



An
Bord
Pleanála

Inspector's Report ABP-302955-18

Development	Single-storey three-bedroom dwellinghouse, wastewater treatment system, vehicular access and associated works
Location	Lisnapaste, Laghy, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	18/51331
Applicant(s)	Sarah Mahon
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First-Party
Appellant(s)	Nicola Morrow & Nigel Morrow
Observer(s)	None
Date of Site Inspection	23 rd January 2019
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site is located in the rural townland of Lisnapaste, approximately 1.8km south of Laghy village and 2.5km north of Ballinatra village in south County Donegal. The surrounding area is characterised by a belt of drumlins situated between the coast to the west and rising lands to the east, known as The Pullans. The immediate area comprises rolling agricultural fields bordered by hedgerows and trees and commercial forestry, interspersed with rural housing and agricultural buildings fronting onto local roads. Local recreational facilities associated with Naomh Bríd GAA Club are located 60m to the north of the site.
- 1.2. The site comprises c.0.26ha of agricultural land accessed by a single lane local road (L-6905-1) and situated between a single-storey bungalow to the south and an agricultural building and associated yard to the north. The local road network serving the site connects with the N15 national road, approximately 1.1km to the northwest of the site. A line of deciduous trees forms the roadside boundary, while the southern boundary with the adjacent house is formed by a timber rail fence. The rear boundary is not marked on the ground and overhead 10/20Kv electricity lines follow the southern boundary. There is approximately a 1m fall in ground levels from the northern to the southern boundaries of the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise the following:
- construction of a three-bedroom detached single-storey dwellinghouse with a stated gross floor area (GFA) of 147sq.m;
 - installation of a wastewater treatment system / septic tank;
 - vehicular access onto a local 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, a supplementary housing application form, a site suitability assessment report addressing on-site disposal of

effluent, a letter from a Commissioner of Oaths referring to the applicant's connections to the area and a letter of consent from a neighbouring landowner consenting to hedge trimming works.

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 16 conditions, including the following:

Condition No.2 – occupancy clause;

Condition No.3 – provision of visibility splays at the entrance.

3.2. Planning Authority Reports

3.2.1. Planning Report

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

- the proposed house would not result in loss of light to the neighbouring house to the south and would not result in overlooking;
- the site is within a 'stronger rural area', which is also designated as an area of moderate scenic amenity (MSA) in the Development Plan;
- the applicant is retiring to the area from the neighbouring parish of Cavangarden in Ballyshannon with bona fides included from a local Commissioner of Oaths to support this. Rural housing need has been established;
- the siting and design of the house is acceptable;
- the vehicular access to the site is acceptable given the traffic speed limitations and as consent to maintain a hedgerow to provide adequate sightlines has been submitted.

3.2.2. Other Technical Reports

- None received.

3.3. Prescribed Bodies

- Environmental Health Officer (HSE) – conditions relating to wastewater treatment should be attached.

3.4. Third-Party Observations

- 3.4.1. A submission was received from the adjoining residents to the south of the appeal site, with the issues raised covered in the grounds of appeal below.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. The following recent planning application relates to the appeal site:

- Donegal County Council (DCC) Ref. 17/51309 – application withdrawn in May 2017 for a house, a treatment system and a vehicular access.

4.2. Surrounding Sites

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

- DCC Ref. 18/50093 – permission granted in June 2018 for a house, garage and a treatment system, located c.170m to the east of the appeal site;
- DCC Ref. 16/50501 – permission granted in November 2016 for dry-floor agricultural shed and apron, located c.50m to the north of the appeal site;
- DCC Ref. 15/50747 – permission granted in September 2015 for replacement and new ball-stopping nets to the GAA grounds, located c.60m to the north of the appeal site;
- DCC Ref. 10/20474 – permission granted in August 2011 for a house, treatment tank and vehicular access, located c.170m to the southeast of the appeal site;
- DCC Ref. 02/959 – permission granted in February 2003 for a house, a fuel store/garage and a septic tank on the adjoining site to the south.

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 also 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 following Plan objectives are particularly relevant:

- ‘RH-O-3: To ensure that new residential development in rural areas provides for genuine rural need;
- 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 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. The site is within an area of Moderate Scenic Amenity, which are defined in the Plan as areas generally of agricultural quality that have adequate capacity to absorb suitably positioned and designed development.

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.

5.3. Natura 2000 Sites

- 5.3.1. The nearest designated sites to the appeal site include Donegal Bay Special Protection Area (SPA) (Site Code: 004151) and Donegal Bay (Murvagh) Special Area of Conservation (SAC) (Site Code: 000133), both of which are located approximately 1.5km to the northwest of the site along the coast.

5.4. Environmental Impact Assessment - Preliminary Examination

- 5.4.1. 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third-party appeal against the decision of the Planning Authority was submitted and the issues raised can be summarised as follows:
- the appellants' property includes a strip of land, registered in their names running through the appeal site, providing a wayleave for their water supply, as demonstrated via the legal documentation enclosed;
 - in August 2017 the applicant initially lodged a planning application (DCC Ref. 17/51309). The appellants made a submission to the Planning Authority as part of this application and following a further information request the application was withdrawn;
 - the development should not commence given the pre-existing water supply running through the site, serving the appellants' house and the legal rights to same;
 - the Planning Authority failed to have sufficient regard to the appellants' legal rights to the property;

- reference to the water supply wayleave through the site is not addressed within the site suitability assessment report submitted or the EHO report addressing on-site disposal of effluent. This could potentially lead to contamination of the appellants' water supply.

6.2. Applicant's Response

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

- the proposed development would not interfere with the route of the appellants' water supply through the site, with the supply route within an area that would be largely undeveloped;
- the appellants' right to repair and renew the water supply pipe is recognised;
- it is not clear who is in control of the subject water infrastructure;
- the proposed on-site wastewater treatment system would not contaminate the appellants' piped water supply.

6.3. Planning Authority Response

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

- matters raised relate to civil matters that are outside the jurisdiction of the Planning Authority.

6.4. Observations

6.4.1. None received.

6.5. Further Submissions

6.5.1. The appellants' response to the applicant's submission reaffirms matters raised within the grounds of appeal and can be summarised as follows:

- the applicant acknowledges the appellants' legal interest in the appeal site, including their apparent knowledge of the water infrastructure traversing it;

- the appellants' legal rights to a wayleave across the site would be significantly undermined by the subject proposals, particularly as the vehicular entrance would traverse over their private water supply and as their ability to maintain their water supply would be hindered;
- Planning Authorities do not have legal right to remove legal rights to property.

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:

- Legal Interest;
- Rural Housing Policy;
- Wastewater Treatment;
- Siting & Design;
- Traffic Safety.

7.2. Legal Interest

7.2.1. The grounds of appeal refer to the existence of an underground water supply running through the appeal site serving the appellants' house immediately adjacent to the south. Section 10 of the planning application form states that the applicant is the legal owner of the site. Documentation relating to the transfer of the appellants' property adjacent to the south are appended to the grounds of appeal, including an annotated map and a fourth schedule referring to the right to lay, maintain and repair an underground water supply along the eastern and northern boundaries of the subject site, prior to connecting with the local road to the north, via the rear of the agricultural sheds. I note the applicant's response to these matters, which states that the proposed water supply would not be interfered with and that the appellants' rights to repair and renew the water supply would continue. The proposed layout for the development would largely comprise landscaped lawns along the route of this

water supply and, as such, the potential to interfere with the water supply would be limited.

- 7.2.2. In addressing 'issues relating to title to land', Section 5.13 of the Development Management Guidelines (2007) outlines that the planning system is not designed to resolve disputes about title to land. The Guidelines also advise that where there is doubt in relation to the legal title of an applicant, and following the clarification sought in additional information, some doubt still remains, the Planning Authority may still decide to grant permission. However a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000, as amended, which states that 'a person shall not be entitled solely by reason of permission under this section to carry out any development'. Clarification on this matter has been provided by the applicant as part of their response to the grounds of appeal. The applicant does not contest the existence and right to maintain the water supply running through the site. I am therefore satisfied that it would not be reasonable to withhold planning permission in this case for reasons relating to the legal interest of the applicant in the site. Should the Board decide to grant planning permission, the onus is on the applicant to ensure that they have adequate legal interest to carry out the proposed development and an advice note to this effect should be attached to a permission arising.

7.3. Rural Housing Policy

- 7.3.1. Map 6.2.1 of the Donegal County Development Plan 2018-2024 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 Plan Policies RH-P-1 and RH-P-2 and that the applicant must demonstrate with evidence that 1.) the applicant's primary employment is in a rural-based activity or 2.) the applicant has a vital link to the rural area or 3.) that there are exceptional health circumstances.
- 7.3.2. Information provided by the applicant within their application and grounds of appeal states that the applicant currently resides in Cavangarden, Ballyshannon, which is approximately 8km to the south of the appeal site. Fifteen years prior to residing in

Cavangarden, the applicant states that they resided in Laghy and that they are now intending to retire to Lisnapaste, which is c.1.8km south of Laghy village. The applicant has not demonstrated that they fit into categories 1 or 3 referred to in Policy RH-P-3 based on their stated employment or health circumstances. In relation to category 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 has submitted a letter signed by a Commissioner of Oaths to confirm that the applicant is 'indigenous to the local area' and 'wishes to construct a family home in Rafoarty, Bridgetown'. I note that Rafoarty townland adjoins the southern boundary of the lands surrounding the appeal site, which are stated to be in control of the applicant.

7.3.3. Other than state that the applicant is from the 'local area', which could conceivably be interpreted to include the Cavangarden area that they currently reside in c.8km to the south, it has not been substantiated within the planning application through the submission of evidence that the applicant has long-established family ties or that the applicant has resided for a period in excess of 7 years in this rural community centred on Lisnapaste. According to the supplementary application form submitted the applicant intends to move from a 'stronger rural area', 8km to the south, to another 'stronger rural area' in order to retire, which conflicts with the statement within the letter submitted with the application and signed by a Commissioner of Oaths, which states that they intend to construct a family home. In summary, I am not satisfied that the information submitted sufficiently or clearly demonstrates that the applicant has a rural-generated housing need based on the stated terms of the Development Plan, including Objective RH-O-3, which seeks to ensure that new residential development in rural areas provides for genuine rural need.

7.3.4. 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'. Permission for the proposed development should be refused for this reason.

7.4. Wastewater Treatment

- 7.4.1. The Site Suitability Assessment Report submitted with the application indicated that bedrock was encountered at 0.6m depth and this shallow depth is not conducive to conducting a T-test and a P-test should be carried out. The P-value of the soil on the site was calculated as 21 and this indicates that the site is suitable for the treatment and disposal of domestic foul effluent to groundwater by means of a secondary treatment system, either in the form of a septic tank and filter system with polishing filter or a packaged wastewater treatment system and polishing filter. The indications in the Report submitted are consistent with the observations of ground conditions made at the time of inspection and are accepted. Details submitted clarify that a conventional septic tank (Envirocare P6) with pumped discharge to a raised soil polishing filter would be installed and that a minimum of 0.9m polishing filter would be placed between the invert of the percolation pipes and the discharge points. I am satisfied that the assessment and the proposed development design details comply with those required within the EPA 'Code of Practice - Wastewater Treatment Systems for Single Houses'.
- 7.4.2. The grounds of appeal also assert that in failing to recognise the existence of the piped water supply within the site suitability report submitted by the applicant assessing the suitability of the site for on-site wastewater treatment, the proposed development would have potential to contaminate the appellants' local water supply. The applicant states that they would connect to the public mains for water supply, although the location for same is not identified within the application. I am satisfied that potential for the proposed on-site wastewater treatment system to contaminate the appellants' water supply would not arise given the piped form of water supply.
- 7.4.3. In conclusion, the proposed development would not be prejudicial to public health and would not be likely to cause a deterioration in the quality of waters in the area, and permission should not be refused for reasons relating to wastewater treatment.

7.5. Siting & Design

- 7.5.1. The proposed development is for a single-storey detached dwellinghouse with a roof ridge height of approximately 6.6m. The house would be situated approximately 11m from the local road to the front of the site. The proposed house would not be

highly visible from the busier local road to the north, as a result of the screening created by existing agricultural buildings, as well as the roadside and field boundary treatments, including mature hedgerows and trees. Views from the wider area would largely be restricted by virtue of the undulating topography of the area and the site is not visible from protected views, prospects or features of interest identified in the Development Plan. The site is located in an area of 'Moderate Scenic Amenity' based on Map 7.1.1 of the Development Plan, which are described as areas that have adequate capacity to absorb suitably positioned and designed development. Where visible from the local road network and the immediate lands, the house would be viewed against a backdrop of rising lands surrounding the site, hedgerows and trees, agricultural buildings and neighbouring rural houses. 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'.

- 7.5.2. In conclusion, the design, form and scale of the proposed house would be capable of being absorbed within this 'Modest Scenic Amenity' area. Consequently, I am satisfied that the proposed development should not be refused for reasons relating to siting and design, and the resultant impact on the visual amenities of the area.

7.6. Traffic Safety

- 7.6.1. As part of the planning application a Traffic Survey was undertaken by the applicant to assess the average speed of vehicles using the local road to the front of the appeal site. This calculated that average speeds of 34km/hr occurred between two fixed points. Table 3 to Appendix 3 of the Development Plan outlines that proposals for single accesses onto local roads, such as that fronting the appeal site where an 80km/hr speed limit applies, require 90m to 120m vision lines in both directions from a point 2.4m setback from the roadside. The Plan also states that deviation from these requirements may be considered upon certification by the applicant's designer. Vision lines from the entrance cannot meet the 90m to 120m required in the Development Plan. The site layout plan drawing (No. L17/001) submitted with the planning application illustrates that 70m visibility would be achievable in both directions at the entrance to the site off the local road. I do not consider that the stated 70m visibility from the proposed entrance along the local road to the

southeast would be achievable given the sharp bend in the road to the south of the site. A letter of consent, stated to be from a landowner in Lisnapaste, allowing the applicant to trim the hedge to the southeast of the site to a level of 1m to achieve sightlines is included with the application and referenced on the site layout plan drawing (No. L17/001) submitted. Having visited the site and noted traffic speeds achievable, the capacity of the road and the results of traffic speed survey undertaken, I am satisfied that the proposed sightlines, though deviating from Development Plan standard requirements, would be appropriate.

- 7.6.2. In conclusion, 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 and permission should not be refused for this reason.

8.0 **Appropriate Assessment**

- 8.1. 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 **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 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. It is considered that the proposed development does not comply with Development Plan policies in relation to rural housing, in particular Policy RH-P-3, as the applicant has failed to

demonstrate that they have a rural-generated housing need to reside in this stronger rural area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colm McLoughlin
Planning Inspector

4th February 2019