



An  
Bord  
Pleanála

## Inspector's Report ABP-301988-18

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<b>Development</b>	Demolition of house and construction of a two-storey four-bedroom dwellinghouse with attached single-storey garage to the rear
<b>Location</b>	Kill townland, Dunfanaghy, County Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	18/50671
<b>Applicant(s)</b>	Brian Campbell
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third-Party
<b>Appellant(s)</b>	Matthew & Lorraine Wild
<b>Observer(s)</b>	Raymond Purdy
<b>Date of Site Inspection</b>	5 <sup>th</sup> December 2018
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Kill, approximately 1.3km to the southeast of Dunfanaghy town centre in County Donegal, overlooking Dunfanaghy golf course and Sheephaven Bay to the north. The site is situated in an area characterised by low-density housing, including estates and single-dwelling developments on rising ground overlooking the bay. The site shares access with the adjoining property to the east off a local road (L-7113), known as Ramonaghan Lane, which in turn connects with the N56 national road approximately 25m to the east of the appeal site. The N56 connects Dunfanaghy and the northwest Donegal area with Letterkenny.
- 1.2. The appeal site comprises c.0.15ha and has been partially cleared of overgrown vegetation and contains an unoccupied house with extensive ivy and vegetation growing from the rear and west side. The site includes approximately 28m frontage onto the N56 national road and the application drawings indicate that there is a right of way over the shared access from the local road. The local road connects the shared access with the N56 at a location where a speed limit restriction of 100km/hr applies and where there is a broken white line and a hard shoulder fronting the appeal site. The site is flanked on the west side by an access road serving six detached houses, Kill Park (Cill Pairc), which are located to the rear of the appeal site. A steep embankment marks the rear boundary of the site, while the roadside boundaries are marked by a timber rail fence. There is approximately a 3m drop in levels over the 60m distance from the rear to the front of the site.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise the following:
- demolition and removal of a detached single-storey dwellinghouse with a stated gross floor area (GFA) of c.150sq.m
  - construction of a four-bedroom detached two-storey dwellinghouse and an attached single-storey garage with a stated GFA of c.222sq.m.

- 2.2.** In addition to the standard planning application documentation and drawings, the application was accompanied by a Traffic and Transport Statement Form and photographs of the existing dwelling.

### **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 six conditions of a standard nature, including condition 2, setting out finishes and landscaping required for the western boundary.

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

##### 3.2.1. Planning Report

The report of the Planning Officer (June 2018) reflects the decision of the Planning Authority and noted the following:

- the proposed replacement house is acceptable in policy terms, where an occupancy condition does not need to apply and where the scale, design and height of the proposed house is acceptable;
- Transport Infrastructure Ireland (TII) request for a Road Safety Audit is not necessary, as the site does not have or propose direct access onto the N56 and as the development would entail a replacement house;
- the site is served by a public sewer.

##### 3.2.2. Other Technical Reports

- None.

#### **3.3. Prescribed Bodies**

- Irish Water – no objection;
- TII – further information is required, as the proposal is at variance with National Guidelines;
- An Taisce – no response;

- Department of Culture, Heritage & the Gaeltacht – no response.

### **3.4. Third-Party Submission**

- 3.4.1. Three submissions from two objectors to the development were received by the Planning Authority during consideration of the application. The issues raised are covered within the grounds of appeal and the observation below.

## **4.0 Planning History**

### **4.1. Appeal Site**

- 4.1.1. The following is the only recent planning application relating to the appeal site;
- Donegal County Council (DCC) Ref. 17/51699 – Application for demolition of a house and construction of a replacement house, which was withdrawn in April 2018 following a request for further information.

### **4.2. Surrounding Sites**

- 4.2.1. There have been numerous planning applications in the vicinity, primarily relating to domestic extensions and infill housing developments.

## **5.0 Policy Context**

### **5.1. Donegal County Development Plan**

- 5.1.1. The policies and objectives of Donegal County Development Plan 2018-2024 are relevant. The site is outside the settlement envelope for Dunfanaghy, based on maps accompanying Part C of the Plan. Map 6.2.1 of the Plan identifies the appeal site as being within a 'stronger rural area', which are defined in the Plan as 'areas where population levels are generally stable within a well-developed town and village structure and in the wider rural area around them'. Within stronger rural areas the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and provisions of the County Development Plan. Policy RH-P-3 of the Plan outlines specific rural housing policy relating to Stronger Rural Areas, which generally requires an applicant for housing to meet a local need,

based on their rural-based employment, links to the area or in exceptional circumstances. Proposals should be subject to compliance with other relevant policies of the Plan, including RH-P-1 and RH-P-2, which provide guidance for rural housing in relation to design, integration with the landscape, suburbanisation and the erosion of the rural character of an area.

5.1.2. The Plan includes Policy RH-P-7 relating to replacement housing in rural areas, which states that:

- 'It is a policy of the Council to consider proposals for the replacement of dwellings in rural areas, where:
  - (a) The Planning Authority is satisfied that the existing dwelling does not make any significant contribution to the built heritage of the area in question and;
  - (b) The replacement dwelling would be of a scale and form generally consistent with that of the existing house on the site and would not result in any significant additional visual impact over and above that arising as a result of the existing development on site and;
  - (c) Adequate provision can be made for wastewater treatment on site; and
  - (d) The proposed development would otherwise comply with all other relevant policies of the County Development Plan'.

5.1.3. Development Guidelines and Technical Standards are outlined in Appendix 3 to the Plan, with the following sections considered to be relevant:

- Section 2.2 – Road Safety Audit;
- Section 2.4 – Entrances;
- Section 2.5 – Surface Water and Roadside Drainage.

5.1.4. 'Building a House in Rural Donegal: A Location Siting and Design Guide' forms Appendix 4 to the Plan and comprises a technical and development management guidance for rural housing, including Section 3.5 which refers to boundary treatments.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. One third-party appeal has been submitted from residents with an address in County Fermanagh. The issues raised can be summarised as follows:

#### Planning Policy

- the site is in a rural area under strong urban influence and the design suggests the house would not be occupied by the applicant and may be used as a holiday home;
- proposals fail to comply with Policy RH-P-6 relating to 'refurbishment of existing dwellings/buildings', as it fails to retain the majority of the building, it does not comply with housing requirements under Policies RH-P-1 and RH-P-2 and as it fails to integrate with the landscape and neighbouring buildings;
- an occupancy condition should have been attached and the proposals only serve to expand the suburban development of Dunfanaghy and add to ribbon development along the N56;

#### Amenities

- landscaping is required along the west side, where builders have recently infilled a watercourse used as a surface water drain by housing in Kill Park;
- the proposed house does not integrate well with neighbouring houses and features a substantial increase in roof ridge height, which would not comply with requirements listed under Policy RH-P-7 of the Plan;
- the adjacent property on the shared access has recently been renovated and this would represent a more appropriate and sustainable approach in providing a habitable house on site;

#### Other Matters

- the application should be declared invalid as incorrect dates are stated, information is omitted and misleading statements are submitted;

- the strip of land along the western boundary has been used for fly-tipping in the past and a fence is proposed along this (photographs included);
- the applicant's claims that they are the legal owner of the property is not true with Land Registry details provided to attempt to substantiate same;
- site notices were not displayed until at least three weeks after application lodgement.

## **6.2. Applicants' Response**

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

### Planning Policy

- Policy RH-P-6 referring to refurbishment of housing is not relevant in consideration of the proposed development, whereas Policy RH-P-7 referring to replacement housing is applicable;
- proposals are in compliance with the requirements set under Policy RH-P-7, including the connection to the public sewer;

### Amenities

- Kill Park is served by its own independent drainage system, with no discharge into the appeal site. This system is identified via photographs submitted with the response;
- the appellants' concerns appear to be more focussed on the reduced views from their holiday home towards the sea, arising from the proposed development;

### Other Matters

- the applicant accepts that only those with a legal right to build would have the right to develop the site;
- the appeal is primarily made to frustrate the applicant.

## **6.3. Planning Authority Response**

6.3.1. The Planning Authority response to the grounds of appeal raised the following:



- the principle of the development is acceptable;
- Policy P-RH-7 of the Plan makes provision for replacement housing, which would not be subject of an occupancy clause, and as such use as a secondary home or holiday home would not be precluded;
- the design and scale is acceptable and no changes are proposed to the existing access arrangements.

## **6.4. Observations**

6.4.1. An observation has been submitted from the owner of No.2 Kill Park, c.15m to the south of the appeal site. The issues raised can be summarised as follows:

- the property would be used as the applicant's permanent home;
- the increase in roof ridge height would impede the enjoyment of the observers property and would devalue their property;
- the Development Plan outlines a preference for refurbishment of derelict housing for holiday homes, rather than replacement;
- proposals fail to comply with Policy RH-P-6 with respect to refurbishment of housing;
- TII had concerns regarding the increased traffic arising from the development, and the Planning Authority decided to grant permission in the absence of the requested Road Safety Audit.

## **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;
- Design & Visual Impact;
- Other Matters

## **7.2. Rural Housing Policy**

- 7.2.1. The proposed development is for a two-storey detached dwellinghouse and an attached single-storey garage on a site close to Dunfanaghy town. The grounds of appeal assert that the house would be used as a holiday home and that the applicant should be required to provide details of whether or not they can comply with local housing need policies contained in the Donegal County Development Plan 2018-2024, as required under Policy RH-P-6 relating to refurbishment of housing. In response to this, the applicant asserts that Policy RH-P-6 is not relevant and that Policy RH-P-7 is relevant, as the proposals relate to replacement housing, and not refurbishment of housing.
- 7.2.2. The subject site is outside the settlement framework boundary for Dunfanaghy, in a 'stronger rural area' based on maps accompanying the Development Plan. Policy Policy RH-P-7 sets out the key requirements to be met when considering the acceptability or otherwise of applications for proposed replacement housing in rural areas. Based on the requirements outlined within Policy RH-P-7, the condition of the existing house and what would be considered standard planning practise, there would not be a necessity for the applicant to meet a specific housing need. In conclusion, I am satisfied that the principle of replacing the house on site, without the necessity for an occupancy condition is acceptable, subject to compliance with environmental and planning considerations, as addressed below.

## **7.3. Design & Visual Impact**

- 7.3.1. Policy RH-P-7 (a) requires that any replacement housing should not impact on the built heritage of the area, and I note that the site and immediate area is not assigned special conservation status or other heritage protection status.
- 7.3.2. Point (b) of the policy requires replacement housing to be of a scale and form generally consistent with that of the existing house on the site and that it would not result in any significant additional visual impact over and above the existing development. The grounds of appeal assert that the proposed development would be out of character and scale when compared with the existing house on site and neighbouring housing. While the existing house is single-storey and the proposed house would be two-storey, with rooms at first-floor in the roofspace solely served by

rooflights, this typology of housing is very much the norm for housing in the immediate area, including those to the rear in Kill Park. The appellant and the observer raise concerns regarding the increased roof ridge height of the proposed house. The finished-floor level for the proposed house is identified as being 0.3m above the finished-floor level of the existing house. Considering the difference in floor levels, I would estimate that the proposed roof ridge height at 7.4m would be approximately 3.2m higher than the existing roof ridge height (c.4.5m). Despite the difference in the existing and proposed building height, I am satisfied that the scale, height, proportions and design of the proposed house would not conflict with neighbouring dwellings and would be appropriate for the site, particularly considering the fact that housing to the rear is situated on higher ground. Furthermore, I consider that the introduction of a modest two-storey structure into this streetscape and within the undulating topography, which includes other buildings that are two-storey in height, would not unduly impact on the character or the visual amenities of the area.

7.3.3. Policy RH-P-7 (c) requires adequate provision to be made for wastewater treatment on site and I note that the proposed replacement house would connect to the public sewer. The proposed development would otherwise need to comply with all other relevant policies of the County Development Plan, which I note include those relating to traffic and access, as addressed below.

7.3.4. In conclusion, I am satisfied that the house design, height, scale and proportions would not conflict with the established pattern and character of development in the area, would not unduly impact on the visual amenities of the area and would accord with the policies, objectives and provisions of the Development Plan in this respect. Accordingly, the proposed development should not be refused for this reason.

## **7.4. Other Matters**

### Access

7.4.1. I note that TII requested a Road Safety Audit with respect to vehicular access arrangements and the Planning Authority did not consider this a necessary project requirement. In this regard, I note that the National Roads Authority (NRA) Design Manual for Roads and Bridges Part 2 NRA HD 19/15 (Volume 5 Section 2) outlining

when a Road Safety Audit is required would not require an audit in the context of the nature of the subject proposed development. I consider the vehicular access proposed to continue to be used to serve the development to be satisfactory and I am satisfied that a Road Safety Audit would not be necessary for this project.

#### Boundary

- 7.4.2. Concerns are raised by the appellant and the observer regarding the treatment along the western boundary with the access road to Kill Park, where earth has been piled and where fly-tipping previously occurred. Section 3.5 of the Guide forming Appendix 4 to the Plan, 'Building a House in Rural Donegal: A Location Siting and Design Guide', requires boundary treatments 'to complement the immediate area and not appear overly dominant to neighbouring buildings or along the road side'. I note that the Planning Authority decided to attach a condition requiring the replacement of the timber rail fence with a dark-stained tanalised timber fence backed by indigenous shrub planting. The applicant has not objected to same and I suggest a similar condition can be attached in the event of permission being granted.

#### Ownership

- 7.4.3. The appellant and the observer to the appeal question whether or not the applicant is in fact the stated owner of the site and whether or not the application should have been validated, given that consent to lodge the application was not submitted with the application. As there is not a necessity to meet a local housing need, I do not consider it necessary to seek clarification on this matter, as per the approach taken by the Planning Authority. I also note here the provisions of Section 34(13) of the Planning and Development Act 2000, as amended, and Chapter 5.13 of the 'Development Management – Guidelines for Planning Authorities' (DoECLG, June 2007) entitled 'Issues relating to title of land', which clarify that the onus is on the developer in this case to be certain under civil law that he/she has all rights in the land to execute the grant of permission.

#### Contributions

- 7.4.4. The Donegal Development Contribution Scheme 2016-2021 applies a 100% exemption for development comprising a replacement habitable house where the property has not been abandoned and where there is no significant intensification of demand upon public infrastructure.

## **8.0 Appropriate Assessment**

- 8.1.** The Horn Head and Rinclevan candidate Special Area of Conservation (cSAC) (Site Code: 000147) is located approximately 340m to the northwest and 450m to the north of the site. Horn Head and Fanad Head Special Protection Area (SPA) (Site Code: 004194) is located approximately 670m to the northeast. The Sessiagh Lough SAC (Site Code: 000185) is approximately 820m to the southeast of the site. Having regard to the Source-Pathway-Receptor model, there would not be a direct pathway between the proposed development and Natura 2000 sites.
- 8.2.** Having regard to the minor nature of the proposed development, replacing an existing house on site, including the proposed connections to environmental engineering services, the location of the site in a serviced area and the separation distance to the nearest European sites, no Appropriate Assessment issues arise, and it is not considered that the 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 that permission be granted, subject to conditions, for the reasons and considerations set out below.

## **11.0 Reasons and Considerations**

- 11.1.** Having regard to the nature and scale of the proposed development, and to the existing pattern of development in the vicinity, it is considered that subject to compliance with the conditions below, the proposed development would not be out of character with existing development within the area, would not seriously injure the

amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience and would be in accordance with the provisions of the Donegal County Development Plan 2018-2024, including Policy RH-P-7 relating to replacement housing in rural areas. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The materials, colours and textures of all the external finishes to the proposed house, as well as details of boundary treatments along the western side including landscape proposals, shall be submitted to and agreed in writing with the Planning Authority prior to commencing construction of the house.

**Reason:** In the interest of the visual amenities of the area.

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

**Reason:** In the interest of public health.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 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.

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Colm McLoughlin  
Planning Inspector

19<sup>th</sup> December 2018