



An
Bord
Pleanála

Inspector's Report

ABP-308654-20

Development	Retention of single storey house and garage.
Location	Tullydonnell Upper, Convoy, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2051235
Applicant	Kevin Harkin
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v. Refusal
Appellant	Kevin Harkin
Observer(s)	None
Date of Site Inspection	17 th February 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.405Ha and is located on the western side of the Letterkenny Road (Local Road L-1074-5), in the townland of Tullydonnell Upper, approximately 260m north of the settlement boundary of Convoy in east County Donegal.
- 1.2. The site has an existing single storey dwelling located on it, with a gross floor area of 101sq.m and ridge height 6.08m. The subject site slopes upward from the roadside, with the finished floor level at the location of the dwelling located approximately 2.5m above that of the public road. A large garage of 54sq.m is located 4m to the immediate west (rear) of the dwelling. The garage has a similar height to the dwelling at 5.8m. The subject site is bound by wooden post and rail fencing and low hedging. A segregated fenced garden area with a detached single storey structure, open on its southern side is located in the north western area of the site.
- 1.3. The site is located on the periphery of the settlement of Convoy in a rural Area Under Strong Urban Influence. Three existing dwelling houses are located to the north and north west of the subject site and agricultural fields are located beyond the southern and western boundaries. The nearest dwelling to the south, a single storey bungalow, is located approximately 100m from the subject site's boundary.

2.0 Proposed Development

- 2.1. The development consists of the retention of:
 - a single storey detached dwelling house of area 101sq.m and height 6.08m to FFL;
 - a single storey garage of 54sq.m with a height of 5.8m;
 - existing entrance and driveway;
 - external aesthetic finishes, and all associated site works.
- 2.2. It is noted that a septic tank and percolation area are also shown on the submitted site layout plan.

3.0 Planning Authority Decision

3.1. Decision

Permission for retention was refused by Donegal County Council for the following reasons:

1. The subject site is located within an area designated as being under Strong Urban Influence under Rural Housing Policy RH-P-5 of the County Development Plan, 2018-24. This Policy provides that the Council will consider proposals for new one-off rural housing from prospective applicants that have demonstrated a genuine need for a new dwellinghouse 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 subject to compliance with all other relevant policies of the Plan, including RH-P-1 and RH-P-2.

Having regard to the site history, whereby the current applicant differs from previous permitted applicant and in the absence of completing a Supplementary Rural Housing Application Form and associated documentary evidence of a rural housing need, the Planning Authority is not satisfied that the applicant can comply with the aforementioned policy and associated housing need requirements. Accordingly to permit the development as proposed would materially contravene the aforementioned policy and would therefore be contrary to the proper planning and sustainable development of the area.

2. The subject site is located within an area designated as being under Strong Urban Influence under Rural Housing Policy RH-P-5 of the County Development Plan, 2018-24. This Policy is subject to compliance with all other relevant policies of the Plan, including RH-P-1 and RH-P-2. Policy RH-P-1 notes the following requirements apply to all proposals for rural housing: (The) *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-P15 which states; 'It is a policy of the Council to require that all development proposals comply with the Development and Technical Standards set out in Appendix 3 to promote road safety.* Having regard to (i) the insufficient demonstration of vision

lines to the required standards as defined under Table 3 Appendix 3 Development Guidelines & Technical Standards of the aforementioned Plan, and in the absence of the demonstration of any supporting *assessment in support of reduced vision lines on the basis of the identified 85th percentile speeds and (ii) absence of third party consent for achievement of requisite vision lines, it is considered that the submitted development would result in being a traffic safety hazard. Accordingly to permitted the development as proposed would materially contravene the aforementioned Policies and Technical Standards of the Plan and would therefore be contrary to the proper planning and sustainable development of the area.*

3. The subject site is located within an area designated as being under Strong Urban Influence under Rural Housing Policy RH-P-5 of the County Development Plan, 2018-24. This Policy is subject to compliance with all other relevant policies of the Plan, including RH-P-1 and RH-P-2. Policy RH-P-1 states that : *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; 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 also A proposed new dwelling will be unacceptable where it fails to blend with the landform.*

Having regard to the submitted design and to previous planning history on the site whereby this exact design was not deemed to be acceptable(planning ref;16/50532) and similar design features were not deemed acceptable (planning ref :16/51078) and in the absence of any proposals to ameliorate same or otherwise aid the integration of same into the host environment, it is considered that the dwelling, as constructed contravenes the aforementioned policies of the Plan. Accordingly to permit the development as proposed would materially contravene the aforementioned policy and would therefore be contrary to the proper planning and sustainable development of the area.

4. The subject site is located within an area designated as being under Strong Urban Influence under Rural Housing Policy RH-P-5 of the County Development Plan, 2018-24. This Policy is subject to compliance with all other relevant policies of the Plan, including RH-P-1 and RH-P-2. Policy RH-P-1 states: 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; Having regard to the reduced percolation area and in the absence of any demonstration as to the working order of same and or compliance with the aforementioned codes of practice, it is considered that to permit the development as proposed would materially contravene the aforementioned policy and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation to refuse permission in the Area Planner's Report reflects the decision of the Planning Authority. The planner's report can be summarised as follows:

- The applicant differs to that from the previous application, and no bonafides have been submitted. Accordingly, the principle based on a rural housing need has not been complied with.
- The design is essentially identical to the one previously refused under P.A. Ref. 16/50532. A further attempt to resubmit this design, albeit with the omission of the hipped roof feature required revisions under P.A. Ref. 16/51078.
- The applicant is now seeking to regularise the design which, on two previous occasions was not deemed acceptable.
- This is an area of High Scenic Amenity and the applicant has failed to make any modifications/improvements to the form or landscaping – the siting and design of the dwelling therefore remains unacceptable.

- The garage as constructed is entirely different from that permitted under P.A. Ref. 16/51078 and based on the design and openings appears to be designed for more of an agricultural/commercial use. However, it was noted that a domestic fee was submitted with the application and no evidence of commercial activity was noted on site. In any case the use of the building can be controlled by way of condition.
- The applicant was previously refused direct access onto the adjacent road under P.A. Ref. 16/50532 and subsequently was required to take an access point to the south of the site (which is now located outside of the landholding). The submitted layout details sightlines of 160m to the south and 80m to the north, no traffic speed survey has been submitted in support of same or third party consents from adjoining landowners for any required boundary works.
- Public water connection to group water scheme and consent attached to application.
- The constructed percolation area is smaller than that permitted under P.A. Ref. 16/51078 and the applicant has not submitted any application in support of this reduction. Also no evidence of compliance with EPA CoP has been submitted.

3.2.2. Other Technical Reports

- Area Road Engineer – report dated 24/09/2020 – no objection subject to conditions as per 16/51078.

Specific conditions in relation to P.A. Ref. 16/51078 included requirement for 160m visibility splays in each direction at a point 2.4m back from road edge at location of vehicular entrance.

The Board should note that the entrance proposed under the previous application P.A. Ref. 16/51078 differs from that proposed under the current retention permission. The entrance which the condition refers to was to be located in the adjoining agricultural field to the south of the proposed dwelling, which at the time formed part of the site.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

- None.

4.0 Planning History

4.1. On site:

- P.A. Ref. UD2030 – warning letter issued for unauthorised development on site 2nd March 2020.
- P.A. Ref 16/51078 – Notification of the Decision to Grant Permission subject to 16 no. conditions issued on 5th December 2016 to the applicant Mark Harkin for construction of a bungalow, detached garage, septic tank and percolation area and associated site works.
- P.A. Ref. 16/50532 – Permission refused on 10th June 2016 to applicant Mark Harkin for construction of a bungalow, detached garage, septic tank and percolation area and associated site works. Reasons for refusal related to;
 1. Vision lines and stopping sight distances at site entrances (contrary to Tables 23 & 24 of Chapter 10 of Donegal County Development Plan 2012-2018) and
 2. Design – Suburban in nature (contrary to Policy RH-P-1 and Appendix B of the Donegal County Development Plan 2012-2018).

The Board should note that the design of the dwelling as presented under this previously refused development reflects that which is currently constructed under the current appeal.

4.2. Nearby sites:

- P.A. Ref. 17/51961 - Notification of the Decision to Grant Outline Permission subject to 16 no. conditions issued on 29th March 2018.

5.0 Policy Context

5.1. National Planning Framework (NPF)

- 5.1.1. **National Objective 19:** *Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

- 5.2.1. The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF). These include: (i) **rural areas under strong urban influence** (close to large cities and towns, rapidly rising population, pressure for housing and infrastructure) within which the current site falls.
- 5.2.2. Development Plans must tailor policies that respond to the different housing requirements of urban and rural communities and the varying characteristics of rural areas.

5.3. EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009)

- 5.3.1. This code of practice provides guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses (PE≤10).

5.4. Development Plan

- 5.4.1. The operative development plan is the County Donegal Development Plan 2018-2024. The subject site is located in an area designated as an 'Area Under Strong Urban Influence'. Within Areas Under Strong Urban Influence it is necessary to

manage the extent of development whilst facilitating those with genuine “rural generated housing need”.

5.4.2. **Section 6.3.2 and 6.3.3** contain the relevant policies and objectives in relation to rural housing, the following are particularly pertinent to the current case:

- **Objective RH-O-3:** To ensure that new residential development in rural areas provides for genuine rural need.
- **Objective RH-O-4:** To protect rural areas immediately outside towns from intensive levels of residential development....
- **Objective 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.
- **Policy RH-P-1** states that
 - It is a requirement that development be subject to best practice in relation to siting, location and design as set out in Appendix 4. It is also a requirement that the house be sited and designed in a manner that enables it to be assimilated into the landscape and that it is sensitive to the integrity and character of the rural area as identified in Chapter 7 and Map 7.1.1.
 - 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;
 - 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;

The policy also states that 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).

- **Policy RH-P-2** facilitates proposals for rural housing where there is a demonstrated need, provided it is of an appropriate design quality, integrates successfully into the landscape and does not cause a detrimental change to, or, further erode the rural character of the area.
- **Policy RH-P-5** requires applicants to demonstrate a genuine rural housing need while also complying with all the other relevant policies of the plan and to 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.
- **Policy RH-P-9** Design seeks the highest standards of siting and architectural design for all new dwellings constructed within rural areas and requires that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the County Development Plan, entitled 'Building a House in Rural Donegal – A Location, Siting and Design Guide'

5.4.3. The following **Landscape Policies** as contained under **Section 7.1.3** are also relevant:

- **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.

The subject site is located in an 'Area of High Scenic Amenity (HSA)' as defined under Map 7.1.1 Scenic Amenity under the Donegal County Development Plan 2018-2024– the development plan states that these areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.

- **Policy NH-P-13** - proposal must be considered in the context of the landscape classifications, and views and prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.

5.4.4. The following **Roads Policies** contained under **Section 5.1.3** are also relevant:

- **Policy T-P-15:** It is a policy of the Council to require that all development proposals comply with the Development and Technical Standards set out in Appendix 3 to promote road safety.

Part B: Appendix 3 Development Standards and Technical Standards

- **Section 2.3** This section states that a roadside boundary in rural areas shall be setback to the minimum distance specified in Table 01 Appendix 3 below to facilitate the entrance – in the case of the current application the setback required from centre line of road is 5m.
- **Section 2.10 Vision Lines** - Vision Lines at junctions with the Non-National Public Road in rural areas outside a 60kph speed limit zone shall be in accordance with Table 03 Appendix 3 and Figure 02 Appendix 3. Deviation from the requirements in Table 03 Appendix 3 may be considered upon certification by the Applicant's Designer to be designed and constructed in accordance with the NRA DMRB/DMURS as appropriate.
- **Table 3 Appendix 3:** Vision Lines at accesses to Non-National Rural Roads, outside 60kph speed limit zone states that the x-distance in the case of the current application should be 2.4m and the Y distance required in accordance with the speed limit of 80kph is 160m
- **Section 2.12 Stopping Sight Distance:** Minimum stopping sight distances on Non-National Roads in rural areas outside a 60 kph speed limit zone shall be in accordance with Table 05 Appendix 3 below. Deviation from the requirements in Table 05 Appendix 3 may be considered upon certification by the applicant's designer to be designed and constructed in accordance with NRA DMRB.

Design Speed (Km/h)	100	80	70	60	50
Stopping Sight Distance (m)	215	160	120	90	70

Source: DMRB ref TD 9/07 / TII DN-GEO-03031

Part B: Appendix 4 Building a House in Rural Donegal – A Location Siting and Design Guide

The guide advocates an integrated approach to the design of a dwelling in the countryside considering the three key elements of Location, Siting and Design.

In summary a house in the countryside should;

- Integrate satisfactorily within the landscape.
- Reflect its location and contribute satisfactorily to the character of the area, expressing local influences and materials appropriate to the rural area.
- Be well designed informed primarily by site specifics.

5.5. Natural Heritage Designations

5.5.1. None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been lodged, the grounds of which can be summarised as follows:

- The applicant's son (Mark Harkin) who received planning permission on the site under P.A. Ref. 16/51078, was the original applicant on the subject site and the applicant (Kevin Harkin) was the overall landowner at the time. However, Mark decided against building the dwelling house and instead bought the current applicant's (his father's) existing dwelling house which is located approx. 100m south of the subject site.
- The current applicant (Kevin Harkin) then decided to build the permitted dwelling house in lieu of his son. He made some changes as part of this build including reverting back to the design of the parental planning application (P.A. Ref. 16/50532) prior to that design being amended by the planning authority.

- The applicant states that his original home place is located 30m north of the current site.
- Regarding the as constructed design, the applicant states that it is his belief that the character of the location is more akin to a sub-urban type scenario, rather than exclusively rural and this is reinforced by the fact that a high number of other houses within the immediate vicinity have varying designs including hipped gable roofs and mock tudor external aesthetics. The applicant states that there are numerous examples throughout Donegal in rural based areas of dwellings permitted with dutch hipped roofs and brick quoins. The applicant accepts they built the dwelling house outside the design parameters permitted under P.A. Ref. 16/51078 and now wishes to apply for retention of same.
- The applicant addresses each of the reasons for refusal as follows:
 - Refusal Reason 1 – the warning letter received never mentioned proof of rural bonafides was required. The applicant states he was born within 30m of the site, in the first cottage to the north of the site and would have no issue in proving this fact.
 - Refusal Reason 2 – the applicant used the existing short access into the subject site during construction and deduced later when another planning application was granted directly opposite the subject site’s existing entrance without concern (P.A. Ref. 17/51961) that his entrance fulfilled the exact same vision lines and therefore was sufficient. In addition, the applicant notes that the Roads Engineer’s report submitted in response to their current retention application never raised any road safety issues nor requested speed reports or such like.
 - Refusal Reason 3 – the applicant argues that the character of the area is more akin to a sub-urban type scenario, rather than rural. The applicant stated that he has applied for retention permission to “retain” the current situation and that it does not make sense to him to be asked to “ameliorate same or otherwise aid in the integration of same in the host environment”. The applicant also believes that the planning authority could have dealt with these

concerns by way of a further information request rather than using this as a reason for refusal.

- Refusal Reason 4 – the applicant believes that this issue could again have been dealt with by way of further information. He states that there are currently only two people living in the house, himself and his wife and that the percolation has only minimal loading and is suitable for two people. He states that if required the planning authority could have included a condition to enlarge same and that no report from the HSE or EHO highlighted it as an issue.
- The applicant stresses that in essence planning permission for a similar development was passed on site and that in general the overall footprint and dwelling layout are the same. There is no issue with his rural background and the entrance has no safety issues. The applicant also states that he made several attempts to contact the planning authority staff involved to discuss the aforementioned matters.
- The applicant feels they have not been treated fairly based on past dealings with the Council and other appeals which saw DCC decisions overturned by the Board.

6.2. Planning Authority Response

6.2.1. A response from Donegal County Council was received by the Board on the 15th December 2020, which addressed the issues raised in first party appeal. The response can be summarised as follows

- The applicant sought to retain permission on a site for a dwelling citing a previous planning application, permitted in the name of a different applicant.
- The applicant did not offer any of the required information in respect of demonstrating their rural housing need which is a fundamental requirement in the assessment of rural planning applications required under both national and local policy.
- The planning authority notes the comments in respect of traffic safety and the inference that an application for a dwelling on the opposite side of the public

road was not required to submit reports in respect of vision line safety. The planning application referred to was P.A. Ref. 17/51961 and as part of this application a traffic speed survey was submitted and also evidence to demonstrate that satisfactory vision lines in both directions on the 85th average percentile speed were achievable. The planning authority also notes that this mentioned permission (P.A. Ref. 17/51961) has greater vision towards the Y-junction to the north of the site by reason of its siting, positioned on the opposite side of the road to the appellant's site.

- The submitted report from the Roads Dept. on the current application specified that the planning conditions as per P.A. Ref. 16/51078 should be adhered to and that the applicant 'provide and maintain required Vision Lines as per the requirements of the County Development Plan. All walls/fences/hedging/bankings to be removed and unobstructed vision lines to be maintained.
- The cited 2016 application provided for a site entrance located outside of the current site (following on from a previous determination that the location of the site entrance as proposed under the current application was not safe P.A. Ref. 16/50532) and as such previous conditions could not be adhered to.
- The planning authority further note that the applicant only indicated the subject site as his overall landholding and did not offer third party consent for vision lines or any detail to support vision splays that were previously determined to be unacceptable at this location.
- The design features were not determined to be acceptable under two previous permissions on site and the planning authority respectfully notes that no appeals were sought on this matter in either of these cases.
- There is no record of any attempts by the appellant or his planning agent to contact the planner during the designated time slots detailed by the planning authority.
- The loading calculation and associated percolation area are determined based on bedroom numbers and not on current occupancy levels as indicated by the appellant. This site was assessed for the same P.E. and formed

conditions in respect of size of the percolation area in accordance with the 2016 permission and EPA Code of Practice for Single dwellings. No documentation or explanation in support of the reduced percolation size as constructed was submitted with the application.

- The appellant in his appeal has clearly demonstrated his awareness that the development as constructed is contrary to that previously permitted yet continued to proceed regardless. He subsequently sought retention permission with no rationale or supporting documentary evidence in respect of same to enable the planning authority reconsider the application. Accordingly, the planning authority were not in a position to require further information/clarification.

6.3. **Observations**

- None.

7.0 **Assessment**

7.1. Having examined the file and the planning history, considered national and local policies and guidance and inspected the site, I consider the main issues which need to be examined in relation to the development for which retention is sought are as follows:

- Principle of Development and Planning History - Demonstration of Rural Housing Need
- Site Access/Egress
- On-site Waste Water Treatment Arrangements
- Design
- Appropriate Assessment

7.2. **Principle of Development and Planning History - Demonstration of Rural Housing Need**

7.2.1. The subject site is located within an area designated as an 'Area Under Strong Urban Influence' under Policy RH-P-5 of the Development Plan. The appellant seeks

to retain the development of a single storey dwelling house of 101sq.m on site. A previous permission on the site P.A. Ref. 16/51078 was granted to Mark Harkin for the construction of a dwelling house of a similar size but with a different design, on a much larger site (approx. double the size of the current appeal site) which encompassed the agricultural field to the immediate south of the current site. Therefore, the principle for a dwelling on this site has been established, albeit on a much larger site under the established planning permission P.A. Ref. 16/51078. The applicant states in their appeal that the former application under granted permission P.A. Ref. 16/51078 was made by his son and that subsequent to receiving permission Mark Harkin decided not to avail of the granted permission on site and instead bought his original home place (i.e. the current applicant's former dwelling house). The current applicant Kevin Harkin (Mark Harkin's father) then decided to build a dwelling house on the subject appeal site for his own use. The Board should note that the design of the dwelling house as currently constructed was originally refused permission under P.A. Ref. 1650532 and that the current applicant acknowledges same.

- 7.2.2. Having examined the planning history on site, I note that the initial planning application applied for by Mark Harkin on the site (P.A. Ref. 16/50532) was refused permission for two reasons 1. Inadequate Vision Lines and 2. as mentioned above for issues regarding Siting and Design (exposed siting and suburban design). The planning authority deemed that the applicant (Mark Harkin) had demonstrated a rural housing need and complied with the policy of the Development Plan at the time and therefore this was not raised as an issue under this previous application. A letter of consent from the landowner Kevin Harkin (current appellant) was also included as part of the application, granting Mark Harkin approval to apply for planning permission on the current site.
- 7.2.3. As part of the second application on site P.A. Ref. 16/51078, a revised design and site layout was submitted which satisfied the planning authorities requirements and overcame the previous two refusal reasons regarding vision lines and design and though the area planner noted that no documentary evidence had been submitted with regard to the applicant's (Mark Harkin's) compliance with the rural housing policy, they accepted that as this had been demonstrated by the same applicant under the previous application P.A. Ref. 16/50532, then this was considered

acceptable. The planning authority subsequently granted permission to Mark Harkin for the dwelling house as detailed under P.A. 16/51078. The Board should note that Condition No.2 part (i) (a) of the Notification of Final Grant states that '*the dwelling shall be used as the principal place of residence of the applicant or with the written consent of the Planning Authority by persons who belong to the same category of housing need as the applicant*'.

- 7.2.4. The area planner has not referred to this condition in their planning report but they do refer to the absence of supplementary information in relation to current applicant (Kevin Harkin) and his requirement to demonstrate rural housing need as per Policy RH-P-5 (site within an area designated as being under Strong Urban Influence). While I acknowledge the applicant's appeal and his claim that he was born and raised within 30m of the subject site, I also note that despite stating he would have no problem proving this fact, that he declined to submit the information as part of the current appeal. However, in my opinion, even if this issue could be addressed with information from the appellant the main concern here is that the current applicant (Kevin Harkin) has still not complied with Condition No.2 of the original grant of permission. This condition requires the written consent of the planning authority and this has not been provided as part of the current application nor as part of the appeal documentation. Accordingly, to permit the development as proposed would materially contravene a condition of the original planning permission on the subject site and would therefore be contrary to the proper planning and sustainable development of the area.

7.3. **Site Access/Egress**

- 7.3.1. As part of the current appeal the applicant seeks retention for the entrance as constructed, which is located on the eastern boundary of the site, to the immediate east of the dwelling house and provides access onto the L-1074-5 local road, also known as the Letterkenny Road. The site is located approximately 260m north of the 60km speed limit on entering the settlement of Convoy. The subject site therefore fronts onto a public road which has a 80km speed limit. Policy T-P-15 requires that all development proposals comply with the Development and Technical Standards set out in Appendix 3 to promote road safety. Table 3 of Appendix 3: *Vision Lines at accesses to Non-National Rural Roads* presents the requisite vision lines for the current site situation and states that 160m vision lines are required. In addition to this

Table 5 of Appendix 3 states that a stopping distance of the same 160m would be required also in the current case. The Development Plan is clear that deviation from these requirements may only be considered upon certification by the applicant's designer to be designed and constructed in accordance with NRA DMRB.

- 7.3.2. The planning authority's second reason for refusal on the current application relates to the existing entrance and the fact that the applicant has submitted no assessment which would support the reduced vision lines on the basis of the identified 85th average percentile speeds and absence of third party consent for achievement of requisite vision lines.
- 7.3.3. As a background to the current case, it is worth noting that the original applicant on site (Mark Harkin) was previously refused a direct access onto the local road under P.A. Ref. 16/50532 at a similar location to the existing entrance. A subsequent application was then submitted under P.A. Ref. 16/51078 which showed a much larger site (approximately double the size of the original) with the entrance proposed at a location further south in the adjoining field, so as to allow a significant improvement in vision lines to be achieved. Following a request for further information the entrance was moved even further south along the boundary to the south-easterly most corner of the site, thus illustrating just how far south the entrance was required to be located to achieve the requisite 160m sightlines to the north. The additional lands to the south of the current site which were used in this former application appeared to be in ownership of the current appellant and a letter consenting to the use of the site was submitted with the application (P.A. Ref. 16/51078) signed by Kevin Harkin. I also note that landowner consent was submitted from the adjoining landowner to the south giving permission to 'look over' his landholding to achieve the requisite vision lines. Having considered all the above and the planning history on site which details the lengths that were taken to achieve the desired sightlines, I would therefore question the appellant's positioning of the current entrance for which retention is sought. This previous location was deemed wholly unsuitable from a traffic safety perspective.
- 7.3.4. The submitted site layout on the current application details the required 160m vision lines to the south from the existing entrance, however only 88m vision lines are visible to the north. In response to the second refusal reason the applicant compares his entrance to that of an outline permission granted under P.A. Ref. 17/51961 which

is located directly across the public road and he argues that the exact same vision line criteria can be achieved from his entrance. He also questions why no reports were requested by the planning authority on that outline planning application to prove vehicular vision line convenience for safety. In response to the appeal the planning authority have stated that P.A Ref 17/51961 did in fact include a traffic speed survey along both sides of the proposed vehicular entrance and demonstrated satisfactory vision lines in both directions based on the 85th average percentile speeds. I note that the appellant has submitted no such evidence with his current application. In addition, the appeal site is located on the western side of the public road, which does not provide as much visibility of oncoming traffic to the north due to a westerly turning bend located approximately 80m north of the existing entrance.

7.3.5. The appellant also queries why issues with his current entrance were not raised by the Council's Roads Engineer in his report on the current application if indeed there were concerns. There appears to be some discrepancy with regard to this matter, as specific reference was not made by the engineer to the current entrance, however I do note that the Council's Roads Dept. Exec Engineer specified that planning conditions as per P.A. Ref. 16/51078 should be adhered to and that the applicant should provide and maintain required vision lines as per the requirements of the County Development Plan. As mentioned, the final approved plans under P.A Ref 16/51078 provided for vision lines of 160m in each direction from the approved most southerly entrance. The Board should note however that P.A. Ref 16/51078 provided for a site entrance located outside the current site and as such this previous condition as referred to by the Council's Roads Engineer cannot be adhered to in the current appeal case.

7.3.6. The Development Plan is clear in its requirements regarding vision lines at junctions with non-national public roads, requiring rural areas outside a 60kph speed limit zone to be in accordance with Table 03 Appendix 3 and Figure 02 Appendix 3. It is also clear in stating that '*Deviation from the requirements in Table 03 Appendix 3/ may be considered upon certification by the Applicant's Designer to be designed and constructed in accordance with the NRA DMRB/DMURS as appropriate*'. No such certification was submitted as part of the current application or as part of the appeal. Therefore, to summarise in accordance with Table 3 Appendix 3, the required vision lines for this site, which is outside the 60kph speed limit and on a non-national road

is 160m in either direction in accordance with the 85 Speed (kph), the applicant has not provide these under the current application for retention nor have they provided any certification or evidence to support a reduction in the requisite vision lines, therefore, in my opinion, retention permission should be refused on this basis.

7.4. On-site Waste Water Treatment Arrangements

- 7.4.1. As part of the original permission on site granted under P.A. Ref. 16/51078 a septic tank and percolation area were approved, with the particulars of same detailed under Condition no.14 of the same permission. The footprint of the dwelling as constructed would appear to be the approximately the same size as that of the dwelling that received permission under P.A. Ref. 16/51078 and both dwellings provide two double bedrooms. The planning authority noted in their report that the percolation area as shown on the submitted site layout appeared to be smaller than that which received approval under P.A. Ref. 16/51078 and that no application in support of this reduction had been submitted as part of the retention application. In response to these concerns the applicant has stated in their appeal that there are currently only two persons living in this house and that the percolation area has only minimal loading and is suitable for two people. They also state that if the planning authority required the enlargement of same percolation area then this could have been done by way of condition and that there was no report from the EHO raising any concern with same. I note that there is no report from the EHO on the current file, however I also note that no details of the current on-site wastewater treatment system have been submitted as part of the current retention permission application.
- 7.4.2. Policy RH-P-1 of the Development Plan clearly states that '*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*'. While the previous waste water treatment system on site submitted under P.A. Ref. 16/51078 may have been deemed acceptable by the planning authority, the fact that the current on-site system has a reduced percolation area and the fact that the appellant refers to same as having a reduced loading raises serious concerns. The house as currently constructed has two bedrooms and therefore the population equivalent (P.E.) has not changed. I also note under the *Code of Practice: Wastewater Treatment Systems for Single Houses (Clarification to*

the design capacity requirements in Section 7 and Section 9 – August 2013) that the minimum house size for the purpose of CoP is 2 bedrooms, which equates to a design capacity of 4 P.E. Therefore, the minimum to be applied in this case would be a P.E of 4 regardless of the number of people using the dwelling.

- 7.4.3. Therefore, given the clear lack of information submitted, including any documentation in support of the reduced percolation area or detail in relation to the operation of same, I am not satisfied that the applicant has demonstrated that domestic effluent arising within the site will be adequately treated such that it will not give rise to surface or ground water pollution. In my opinion, retention permission should therefore be refused on this basis.

7.5. Design

- 7.5.1. The existing design of the dwelling on the subject appeal site, is in fact the same design which was originally refused by the planning authority under P.A. Ref. 16/50532. Amendments to same were made under P.A. Ref. 16/51078 which the planning authority deemed acceptable and a subsequent grant of permission was issued for that design. While the appellant acknowledges that the current design was an issue previously, and that the dwelling and garage as constructed are outside the parameters as approved under P.A. Ref. 16/51078, he argues that given the site's location on the peripheral edge of the town limits and also considering the variations in the design of other houses within the area, which are also deemed to be rural in location, that he should have been afforded some degree of flexibility by the planning authority.
- 7.5.2. The planning authority in their response to the appeal respectfully note that no appeals to the Board were sought by the applicant in the case of either of the previous two instances in relation to design and that they have remained consistent in their approach and the applicant was aware of the issues with the design when he constructed the dwelling.
- 7.5.3. While I acknowledge that the current site is located on the periphery of the settlement of Convoy, it is notably also located within an 'Area of High Scenic Amenity (HSA)' as defined under Map 7.1.1 Scenic Amenity under the Development Plan. The Development Plan states that these areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation

into the receiving landscape and which do not detract from the quality of the landscape. Policies RH-P-2 and RH-P-9 are clear on the importance of siting and design in considering new rural dwellings and the Development Plan states that new rural dwellings should be designed in accordance with the principles set out in Appendix 4 of the County Development Plan, entitled '*Building a House in Rural Donegal – A Location, Siting and Design Guide*'. In my opinion, having conducted a site visit and examined the submitted plans the existing dwelling on site currently does not comply with the principles outlined in the Development Plan. Those features included as part of the design including the hipped roof, bay window and red brick quoins are features more commonly found on dwelling houses within urban areas. I would however consider that certain features of the dwelling may be addressed by way of condition if the Board were minded to grant the application. However, given the other substantive reasons for refusal discussed above and listed below I do not consider these amendments worth pursuing at this stage.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development and separation distance 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.

8.0 Recommendation

- 8.1. It is recommended that retention planning permission be refused for the reasons and considerations set out hereunder.

9.0 Reasons and Considerations

1. The development for which retention is sought would materially contravene condition number 2(i)(a) of planning register reference number 16/51078, which requires the written consent of the planning authority where persons other than the applicant in that case wish to use the dwelling house as their principal place of residence and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to Policy T-P-15 and the required standards outlined under Table 3 Appendix 3 of the Development Guidelines and Technical Standards of the County Donegal Development Plan 2018-2024 and in the absence of any assessment in support of reduced vision lines, it is considered that the location of the entrance to the development for which retention is sought would be contrary to the aforementioned policies and standards and as a result would endanger public safety by reason of traffic hazard and would therefore be contrary to the proper planning and sustainable development of the area.
3. Having regard to the submitted site layout plan, which shows a reduction in the percolation area for which permission was previously granted under planning register reference number 16/51078 , the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

Máire Daly
Planning Inspector

10th March 2021