



An
Bord
Pleanála

Inspector's Report PL304630-19

Development	Retain and complete house and retain demolition of a habitable house.
Location	Loughanure, Annagry, Letterkenny P.O., Co. Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	18/51757.
Applicant	Brian Boyle.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Hugh Boyle.
Observer	None.
Date of Site Inspection	15 th of August 2019.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site of the proposed development comprises an elevated plot of land to the east of the N56 at a location which is north of the village of Loughanure and roughly half way between Dungloe and Gweedore in west county Donegal. To the south and separated by some agricultural land is Lough Doo / An Loch Dubh. On lands at the opposite side of the road is the applicant's family home and other lands in the family ownership.
- 1.2. There are two vehicular entrances to the site. At the western site boundary along the N56 road frontage there is a shared entrance with an existing house to the north, which is the appellant's house. That site entrance is stated to be under the control of the owner of the adjacent two-storey house to the north, although it is shown as being within the site defined for the application. To the rear of the site there is a laneway, which is stated to be a public road and which connects with the N56 at a location north of the site and beyond a sharp bend in the national road. The rear entrance is being used for the construction of the development.
- 1.3. The site was formerly occupied by a hipped roof dwellinghouse built in the 1950s, which was once the family home of the applicant's father and of his uncle, the appellant. The existing partly built structure is located generally at the same location and elevation and on file there are images of the previous structure and of the existing situation. I formed the impression on site that the finished floor level of the house under construction is elevated above what is likely to be the original level of the existing house and I discuss this later. The measured shortest distance between the house under construction and the appellant's house to the north is about 3.95m.
- 1.4. Photographs of the site and surrounding area which were taken at the time of my inspection are attached.

2.0 Proposed Development

- 2.1.1. Permission is sought to retain and complete the dwellinghouse and to retain the demolition of a habitable house, which has been undertaken. The application drawings indicate the positions of the permitted and proposed houses.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant permission subject to conditions including:

- Plans and particulars of 27/03/2019 refer.
- Planting requirement at southern site boundary and public road frontage including details with respect to suitable trees.
- Requirements relating to wastewater treatment design, installation and maintenance.

3.1.2. The decision was preceded by a further information request which requested revised house plans for a single storey dwellinghouse with ridge of 5.5m. The site layout was to demonstrate the finished floor level of the proposed house relative to that of the house to the north-east and relative to the site entrance. The planning authority commented that the increased levels on site together with the proposal to increase the ridge height (compared to that previously permitted) would negatively impact on the amenities of the house to the north-east. Details on the septic tank and the material used to raise the level of the site were also requested.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The **Planner's further information response report** of the 5th of April 2019 notes that the planning authority following a site meeting accepts the current position of the proposed dwelling subject to a reduction in the ridge height to 6.63m. The applicant's statements that there is only a marginal difference (if any) between the finished floor level of the new and demolished houses and the proposed grading of the area to the front of the house and creation of a garden are noted. The proposed replacement of the septic tank with a wastewater treatment plant is noted.

The report of the Acting Senior Executive Planner dated 19th of March records detailed comments of what was noted on site and comparison between the building under construction and that permitted. The planning official recounts how it was explained on site that it was considered that the site had been filled and that the

house was being constructed on a plateau, that the finished floor level was now higher than the house demolished and that the 7.7m high ridge height results in a very unsatisfactory relationship between the proposed house and the existing dwelling to the north-east and the development would be unsatisfactory in terms of its relationship with the house to the north-east and would appear strident when viewed from the N56. For those reasons the request for further information had included a revised house to single storey design. The applicant's representatives on site stated that there was no change to ground level. The planner noted that while there appeared to be changes to ground level from the N56 that was not borne out from further inspection including from the laneway and when Google street view was examined. It was not considered that there was any material change in the level of the original house with that of the dwelling to be retained under the current application. The relocation of the dwelling a further 2m from the location approved under 15/15098 is positive in term of residential amenities. In conclusion the dwellinghouse is acceptable subject to revised design details illustrating a 35 degree pitch and reducing the roof ridge height to 6.63m, under the further information drawings to be submitted. The landscape integration will be increased by the importation of topsoil which is proposed.

- 3.2.3. The **Screening report for AA** notes that the development would not result in any direct loss or fragmentation of Natura 2000 sites, none of the development is within the designated lands and the site comprises a brownfield site and therefore the planning authority concludes that the proposed development would not have a significant effect on Natura sites.

3.3. **Other Technical Reports**

- 3.3.1. None relevant.

3.4. **Prescribed Bodies**

The report of TII dated 5th of December 2018 considers that the development is at variance with official policy outlined in DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities as the development by itself or by the precedent

it would set would adversely affect the operational safety of the national road network as follows:

- Create an adverse impact on the national road where the maximum speed limit applies and would be at variance with the foregoing national policy in relation to control a frontage development on national roads.
- Would result in an intensification of an existing direct access to a national road contrary to official policy in relation to control a frontage development on national roads. Would endanger public safety by reason of traffic hazard and obstruction of road users due to movement of extra traffic generated.
- Insufficient data has been submitted to demonstrate that the proposed development will not have a detrimental impact on capacity, safety or operational efficiency of national road network in the vicinity of the site.

The report of HSE dated 20th of December 2018 there was inadequate information about the state of repair capacity of the existing septic tank which does not appear to be connected to a percolation area and in relation to which various details and requirements are identified namely:

- Details of the existing septic tank, of the infiltration area and of any maintenance carried out.
- The applicant should be requested to submit a site characterisation assessment.
- Proposals for the collection, treatment and disposal of effluent in accordance with the EPA Code of Practice requirements.

The HSE in a report of the 1st of May 2019 recommends conditions in the event of a grant of permission.

The appeal was referred to the Heritage Council and to NPWS/Department of Culture Heritage and the Gaeltacht and An Taisce. No responses were received.

3.5. **Third Party Observations**

- 3.6. The owner of the property to the north-east objects to the relocation, increased FFLs of 18 inches, incorrect site layout and representations, difference between drawings

and reality on ground, all of which constitutes in the structure being overbearing and visually intrusive and not reflective of the objectives of the development plan.

Objection to impact on parking and to access. The development hugely diminishes and infringes on my property. Photographs enclosed include the footpath beside the house which can be used as a bench mark.

4.0 Planning History

Under **planning reg. ref. 15/51098** permission was granted for extension and renovation of the existing house on site to provide for a house of roof ridge height of 6.5m and an overall floor area of 223 sqm.

A small set back from the existing house to the north was indicated, resulting in a 4m separation between the two houses at the closest point. The finished floor level of the new house was to be as the existing and a temporary bench mark was set up but the finished floor level of the existing house is not indicated on the plans.

The application drawings indicate that the house which was to be extended and renovated was of stated area of 91 sqm and 5.6m high.

Conditions which were attached included a requirement relating to surface water drainage at the existing entrance to the site onto the N56.

The application also provided for retention of a garage at the rear of the site subject to a **condition to close the vehicular entrance to the road to the east.**

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The policy in relation to **replacement dwellinghouses** which is set out under RH-P-7 of the Donegal County Development Plan 2018-2024 is relevant. Such applications will be considered where the original dwellinghouse does not make a significant contribution to the built heritage of the area, where the replacement dwellinghouse would be of a scale and form that is generally consistent with that of the existing house on the site and would not give rise to additional visual impact and adequate

provision can be made for wastewater treatment and all other provisions of the development plan.

5.1.2. The site is in a **Structurally Weak Rural Area** and area of **High Scenic Amenity**.

5.2. Natural Heritage Designations

The site is within 200m of Derryveagh and Glendown Mountains Special Protection Area Site Code 004039. All other European sites are over 2.5km from the site of the proposed development.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the third party appeal include:

- A planning authority may not accept an application for retention permission for any development which would have required an EIA, screening for EIA, appropriate assessment and the **application is invalid**.
- **TII concerns are not addressed**. There is no record of engineer's report or anything which addresses the road safety concerns raised.
- **Precedent cases** in Loughanure village for refusals.
- In the **absence of AA screening** there is no assessment of effects on the environment and wildlife. Failure to comply with standards as per Appendix 4.
- At variance with the **Design Guide**. Detracts from landscape through vegetation removal.
- Dimensions on site not in keeping with drawings. 18 inch increase in FFL and rise in ridge and style of roof has had **detrimental impact on my house**.

6.2. Applicant Response

The main points of the applicant's response include:

- Image 4.1 shows the original hipped roof house with adjoining bungalows that are compatible roof spaces with dormer windows as well as the appellant's

two-storey house. **Visual and residential amenities would not be negatively impacted.**

- There is no interference with the existing vehicular access onto the N56 and no additional bedroom accommodation, consequently **no intensification of use of access** and no contravention of policy T-P-16. Site has access to N56 from front and rear. Condition 2 of previous decision noted.
- House had to be **demolished due to substandard foundations** as shown in the attached photograph and at the same time the decision was made to **reduce the size of the house to a footprint similar to the original dwellinghouse**. The original house was built on a timber floor plate and without proper foundations.
- The redevelopment of the site of a single house does not breach any threshold and **does not warrant a mandatory EIA. Sub threshold EIA** is addressed by virtue of the conclusions of the Council's AA screening. There is **no requirement to submit a screening report for AA** and the application is not invalid.
- As owner of the entrance there are responsibilities on the appellant to maintain safe access. It is also noted that the entrance exists and that permission was granted for a larger house on the site.
- Regarding condition 3 the existing access has not yet been closed and is in use for construction of the house. The access to the rear of the house already exists. If the Board considers it appropriate it is acceptable that the access be restricted to the rear access only and there would be no difficulty if the front access is not used other than for pedestrian access. Such a condition would however be difficult to enforce.
- The **SEP report noted no change in ground levels**. Regard was had to the proposed additional separation from the house owned by the appellant and the proposed regrading and topsoil importation. The roof ridge of 6.63m was revised following the further information request and the development was considered to be acceptable in terms of its visual impacts.

- Redevelopment of this brownfield site is preferred. The development will help to sustain services.
- The **revised house as per further information submission is 18.4% less than the previously permitted, of less length and is similar to those nearby** and will not have a negative visual impact on the area as the appellant suggests.

6.3. **Planning Authority Response**

The planning authority considers that all matters which are raised in the appeal have been included in the assessment of the application by the planning authority. The Board is requested to uphold the decision of the planning authority to grant permission.

6.4. **Observations / Further Responses**

None.

7.0 **Assessment**

I consider that the main issues in the appeal are:

- Impact of proposed development on visual and residential amenities.
- Roads and traffic issues.
- Wastewater treatment and surface water drainage.
- Other issues.
- Appropriate assessment screening.

7.1. **Visual and residential amenities**

- 7.1.1. The elevated and exposed nature of the site is such that the full integration of the proposed house is not likely to be achieved. The landscape character includes a high level of one-off houses and in general these are located on elevated sites overlooking the national secondary road. In the immediate environs of the site there are similarly located houses. The principle of development of this site for residential

use was established under the previous permission which included a raising of the roof ridge height by 900mm. This together with the increased width would have increased the apparent mass and scale of the house on the site.

7.1.2. I note that the further information request of the planning authority initially requested a 5.5m height maximum as well as details of finished floor levels. The planning authority officials reported in detail on the floor level of the house under construction concluding that there was no material change and was satisfied to accept the house design with a 6.63m high roof ridge. The appellant refutes the conclusions of the planning authority and supports arguments by a range of photographs, to which I refer the Board.

7.1.3. In relation to the finished floor level whether any change is material my views are as follows. In the absence of a finished floor level of the original house being established under the previous permission or as part of the current application it is reasonable to refer to items such as the footpath adjacent the appellant's house as a guide. On that basis I suggest that the finished floor level of the subject house may be as much as 400mm over the original house. However, I also consider that it is difficult to accurately assess this by means of visual inspection, which is the only option available in the circumstances. The significant point which I consider is relevant in terms of visual amenities in this case is that the finished floor level of the proposed house (102.0M) would be less than that of the house to the south and that the house would be positioned in an area characterised by one-off development. I note that the applicant proposed significant land recontouring to the front of the house, which will provide opportunity for landscaping which will ensure better integration of the new house with the landscape. I consider that for these reasons it would be difficult to conclude in the circumstances of this case that the proposed development is unacceptable on the grounds or landscape or visual amenities impacts.

7.1.4. Regarding the impact on residential amenities I consider that the location of the development on the site is of more significance than changes to the ground level / finished floor level. It appears to me that the separation between the existing house under construction and the appellant's house is less than 4.35m. Based on my site measurement, it is in the region of 3.95m, which would be similar to the separation shown on the previous application drawings. The revised proposal presented in the

current appeal case provides for a setback from the northern façade of the original house, which I consider is a very significant change in terms of the impact on any residential amenities of the appellant's house. For this reason I consider that the development would not adversely impact on the residential amenities of nearby properties.

- 7.1.5. In terms of the house which it is proposed to retain and complete and its impact on visual and residential amenities, I consider that the proposed development is acceptable.

7.2. Roads and traffic issues.

- 7.2.1. In relation to the appeal ground that the TII objection is not addressed I consider that there are two salient matters. First, this is not a greenfield site as it has been a place of residence for about 50 years and the former house was served by an entrance off the N56. Secondly, I consider it relevant to note that there is no significant change in floor area compared with the previously permitted house and no intensification of use of the entrance.
- 7.2.2. The existing entrance at the western side of the site is clearly shared between the appellant's two-storey house and the house subject of this appeal and the appellant would have control over the vegetation to the north of the site entrance. Neither the description of the development, the site layout drawings or the conditions of the decision of this matter clarify the applicant's proposals or the requirements of the planning authority on the site entrance and it must be assumed that the intention in the making of the application and in the planning authority's decision is that the western established entrance would serve the proposed house. The western entrance was authorised to serve the house permitted under the previous application.
- 7.2.3. In my opinion following site inspection the site entrance to the west of the site onto the N56 would constitute a less safe option than the alternative available, which is to take the entrance from the east of the site. The Board is advised however that the previous decision of February 2016 included a condition requiring permanent closure of the existing vehicular entrance to the domestic garage from the road along the eastern boundary of the site. That condition appears to have emanated from

concerns that the opening to the east might constitute an unauthorised entrance. There is no indication of any concern relating to traffic safety.

- 7.2.4. In the appeal response the submission on behalf of the applicant notes that while there have been no accidents at the site entrance the applicant is willing to use the rear entrance if necessary and invites a condition to that effect if necessary. I consider that this option which would appear to offer much better sightlines should be addressed in the decision of the Board. The rear / eastern entrance is stated to be in place and that it is not a new entrance. I accept this claim having regard to the boundary treatment at that site frontage.
- 7.2.5. The Board could take the view that the proposed development constitutes a change in house type and therefore the issues relating to roads and traffic are not relevant to its decision. In my opinion a *de novo* consideration of all of the issues is appropriate.
- 7.2.6. Subject to the recommended condition I am satisfied that the proposed development is acceptable in terms of roads and traffic issues.

7.3. **Wastewater treatment and surface water.**

- 7.3.1. The proposed development involves decommissioning of an existing septic tank and installation of a wastewater treatment system. In this regard a site suitability assessment report was submitted to the planning authority. I am satisfied that the upgraded system will constitute an improvement in the arrangements for on-site disposal of wastewater. The development has been deemed to be acceptable by the Environmental Health Officer and I agree with that conclusion. The proposal is acceptable subject to the attachment of a standard condition regarding the design and installation of the system.
- 7.3.2. I consider that any matters arising related to surface water disposal can be addressed by the Board's standard condition.

7.4. **Other issues.**

- 7.4.1. The appellant claims that the development is the category of development that would preclude the planning authority from considering the application on the basis of section 34 (12) of the Planning and Development Act 2000 as amended as it would

have required EIA/AA screening. These matters are addressed in the screening sections below.

7.5. EIA screening

Having regard to the nature and scale of the proposed development involving the redevelopment of a residential site in a rural area and to the nature of the receiving environment 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.

7.6. Appropriate assessment screening

- 7.6.1. Regarding appropriate assessment the screening report of the planning authority concludes that appropriate assessment of the proposed development is not required.
- 7.6.2. The site is within 200m of the Derryveagh and Glenowan Mountains SPA, which I consider is the only site from which there is a possible pathway to the development. The site is of special conservation interest for the red-throated diver, merlin, peregrine, golden plover and dunlin. All other European sites are at least 2.7km from the proposed development site and having regard to the nature and scale of the proposal any impact on those sites can be excluded.
- 7.6.3. The development would not give rise to direct loss or fragmentation of habitat and no part of the proposed development is within a Natura 2000 site.
- 7.6.4. Having regard to the nature and scale of the proposed development which comprises a redevelopment of a brownfield site, the likely emissions arising from the proposed development and the distance to the nearest European sites, I am satisfied that 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. I recommend that the decision of the planning authority be upheld and permission granted for the reasons and considerations and subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the planning history and the design and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development to be retained and completed would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as revised by the further information received by the planning authority on 27th of March 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.

Reason: In the interest of clarity.

2. The vehicular access to the development shall be by way of the road to the east of the site.

Reason: In the interest of traffic safety.

3. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this decision. This scheme shall include a plan to scale of not less than 1:500 showing –

- (a) Details of all boundary treatments.

(b) Details of all planting including species, variety, number, size and locations of all proposed trees and shrubs.

(c) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

4. The following shall apply in relation to the wastewater treatment system.

a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system

has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

6. Prior to the commencement of development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of orderly development and the visual amenities of the area.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Mairead Kenny
Planning Inspector

20th November 2019