to accommodate any additional developments along the private road;
- visibility splays required under Condition No.3 would need to use lands in control of the appellant;
- negative impact of construction traffic on private road;

Other Matters

- the private road proposed to access the site is not a right of way for residential use and is maintained by the appellant and their family to access agricultural lands and a farmyard;
- Condition No.5(c) requires electrical and telephone connections to run underground. The applicant does not have permission to run these services under the private road;
- surface water discharge would be to a land drain which flows to Kill Lough 190m to the east.

6.1.2. The grounds of appeal were accompanied by correspondence from a legal representative relating to land ownership and legal rights of way, a map outlining landholdings in the vicinity, photographs and the Road Design Office submission and

Planner's Report regarding DCC Ref. 17/50638 (widening of a c.170m stretch of private road).

6.2. Applicant's Response

6.2.1. The response of the applicant to the grounds of appeal can be summarised as follows:

Traffic Safety

- the private road is good condition and services numerous residential properties and agricultural landholdings, and previously served historic dwellings that are now in ruins;
- traffic along the private road is slow-moving and the applicant agreed to provision of a lay-by along the lane on their land to address traffic flow;
- adequate sight visibility splays exist at the junction of the private road and local road;
- optimum visibility splays would be provided at the site entrance onto the private road;
- applicant would make any repairs to the road if required;

Other Matters

- applicant would use water supply via the group water scheme line running through their land and refers to statutory provisions allowing for electrical connections;
- applicant has legal entitlement to use the private road for residential purposes;
- contaminated water would not enter the drainage system and best practise would be used in the construction phase.

The applicant's response was accompanied by a Site Layout Plan, photographs, an extract from the ESB Code of Practise for Access to Land and/or Premises, correspondence from the their legal representative regarding use of the private road as a right of way and an extract map detailing the location of the Kill Group Water Scheme.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority responded to state that they are satisfied that all matters raised within the grounds of appeal have been considered in their previous assessment of the application.

6.4. Observations

- 6.4.1. None.

7.0 Assessment

7.1. Introduction

- 7.1.1. I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Rural Housing Policy;
- Traffic Safety;
- Siting & Design;
- Wastewater Treatment;
- Other Matters.

7.2. Rural Housing Policy

- 7.2.1. Following submission of further information, the Planning Authority considered that sufficient documentation had been submitted to substantiate that the applicant fulfilled the rural-generated housing need criteria of the Development Plan and that the proposed development would, therefore, comply with rural housing policy of the Donegal County Development Plan 2012-2018.
- 7.2.2. Map 7 of the Plan identifies the appeal site as being within 'an area under strong urban influence'. Within 'areas under strong urban influence' the Plan states that it is necessary to manage the extent of development, whilst facilitating those with a genuine rural-generated housing need. Policy RH-P-5 of the Plan outlines the following:

'It is a policy of the Council that where an individual has demonstrated that they need a new dwelling house in a rural area defined as Area Under Strong Urban Influence (see Map 7), it may be favourably considered for those individuals who can provide evidence that they, or their parents or grandparents, have resided at some time within that rural area for a period of at least 7 years. The foregoing is subject to compliance with other relevant policies of this plan, including RH-P-1 and RH-P-2. Holiday home development will not be permitted in these areas'.

- 7.2.3. As stated above, the information and evidence provided must demonstrate 1.) that the applicant needs a new dwelling house in the area, 2.) that the applicant, their parents or their grandparents, have resided at some time within that rural area for a period of at least 7 years, and 3.) compliance with other relevant policies of this plan, including RH-P-1 and RH-P-2.
- 7.2.4. Information provided by the applicant within their Supplementary Housing Application Form states that they are building a permanent house on family land and that they have resided in this area all of their life. As stated above at further information stage, the applicant submitted documentary evidence to support their rural-generated housing need in the form of a letter from a local representative. While I would have concerns regarding the absence of substantial evidence within the documentation submitted with the application attempting to substantiate that the applicant has resided in the immediate area for a period of 7 years, I note correspondence from the legal representatives of both the applicant and appellant, which outline that the applicant has farmed land in the immediate area for over 60 years and I note the planning history relating to the surrounding area. The letter from the local representative outlined that the applicant intends 'to move to a smaller home on lands which are in close proximity to his farm, as his current house is simply too big'. I do not consider the need to downsize homes as providing a genuine rural-housing need, particularly where a person already resides in the rural area and given the availability of existing housing within the immediate area of Dunfanaghy town, identifiable via online property searches. The applicant's rural housing need has clearly already been satisfied.
- 7.2.5. Policies RH-P-1 and RH-P-2 provide guidance for rural housing particularly in relation to appropriate and quality design, integration into the landscape,

suburbanisation and the erosion of the rural character of an area. Under Policy RH-P-2 the acceptability of a proposal will be guided, inter alia, by the need for a proposed dwelling to avoid the creation or expansion of a suburban pattern of development in rural areas. I note the proximity of the site to Dunfanaghy town, c.370m outside the settlement envelope for the town, as identified within the County Development Plan and the existing pattern of development in the area, including extensive one-off housing, illustrating pressure for development of the land. Consequently, I consider that the proposed development, would contribute to the creation and expansion of a suburban pattern of development in a rural area. The proposed development would therefore not comply with Policy RH-P-5 of the Development Plan, as the applicant's rural-generated housing need has already been satisfied in this rural area and the proposed development would be contrary to the provisions of RH-P-2 of the Development Plan, as it would contribute to the creation and expansion of a suburban pattern of development in a rural area. Permission for the proposed development should be refused for this reason.

7.3. Traffic Safety

- 7.3.1. The grounds of appeal primarily focus on traffic safety concerns that the appellant considers would result from the proposed development. It is asserted by the appellant that the private road serving the site and the junction between the private road and the local road (L-3243-1) approximately 350m to the north of the site, do not have capacity to serve the development and mitigation would not overcome concerns raised, primarily due to land ownership constraints. Section 10.2 of the Development Plan provides various criteria to be met with regards to proposals involving alterations and use of roads. Within this it is stated that visibility splays at junctions shall be provided in accordance with Table 23 and Figure 6 of the Plan. Vehicular entry and exit at the site itself would not be problematic, as the proposed house would be the last house along the private road and traffic speeds would be significantly restricted by virtue of the road alignment, both vertical and horizontal. As part of the planning application, the applicant provided a survey to estimate average vehicle speeds along the local road to the north. This concluded that average speeds would be less than 50km/hr and that based on Table 23 of the Development Plan a visibility splay of 70m would be required from a position setback

a minimum of 2.4m from the back edge of the local road. Having visited the area and noted traffic speeds and recent works to improve visibility at the junction viewing west, I am satisfied that adequate sight visibility is provided for at the junction and that the proposed development would not result in traffic hazard at this junction.

- 7.3.2. Concerns are raised by the appellant with regard to the capacity for two vehicles to pass along the 350m stretch of private road. I note that widening works appear to have recently taken place over a 120m stretch on the northern end of the private road and that it would be a c.150m stretch of road closest to the site that would prove most problematic for vehicles to pass. Given the low level of traffic movements that would be associated with the proposed house and the fact that the southern section of the private road already serves a residence, a farmyard and agricultural lands, including lands stated to be in control of the applicant, I am satisfied that the proposed development would not result in a traffic hazard or significant inconvenience along this stretch of private road. In conclusion, the proposed development should not be refused for reasons relating to traffic safety.

7.4. Siting & Design

- 7.4.1. The proposed development is for a single-storey detached dwellinghouse and a garage on a site to the south of Dunfanaghy town. The site is situated within a depression in the landscape at the foot of Kill Mountain and the proposed house would not be visible from the local road 350m to the north, the N56 national road, the town of Dunfanaghy or protected views or prospects illustrated in Map 8 of the Development Plan. Where visible from the private road approaching the site, the immediate lands and the local road, c.520m to the southwest, it would be viewed against the backdrop of the existing farmyard building complex and/or Kill Mountain, including one-off housing on much higher ground. Furthermore, the proposed house and site layout arrangement would be in accordance with the provisions set out within Appendix B to the Development Plan, relating to the location, siting and design guidance for 'Building a House in Rural Donegal'. Consequently, I am satisfied that the proposed development should not be refused for reasons relating to the impact on the character or visual amenities of the area.

7.5. Wastewater Treatment

7.5.1. The Site Suitability Assessment Report submitted with the application indicated that the T-value of the soil on the site was 27 and that there was a depth of more than 1.6m of unsaturated soil. These parameters indicate that the site is suitable for the treatment and disposal of domestic foul effluent to groundwater by means of a septic tank and percolation area. The ordnance survey maps refer to an 'open well' 10m from the proposed location for the percolation area and on a similar level, while the on-site assessment states that there are no springs or wells within 200m of the site. I note the details submitted with the applicant's response to the grounds of appeal, including an extract from the Kill Group Water Scheme, showing that the area is served by piped water supply. Based on the information contained within the Report submitted and criteria within Table B.3 of Annex B to the EPA Code of Practice, a minimum separation distance of 25m is required from the percolation area to the well. Given the consistency of the ground conditions on site and the size of the site, I am satisfied that any amendments to the location of the percolation area to meet the minimum standards can be addressed via condition, if necessary. The other indications in the Report submitted are consistent with the observations of ground conditions made at the time of inspection and are accepted. The proposed development would not, therefore, be prejudicial to public health and would not be likely to cause a deterioration in the quality of waters in the area.

7.6. Other Matters

7.6.1. The grounds of appeal raise matters relating to land ownership and rights of way over the private laneway accessing the site. I note the applicant's responses to these matters both accompanying their response to the grounds of appeal and in response to the Planning Authority's request for further information. Such issues are civil matters, and, accordingly, I do not propose to adjudicate on these issues, but I would highlight that Section 34(13) of the Act states that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'.

8.0 Appropriate Assessment

- 8.1. The Horn Head and Rinclevan candidate Special Area of Conservation (cSAC) (Site Code: 000147) is located approximately 0.7km to the north and 1km to the west. Horn Head and Fanad Head Special Protection Area (SPA) (Site Code: 004194) is located approximately 1km to the west. The Sessiagh Lough SAC (Site Code: 000185) is approximately 1km east of the site. An Appropriate Assessment Screening Report was not submitted with the application. Nonetheless there is sufficient information on the file and available to allow me to carry out an Appropriate Assessment screening. The subject proposals would not have the potential for loss or fragmentation of protected habitats.
- 8.2. The nearest pathway to the aforementioned designated sites from the appeal site is a drainage ditch that runs along the southern boundary of the site, draining in an easterly direction initially to Kill Lough, which drains northwards to the coast. Having regard to the Source-Pathway-Receptor model, there would be a direct pathway between the proposed development and the Natura 2000 sites. With the exception of the Horn Head and Rinclevan cSAC, I am satisfied that the other sites within 15km of the appeal site can be 'screened out' on the basis that significant effects on these European sites could be ruled out as a result of the separation distances from the appeal site, topography and given the absence of any hydrological or other pathway to the appeal site.
- 8.3. The Conservation objectives for Horn Head and Rinclevan cSAC seek:
- To maintain the favourable conservation condition of embryonic shifting dunes;
 - To maintain the favourable conservation condition of shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes');
 - To maintain the favourable conservation condition of fixed coastal dunes with herbaceous vegetation ('grey dunes');
 - To restore the favourable conservation condition of dunes with *Salix repens* ssp. *Argentea* (*Salicion arenariae*);
 - To maintain the favourable conservation condition of humid dune slacks;

- To restore the favourable conservation condition of machairs;
- To maintain the favourable conservation condition of Geyer's Whorl Snail;
- To maintain the favourable conservation condition of Grey Seal;
- To maintain the favourable conservation condition of Petalwort;
- To maintain the favourable conservation condition of Slender Naiad.

8.4. There would not be a direct pathway between the proposed development and Port Lough, which forms part of the Horn Head and Rinclevan candidate SAC and is inland and to the west of the site and contains the population of Slender Naiad. I note the proposed development, as outlined above, and that surface water attenuation is proposed within the site by way of a discharge pipe to the drainage ditch along the southern boundary. The applicant states that the development would be constructed to best practise and would not result in contamination of the drainage ditch and these are intrinsic elements of the project. Furthermore, wastewater treatment system to EPA standards is proposed to treat the domestic effluent generated. Given the distance from the Natura 2000 site (0.7km to the north), I am satisfied that the proposals would not result in a reduction in the quality of the cSAC marine habitats or the cSAC species, and as a consequence would not have a significant effect on the conservation objectives of the aforementioned designated sites.

8.5. It is reasonable to conclude that on the basis of the information on the file and available, 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 the Horn Head and Rinclevan cSAC (Site Code: 000147), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a Natura Impact Statement is not therefore required

9.0 Recommendation

9.1. I recommend permission be **refused** for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. The site of the proposed development is located in a rural area under strong urban influence, as identified in the Donegal County Development Plan 2012 – 2018, wherein policies aim to manage the extent of development, whilst facilitating those with a genuine rural-generated housing need. Based on the documentation submitted with the application and appeal, it is considered that the applicants do not meet the criteria for a rural-generated house under the provisions of the Development Plan, as they already reside in this rural area, and the proposed development would contribute to the creation and expansion of a suburban pattern of development in a rural area. The proposed development would, therefore, be contrary to Policies RH-P-2 and RH-P-5 of the Development Plan, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Colm McLoughlin
Planning Inspector

15th June 2018