



An  
Bord  
Pleanála

## Inspector's Report ABP-301802-18

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<b>Development</b>	Single storey four-bedroom dwellinghouse, two-storey detached garage, wastewater treatment system, access road and associated works
<b>Location</b>	Ballykeeran, Kilmacrenan, County Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	17/51906
<b>Applicant(s)</b>	Martin Duffy
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Martin Duffy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	5 <sup>th</sup> December 2018
<b>Inspector</b>	Colm McLoughlin

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
4.0 Planning History.....	5
5.0 Policy Context.....	6
6.0 The Appeal .....	9
6.1. Grounds of Appeal .....	9
6.2. Planning Authority Response.....	10
6.3. Observations.....	10
7.0 Assessment.....	10
7.1. Introduction .....	10
7.2. Rural Housing Policy.....	10
7.3. Wastewater Treatment.....	12
7.4. Siting & Design.....	13
7.5. Traffic Safety .....	14
8.0 Appropriate Assessment.....	14
9.0 Environmental Impact Assessment - Preliminary Examination.....	15
10.0 Recommendation .....	15
11.0 Reasons and Considerations .....	16

## **1.0 Site Location and Description**

- 1.1.** The appeal site is located in the rural townland of Ballykeeran, approximately 0.5km southeast of Kilmacrenan village and approximately 8km northwest of Letterkenny. The surrounding area is characterised by agricultural fields bordered by hedgerows and trees, interspersed with rural housing generally fronting onto local roads, but also including multiple-house backland developments.
- 1.2.** The site comprises c.0.63ha of agricultural land accessed via an agricultural track, which connects with a local road (L-1412-1) approximately 235m to the north of the site for the proposed house. This track currently serves as an access to adjoining fields. A hedgerow forms the roadside boundary along both sides of the proposed entrance off the local road. There is approximately a 5m rise in ground levels from the north to the south in the area proposed to accommodate the house and garage.

## **2.0 Proposed Development**

- 2.1.** The proposed development would comprise the following:
- construction of a four-bedroom detached single-storey dwellinghouse with a stated gross floor area (GFA) of 202sq.m;
  - construction of a detached two-storey garage with a stated GFA of 80sq.m;
  - installation of a packaged wastewater treatment system;
  - vehicular access along a private agricultural track;
  - 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. Additional unsolicited information was submitted in the form of Birth and Death Certificates and an updated Application Form. Following requests for further information the applicant submitted a Traffic Survey and correspondence from a legal representative referring to the applicant's

connections with the area, legal entitlement to use the private agricultural track and information regarding the transfer of lands.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The Planning Authority issued a notification of a decision to refuse to grant permission for the proposed development for the following reason:

Reason No.1 – failure to provide sufficient evidence of local housing need in line with rural housing policy.

#### **3.2. Planning Authority Reports**

3.2.1. Planning Report

The initial report of the Planning Officer (February 2018) noted the following:

- the site is within a 'stronger rural area' and sufficient details to show compliance with housing need policies for this area has not been provided;
- the proposed house design and garage are acceptable, subject to omission of a first-floor gable window from the garage;
- 160m visibility in both directions along the junction with the local road to the north of the site cannot be achieved, therefore a traffic speed survey is required;
- the applicant should provide evidence of housing need, traffic speed surveys and evidence of consent to provide vehicular sightlines and drainage at the proposed access and to use the private agricultural track.

The second report of the Planning Officer (April 2018) noted the following:

- both the applicant and his uncle whom the site is being transferred from have addresses in the village of Kilmacrenan, and the applicant's uncle farms the subject landholding;

- sufficient details to show compliance with housing need policy for this area have not been provided, including whether or not the applicant would farm the lands or whether they are employed in a rural-based activity.

The final report recommendation of the Planning Officer (December 2017) reflects the decision of the Planning Authority and confirmed that the Planning Officer was not satisfied that the clarification of further information submitted demonstrated a specific housing need for the applicant to reside in this area, as the applicant's primary employment is in Letterkenny and the family ties to the area relate to Kilmacrenan village.

#### 3.2.2. Other Technical Reports

- Roads and Transportation Department – no objection, subject to conditions;
- Environmental Health Officer – conditions relating to wastewater treatment should be attached.

### 3.3. Prescribed Bodies

- Irish Water – no objection.

### 3.4. Third-Party Observations

3.4.1. None received.

## 4.0 Planning History

### 4.1. Appeal Site

4.1.1. I am not aware of any recent planning applications relating to the appeal site.

### 4.2. Surrounding Sites

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

- ABP Reference PL05E.248546 / Donegal County Council (DCC) Ref. 17/50357 – Permission granted by the Board in October 2017 for a house, garage, a septic tank and an access road, c.700m to the south of the appeal site;
- DCC Ref. 17/51079 – Permission granted in September 2017 for a house, a garage, a septic tank and an access road, c.360m to the west of the appeal site;
- DCC Ref. 16/51180 – Permission granted in February 2017 for floodlit recreational playing fields and associated facilities, directly to the north of the proposed entrance to the appeal site;
- DCC Ref. 12/50843 – Permission granted in January 2013 for a house and septic tank, c.225m to the northwest of the appeal site;
- DCC Ref. 11/40363 – Permission granted in March 2012 for extension to a workshop and office space and connection to wastewater treatment system, c.230m to the north of the appeal site;
- DCC Ref. 11/40245 – Permission granted in September 2011 for a house, a domestic garage and a septic tank, c.100m 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 Guidelines outline how rural-generated housing need to reside in these areas should be defined in the Development Plan and examples of categories of persons that may be used to define same. The appeal site is located in a 'stronger rural area', as set out under Section 5.2 below. Appendix 3 to the Guidelines outlines that the key Development Plan objective in relation to stronger rural areas should be 'to consolidate and sustain the stability of the population and in particular to strike the appropriate balance between development activity in smaller towns and villages and wider rural areas'.

## **5.2. Donegal County Development Plan 2018-2024**

5.2.1. The policies and objectives of the Donegal County Development Plan 2018-2024 are relevant. The site is outside the settlement framework boundary for Kilmacrenan, based on maps accompanying 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 rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape having particular regard to the Landscape Classifications illustrated on Map 7.1.1 and contained within Chapter 7 of this Plan.

5.2.2. Map 6.2.1 of the Plan identifies the appeal site area as being within a 'stronger rural area'. Within such areas the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and provisions of the Plan. Policy RH-P-3 of the Plan specifically outlines that applications for rural housing in stronger rural areas need to comply with Policies RH-P-1 and RH-P-2 of the Plan

and that the applicant must demonstrate that they fit into at least one of the following categories:

- 'persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum);
- persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location'.

5.2.3. Limitations to the policy are addressed in the Plan, including provisions for exceptional circumstances and restrictions on holiday-home development. Policies RH-P-1 and RH-P-2 provide guidance for rural housing with particular attention to design, integration of proposals into the landscape and the environment, development parameters, 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 (see definitions);
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 new 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 4 to the Plan and includes technical and development management guidance for rural housing.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. A first-party appeal was submitted and the issues raised can be summarised as follows:

#### Housing Need

- the applicant meets the housing need requirements set out under the relevant Development Plan policy, given their established family ties with Ballykeeran townland, as demonstrated via legal documentation;
- the applicant's family farmed the subject lands since 1952 and the lands would now be transferred from the applicant's uncle to allow the lands to continue to be farmed;
- additional details are provided to clarify the exact nature and ownership of the subject farm, stating that the applicant intends to farm the lands when the proposed house is constructed;
- the applicant works as an Adult Education Tutor in Letterkenny and they reside in the village of Kilmacrenan;
- the applicant does not own the property in Kilmacrenan and they wish to reside in the area to be close to their relatives who are elderly and in poor health;
- there was a derelict farmhouse and sheds on the landholding, as indicated in extracts of historical maps submitted;
- the Planning Authority assessment shows a degree of uncertainty in their concluding remarks and the proposed development approach, involving the transfer of farmlands from one family member to another, is very much standard practise in Donegal.

## **6.2. Planning Authority Response**

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

- matters raised have been addressed in the Planning Officer's report assessing the proposed development;
- the subject site is located in an area of High Scenic Amenity based on the new Development Plan (2018-2024) provisions. The design, form and scale of the proposed house would be appropriate for this area, but the applicant has not demonstrated compliance with rural housing policy.

## **6.3. Observations**

6.3.1. None received.

## **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;
- Wastewater Treatment;
- Siting & Design;
- Traffic Safety.

### **7.2. Rural Housing Policy**

7.2.1. Following submissions of further information, the Planning Authority considered that sufficient documentation had not 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, not comply with rural housing policy of the Donegal County Development Plan 2012-2018. Since consideration of the

application, Donegal County Development Plan 2018-2024 has been adopted and is the relevant statutory plan in considering this appeal.

7.2.2. Map 6.2.1 of the Plan identifies the appeal site as being within a 'stronger rural area'. Within such areas the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and provisions of the Plan. Policy RH-P-3 of the Plan, specifically outlines that applications for rural housing in 'stronger rural areas' need to comply with Policies RH-P-1 and RH-P-2 of the Plan and that the applicant must demonstrate with evidence 1.) that the applicant's primary employment is in a rural-based activity or 2.) that the applicant has a vital link to the rural area or 3.) that there are exceptional health circumstances.

7.2.3. Information provided by the applicant within their application and grounds of appeal states that the applicant's primary employment is as an Adult Education Tutor in Letterkenny, that they currently help out with work on the farm lands on a part-time basis and that they intend to farm the land once the proposed house is built. While the applicant asserts that they undertake some agricultural work in this rural area, the applicant's primary employment is not a rural-based activity and they do not satisfy point 1.) of Policy RH-P-3. In relation to point 2.) the applicant must have 'a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum)'. The applicant's address is given as Main Street, Kilmacrenan, which is an urban area. The applicant has stated that their family have farmed the subject lands since 1952 and land registry documents and maps are submitted in an effort to substantiate same. The landholding is in the applicant's uncle's name and correspondence from a legal representative gives the uncle's address as Main Street, Kilmacrenan and states that the lands will now be transferred to the applicant. While I do not contest that the subject lands have been in the applicant's family for a significant period of time, other than owning the land, there is nothing provided by the applicant to substantiate in a comprehensive evidential manner that the lands have been farmed by the applicant's family. Furthermore, the immediate family members, appear to be more closely affiliated with Kilmacrenan village based on the addresses given and I am therefore not satisfied that long-established vital links with the rural area subject

of this appeal have been demonstrated. While the applicant states that they wish to reside in the area to be close to their relatives, who are elderly and in poor health, again I would note that they currently reside in the village, therefore exceptional reasons to allow the applicant to build a dwelling in this rural area have not been demonstrated.

7.2.4. Policies RH-P-1 and RH-P-2 provide guidance for rural housing particularly in relation to appropriate designs, integration of proposals into the landscape and the environment, development parameters, 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 Kilmacrenan village, c.500m outside the development framework boundary for the village, as identified within the County Development Plan, and the existing pattern of development in the area, including extensive one-off and small housing developments, 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.

7.2.5. In conclusion, the proposed development would not comply with Policy RH-P-3 of the Development Plan, as the applicant has not demonstrated that they have a housing need to reside in this 'stronger rural area'. Furthermore, 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. Wastewater Treatment**

7.3.1. The wastewater treatment element of the proposals involves the installation of a packaged effluent treatment system with soil polishing filter. Assessment of this aspect of the development is not undertaken within the Planning Officer's report, but I would note that an Environmental Health Officer from the HSE has commented on this, requiring the proposed system to meet certain parameters. Appendix 4 of the Development Plan, requires the disposal of wastewater from a dwelling to be carried

out in accordance with the EPA standards, which include the 'Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses'.

- 7.3.2. The Site Suitability Assessment report submitted notes that there are no watercourses or wells within 250m of the proposed location for the wastewater treatment system. The Site Suitability report states that a trial hole was examined in December 2017 and that bedrock was not encountered within 2.35m depth. Percolation tests undertaken revealed an initial average T-value of 215, reflective of low permeability soils/subsoils or ponding, which I noted on site, and a modified T-test should be carried out (where  $T_{100} > 210$  minutes) based on EPA guidance. The modified percolation T-test resulted in a T-value of 49. An initial P-value of 115 was recorded and where this value is greater than ( $P_{100}$ ) 90, then discharge to ground is not suitable, as ponding would be likely to occur. To establish if it is possible to install a constructed percolation area or a polishing filter, a modified P-test was undertaken to assess the permeability of the upper layers of the subsoil. The results of this revealed a modified P-value of 29. Given the elevated initial T-value and the guidance within the EPA Code of Practice, where a P-value of  $3 \leq P \leq 75$  is encountered, the site is considered suitable for a secondary treatment system with polishing filter at ground surface or overground. I note that the percolation pipes would need to be realigned to run with the contours, as required in the EPA guidance. 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. Accordingly, permission should not be refused on these grounds.

#### **7.4. Siting & Design**

- 7.4.1. The proposed development is for a single-storey detached dwellinghouse and a two-storey garage. The site is situated approximately 235m off the local road, on slightly elevated ground (approximately 10m above the local road). The proposed house and garage would not be highly visible from the local road, and they would not be visible from the N56 national road 410m to the west, from the village of Kilmacrenan or from protected views, prospects or features of interest. The site is located in an area of 'High Scenic Amenity' based on the Map 7.1.1 of the Development Plan, an area that has capacity to absorb sensitively-located development. Where visible from the local road and the immediate lands, the house and garage would be viewed

against a backdrop of hedgerows and trees on higher ground. Furthermore, the proposed design and site layout arrangements would be in accordance with the provisions set out within Appendix 4 to the Development Plan, relating to the location, siting and design guidance for 'Building a House in Rural Donegal'. The design, form and scale of the proposed house and garage would be capable of being absorbed within this 'High Scenic Amenity' area. Consequently, I am satisfied that the proposed development should not be refused for reasons relating to the impact on the visual amenities of the area.

## **7.5. Traffic Safety**

- 7.5.1. Following a request for further information which sought 160m visibility in both directions at the entrance to the site off the local road, the applicant provided additional details to show 90m sightlines would be available at the entrance of the site access road off the L-1412-1 local road. Reduced visibility was considered acceptable based on a traffic speed survey undertaken and the access was considered to be acceptable by the Planning Authority. I am satisfied that the sightlines available at the access to the public road are adequate to cater for the traffic that would be generated by the proposed development. It would not, therefore, give rise to traffic hazard or the obstruction of road users and permission should not be refused for this reason.

## **8.0 Appropriate Assessment**

- 8.1. The Leannan River candidate Special Area of Conservation (cSAC) (Site Code: 002176) located approximately 1km to the north and Lough Fern Special Protection Area (SPA) (Site Code: 004060) are located 2.5km to the northwest. Other designated sites within 15km of the appeal site include the Ballyarr Wood SAC (Site Code: 000116) approximately 3km to the west, Lough Swilly SPA (Site Code: 004075) and Lough Swilly SAC (Site Code: 002287) approximately 7km to the east, Cloghernagore Bog and Glenveagh National Park SAC (Site Code: 002047) approximately 7.8km to the west, Mulroy Bay SAC (Site Code: 002159) approximately 8.5km to the north, Derryveagh and Glendowan Mountains SPA (Site Code: 004039) approximately 8.7km to the west and Sheephaven SAC (Site Code:

001190) approximately 12.4km to the northwest. An Appropriate Assessment Screening Report was not submitted with the application.

- 8.2.** Having regard to the Source-Pathway-Receptor model, there would not be a direct pathway between the proposed development and the Natura 2000 sites. The nearest pathway to the aforementioned designated sites from the appeal site is a drainage channel, approximately 250m to the north of the development part of the site, close to the entrance off the local road. As the site would be a considerable distance (1km) from the nearest downstream designated sites (Leannan River cSAC) and as the proposed development would be provided with a secondary treatment and polishing filter that would treat the effluent to the necessary environmental standards, I am satisfied that the proposed development would not be likely to have a significant effect on these or other sites.
- 8.3.** Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Environmental Impact Assessment - Preliminary Examination**

- 9.1.** Having regard to the nature and scale of the proposed development and the location of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **10.0 Recommendation**

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

## 11.0 Reasons and Considerations

1. The site of the proposed development is located in a stronger rural area, as identified in the Donegal County Development Plan 2018 – 2024, 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 the appeal, it is considered that the applicant has not demonstrated that they have a housing need to reside in the area as per the requirements set out in Policy RH-P-3 of the Development Plan, as their primary employment does not comprise a rural-based activity and as vital links to the rural area or exceptional circumstances have not be demonstrated. Furthermore, the proposed development would contribute to the creation and expansion of a suburban pattern of development in a rural area and would, therefore be contrary to the Policy RH-P-2 of the Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Colm McLoughlin  
Planning Inspector

19<sup>th</sup> December 2018