



An
Bord
Pleanála

Inspector's Report ABP-302685-18

Development	Erection of a house, detached garage, sewage treatment plant with sand polishing filter and all associated site works.
Location	Castlewray, Letterkenny P.O., Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	1851180
Applicant(s)	Paul & Eileen Speer
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Patrick Joseph Sweeney
Observer(s)	None
Date of Site Inspection	17 th December 2018
Inspector	Donal Donnelly

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Castlewray in Co. Donegal approximately 5km north-east of Letterkenny and 6km south of Rathmelton. Access to the site is off the R245 at Ballymaleel and via a number of local roads. The surrounding area comprises mainly of agricultural land with wooded areas. There is extensive suburban sprawl and ribbon development further to the west and south-west of the site and the western shore of Lough Swilly Estuary is approximately 250m east of the site boundary.
- 1.2. The site sits on the southern side of a local road that terminates to the east at Lough Swilly. There is a dwelling and farm buildings and a wooded area to the east of the site and to the west are three detached dwellings situated to the south-east of a “T” junction.
- 1.3. The site comprises of a grass field that rises in level from the roadside by approximately 12m to the highest point to the rear. The site frontage measures c.50m and the distance to the rear of the site is c. 150m. Mature trees continue along the western and rear site boundaries. The stated area of the site is 0.92 hectare.

2.0 Proposed Development

- 2.1. Planning permission is sought for the following:
 - Construction of a 1 ½ storey dwelling house (255 sq.m.);
 - Detached garage (87 sq.m.);
 - Sewage treatment plant with sand polishing filter;
 - All associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Donegal County Council issued notification of decision to grant permission subject to 19 conditions.

3.2. Planning Authority Reports

3.2.1. The recommendation in the Planner's Report reflects the Council's decision to grant permission. The following points are highlighted in the assessment of the proposal:

- Rural housing need and principle of development acceptable subject to compliance with all other relevant development plan criteria.
- Proposed development is of traditional vernacular and represents a well thought-out and appropriate design that is carefully sited.
- No trees are to be felled and this shall be strictly conditioned, as shall additional hedgerow planting along all site boundaries.
- Visibility splays of 110m to the west and 100m to the east are considered acceptable.
- All post construction surface water run-off shall be treated via serviced sediment and oil interceptor traps prior to discharge to roadside drain which flows into Lough Swilly.
- Not considered that the proposal will have an adverse impact on the Natura 2000 sites, having regard to their conservation objectives and qualifying interests.

3.3. Prescribed Bodies

3.3.1. Comments were received from Inland Fisheries Ireland on wastewater treatment system installation and maintenance and surface water run-off.

3.3.2. The HSE recommended a number of conditions to be attached relating to wastewater treatment and disposal.

3.3.3. An Taisce submitted an observation stating that the proposal should be assessed under the rural housing and amenity provisions of the Development Plan; National Policy Objective 19 of the National Planning Framework; the Sustainable Rural Housing Guidelines for Planning Authorities, 2005; and the cumulative impact of wastewater treatment systems.

4.0 Planning History

Donegal County Council Reg. Ref: 18/50181

- 4.1. Permission granted on site to the north for a 2-storey dwelling (1,559 sq.m.), detached coach house/ garage, access road and septic tank with polishing filter. The development is on the grounds of the former Castlewray House.

Donegal County Council Reg. Ref: 07/40234 (PL05D.226844)

- 4.2. The Board overturned the Council's decision and refused permission on a site to the east for a house, garage and septic tank.
- 4.3. Under the first reason for refusal it was stated that the extent of tree felling associated with the proposed development and the impact of residential use on this area of woodland would have serious adverse effects upon the integrity of the candidate Special Area of Conservation. The Board was not satisfied under the second reason that the proposal would not pose an unacceptable risk to groundwater having regard to the proximity to the shore of the Lough Swilly Estuary.

5.0 Policy Context

5.1. Donegal County Development Plan, 2018-2024

- 5.1.1. The appeal site is located within a rural 'area under strong urban influence'. Section 6.3 of the Development Plan includes policies and objectives for rural housing.
- 5.1.2. The site is also within an area of High Scenic Amenity.
- 5.1.3. '*Building a Rural House in Rural Donegal - A Location, Siting and Design Guide*' is set out in Part B, Appendix 4. Other development guidelines and technical standards are included in Part B, Appendix 3.
- 5.1.4. The site is approximately 2km north-east of the Letterkenny & Environs plan boundary.

5.2. Natural Heritage Designations

- 5.2.1. The Lough Swilly SAC and the Lough Swilly Including Big Isle, Blanket Nook & Inch Lake pNHA are approximately 10m east of the appeal site boundary. The Lough Swilly SPA and approximately 180m further east.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third party appeal against the Council's decision was submitted by the resident of a dwelling located approximately 300m south of the appeal site. The grounds of appeal and main points raised in this submission are summarised as follows:

- A minimum of six, possibly 10, high value mature oak trees were cut and removed in September 2018.
- Up to 20 young trees of birch, beech, holly, ash, sycamore and oak have been destroyed in the felling and removal process.
- All felled trees are within the SAC – appellant contacted the NPWS.
- Applicant's parents did not inherit the site until 2016 and have never lived there.
- There will be adverse impacts on the wildlife of the area where bats have nested for many years and there are rare species of butterfly.
- If house is built there will be no protection for the surrounding mature trees.
- There is a spring well at the entrance to the site that has been used for about a century.

6.2. Applicant Response

- 6.2.1. The applicant's agent responded to the third party appeal with the following comments:

- Interconnected design around a central courtyard is in keeping with the traditional form and arrangement of farm buildings in rural areas.

- Proposal exhibits a sensitive design approach within a landscape defined as High Scenic Amenity and complies with the natural heritage policies of the Development Plan.
- NIS concludes that there are no direct or indirect significant impacts on the Natura 2000 sites arising from the proposed development and any short term impacts could be mitigated by utilisation of a 20m buffer zone, employment of good construction and best practice management, and appointment of an ecological clerk of works.
- Applicant is willing to comply with conditions, particularly those relating to trees – Board may wish to replace Condition 3 with a more suitable condition allowing for retention of the hedgerow and creation of a safe entrance.
- Applicants have been in rental accommodation at their current address for many years and have a genuine housing need. Letter from local councillor attests to the bona fides of the applicant.
- Recent felling of trees is ongoing woodland management completely unrelated to the application site.
- Small number of trees were removed that were of ill health – applicant's parents consulted with NPWS.
- Ecological report appended to appeal response confirms that trees felled were not within the site and only very minor historical tree felling occurred for safety purposes along the southern boundary.
- Ecological report states that there is an absence of any Annex I habitat on site and data results confirmed an absence of any recorded listed species sighting within 1km search radius of the site.
- Impact on Holly Blue Butterfly and bats is considered in ecological report to be negligible.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority stated in response to the third party appeal that all matters have been addressed in the Planner's Report.

7.0 Assessment

7.1. I consider that the key issues in determining this appeal are as follows:

- Rural housing need;
- Visual impact;
- Wastewater treatment and disposal; and
- Appropriate Assessment

7.2. Rural Housing Need

- 7.2.1. The appeal site is located in a rural “area under strong urban influence”. Policy RH-P-5 states that the Council will “...*consider proposals for new one-off rural housing within Areas Under Strong Urban Influence from prospective applicants that have demonstrated a genuine need for a new dwelling house and who can provide evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site 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. New holiday home development will not be permitted in these areas.*”
- 7.2.2. The Development Plan recognises that it is necessary to manage the extent of development in “areas under strong urban influence”, whilst facilitating applicants with a genuine “rural generated housing need”. Those with a genuine rural generated housing need could be described as persons who are an intrinsic part of the rural community or persons who work full-time or part-time in rural areas.
- 7.2.3. It is stated within planning application documentation that the applicants and their family live at Thorn Road in Letterkenny and the applicant’s father has made available a plot of land on his farm for the proposed development. Correspondence on file from a public representative states that the applicants comply with Development Plan requirements. The Planning Authority is satisfied that the applicant meets the relevant rural housing needs criteria.
- 7.2.4. The third party appellant submits that the applicant’s parents did not inherit the site until 2016 and have never lived there. The appellant gives an address for the

applicant's parents in Letterkenny which is not within the area under strong urban influence in the vicinity of the application site.

- 7.2.5. In my opinion, it is imperative that an applicant for a rural dwelling provides sound and verifiable evidence to demonstrate compliance with Policy RH-P-5. This may include confirmation from a local school or other organisation to show an intrinsic link to the local rural area. Evidence that an applicant's parents or grandparents have resided in the vicinity of the site for at least 7 years could be in the form of land registry details or utility bills with a local address. No such details accompany the planning application.
- 7.2.6. Having regard to the above, I consider that the applicant has failed to demonstrate compliance with the Council's rural housing policy. Policy RH-P-5 clearly sets out what is required of an applicant to demonstrate a genuine need for a rural house at a particular location. I consider that this has not been achieved in this instance based on the information submitted with the application.

7.3. Visual Impact

- 7.3.1. When considering the acceptability of a rural housing proposal, Policy RH-P-2 of the Development Plan states that the creation or expansion of a suburban pattern of development or the creation or addition to ribbon development shall be avoided. Ribbon development is defined as generally five houses on any one side of a 250m road frontage.
- 7.3.2. The proposed dwelling will be the 5th along a 215m frontage at this location and this would constitute ribbon development as defined in the Development Plan. There may be some mitigating factors such as the location of the adjoining three dwellings next to a junction, the setback distance of the proposed dwelling and the existing dwelling being within a farm complex to the north-east. However, there is widespread ribbon development to the west and south-west of the site and the proposed development introduces this unsustainable development pattern to the locality.
- 7.3.3. Having regard to the above, I have concerns that the proposal, together with existing and permitted development, will further erode the rural character of the immediate area. An additional dwelling at this location will expand the suburban pattern of

development into this rural area and militate against the preservation of the rural environment in a designated Area of High Scenic Amenity.

7.4. Wastewater Treatment and Disposal

- 7.4.1. It is proposed to serve the site with a sewage treatment system draining to a sand polishing filter located on the lower part of the site adjoining the eastern boundary. Water supply will be from public mains. The Site Suitability Report submitted with the planning application notes that the aquifer is poor and groundwater vulnerability is high. A 1.51m trial hole down to bedrock was excavated on site and the water table was encountered at a depth of 1.38m. The 'T' test recorded a value of 33.22.
- 7.4.2. There is an existing watercourse or "sheough" along the roadside boundary and at the time of my site visit there was ponding near to this boundary. It is recognised in the Site Suitability Assessment Report that ground levels along the lower site boundary / sheough may be subject to potentially high water table levels. However, it is stated that this potential target at risk is c. 29m from the proposed polishing filter.
- 7.4.3. It is also noted in the Site Suitability Assessment Report that a sand polishing filter is proposed as there is not sufficient space on site to easily accommodate a standard soil polishing filter. The applicant has also requested a high level tertiary treatment to reduce the potential impacts to the nearby European sites.
- 7.4.4. Having regard to the above, I consider that the proposed sand polishing filter is a satisfactory solution for the treatment of effluent levels generated by the proposed development. All minimum separation distances set out in the EPA's Code of Practice are achieved and there would appear to be the required levels of free draining subsoil/ sand to provide effective treatment before discharge to groundwater.

7.5. Appropriate Assessment

- 7.5.1. The EU Habitats Directive (92/43/EEC) requires competent authorities to review planning applications and consents that have the potential to impact on European designated sites, i.e. Special Protection Areas (SPA's) and Special Areas of Conservation (SAC's). To assist this process, the applicant has prepared a Natura Impact Assessment.

Stage 1: Screening

- 7.5.2. The first stage of the Appropriate Assessment process is the screening exercise where it should be decided if the effects of a development on a European site are likely and whether or not the effects are significant in light of the Conservation Objectives for the site. It should also be determined if there are cumulative effects with other projects. The precautionary principle should apply if there are significant effects that cannot be excluded, or where the likelihood is uncertain.
- 7.5.3. The first step of this stage is to identify all European sites which could potentially be affected using the Source-Pathway-Receptor model. The Natura Impact Assessment identifies all European Sites within 15km of the site, the closest of which are the Lough Swilly SAC (site code: 002287) located approximately 10m east, and Lough Swilly SPA (site code: 004075) located approximately 185m east of the appeal site boundary.
- 7.5.4. Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways and mobile species pathways. Using the source-pathway-receptor risk assessment principle, the Lough Swilly SAC (site code: 002287) and the Lough Swilly SPA (site code: 004075) are the only European sites that could potentially be affected by the proposed development. The distance to all other European Sites is in excess of 5km. It can be reasonably concluded that the proposed development would not have a significant effect individually or in combination with other plans or projects on European sites in excess of 5km from the site having regard to the conservation objectives for these European Sites, the nature of discharge from the development site, and the source-pathway-receptor risk assessment principle.
- 7.5.5. I consider that likely significant effects, either individually or in combination with other plans or projects, on Lough Swilly SAC (site code: 002287) and the Lough Swilly SPA (site code: 004075) cannot be reasonably ruled out in this case on the basis of objective scientific information. A Stage 2 Appropriate Assessment must be carried out to establish if the project will adversely affect the integrity of these European sites, either individually or in combination with other plans and projects, in view of the sites' conservation objectives. I agree that a Stage 2 Appropriate Assessment can

be confined to the above sites and that the other European Sites within 15km of the site can be screened out having regard to the nature of the proposal and the distance of these European Sites from the appeal site.

Stage 2: Appropriate Assessment

7.5.6. The purpose of the Stage 2 Appropriate Assessment is to establish if the project will adversely affect the integrity of the European sites, either individually or in combination with other plans and projects, in view of the site's conservation objectives. The Stage 2 Appropriate Assessment should consider mitigation measures where appropriate, both those proposed by the applicant and those that may be considered necessary to be required by the Board.

7.5.7. Firstly, the conservation objectives shall be identified for the European Sites that could potentially be affected using the Source-Pathway-Receptor model. A full list of the conservation objectives for both the Lough Swilly SAC and the Lough Swilly SPA are set out in Appendix 6 of the Natura Impact Statement. The Natura Impact Statement also includes an impact assessment for each of the qualifying interests.

Potential likely and significant effects

7.5.8. Table 7 of the Natura Impact Statement provides a summary of the potential impacts of the proposed development and an evaluation of their significance. It is considered that there are potential short term indirect impacts on the integrity of the SPA and SAC in the absence of mitigation measures from accidental spillages, silt and particulate matter run-off from the construction site to surface water and release of cement or other potential pollutants during construction.

In combination effects

7.5.9. Table 4 of the Natura Impact Statement includes any other plans or projects within the immediate vicinity of the site. There are five recent planning permissions for dwellings and agricultural development, which are considered to have a negligible cumulative impact.

Mitigation

7.5.10. Section 3.4 of the Natura Impact Statement contains details of proposed mitigation measures required to maintain the European Sites' conservation objectives. Detailed mitigation measures include the use of petrol/ sediment interceptors, silt

traps and fencing, perimeter vegetation screening and any attenuation of surface water run-off prior to discharge to receiving water environment. The principal measure is to assign a 20m wide buffer zone between the main construction works area and the nearby European Site. Plans and schedules during construction will also incorporate environmental and ecological management and it is recommended that a Clerk of Works is present on site at all relevant stages.

Evaluation of Significant Effects

- 7.5.11. The appeal site boundary is located approximately 10m from the Lough Swilly SAC and 185m from the Lough Swilly SPA. The closest construction works to the European Site will take place at the location of the proposed sand polishing filter. All other construction works including the proposed access road, dwelling and garage will be along the north-western side boundary and on the far side of the existing farm complex of buildings.
- 7.5.12. The applicant proposes a sand polishing filter to provide a high level tertiary treatment and to reduce the potential impacts to the nearby European sites. The wastewater treatment system would appear to be in accordance with the EPA's Code of Practice in terms of installation and separation distances. It is not therefore considered that the proposed wastewater treatment arrangement or any other aspect of the proposed development will give rise to adverse effects on the nearby European Sites during the operational phase of the development.
- 7.5.13. The construction phase of the proposed development has the potential for adverse impacts resulting from accidental spillages, silt and particulate matter run-off to surface water and release of cement or other potential pollutants. However, the applicant proposes a suite of mitigation measures to ensure that impacts to the qualifying interests of the European Sites are avoided or minimised to the point that they do not affect the integrity of these Sites.
- 7.5.14. I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Lough Swilly SAC (site code: 002287), the Lough Swilly SPA (site code: 004075), or any other European site, in view of the sites' Conservation Objectives.

- 7.5.15. The applicant submitted an Ecological Survey Report in response to the third party appeal which assesses the impact of the proposed development on the nearby European Sites, the local bat population and the Holly Blue Butterfly. It is concluded that there is a lack of any overlap with the European Site boundary, together with the absence of any Annex I Habitat, bat roosts, Holly Blue Butterfly and/ or pristine habitat within the site boundary, and therefore the significance of any potential impact(s) on the indicated receptors and listed species is deemed as being negligible.
- 7.5.16. The report also confirms that the majority of trees recently felled within the vicinity of the site were not within the current site boundary but that 2 no. Oak trees and 1 no. Beech tree were felled approximately 4-5 years ago for safety reasons.

8.0 Recommendation

- 8.1. I recommend that planning permission should be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005, and in an area where housing is restricted to persons demonstrating local need in accordance with the current Donegal County Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. Based on the information submitted with the planning application and appeal, the proposed development, which does not cater for locally derived housing needs, would conflict with the policies of the Development Plan and would be contrary to the proper planning and sustainable development of the area.
2. Taken in conjunction with existing and permitted development in the area, the proposed development would constitute an excessive density of one-off detached dwellings in a rural area, which would militate against the preservation of a rural

environment designated as an area of High Scenic Amenity. Furthermore, the proposed development would contribute towards undesirable ribbon development in a rural area outside lands zoned for residential development and would, therefore, be contrary to the proper planning and sustainable development of the area.

Donal Donnelly
Planning Inspector

21st December 2018