



An
Bord
Pleanála

Inspector's Report

ABP-303926-19

Development	Retention and completion of a house previously approved under planning reference number 14/51438
Location	Ballynacor, Killygordon, Lifford PO., Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	1851061
Applicant(s)	Christopher and Martina McHugh
Type of Application	Retention Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First / Third Party
Appellant(s)	Joseph and Siobhan Kelly
Observer(s)	None
Date of Site Inspection	8 th May 2019
Inspector	Una O'Neill

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1.0 Site Location and Description

- 1.1. The subject site is located in a rural area, accessed from the northern side of a narrow country road, which runs southwards out of a settlement known as the Crossroads (approx. 1.8km to the north of the appeal), which is south of the N15 and the larger village of Killygordon in central Donegal.
- 1.2. The site, which has a stated area of 0.93ha, comprises a field with a bungalow (applicant's parent's home) on the southern portion of the site and a partially completed large two storey detached dwelling (subject of this appeal) on the northwestern portion of the site, permitted under 14/51438. During my site visit it was evident that all works on the two storey dwelling have ceased. The dwelling is built up to roof level, with roof timbers in place, but with no roof slates or windows to the dwelling.
- 1.3. The partially complete dwelling is set back approx. 54m from the public road to the south and is 24m from the rear/northern boundary. There are existing bungalow dwellings on either side of the entrance to the dwelling. There is an existing one and a half storey dormer dwelling to the north. The topography in the area is undulating, with the public road rising from Crossroads, north of the site, up to site and continuing to rise beyond this site. There is a drop in levels at the northern boundary between the appeal site and the adjoining site to the north.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Retention and completion of a detached dwelling house.
 - The stated floor area of the dwelling is 211.7sqm.

3.0 Planning Authority Decision

3.1. Decision

Permission GRANTED, subject to 4 conditions, including the following:

C1: Conditions of the parent permission planning reference no. 14/51438 to be complied with in full.

C2: 3 no wall plate dormers to be replaced with 3 no. rooflights along the northern elevation.

C3: Trees, shrubs and hedgerows to be retained where possible.

C4: All site boundaries to be planted with hedgerows of semi-mature species native to the area and at least 25 semi mature broadleaf trees....No leyland cypress trees shall be planted along the northern site boundary.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. The following is of note:

- The house type and location have previously been considered and approved. The outstanding issue for assessment is the ground level and resulting impact upon local scenic amenities and neighbouring amenities.
- This sloping site has a substantial backdrop which will aid site integration.
- The planning authority sought further information requesting the applicant to omit the three number half dormers and replace them with rooflights in order to mitigate the concerns raised by the neighbouring property to the north in relation to invasion of privacy. A detailed landscape plan was also sought, specifically requesting attention be paid to the northern site boundary.
- The revised design incorporating rooflights in place of dormer windows was considered acceptable.
- The wastewater treatment system is as previously permitted under reg ref 14/51438, which is still a live application.
- Photos taken from the upper level of the subject dwelling of the neighbouring dwelling to the north are included within the planner's report on file.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One submission was received from a neighbouring property. Concerns raised are similar to those raised in the third party appeal, summarised in detail hereunder and includes photos of the proposed dwelling to be retained as taken from the appellant's dwelling.

4.0 Planning History

Subject Site:

14/51438 – Permission GRANTED for construction of a dwelling house, garage and septic tank/sewage treatment system and decommissioning of an existing septic tank and relocation and replacement with a septic tank/sewage treatment system.

Adjoining site to the north:

06/60760 – Permission GRANTED for the construction of a house, garage and septic tank.

5.0 Policy Context

5.1. County Development Plan 2018-2024

- The subject site is in an area designated as '**Stronger Rural Area**' under policy RH-P-3.
- **RH-P-1:** It is a policy of the Council that the following requirements apply to all proposals for rural housing:
 1. Proposals for individual dwellings shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;
 2. Proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas as identified in Chapter 7 and Map 7.1.1 of this Plan. Proposals for individual dwellings shall also be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated

habitats of conservation importance, prospects or views including views covered by Policy NH-P-17;

3. Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District plan;

4. Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P-15;

5. Any proposal for a new rural dwelling which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;

6. Proposals for individual dwellings shall be subject to the flood risk management policies of this Plan;

7. In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

- **RH-P-2:** It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need (see Policies RH-P-3–RH-P-6) provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:-

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. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case, including the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings (as elaborated below).

- **Rural Housing Policy RH-P-3: Stronger Rural Areas:** It is a policy of the Council to consider proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area, provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2, where the applicant can demonstrate that they comply with one or more of the following:

- 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.

- **Appendix 4 'Building a House in Rural Donegal - A Location, Siting and Design Guide'.**

- The subject site is located in an area of **Medium Scenic Amenity**.
- **Policy NH-P-7:** Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.

5.2. Natural Heritage Designations

The subject site is not located within or adjacent to a European site. The closest European site is the River Finn Special Area of Conservation (002301), which is approx. 1.7km south of the application site.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, 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

The grounds of appeal has been submitted by the neighbouring property owner, located north of the appeal site, who submitted an objection to the planning authority in relation to this application. The grounds of appeal is summarised as follows:

- Finished floor level (ffl) of house to be retained is higher than that previously permitted by 4m. The ffl of the proposed dwelling is 93.42m, which is 5.08m below the temporary benchmark and 6.42m above the appellant's property. The original permission showed it would be 2m above the appellant's property. The differential of 4.24m over a lateral distance of 40m uphill is unacceptable.

- The appellant's when they received their permission were required to excavate into the rock on their sloping site so as to keep their ffl at a reduced level and blend into the environment and landscape.
- Height of the house is overbearing on appellants property.
- North facing windows on the house are extremely intrusive, overlooking the back of the appellant's property, specifically the patio, kitchen and conservatory area.
- North facing windows overlook bedroom windows in the appellant's property. The use of velux rooflights in place of the proposed dormers will not mitigate overlooking and will make it worse and the change to the east elevation for bedroom 1 by adding an additional window also makes it worse. The plans now show two bedroom windows on the east side of the bedroom instead of the original single window. There is an unobstructed view from these two windows into the appellant's property.
- The siting of the dwelling is contrary to the principles as set out in appendix 4 of the Development Plan 'Building a House in Rural Donegal – A Location, Siting and Design Guide'. It also contravenes policy RH-P-2 as it would be detrimental to the amenity of the other rural dwellers and policy T-P-15 as it is prominent in the landscape.
- The dwelling is on an elevated and exposed site and will detract from the visual character of the rural area due to its obtrusiveness and it breaks the skyline. The house would not have been granted had the levels been accurately given in the original application.
- Concerns were raised in relation to the site at an early stage but the applicant continued to build to roof level, when the situation could have been mitigated earlier with the omission of the first floor level above the living room/playroom area.
- Concern raised in relation to septic tank/percolation area and potential for excess rain water running down onto appellant's property.
- Boundary hedge should be retained and strengthened.
- Proposed dwelling will devalue appellant's property.

6.2. Applicant Response

The applicant has responded to the third party's grounds of appeal as follows:

- The appellant's have not questioned Mr McHugh's housing need or challenged the principle of development. The objection is based on amenity and design grounds.
- There was an error in relation to levels in the initial application. The appellant's dwelling's ffl is 87m against BM of 98.5m at the site access. The appeal dwelling as constructed has a ffl of 93.42m, 3.58m lower than approved but more than 2m higher than the ffl of the appellant's dwelling.
- The applicant sited his dwelling so as to maximise privacy and amenity. The dwelling is 40m from the appellants' dwelling.
- There is no issue raised with the ground floor level and there would be no overlooking from the ground floor.
- The omission of the dormer windows removes the scope from overlooking. There would be limited potential for overlooking with hedgerow and trees at the boundary, which the applicant will plant.
- The rooflights will be well above eye level, as shown in the section accompanying this submission. The purpose of the rooflights is to provide light and not views out.
- There would be no overlooking from the eastern windows.
- Excavated rock has not been used to raise the ground level as implied by the appellant. The site has been lowered.
- The application is consistent with the council's policies and appendix 4 of the development plan. The dwelling is east facing to avoid overlooking.
- The planner's report considered the location of the dwelling and stated given the backdrop the house would not be visually obtrusive. The dwelling is not visible from the wider area as demonstrated in photos submitted.
- Site drainage and percolation was previously assessed and will be in accordance with EPA guidance. Storm/surface water will discharge to an existing 300mm storm water drain at the county road to the east of the site.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. The application is for retention and completion of a house previously permitted by Donegal County Council under planning register reference 14/51438.

7.2. The primary issues for assessment include;

- Revised Location and Design /Impact on Residential Amenity
- Appropriate Assessment

Revised Location and Design /Impact on Residential Amenity

7.3. The third party appeal raises concerns relating to the higher finished floor level of the dwelling proposed to be retained, which it states is 4.24m higher over a lateral distance of 40m than that previously permitted. It is further contended that the design of the dwelling with rear dormer level windows impacts on the neighbouring property in terms of overlooking and loss of privacy arising from an unauthorised increase in the finished floor level and additional window on the east elevation. It is also contended that the proposal impacts on the visual amenity of the area given its height against the skyline, contrary to development plan policy.

7.4. The applicant contends there is sufficient distance between the properties with the dormer windows omitted to ensure no overlooking and the eastern elevation windows will not result in overlooking. It is contended that the dwelling is not visually obtrusive from the wider area.

7.5. The dwelling to be retained is located 24m from the northern boundary of the site with the neighbouring property. The dwelling is positioned west of the dwelling to the north, therefore direct overlooking of windows does not result. I note the patio of the

dwelling to the north is aligned with the rear elevation of the dwelling to be retained, however given the separation distances involved I do not consider the level of overlooking to be so significant in terms of the increased height of the dwelling (over that previously permitted due to the increase in ffl) to warrant a refusal. I note the applicant by way of further information amended the rear dormer windows to rooflights. I consider this acceptable from a design perspective and note that it will minimise overlooking of the garden/patio area of the dwelling to the north. I note an additional window was added to the east elevation, however given the orientation of the dwelling relative to the dwelling to the north, no direct overlooking will result.

- 7.6. Having regard to the nature and scale of the dwelling to be retained, the overall separation distances to the neighbouring dwelling to the north and the context of development in the area, I am of the view that the proposed development would not seriously injure the residential amenities of property in the vicinity and would not materially impact on the neighbouring property in terms of overlooking, or loss of privacy.
- 7.7. I note the context of the dwelling within the wider landscape and do not consider the proposed dwelling to be retained is significantly more obtrusive than that previously permitted such as to warrant a refusal.
- 7.8. Having regard to the lack of a significant impact on the residential amenities of property in the vicinity, as discussed above, there is no evidence to support the third party contention that the proposal would affect property values in the area.

Appropriate Assessment

- 7.9. The River Finn Special Area of Conservation (002301) is approx. 1.7km south of the application site. There is a stream approx. 800m east of the appeal site and separate from it which connects to the River Finn.
- 7.10. The qualifying interests for the River Finn SAC (002301) are 1106 Salmon *Salmo salar*, 1355 Otter *Lutra lutra*, 3110 Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*), 4010 Northern Atlantic wet heaths with *Erica tetralix*, 7130 Blanket bogs (* if active bog) and 7140 Transition mires and quaking bogs. There are six conservation objectives for the SAC, which are as follows:

1. to restore the favourable conservation condition of Oligotrophic waters in the River Finn,

2. To restore the favourable conservation condition of Northern Atlantic wet heaths with *Erica tetralix*
3. To restore the favourable conservation condition of Blanket bogs (*if active bog)
4. To restore the favourable conservation condition of Transition mires and quaking bogs
5. To maintain the favourable conservation condition of Atlantic Salmon
6. To maintain the favourable conservation condition of Otter *Lutra Lutra*

7.11. Having regard to the nature of the proposed development and receiving environment and the lack of a direct surface water connection to the European site, I consider that the potential impacts on the SAC are primarily related to impairment of ground water during construction or operation. Having regard to the results of the on-site waste water assessment, considered under a previous permission, the proposed development is not likely to result in ground water pollution or contamination. I do not consider that any loss of, or disturbance to, habitats or species are likely to occur, having regard to the separation distance to the European site.

7.12. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 002301 (River Finn SAC), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

8.0 Recommendation

8.1. It is recommended that permission is granted, subject to conditions as set out hereunder.

9.0 Reasons and Considerations

Having regard to the planning history of the site and the existing pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the development to be completed and retained would not be injurious to the visual amenity of the area or injure residential amenity of property

in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 25th day of January 2019, 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 20th March 2019, under planning register reference number 14/51438, and any agreements entered into thereunder.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.</p>
3.	<p>The site shall be landscaped, using only indigenous species with no Leyland cypress trees permitted, in accordance with a revised overall landscaping scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <ul style="list-style-type: none"> (a) details relating to all of the boundaries of the site; (b) details of planting species proposed on the site and (c) a timescale for the implementation of the planting and landscaping. <p>Reason: In the interest of visual amenity.</p>

Una O'Neill
Senior Planning Inspector

19th June 2019