



An
Bord
Pleanála

Inspector's Report ABP-303933-19

Development	Retention and completion of a house
Location	Trimragh, Letterkenny, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	1851968
Applicant(s)	Marcella Rodgers
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	Third Party
Appellant(s)	Daniella Crawford
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 approx. 0.5km east of the urban settlement boundary of Letterkenny. The site is accessed via a minor county road, L-1124-1, which forms the south western boundary of the site. The site is located within a wider cluster of large detached rural dwellings, with a large two storey detached dwelling located on either side of the appeal site as well as to the rear.
- 1.2. The site, which has a stated area of 0.21ha, comprises a partially completed large two storey detached dwelling with detached garage, permitted under planning register reference 11/40422 and 18/50409. During my site visit it was evident that all works on the site have ceased. The dwelling is built up to first floor with no roof on the structure and the block work to the garage has been complete with no roof on. The partially complete dwelling is set back approx. 44m from the public road.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - Retention and completion of a dwelling house, garage, vehicular entrance, and a septic tank/sewage treatment system.
 - The stated floor area of the dwelling is 259.5sqm and the garage is 23.9sqm.

3.0 Planning Authority Decision

3.1. Decision

Permission REFUSED for the following reason:

The subject site is located within an 'area under strong urban influence' as defined in the County Development Plan (CDP) 2018-2024. It is a policy of the Council (Policy RH-P-5, CDP 2018-2024) that 'where an individual has demonstrated that they need a new dwelling house in a rural area defined as an area under strong urban influence, it may be favourably considered for those individuals who can provide evidence that they, or their parents or

grandparents, have resided at some time within that rural area for a period of at least seven year'. On the basis of all the information submitted in support of the applicants genuine rural housing need, their current interest in the subject site and the failure of the current owner/developer to evidentially demonstrate compliance with the Councils rural housing policies, the Planning Authority is not satisfied that the applicant has demonstrated a genuine rural housing need or falls within the prescribed criteria of housing 'need' in this rural area as required by the aforementioned Policy RH-P-5. Accordingly to permit the development would materially contravene the aforementioned policy provisions of the County Development Plan 2018-2024 and would thereby be contrary to the proper planning and sustainable development of the area.

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 applicant is Ms Rodgers, who was granted permission previously on this site. Supplementary rural house form was submitted with the application and considered satisfactory.
- The owner of the site is not however Ms Rodgers, but Mr. McLaughlin.
- There remains a degree of uncertainty regarding the applicant's genuine intention to acquire and reside in the dwelling house. The issue was not satisfactorily addressed in a further information request under a previous application 18/51361 (which was withdrawn).
- With regard to previous permission 11/40422, relevant conditions of that permission apply and the window to bedroom 4 should be omitted and ensuite windows obscured as per permission 18/5049 (conditions 3a and b)

3.2.2. Other Technical Reports

Roads Department: No objection, subject to conditions of previous report.

Environmental Health Officer: No objection, subject to conditions of previous report.

3.3. Prescribed Bodies

Irish Water: No objection.

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.

4.0 Planning History

18/50409 – Permission GRANTED for repositioning and change of house design approved under 11/40422 and permission for construction of a domestic garage.

17/50013 – Extension of duration GRANTED in relation to planning application 11/40422 until 26/02/2022.

11/40422 – Permission GRANTED for construction of a dwelling house with septic tank.

5.0 Policy and Context

5.1. Development Plan

County Donegal Development Plan 2018-2024

- The subject site is in an area designated as ‘**Area Under Strong Urban Influence**’.
- **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-5:** It is a policy of the Council to 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 RHP-1 and RH-P-2. New holiday home development will not be permitted in these areas.

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

- The subject site is located in an area of **High Scenic Amenity**. These landscapes have 'capacity to absorb sensitively located development of a

scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape’.

- **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 Lough Swilly Special Area of Conservation (002287), which is 1.35km north of the site. Lough Swilly Special Protection Area (0049075) is located approx. 0.9km north of the 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 an adjoining property owner, located northeast of the appeal site. Although planning permission was refused by the planning authority on the basis of the rural housing policy, the third party has submitted an appeal objecting to retention of the dwelling, restating their concerns relating to the impact of the dwelling on their residential amenity, as summarised hereunder:

- Permission 18/50409 showed a distance of 12.3m from the gable wall of the new dwelling to the boundary with the neighbour's property. The distance was reduced to 9.67m in this application for retention.
- Concern is raised in relation to height and close proximity of the dwelling which results in overshadowing, overlooking and blocking of light to the neighbouring property.
- The rear of the third party property is facing directly onto the gable wall of the new dwelling and the gable windows on the new dwelling result in a loss of privacy to the neighbouring dwelling. The windows on the gable should be removed.
- The proximity of the dwelling will seriously affect the property value.
- The height of the dwelling is not in keeping with the height of the adjacent properties.

6.2. Applicant Response

The applicant has responded to the third party's grounds of appeal and to the planning authority reason for refusal as follows:

- Ms. Rodgers is a native of the area and resides at the family home. Permission was granted to Ms. Rodgers in 2011 under planning ref 11/40422 for a dwelling house and septic tank. Donegal County Council accepted the applicant has a housing need and complied with the rural housing policies. This permission is still live following an extension of duration application permitted on 02/03/2017 under planning ref 17/50013.
- Under planning ref 18/50409 permission was granted to reposition and change the house design. Under the current application ref 18/51968, the planning authority accept the principle of the development as it has currently been constructed is acceptable.
- The appellant has not challenged Ms. Rodgers housing need or the principal of the development. Matters raised are in relation to design, specifically overshadowing, overlooking and light deprivation.

- The plans approved under ref 18/50409 are the same as this application with the exception that the position of the dwelling has been relocated north, closer to the appellant. At the closest point the dwelling currently measures 23m from the dwelling, instead of previously permitted distance of 24.3m, a difference of 1.3m.
- It is noted that under ref 11/40422 the dwelling was positioned closer to the appellants dwelling by 4.4m than that which has been constructed.
- The difference of 1.3m will not have any greater or lessor impact in terms of light and shadowing given the separation distances and siting/configuration of the dwellings.
- In relation to overlooking, the two windows at first floor level will be obscure glazed and the ground floor window is to a living room. The design is as approved under ref 18/50409.
- Refusal Reason: The planning authority has taken the view that because the applicant is not the registered owner that they are not satisfied of the genuine intentions of the applicant. Policy RH-P-5 does not require the applicant to be the owner.
- Donegal County Council has determined that the proposal has no visual or residential amenity concerns.
- The dwelling satisfied the applicant's housing need under current and past development plan policy. It is requested the Board grant planning permission in terms of design and housing need in order to allow the applicant complete the works.

6.3. Planning Authority Response

The planning authority is satisfied that all matters raised in the appeal have previously been addressed in the planners report on file and the planning authority wishes to rely on the content of same.

6.4. **Observations**

None.

6.5. **Further Responses**

None.

7.0 **Assessment**

7.1. The application is for retention of modifications to a previously permitted dwelling and septic tank/sewage treatment system.

7.2. The primary issues for assessment include;

- Revised Location and Design /Impact on Residential Amenity
- New Issue - Rural Housing Policy
- Wastewater Treatment

Revised Location and Design /Impact on Residential Amenity

7.3. The third party appeal does not address the reason for refusal in their submission. Concerns raised relate to the siting and design of the dwelling, which it is contended impacts on the neighbouring property in terms of overlooking, overshadowing, loss of light and loss of privacy.

7.4. The applicant's dwelling is positioned approx. 9.67m from the shared boundary with the appellant to the northeast, with a separation distance of approx. 21.67m between the dwellings themselves. The proposed dwelling to be retained is positioned 2.7m closer than the position previously permitted under planning reg ref 18/50409.

7.5. Having regard to the nature and scale/height of the dwelling to be retained, the overall separation distances to the neighbouring third party dwelling and the context of development in the area, I am of the view that the revised location of the proposed development would not seriously injure the residential amenities of property in the vicinity, including the third party's dwelling to the northeast and would not materially impact on neighbouring properties in terms of overlooking, overshadowing or loss of light. I note the planning authority previously omitted a window to bedroom 4 at first

floor level on the side elevation by condition and also conditioned that the bathroom windows be obscure glazed in the interests of the amenities of the area. A condition in relation to landscaping was also applied. Should the Board be minded to grant permission, I consider this application should be linked to the parent permission.

- 7.6. 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.

New Issue - Rural Housing Policy

- 7.7. While the third party has not raised the issue of the rural housing policy as part of their appeal, I have nonetheless assessed it as part of this application given this was the basis for the refusal by the planning authority. The Board may wish to consider this a new issue.
- 7.8. The subject site is located within an area designated as an 'Area Under Strong Urban Influence'. The applicant is proposing retention of alterations made in relation to the positioning of the dwelling on the site. A dwelling was previously permitted under two separate and linked applications on this site, where the applicant was deemed to have met the requirements of the rural housing policy and an occupancy clause was attached to the permissions.
- 7.9. The planning authority in their reason for refusal stated that given '...the failure of the current owner/developer to evidentially demonstrate compliance with the Councils rural housing policies, the Planning Authority is not satisfied that the applicant has demonstrated a genuine rural housing need or falls within the prescribed criteria of housing 'need' in this rural area as required by the aforementioned Policy RH-P-5'. As noted above, two previous applications for a house have been permitted at this location in the applicant's name (Ms. Rodgers). Ms. Rodgers, who was not the owner at the time of either application, indicated the land as being family land in the ownership of James Trearty. It is stated in a letter to the planning authority as part of this application that the applicant, Ms. Rodgers, had intended to purchase the site from the owner James Trearty at the time of the original application (reg ref 11/40422), however she subsequently did not buy the site and the site was sold to Brendan McLaughlin. Mr. McLaughlin approached the applicant as he wanted to change the design of the house, which was in her name, and the applicant indicated

to Mr. McLaughlin she wished to now buy the house. Permission was obtained for revised designs under 18/50409 under Ms. Rodgers name. However, amendments were made during the construction which required retention permission.

- 7.10. The retention permission now being applied for is under Ms Rodgers name, as per the previous permissions on this site, with a letter of consent from the owner Brendan McLaughlin to Ms. Rodgers consenting to her applying for permission on his land. The applicant contends she has a genuine rural housing need, as previously determined by the planning authority, and intends to buy the house, but has been advised by her solicitor not to sign contracts until retention permission is obtained.
- 7.11. The planning authority states there remains a degree of uncertainty regarding the applicant's genuine intention to acquire and reside in the dwelling house being built and owned by Mr. McLaughlin. Permission was refused on the basis that the owner/developer (Mr. McLaughlin) has not demonstrated compliance with the rural housing policy and the applicant has not demonstrated a genuine rural housing need.
- 7.12. I note that condition 1 of reg ref 11/40422 relates to an occupancy clause tying the applicant to the permission and permission reg ref 18/50409 under condition 2 required the development be carried out in accordance with conditions 1-3 and 5-7 of parent permission reg ref 11/40422 (now extended by permission to 2022). I note that the owner of the property in this application has given consent to the applicant to apply for retention permission on his land and the applicant has indicated that she is buying the property being built subject to retention planning permission.
- 7.13. Given the planning authority has accepted under two previous applications that the applicant complies with the rural housing policy and given condition 1 in relation to occupancy links the permission to the applicant (as per policy RH-P-1), I consider that the principle of this dwelling has been established under previous permissions and the occupancy clauses as previously attached on past permissions remain appropriate and enforceable in this instance, therefore I recommend permission is granted subject to conditions. Should the Board be minded to grant permission, they may wish to consider this a new issue.

Appropriate Assessment

7.14. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest Natura 2000 sites. 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.

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 on the site and 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 visual amenity of the area or injure residential amenity of property in the vicinity and is in compliance with policies PH-P-1 and RH-P-5 of the operational development plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained, 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. 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 3rd May 2018, under planning register reference number 18/50409 and on 17th January 2012 under permission Reg. Ref. 11/40422 (as extended under permission Reg. Ref. 17/50013 on 2nd March 2017), and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permissions.

3. a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant]. Within three months of this permission, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: In the interest of clarity and to ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted in the interest of the proper planning and sustainable development of the area.

4. 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:

- (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.

Reason: In the interest of visual amenity.

Una O'Neill
Senior Planning Inspector

19th May 2019